

# **Proposed Marlborough Environment Plan (MEP)**

## **Hearing Notes**

4 December 2018

Block 11 – Topic 22

## **Forestry**

### **Volume 2 of the MEP (Rules and Standards)**

Presentation from

**Kenepuru and Central Sounds Residents' Association**

## **Presentation to MEP Hearing Panel re Topic 22 - Forestry**

### **Introduction**

1. On behalf of the Kenepuru and Central Sounds Residents' Association (**KCSRA**). I would like to thank the hearing panel for the opportunity to talk to our subsequent Further Submission on the MEP as it concerns the above Topic.
2. My name is Andrew Caddie and I am the President of KCSRA. The Association was incorporated in 1991 and currently has 280 members (mainly household) who predominately reside full or part time in the Kenepuru Sound and Central Pelorus. Our objectives include among other things to coordinate dealings with central and local government. We are an active organisation dealing with a wide range of matters of concern and/or interest to members. For a fuller grasp of our activities go our website [www.kcsra.org.nz](http://www.kcsra.org.nz).
3. Suffice to say that insofar as our limited resources permit - and bear in mind we are a voluntary organisation with no staff - we have committed to engaging in the MEP process since it first began in 2014 with the release of various MDC discussion papers. In 2016 we reviewed aspects of the notified MEP and made extensive written submissions on these aspect. KCSRA then made further submissions on other submitter's efforts. We have attended and made a number of presentations to this hearing panel on various topics since November 2017.
4. Realizing the importance of issues surrounding Commercial Forestry operations in the Marlborough Sounds KCSRA decided to make a dedicated submission under the heading of "Commercial Forestry in the Coastal Environment Zone". We duly prepared and filed the same back in August 2016.
5. In terms of my professional background I hold two tertiary qualifications - a Bachelor of Forestry Science and a LLB, both from Canterbury University. I was a forester for a number of years with the then NZ Forest Service and also spent some time with a national forestry consultancy firm - PF Olsen Ltd. Following a period of OE I obtained my LLB and practiced law as a commercial solicitor for a number of years at various large National legal firms. In that time I maintained a professional interest in matters forestry. I was the Chair of the Auckland Section of the New Zealand Institute of Forestry for three years till 2009 and remain a member of the NZIF (retired). I was also a Trustee on an Indigenous Forestry focused trust – Tane's Tree Trust - for a number of years.
6. Today's session of hearings covers Topic 22 which is entitled Forestry.

### **Forestry in the MEP**

7. The MEP comprises four Volumes. Volume 1 of the MEP is, I suggest, the paramount section as it sets the issues, objectives and policies in relation to or in response to those identified issues. For various reasons MDC made a policy decision not to grace Forestry with a separate chapter. Instead the MEP's treatment of Commercial Forestry related matters is scattered through various chapters eg., Chapter 4 of Volume 1 is relevant as it deals with the use of natural and physical resources, Chapter 15 dealing with Resource Quality – soil and Chapter 17 dealing with transportation.

8. We have already made presentations to the Panel on these chapters and do not intend to re-traverse the same unless particularly pertinent to Topic 22.
9. In our original submission we also spent a bit of time on Volume 2 of the MEP. This deals with Rules and Standards. Once again forestry related matters are found in a variety of the subject headings making up the various chapters of Volume 2. For example under the heading of “Rural Environment Zone and chapter 5 entitled “Coastal Environment Zone”.
10. Today's Topic and the associated Section 42A report from Mz Liz White, Consultant planner is, we submit, largely concerned with the detail of Volume 2 as it relates to Forestry operations in the Marlborough Region.
11. To be clear we found pulling together our original submission focusing on Commercial Forestry in the Sounds something of a demanding exercise. However there has been another layer of complexity added to the mix. In May of this year the National Environment Standard for Plantation Forestry Regulations (**NES PF**) came into effect. It provides a binding set of nation wide rules for planting, harvesting and replanting (together with defined ancillary operations) for plantation or commercial forestry. The empowering legislation for these regulations (the RMA) sets out how they will apply to the likes of the MEP. Regulation 6 of the NES PF provides a seemingly limited discretion for the likes of the MDC to depart from the NES PF in the MEP.
12. The gestation of the NES PF has not exactly been under the radar. Nevertheless MDC back in 2016 decided to proceed with notifying the MEP containing within a set of rules and standards it saw fit at the time. Accordingly under the RMA a realignment exercise of the proposed plan was now required. This realignment exercise has been completed - some 51 pages long.
13. The report to Council on 1 November 2018 as to the completion of this exercise indicates that the exercise has been completed at some pace in order that submitters in support or in opposition to these rules will have the opportunity to present submissions and evidence to the Hearing Panel<sup>1</sup>. In any event as we see it fell to Mz White to incorporate that exercise into the section 42A report on Volume 2 of the notified MEP and against the various relevant submissions. **No small task.**
14. However the existing fragmented nature of the treatment of Commercial forestry in the MEP and then this realignment certainly resulted in a rather daunting complex and, dare I say it, confused potage, for the likes of voluntary organisations such as the Association to grapple with using their own sparse resources.
15. Accordingly we decided it was best to refresh as to what was our objectives in engaging in this part of the process, our strategy to achieve these objectives and come up with a simple framework to see where we appear to have landed in terms of the S42A report and associated narrative and recommendations on matters of concern to the Association.

### **KCSRA Approach**

16. KCSRA freely acknowledges the hugely significant national economic importance of Commercial Forestry to the New Zealand economy. Over Five Billion dollars in exports alone and creating employment, directly and indirectly, for many 10's of thousands of New Zealanders. We accept that there are also many other positive effects over the life of a

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<sup>1</sup> MDC report L225-08-08 as presented to Council on 1 November 2018.

commercial plantation forest other than export dollars and jobs. Indeed in paragraphs 5 and 7 of our original submission we identified some of these undoubted positive effects of **carefully located** commercial forestry.

17. In an earlier hearing we outlined and supplied evidence to the Panel as to how we came to have a large amount of **poorly** located commercial forestry in the Sounds. In the run up to the notification of the MEP one of the material adverse effects from Commercial Forestry in the Sounds – particularly in the five or so years following harvest and replanting - was creating real concern among members.
18. This material adverse effect is the risk and adverse consequences of that risk becoming an actuality, namely the deposition of large volumes of sedimentation over relatively short times into the Coastal Marine Area (CMA) – particularly following rainfall events. To be clear such events abound in the Sounds and many say they are increasing in frequency and intensity.
19. In November 2015 the MDC released a technical paper entitled “*Mitigating Fine Sedimentation from Forestry in Coastal Waters of the Marlborough Sounds*”<sup>2</sup>. As we have discussed that paper on our earlier submission and proffered that paper as evidence in earlier hearings, we do not intend to spend much time on it other than to repeat - it sets out a compelling science and factual based narrative as to the importance of addressing the issue of Commercial Forestry operations generating adverse and significant quantities of sedimentation and how this issue might be addressed. We submit the need for the MEP to address this issue is not only required by Policy 22 of the New Zealand Coastal Policy Statement (NZCPS) but also by Policy 11 of the NZCPS – sedimentation’s adverse impacts on the matters covered in Policy 11 (eg., protecting indigenous biological habitats and diversity in the coastal environment).
20. It underlines why KCSRA believes the MEP is an excellent generational opportunity to address these significant adverse effects as the commercial forestry plantings in the boom years of the mid to late 1990’s come up for harvest as well as ensuring any replanting is better managed. We are also mindful that the current governments thinking around afforestation sounds a warning note that commercial afforestation (new planting) in the Sounds may not be a dead duck as some have suggested.
21. In earlier hearings we tabled the likes of the April 2017 NIWA Report entitled “*A 1000 year history of seabed change in the Pelorus/Te Hoiere Marlborough*”. We submit that the results of this coring study show fairly conclusively that in modern times (post 1975) Commercial Forestry from pine plantations is a major contributor to fine sedimentation in the CMA and, so the report states, making a contribution well in excess of its relative land area.
22. Again at an earlier hearing we advocated for a new Policy in Chapter 4 of Volume 1 of the MEP namely “*Recognise the need to mitigate fine sedimentation run off into the marine environment of the Marlborough Sounds*”. On reflection, given the wording of Policy 22 of the New Zealand Coastal Policy Statement (NZCPS) our suggested wording seems a bit on the timid side.
23. Words are one thing pictures another. Accordingly, I thought it might be useful to illustrate in practice how sedimentation from Commercial Forestry operations associated with rainfall events enters the CMA. I do this with a couple of MDC photos that formed part of the

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<sup>2</sup> MDC Technical Report Number 15-009.

Forestry report to the 22 November meeting of the MDC Environment Committee. [*Two photos*<sup>3</sup>]

24. So, in short the objective of the Association in making its submission and appearing here today is to try and ensure that the MEP takes full cognizance of this issue and puts in place – in the context of today's Topic – rules that have a more than even chance of being effective in controlling the significant adverse effects in the CMA from sedimentation runoff generated by Commercial forestry operations. **I stress** that our focus today is narrow - the Sounds or in terms of the terminology of the MEP - the Coastal Environment Zone (**CEZ**) and largely focusing on the issue of sedimentation.

### **National Environment Standard for Plantation Forestry**

25. In terms of the NES PF, the Council's realignment exercise and the narrative of the section 42A report we wish to make an overview comment and submission. The route we appear to be heading down is, we submit, more likely than not to result in a narrow case by case approach. It seems to be engendering a mind set that prevents us from standing back and looking at the issue not just on a block by block basis but on say a catchment by catchment or watershed basis.
26. Indeed we submit there seems something of a unseemly policy rush by Council to “*offer their hands for tying*” rather than seeing the NES PF as an opportunity to retain policy and management discretion when considering the adverse effects of Commercial Forestry in the CEZ. We say that this would be a most unfortunate outcome and not one envisaged or required by the NES PF.
27. The NES is over 70 pages long. A lot of effort has been put into it by Central Government and the industry. It is not necessarily a simple is the NES PF applicable or is it out exercise. We suggest to MDC and the Panel that there is a lot of useful base material that can **be built on** to better protect the Jewel of the Marlborough region from the adverse effects of Commercial forestry. I appreciate that this approach will require extra effort from the Panel and the policy department of the Council. But surely better protecting and even enhancing the environmental values of our Iconic Sounds CMA is not of itself a worthwhile endeavor?
28. Regulation 6 of the NES PF makes it clear that in terms of say controlling sediment the Council may promulgate more stringent MEP rules, we also note that the NES does not purport to cover all commercial forestry related matters. For example around the manner in which logs may be transported to market.
29. In the balance of this submission our underlying stance is that the weight of evidence is such that on the balance of probabilities the adverse effects of sedimentation run off into the coastal marine area of the Marlborough Sounds and the requirements of the NZCPS demands more stringent rules and thus more hands on Council oversight and management and that this approach is necessarily facilitated by Regulation 6 of the NES PF.

### **Submission structure**

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<sup>3</sup> MDC Forestry Monitoring Report E335-003-002-01 (**page 37**) as presented to the MDC Environment Committee on 1 November 2018.

30. In terms of the structure of the rest of this submission we intend to use the approach of briefly considering, in turn, where we seem to have landed by reference to the Section 42A report in the usual commercial forestry operational sequence of first you plant, then you harvest and then you replant.

## **Planting/Afforestation**

31. KCSRA, with all due respect, disagrees with the section 42A reporter that Rule 4.6.3 of Volume 2 - where Commercial Forestry planting is said to be a discretionary activity - must be amended (or in this case replaced with Rule 4.5.3) to become a restricted discretionary activity and submit accordingly.
32. We do not purport to suggest we have had commissioned a legal opinion on this matter but briefly note a couple of points that may be of interest/support. Firstly, the mere grant of the more stringent discretionary status under the MEP cannot, we submit run foul, of the NES PF, if there is an issue then that only arises at a later point if at all. The second point is that section 43(6)(iii) of the RMA entertains the notion that a NES may label an activity with the status of fully discretionary. So if it such a status is permitted under an NES why not, we say, in the MEP?
33. By way of example as to how restrictive the restricted discretionary approach is we note that as far as we can ascertain in the NES PF there is no requirement or detail around the preparation of an Establishment or Planting Management Plan. We consider this an unfortunate oversight and one that we submit should be corrected. As we submitted in our original submission Planting is the prime time for a forward looking Council to control future sedimentation into the CMA from future harvesting operations and to address matters such as we outlined in paragraph 36 of our original submission.
34. With Commercial Forestry planting as a discretionary activity this oversight can be easily rectified and an Establishment plan required. This can be reviewed and amended by Council as required and thereby control/mitigate future sedimentation issues from poor siting of proposed planting at the onset.
35. However if the Panel is of a mind to follow the recommendations of the Section 42A report (or believes it is required to do so) as to the view that planting can only be monitored through a limited discretionary rule then we submit most strongly that matters covered in the new Rule 4.5.3 be revisited as they are far too (and unnecessarily so we submit) sketchy. In revisiting them the objective should be to more fully and thus more clearly cover the subject matter of say Regulation 6 (1) and 6(2).
36. It seems to KCSRA that some of the suggested new wording of rule 4.5.3 attempts to paraphrase Regulation 6 (1 & 2). On this basis and by way of example only, we submit the wording re the reference to sedimentation needs to be revisited against the requirements of Policy 22 of the NZCPs. For example we submit that at the very least the word "*Control*" needs to appear before the word "*Effects of Sedimentation*". KCSRA dares to submit that this is an area where there may also be some useful hints from the NES PF to flesh out the **very, very** bare bones of this new rule.
37. Again we are not clear why in the new Rule there is no express reference to significant natural areas (Reg 6(2)(b)) or NZCPS Policy 15, which among other things, refers to avoiding significant adverse effects on other natural features and landscapes. We submit that this needs to be rectified.

38. Further it seems a most unfortunate outcome if the new Rule results in the view point that as the Councils discretion has been limited to those defined matters in the new Rule then matters not covered/controlled by the NES PF – for example how logs resulting from Commercial Forestry plantings may be required to be transported to market (by barge say - rather than via the stressed and inadequate Sounds road network) – can no longer be addressed by the consenting officer in the initial consent process. Again an express reference here will we submit assist.
39. **Set Backs:** Unfortunately the definition of “Setback” in Volume 2 of the glossary section of the MEP has become lost with the definition of “yard”. Accordingly we submit that in the context of Commercial Forestry planting the NES PF definition of setback be expressly incorporated into the MEP. Namely that it means *”the distance measured horizontally from a feature or boundary that creates a buffer within which certain activities cannot take place”*.
40. In relation to the setback for Commercial Forestry planting within the CMA, as we read it, the current setback (as that term is defined above) is 30 m from the CMA. This is less than one tree length. We submit this is not wide enough in terms of effectively reducing sedimentation from current and future forestry operations. We submit that the setback for Commercial Forestry planting be **extended to 50 m** from the CMA.
41. We note we are uncomfortable that despite the mandatory language around the use of the word “set back” as we read the MEP this is not a prohibition but merely a drop down to a discretionary activity.

## Harvesting

42. The larger scale impacts of recent rainfall related events in the East Coast of the North Island on recently harvested areas of Commercial Forestry dramatically underlined what can happen if the appropriate authorities have not the wit or will to more carefully and thoughtfully regulate Commercial forestry harvesting activities bearing in mind the likelihood of such events.
43. Even under the MPI and Industry led revision of the NES PF Erosion Susceptibility (**ES**) mapping exercise - which surprise, surprise - downgraded many previously Very High ES areas to High ES the Sounds is still predominately classified as High ES. And so it should be. Just to refresh I remind you again of the MDC photos of what this can look like.
44. Commercial forestry harvesting was listed as a discretionary activity in the notified MEP. Following the realignment exercise it is now via a new Rule (4.5.4) a restricted discretionary activity. The councils discretion is to be restricted using, as far as we can ascertain, the same wording as that for Commercial Forestry planting in new Rule 4.5.3.
45. In light of the overwhelming evidence that the sedimentation issues arising from CF harvesting require a much greater regulatory oversight KCSRA has struggled with the policy reasoning that Regulation 6 of the NES PF **requires** that Council can only have a rule classifying CF harvesting in the CEZ as restricted discretionary. We submit against this outcome and reiterate that in the CEZ CF harvesting should be discretionary.
46. However if the Panel is of a mind to follow the recommendations of the Section 42A report (or believes it is required to do so) then we submit that the excessively sparse wording used

in the proposed new Rule 4.5.4 be revisited so as to more fully and thus more clearly cover the subject matter of say Regulation 6 (1) and 6(2).

47. We may be wrong but it seems to the Association that some of the suggested new wording attempts to paraphrase Regulation 6 (1 & 2). On this basis and by way of example, we submit the wording re the reference to sedimentation needs to be revisited against the requirements of Policy 22 of the NZCPs. For example we submit that at the very least the word “*control*” needs to appear before the word “*Effects of Sedimentation*”. Again we are not clear why there is no express reference to significant natural areas (Reg 6(2)(b)) or NZCPS Policy 15, which among other things, refers to avoiding significant adverse effects on other natural features and landscapes. We submit that this needs to be rectified.
48. Further it seems a most unfortunate outcome if the new Rule results in the view point that as the Councils discretion has been limited to those defined matters in the new Rule then matters not covered/controlled by the NES PF – for example how logs resulting from Commercial Forestry Harvesting may be required to be transported to market (by barge say - rather than via the stressed and inadequate Sounds road network) – can no longer be addressed by the consenting officer in the consent process.
49. **Set Backs:** Unfortunately the definition of “Setback” in Volume 2 of the glossary section of the MEP has become lost with the definition of “yard”. Accordingly we submit that in the context of Commercial Forestry harvesting the NES PF definition of setback be expressly incorporated into the MEP. Namely that it means “*the distance measured horizontally from a feature or boundary that creates a buffer within which certain activities cannot take place*”.
50. In our original submission we submitted that a strong case existed for the MEP to **prohibit** CF harvesting within 50 m of the CMA. As we understand it the MDC has done some work on estimating some of the economic costs this sort of approach might cause to owners of existing commercial forest. It appears it could be significant. Nevertheless we submit the RMA and the NZCPS require that this unfortunate historical legacy be addressed in the Sounds.
51. As we see it if planting and replanting of commercial forestry is setback (not allowed) within 50 meters of the CMA then in time we will achieve a suitable buffer zone from the clearly documented significant adverse issues arising from CF operations in the CEZ in close proximity to the CMA. Accordingly on that basis we resile from our previous position of a set back (**prohibition**) for Commercial harvesting of 50m from the CMA to one of 30m and submit accordingly. To be clear we see this concession as only relating to the existing crop.

## Replanting

52. Replanting of Commercial Forestry in the CEZ following the harvesting of an existing crop and the proximity of such replanting to the CMA is an area of considerable concern to the Association. Further, our representatives are constantly told at other forums where we are trying to rein in the unsustainable activities of users of the CMA that the real issue is not the adverse effects of their activities but sedimentation run off from land based activities. It was also a matter for which the MDC technical report highlighted the existing inadequacies of the current planning and regulatory oversight. Will the MEP merely cement in existing practices or will the adverse effects of replanting in the CEZ in close proximity to the CMA be addressed? Naturally we hope for the latter approach.

53. As we understood it in the MEP as notified, CF replanting in the CEZ was a permitted activity (no resource consent required) so long as it was in accordance with the standards set out in the likes of 4.3.1.6© or was expressly limited by another rule. The plain wording of standard 4.3.1.6 was that no replanting of CF was permitted in, or within 30m of the CMA. However this standard was qualified by Rule 4.6.1. This meant that replanting in this so called set back area was, as a result of non-compliance with the above standard, a discretionary activity.
54. In other words in theory you could seek consent to carry out CF replanting within the 30m-setback area.
55. Under the NES PF Regulations it appears a similar approach has been taken. We refer to Reg 78 (2) (a set back – no planting within 30 m of the CMA) and then if this is not complied with it becomes a restricted discretionary activity with Reg 81(4) setting out some potentially wide ranging discretions (eg effects on ecosystems, effects on the coastal environment, effects of future forestry activities on the coastal environment and so on).
56. However, whilst turning to the Section 42A report on this topic of replanting keep in mind Regulation 6.
57. As we understand it Mz White proposes that there be a setback area of 30m (drop down to a discretionary activity if you wish to chance your arm). More controversially, Mz White proposes a buffer zone from 30m to 200m, in which replanting is to have a controlled activity status – the forest owner can replant as of right subject to certain MDC controlled matters. Namely the location of the replanting and the effects of sedimentation including those likely to arise from harvesting and measures proposed to avoid or mitigate those effects.
58. In her report at paragraph 240 Mz Whites identifies some of her concerns with this approach and how these concerns might be better dealt with as a restricted discretionary approach. **We endorse those concerns.**
59. In our original submission we sought a total buffer zone of 300 m. Outside of that CF replanting would be a permitted activity. Mz White recommends one of 200m. After some reflection the Association supports in principle Mz Whites proposal of a buffer zone of 200m.
60. We **do not support** the proposal that in the buffer zone the area from 30m of the CMA to 200m have the very limited controlled activity status suggested and submit accordingly.
61. Even the NES PF at REG 81(4) offers the more flexible (and we submit more likely to be effective in addressing the issues) restricted discretionary status approach. Bearing in mind a more stringent rule is permitted under Reg 6 we prefer that in this area replanting be a discretionary activity and submit accordingly.
62. As noted previously we submit that Reg 6 of the NES PF is not a barrier to a discretionary status where the focus is in a defined area with real problems in terms of meeting the requirements of the NZCPS.
63. However we appreciate that this is a yet to be tested area the Panel may prefer to continue down the path of a restricted discretionary activity status in this 30m to 200m zone. If that is the case then we submit that the matters set out in Regulation 6 be expanded in full as we have suggested in elsewhere in this submission. We also draw the Panels attention to the

wording of Regulation 81(4) of the NES PF and submit that these matters should also be listed as requirements of the restricted discretionary activity.

## **Steep Erosion Prone Land Mapping (SEPL)**

64. The notified MEP mapped SEPL in the Marlborough region. This seems in essence a local knowledge exercise. Planting of Commercial Forestry was to be prohibited on SEPL. In relation to planting (new) on SEPL in the CEZ the section 42A reporter recommends keeping both the prohibition on planting on SEPL and the map. We submit in support of that recommendation.
65. Before we turn to the treatment of harvesting and replanting of Commercial Forestry in the SEPL I stress what we are dealing with here – steep erosion prone land in the CEZ. Accordingly the requirements of the likes of Policy 22 of the NZCPS need to be at the forefront in considering if the continued harvesting and replanting in Commercial Forestry is an appropriate land use.
66. Under the MEP as notified there was to be a dual system - unlawfully established Commercial Forestry on SEPL was not to be permitted to be harvested but lawfully established CF would be. The section 42A reporter after some discussion (see paragraph 272) arrives at the view that this distinction is not manageable, appropriate nor so the S42A reporter opines is there sufficient evidence to support a blanket prohibition. Mz White plumps for harvesting and replanting on SEPL to be treated as a restricted discretionary activity. In other words aligning SEPL with harvesting and replanting on non-SEPL.
67. KCSRA can live with the removal of the distinction between lawful and unlawful (we raised issues with this in our original submission). However, with all due respect we do not support the treatment of SEPL as proposed. We submit that the precautionary principle overrides Mz Whites concern about the lack of evidence (a stance we find surprising). A more rigorous approach is required to effectively assess the continuation or not of the cycle of harvesting and replanting on SEPL. We find it unfortunate that Council has seemingly not seen fit to get expert professional forestry advice as to the size and scope of the problem to support prohibiting harvesting and replanting in this zone.
68. As a minimum, we submit Commercial forestry harvesting and replanting on SEPL should be classified as a fully discretionary activity. This will facilitate Council Officers having full rein to mitigate the adverse effects of this unfortunate historical legacy. It will also we suggest increase the opportunity for public stakeholders, to say nothing of adjacent or downstream property owners and communities, to also have a say.

## **Conclusion**

69. The unfortunate placement of significant areas of Commercial Forestry in the Sounds arises from “Mr She’ll be Right’s” ill thought out historical policy decisions. We submit the available science, evidence and the requirements of the NZCPS strongly support the view that there are likely to be significant adverse effects arising from Commercial Forestry activities in the Sounds. This require hands on and careful thoughtful management by the regulator in order not to repeat or perpetuate that unfortunate historical legacy.

70. The need to revisit the MEP in a major way as a result of the introduction of the NES PF has, late in the piece, created a real degree of complexity and confusion. There is useful material in the NES PF that can be used as a base for addressing the adverse effects of Commercial Forestry in the Sounds. However we have real concerns that there is something of a rush by MDC to abdicate policy, managerial and regulatory oversight on the grounds that this is what the NES PF requires, that approach is neither necessary nor required.

Andrew Caddie  
President  
Kenepuru and Central Sounds Residents' Association  
4 December 2018