

# Proposed Selwyn District Plan



## Right of Reply Report

### Natural Character

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## 1.0 Purpose of Report

- 1.1 The purpose of this report is to respond to the questions raised by the Hearings Panel after the Hearing on the Proposed District Plan's (PDP) Natural Character chapter (NATC), and for the Officer to address other matters raised in evidence and to propose any further amendments to the notified version of the PDP above those recommended in the Officer's s42a evidence report. Mr. Smith has provided additional input to inform my reply. He has not provided this as a separate document but directly into my report. All input from Mr. Smith has been specifically identified within the report.

## 2.0 Hearing Panel's Questions to the s42a Reporting Officer and Response

### Question 1

**Comment: In the Reply Report please ensure that all of your changes now recommended in the 'Officer's Response to Questions from the Hearings Panel' are briefly discussed, and are shown in an updated Appendix 1 of all changes (with colour coding to distinguish the latest changes).**

- 2.1 All amendments to recommended decisions on submission are indicated in **blue** in **Appendix 1**.
- 2.2 All amendments are colour coded in **Appendix 2** as follows:
- a. The proposed amendments recommended by the section 42A report are highlighted in **yellow**.
  - b. The amendment recommended in response to the hearings panel initial questions are highlighted **green**.
  - c. The amendments recommended by this right of reply report are highlighted in **blue**.

### Question 2

**In the above report, item para 10.39 – 10.40, please review the suggested wording of REQ(1)(c) to make it clear how the amended rule would treat a travelling irrigator at say 15m from the bank.**

- 2.3 I assume the Hearings Panel is referring to REQ2.1c. that relates for buildings and structures. The issue the Hearings Panel is referring to is that the draft wording is not clear as it relates to irrigation structures less than 10m<sup>2</sup> and travelling irrigators. I have proposed amendment to REQ2.1c. in **Appendix 2** to provide greater clarity.

### Question 3

**In the above report, para 10.60, in the last sentence reference is made to the *“Water’ baseline and preferred option reports that discussed the potential impacts of these types of plantings within riparian margins in greater detail which informed the higher level s32 evaluation”*. Can you please advise if those reports addressed specifically the natural character effects of these types of plantings in riparian margins, and if so provide relevant references.**

- 2.4 The 'Water Baseline report'<sup>1</sup> (WBR) provides a review of the following in relating to water:
- a. the Operative Selwyn District Plan (SDP);
  - b. the Operative District Plans of the two adjacent territorial authorities;
  - c. the Mahannui Iwi Management
- 2.5 The WBR does not specifically address the natural character effects of horticultural plantings, woodlots and shelterbelts. However, what it does do is confirm that tree planting is addressed in the SDP and to a lesser extent in the Christchurch District Plan. This includes mention of policies in the SDP on page 4 of the WBR that seeks to avoid tree planting in riparian margins, along with Table 3 (starting on page 34) that summaries all the provisions that relate to tree planting in riparian areas. This includes rules C2.1.1 and C2.2 of the SDP that permit the planting of trees, amenity planting, shelter belts and plantations generally subject to setbacks. Note the definition of tree plantation include forests, orchards, vineyards and woodlots.
- 2.6 Therefore, while the WBR does not provide an assessment of the natural character effects of horticultural plantings, woodlots and shelterbelts, it informed the s.32 report at a high level by identifying the type of activities the existing district plans address, including provisions that relate to tree planting within riparian margins.
- 2.7 Similarly, the 'Preferred Option Report'<sup>2</sup> does not provide an assessment of the natural character effects of horticultural plantings, woodlots and shelterbelts, but rather repeats the assessment provide by the WBR in identifying the type of activities the existing district plans address, including provisions that relate to tree planting within riparian margins.
- 2.8 These reports help explain why the rules in relation to horticultural plantings, woodlots and shelterbelts were included in the PDP. Neither report raises any issue with the SDP existing provisions, which is noteworthy as, if there was a significant issue with the existing provisions, I would have expected it to be highlighted in this report. However, this has not been the case and similar provisions have been included in the PDP. This also help explains why there is no assessment of the natural character effects of horticultural plantings, woodlots and shelterbelts. If it there was no significant issue with the existing provisions, no detailed assessment would have been necessary.

#### Question 4

**Can you please respond to the evidence of Ms Wharfe (and also Ms Barnett) regarding what constitutes "inappropriate development" in terms of s6(a) RMA , when we are considering horticultural plantings/woodlots etc, planted near waterways but in the Rural Zone context (where farming is encouraged).**

- 2.9 Ms. Wharfe's evidence on this matter is perhaps best summarised by paragraphs 6.15 and 6.16,

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<sup>1</sup> Full title: Report for the Selwyn District Plan Review – Review of the District Plan Provisions Relating to Water. Prepared by Stantec NZ Ltd

<sup>2</sup> Full Title: Preferred Option Report to District Plan Committee

which state:

*“It is important to reflect that s6(a) does not seek to limit all subdivision, use and development, but rather that natural character is protected from ‘inappropriate’ subdivision, use and development.*

*In essence, the debate in this hearing is about what is ‘appropriate’ development while still preserving natural character”*

2.10 I agree in part with these statements. The only point of clarification I would add is the outcome sought by section 6(a) RMA is *‘The preservation of the natural character of the coastal environment (including the coastal marine area) wetlands, and lakes and rivers and their margins...’*. That outcome is to be delivered by the protection of the natural character of wetlands, lakes and rivers etc from inappropriate subdivision, use and development. Ms. Wharfe is correct in stating that debate is about what is appropriate development while still preserving natural character.

2.11 Ms. Wharfe’s evidence also refers to Mr. Smith’s evidence that refers to the NZ Institute of Landscape Architects draft document *‘Aotearoa New Zealand Landscape Assessment Guidelines (Guidelines)’*, which define natural character and naturalness as:

Natural Character

*“An area’s distinct combination of natural characteristics and qualities including degree of naturalness.”*

Naturalness

*“The extent to which natural elements, patterns, and processes occur. The extent to which an area is unmodified.”*

2.12 I agree this guidance is helpful, but some caution is needed to be taken to any guidance that has not gone through a statutory process. The NZ Coastal Policy Statement (NZCPS) is also relevant, although I acknowledge this document only applies to the coastal environment, which is addressed in the Coastal Environment Chapter of the PDP. Nevertheless, it is useful to note that Objective 2 of the NZCPS provides a three-step process to preserving natural character of the coastal environment, stating:

*“To preserve the natural character of the coastal environment and protect natural features and landscape values through:*

- *recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;*
- *identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and*
- *encouraging restoration of the coastal environment.”*

- 2.13 The 'characteristics and qualities' of natural character are address in policy 13.2 of the NZCPS that states:

*"Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:*

- *natural elements, processes and patterns;*
- *biophysical, ecological, geological and geomorphological aspects;*
- *natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;*
- *the natural movement of water and sediment;*
- *the natural darkness of the night sky;*
- *places or areas that are wild or scenic;*
- *a range of natural character from pristine to modified; and*
- *experiential attributes, including the sounds and smell of the sea; and their context or setting."*

- 2.14 Policy 13.2 of the NZCPS provides the first step of objective 2. The second step of objective 2 is more difficult as there has been no district wide natural character assessment conducted, due to the significant resourcing that such a study would entail and that no issues had been identified with the existing suite of provisions. It is also noted that all the above definitions of natural character and naturalness rely on an assessment or intimate knowledge of the 'natural characteristics and qualities' of the area.

- 2.15 The NATC chapters response to this uncertainty is to require setbacks for different activities that depends on the perceived risk of that activity reducing the natural character of surface water bodies. The setbacks differ depending on the degree of natural character of surface water bodies that have been broadly identified. When an activity seeks to be established within the setback, a resource consent is required, and an assessment is then conducted of the adverse effects of the activity on the natural character of the area. This approach aligns with Objective 2 NZCPS.

- 2.16 This brings us to the focus of the evidence, which is not what section 6(a) RMA is trying to achieve, but what activities are likely to affect natural character; what activities are unlikely to affect natural character; and what should the setbacks be.

- 2.17 Mr. Smith has provided me with following further input on this matter:

*2.17.1 "I consider that horticultural plantings, woodlots and shelterbelts, that consist of stands or rows of food producing trees, vines or bushes (which are typically exotic) would be inappropriate when located near Schedules 2 and 3 water bodies. This is because these waterbodies include ONLs, the Selwyn River and the rivers and creeks that feed into Lake Ellesmere, that are an ONL. These waterbodies generally display a higher degree of*

*natural character. Therefore, more intensive primary production activities near these water bodies should be considered on a case-by-case basis, rather than as a permitted activity, because cumulatively the activities are unlikely to directly or indirectly preserve the natural character of these water bodies.*

2.17.2 *Regarding cumulative effects, the panel should bear in mind that the Waimakariri, Rakaia and Selwyn Rivers, being the three main rivers in the district are 151km, 150km and 80kms long, respectively. Due to their length a significant number of activities may be located along or near their margins that may degrade their natural character. Therefore, at this high level, and when considering a threshold between permitted and restricted discretionary activities, a more conservative approach should be taken to achieve Section 6(a) of the RMA.”*

2.18 I asked Mr. Smith to clarify his statement under paragraph 2.17(a) in terms of whether horticultural plantings, woodlots and shelterbelts are a threat to the natural character of all surface water bodies, not just Schedule 2 and 3 surface waterbodies. He confirmed that horticultural plantings, woodlots and shelterbelts are a threat to the natural character of all surface water bodies, although less of threat to non-schedule 2 and 3 surface waterbodies. He considers the 10m setback provided by NATC-REQ3b is appropriate to protect the natural character of non-schedule 2 and 3 surface waterbodies from horticultural plantings, woodlots and shelterbelts.

2.19 Mr. Smith’s view is consistent with case law<sup>3</sup> on this matter that suggests the words “natural” and “natural character” may connote a range of qualities and features created by nature as distinct from man-made constructions, including things such as pasture, exotic trees, orchards and vineyards, or wildlife, both feral and domestic. Mr. Smith’s evidence is the only landscape evidence on the NATC Chapter.

2.20 Mrs. Barnett’s evidence is different to Ms. Wharfe’s evidence and did not specifically mention section 6(a) RMA or ‘inappropriate development’, although she may have alluded to this in the hearing. The only thing similar I could find was section 4.22 in the ESAI evidence that states:

*“Horticulture, shelterbelts and woodlots are important parts of agricultural activities in rural areas for food production and to provide shelter and erosion protection. They are a normal and accepted part of rural landscapes. The impacts of these plantings are predominantly relevant to the visual aspect of natural character and can also be considered as having a ‘natural element’ consisting of biological flora and neither human nor artificial.”*

2.21 Overall, I agree with this statement. Horticulture, shelterbelts and woodlots are important parts of agriculture and are normal and an accepted part of rural landscapes. I agree also that vegetation is a natural element, but disagree they have a completely natural character, particularly in relation to the linear pattern of this type of vegetation and the cultivation and management processes surrounding them. In respect of this matter Mr. Smith’s further input

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<sup>3</sup> Harrison v Tasman DC [1994] NZRMA 193 (PT Trio Holdings v Marlborough DC W103A/96 (PT), partially reported at (1996) 2 ELRNZ 353; [1997] NZRMA 97; Thompson v Queenstown Lakes DC EnvC C103/97.

notes that:

*“while horticulture, shelterbelts and woodlots are in keeping with the rural activities and patchwork pattern of the Canterbury Plains, they are inconsistent with the natural patterns and processes of these predominantly braided rivers and other water bodies that are ONLs or feed into an ONL.”*

- 2.22 One important element of Mrs. Barnett’s evidence I should address is the insinuation that rural character is important or relevant to this discussion. Section 6(a) RMA does not refer to ‘rural character’ but the ‘natural character’ of wetlands, lakes and rivers etc. Natural character therefore has primacy over rural character in the margins of wetland, lakes and rivers. Accordingly, despite the purpose of the General Rural Zone being to enable primary production, this purpose must be held in the context of the whole PDP, part of which is the NATC that seeks to preserve natural character of wetlands, lakes and rivers etc as a matter of national importance under section 6 RMA.

### Question 5

**For Mr Smith also, ref in Response Report was made to “*manmade modifications reduce the naturalness or natural character of the district’s water bodies and their margins, therefore not preserving their natural character*”. Can you please respond to the evidence by submitters regarding the distinction to be made between manmade buildings v manmade plantings (for horticulture)**

- 2.23 Mr. Smith has provided the following response to this question:

2.23.1 *“Naturalness, or the degree of existing modification sits on a spectrum between ‘natural’ or ‘not-disturbed’ to ‘Cultural’ or ‘extremely disturbed’. Natural is usually likened to pristine, and for example would include Fiordland National Park that has little built elements and the vegetation structure, floristic composition, substructure, and natural patterns and processes have not changed. Whereas cultural is likened to an urban city center, where vegetation includes amenity plants, turf and ephemeral weed, no spontaneous species occur and the substrate includes compacted, artificial and impervious surfaces.*

2.23.2 *Buildings are entirely man made, require ongoing maintenance and are not natural. Individually, they sit at the cultural end of the above-mentioned spectrum.*

2.23.3 *Trees are a natural element. However, horticultural plantings usually include large areas of one type of tree species which is a monoculture. Its implementation, location and maintenance are not natural and require ongoing human input and do not allow for natural processes, like understory growth to occur. Horticultural cropping and this type of monoculture generally sits at the moderate-low<sup>4</sup> end of the above-mentioned spectrum.”*

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<sup>4</sup> Using a 7-point spectrum of Very-High, High, High-Moderate, Moderate, Moderate-Low, Low and Very Low, and Very-High being Natural, Moderate being an agricultural / developed pasture, and Very-Low being Cultural.



## Question 6

**Please respond to the submitters' evidence regarding appropriate definitions for 'natural character', 'naturalness' etc.**

- 2.24 Paragraphs 6.13 and 6.14 of Ms. Wharfe's evidence are the only points in her evidence that I can find that addresses 'natural character' and 'naturalness' and state:

6.13 *"I do note that natural character qualities of surface water bodies in NATC-SCHED4 appear to be based on the NZCPS characteristics and qualities but does not include 'a range of natural character from pristine to modified'.*

6.14 *I consider that it is important to recognise that there is a range or continuum of modification which influences natural character"*

- 2.25 NATC-SCHED4 provides a list of natural character qualities of surface water bodies. I have no issue in principle with adding a clause like the clause provided in Policy 13.2 of the NZCPS which recognises a range of natural character from pristine to modified. However, I cannot find any scope in any of the submissions to make that change. Accordingly, no amendment to NAT-SCHED4 is proposed and it is consequently recommended that Council address this matter in a subsequent plan change.

## Question 7

**Para 3 of Mr Smith's contribution to the Response report - does the acknowledgement that the s32 report not providing a strong basis for including controls on horticultural plantings change your recommendations for riparian margin controls in any way.**

- 2.26 Paragraph 3 of Mr. Smith's contribution to the response report does not change my recommendation for riparian margin controls on the following basis:

2.26.1 While the s.32 does not provide any specific evidence in relation to horticultural plantings, Mr. Smith has provided evidence that horticultural plantings are risk to natural character and should be managed by setbacks. That should be sufficient evidence to justify the riparian margin controls for horticultural plantings.

2.26.2 As recommended by Mr. Smith in the response report, it would have been ideal for a district wide natural character assessment to have been conducted to inform the NATC Chapter. However, I doubt whether this would have removed the need for setbacks rules for horticultural plantings. I accept it would have refined the setback rules and help justify them. For instance, it would have identified broad areas of higher and lower natural character and would have likely identified key activities that were a threat to natural character. However, it would not have been exhaustive, for instance, it would not have identified what type of horticultural species could be planted and where. For practical (and resourcing) reasons, the assessment would also have been conducted at a large scale and therefore unlikely to have surveyed every part of every surface water body in the district. This would have the implication that its recommendations on setback rules would be generic to a certain extent and embody a precautionary

approach in recognition that the rules will not be suitable for every situation. My view is that such a district wide natural character assessment would be beneficial but not perfect in that setbacks would still likely be required for some horticultural activities. Thus, while the s.32 report does not provide a strong basis for riparian margin controls for horticultural plants, as suggested in my response report, it provides a sufficient basis to justify some generic controls that are based on corresponding provisions contained in the Operative District Plan and are not considered unduly onerous.

- 2.26.3 The alternative is to ignore Mr. Smith's evidence that horticultural plantings will affect natural character. However, with the absence of any alternative landscape evidence, this would be tenuous position.
- 2.27 A possible solution would be for Council to make a commitment in the PDP that Council will conduct a natural character assessment within a certain timeframe to refine the riparian margin controls, however this would necessarily be subject to funding approval through the Long Term Plan process.

### Question 8

**Do you have any further response to the submitters' evidence on whether 'drainage clearance activities' should be exempt from the setback rule for earthworks/stockpiling.**

- 2.28 At the hearing the submitters appeared to acknowledge that:
- 2.28.1 NATC-REQ1 would not require resource consent for clearance activities of drains, as they are not defined as surface water bodies; and
- 2.28.2 The only remaining issue was drain clearance activities along drains that would be captured by NATC-REQ1 setback requirement from surface water body (i.e. at the junction of a drain and a river).
- 2.29 As currently drafted NATC-REQ1.4 requires a 20m setback of earthworks and earthworks stockpiles from the bank of a surface water body. This would mean that at a junction of a drain and a river, earthworks and earthworks stockpiles would have to be either setback 20m or require consent.
- 2.30 I accept it would be pragmatic to allow earthworks for drain clearance activities within the setback, particularly as drain clearance does not just involve vegetation clearance from drains but also sediment. I also do not think the removal of vegetation and sediment from a drain is a threat to natural character. Accordingly, the submission point DPR-0212.050 can be accepted in part and **Appendix 1** amended. An amendment to NATC-REQ1.4 is recommended in **Appendix 2**.
- 2.31 However, Mr. Smith has confirmed that stockpiles are potentially a threat to natural character. A simple way of avoiding the consent requirement for earthwork stockpiles would be to blade the stockpiles back beyond the 20m setback. Considering the distance is only 20 metres and that the activity is being conducted with a digger, this would be practicable and efficient. Accordingly, no amendments are considered necessary to NATC-REQ1.4 for earthwork stockpiles.

### Question 9

**Please respond to the matters contained in Ms Barnett's statement, at para 4.21, in relation the s42A Report not correctly responding to ESAI's submission points and if this results in any changes to your recommendations.**

- 2.32 The first matter Mrs. Barnett raises is that paragraph 10.57 of the s. 42A report does not correctly record the ESAI submission point (DPR-0212.053). Paragraph 10.57 states that the ESAI submission requests the deletion of the words 'horticultural planting' from NATC-R3. After reviewing the ESAI submission, I can confirm they have not requested the deletion of the words 'horticultural planting' from NATC-R3. The statement in the s.42A report is therefore incorrect and reflects the error in the summary of submissions. Mrs. Barnett acknowledges the error in the summary of submissions was likely a result of the submission point not being sufficiently explicit. As Mrs. Barnett has now clarified that the ESAI supports NATC-R3, their submission point can be accepted. Accordingly, an amendment to **Appendix 1** to accept this submission point recommended.
- 2.33 Mrs. Barnett's evidence also states she does not support the heading of NATC-REQ3 which is:
- "Setbacks from Surface Water Bodies – Vegetation Planting"*
- 2.34 Mrs. Barnett wishes to have the heading read:
- 'Setbacks from surface water bodies – ~~Vegetation~~ Woodlot and shelterbelts planting'.*
- 2.35 This matter has been dealt with in the s.42A report and I my recommendation has not changed.

### Question 10

**Please respond to para 4.25 of Ms Barnett's statement regarding types of vegetables potentially encapsulated in the definition of horticultural plantings.**

- 2.36 Paragraph 4.25 of Mrs. Barnett's evidence raises issue with the PDP's definition of 'horticultural planting' particularly in that the inclusion of 'bush' captures certain types of commercial vegetable production (e.g. Brussel sprouts, beans, capsicums etc.), which would reduce the land area for many types of viable food production. She also questions why these plantings are addressed and not other agricultural activities.
- 2.37 Whether or not bushes are included in the definition of 'horticultural planting' is dependent on whether they are a risk to natural character. Mr. Smith advice on this is that:
- "Cultivated land including cropping results in a more modified landscape when compared with grazed pasture. Therefore, this activity, has a higher risk of reducing the natural character of a nearby waterbody. Because of this, all horticultural plantings pose a risk, and therefore should be including in this definition."*
- 2.38 While I was not involved in the NATC prior to the hearing, I suspect why other agricultural activities have not been addressed is because either:

- 2.38.1 they were not considered a threat to natural character; or
  - 2.38.2 there was no natural character assessment that identified them as a threat to natural character.
- 2.39 In this regard, Mr. Smith has noted that *“there may be other agricultural activities that pose a risk to the natural character of these water bodies”*. However, no submitters have sought that other types of agricultural activities be controlled in riparian areas, and there is no available evidence to suggest that other activities should be controlled that are not already controlled.

### Question 11

**Can you please respond to para 4.27 of Carey Barnett’s statement re the quantum of lost production on an average farm and across the district.**

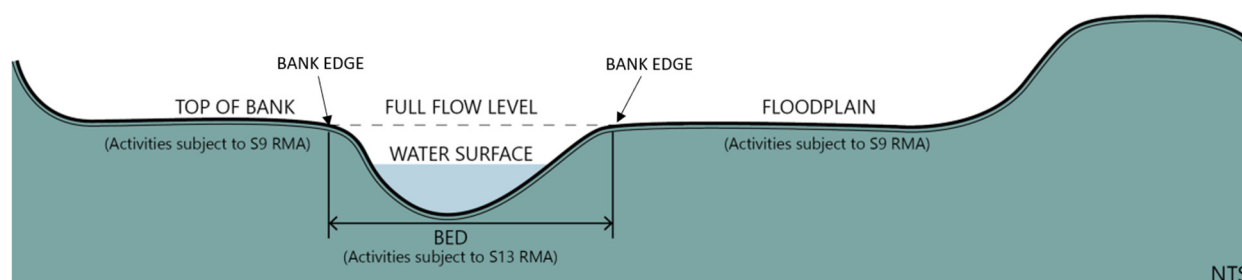
- 2.40 Paragraph 4.27 of Mrs. Barnett’s evidence suggests that the NATC setback requirements for horticultural plantings would result in significant areas of land that would have to be taken out of production. She suggests this would be untenable and have a major impact on economic viability of some farms and when accumulated across the district would equate to several thousand hectares of lost production.
- 2.41 I agree in part that the setbacks required by NATC-REQ3 will adversely affect some forms of agricultural production. However, I disagree that it will take land completely out of production for the following reasons:
- a. NATC-REQ3 only applies to horticultural planting, woodlots and shelterbelts. Other forms of primary production (e.g. pastoral and crop farming) can occur in these setbacks as a permitted activity and therefore it cannot be said the effect of NATC-REQ3 is to take these areas completely out of production. Despite that I acknowledge that the setbacks would raise practical issues for horticulture. For instance, it may be impractical for an orchard to graze the setback with livestock and therefore the setbacks may constrain some form of production.
  - b. As the operative SDP requires plantation trees to be setback 20m from Appendix 17 areas and 10m from all other waterways, horticultural activities within these setbacks are already restricted. At least 10m of the setback is already out of production, which sets a baseline to compare the effects of NATC-REQ3 against. This is important context when considering any potential loss in production.
  - c. The setbacks do not mean that resource consent cannot be obtained to undertake horticultural activities within these setbacks.
- 2.42 With the above matters in mind, there is a lot of uncertainty as to what land would be taken out of production. While the figures used in Mrs. Barnett’s evidence illustrate the point that there is likely to be a potential economic effect from the proposed setbacks requirements, the figures are of limited help in that they do not fairly represent all situations.

- 2.43 It would be more accurate to say NATC-REQ3 constrains the type of primary production within the setbacks, and this would have subsequent economic effects. However, it is worth noting that, while economic effects are relevant, the environmental bottom line is that natural character is preserved in accordance with section 6(a) RMA. Notwithstanding, I accept that every effort should be made to ensure any setbacks rules are effective (protect natural character) and efficient (minimise costs, including effects on production), as required by section 32 RMA.

### Question 12

**Please respond to para 4.38 in above statement regarding suggestion for ‘bank edge’ to be marked on the illustration.**

- 2.44 Paragraph 4.38 of Mrs. Barnett’s evidence supports the inclusion of the words ‘bank edge’ in the definition of ‘surface water bodies’ as recommended in the s. 42A report. This is subject to the words ‘bank edge’ are located on the illustration at the point where the ‘full flow level’ meets the commencement of the ‘top of bank’ or ‘floodplain’ areas.
- 2.45 The words ‘bank edge’ were recommended in the s.42A report to be inserted into the definition of ‘surface water bodies’ in response to the submission from J Thomson<sup>5</sup> to provide greater clarity as to the point where the setbacks are to be measured from. As the illustration was referred to in the definition of ‘surface water bodies’ but not provided, comment was requested from submitters on the diagram. Accordingly, I consider the request in Mrs. Barnett’s evidence to be within the scope of the submissions.
- 2.46 I agree that including the words ‘bank edge’ on the illustration referred to in the definition of ‘surface water bodies’ would be useful in clarifying where the setbacks are to be measured from. An amended diagram is provided as Figure 1 below.



*Figure 1 – Amended diagram illustrating the bank edge*

### Question 13

**Please respond to para 4.39 in above statement regarding suggestion for classified Council drains to be excluded from the Schedules.**

- 2.47 As the ESAI did not submit on NATC-SCHED 1-3, I consider this suggestion is out of scope of their original submission. Considering this suggestion further would also raise a natural justice issue in

<sup>5</sup> DPR-0379.032 Jill Thomson

that other people may have made a further submission on this matter if they saw that ESAI submitted against these schedules.

- 2.48 In the instance the Hearings Panel consider this matter within scope, I have endeavored to address this matter below.
- 2.49 Mrs. Barnett is concerned that several water bodies listed within the schedules are Council classified drains for part or all their reaches and requests these are excluded from the NATC-SCHED 1-3. I can confirm that several of the drains listed on Council's website follow small surface water bodies. However, the majority do not appear to follow natural water courses with most following roads.
- 2.50 The definitions of 'surface water bodies' and 'river' do not include 'drains'. This means that drains can be cleared as a permitted activity, but rivers that are also listed as a drain are subject to the NATC chapter. This is problematic as no doubt these rivers also need to be cleared.
- 2.51 In addressing this matter, I firstly note, there is no need to address drain clearance rules within the bed of a river, as that is a regional council function that is addressed in the Regional Plan. Second, while the Regional Plan rule 5.67 permits vegetation clearance and earthworks in riparian areas subject to several standards, as stated in the s.42A report, this rule is directed at managing water quality effects, not natural character effects, and therefore is of limited assistance.
- 2.52 Third, the key questions that then arise are:
- a. Is the natural character of these rivers (that also act as drains) less than rivers that are not used as drains?
  - b. Do we need earthworks rules to protect natural character of these rivers/drains?
  - c. Do we need stockpile rules?
  - d. Are there any other reasons to relax the standards?
- 2.53 The answer to the first question is that we do not know what the degree of natural character of these rivers (that also act as drains) is like as there has been no natural character study. It is likely that parts of these rivers have less natural character, particularly where their alignment has been straightened and vegetation removed for drain clearance activities, when compared with rivers that are not used as drains. However, it is also likely that other parts of these rivers (that also act as drains) retain some degree of natural character.
- 2.54 The answer to the second question is yes because Mr. Smith as confirmed that:
- a. *"there will be at least parts of these rivers that display some degree of natural character; and*
  - b. *earthworks are a threat to that natural character."*
- 2.55 We are therefore required to protect the remaining natural character in accordance with section

6(a) RMA and rules are the best way to achieve this.

- 2.56 The answer to the third question is also yes as Mr. Smith has also confirmed that stockpiles are a threat to natural character.
- 2.57 The answer to the fourth question is difficult. On the one hand these rivers/drains need to be cleared for practical reasons which will have economic and environmental benefits. On the other hand, preserving natural character has primacy as a matter of national importance under section 6(a) RMA. In this regard it is noted that these rivers are rivers first and drains second and just because they are used as a drain does not mean we should disregard their natural character values.
- 2.58 On balance, my preference would be to retain the earthworks and earthworks stockpile setbacks. It is appropriate for these activities to obtain consent, which could have the benefit of managing these activities in a much greater level of detail compared with a district plan rule. While this will create costs for landowners, these costs could be minimised by applying for global or catchment consent for these activities.

#### Question 14

**Fed Farmers – please respond to para 18 “The reporting officer correctly points out that fencing is exempt from NAT-REQ2. However, under the currently recommended changes, there is now no specific reference to removal of plant pests. Such activity would presumably be encompassed by the terms *restore* and *rehabilitate* in NATC-P1.4?”**

- 2.59 Removal of plant pests are not addressed by the NATC rules and are therefore classified as a permitted activity.
- 2.60 Although this satisfies the submitters inquiry, it does highlight that there is an issue with the interpretation of the NATC chapter. The ‘How the Plan Works’ chapter under HPW6 provides clarification on this matter stating: ‘No person is allowed to undertake any activity in a manner that contravenes a rule in the District Plan’. This statement is correct and a repeat of section 9 RMA. Notwithstanding, I doubt whether this is clear to most members of the public and therefore it would be helpful if this statement was supplemented by a more explicit statement such as: ‘Activities are permitted in district wide chapters unless otherwise stated by a rule in zone chapter or another district wide chapter’. Although repetitive, this statement would also ideally be located in the NATC chapter as a note. I recommend SDC consider this as Clause 16(2), Schedule 1 RMA amendment as it is not requested by a submission and is an alteration of minor effect.

#### Question 15

**Fed Farmers – para 30 – should planting of indigenous vegetation be explicitly excluded from the required setbacks in NATC-REQ3.**

- 2.61 There is no need for this as with the recommended amendments NAT-REQ3 will only apply to horticultural plantings, woodlots and shelterbelts. The amendments recommended in response to question 14 will also help clarify that anything not listed is permitted.

### Question 16

**Ms Wharfe's statement, paras 5.1- 5.3, please respond regarding incorrect listings of HortNZ's submissions.**

- 2.62 Paragraph 5.1-5.3 of Ms. Wharfe's evidence refers to the comments in the s.42A report that state the HortNZ submission points (DPR-0350.155 and DPR-0353.164) in relation to NATC-P1 and NATC-R1 appeared to indicate a 'contradictory position', with the 'position' being stated as 'opposed in part' and the 'relief sought' stated as being 'retain as notified'.
- 2.63 As stated by Ms. Wharfe's evidence it appears that the submission summary has created confusion as to what the submission seeks and hence the apparent contradiction.
- 2.64 These issues only relate to NATC-P1 and NATC-R1. The relief sought by their submission points on these provisions were:
- a. NATC-P1 – Accept and adopt submission points relating to the NATC chapter relating to definition of surface water body.
  - b. NATC-R1 – Accept and adopt submission points relating to NATC-REQ1.
- 2.65 To address this issue, it is recommended to update **Appendix 1** to clarify their position.

### Question 17

**Please respond to para 8.5 to 8.12 of Lynette Wharfe's evidence re using the definition of artificial watercourses for exclusions.**

- 2.66 Paragraph 8.5 to 8.12 of Ms. Wharfe's evidence questions the amendments recommended in the s.42A report that relate to the exemptions for artificial water courses in the definition of 'surface water bodies', which state:
- "Except this excludes the following artificial watercourses: an irrigation canal/lake, water supply races, canal for supply of water for electricity power generation and drainage ditches"*
- 2.67 Ms. Wharfe points out that there is a definition in the PDP for 'artificial water courses' that states:
- "A watercourse that is created by human action. It includes an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal channel. It does not include artificial swales, kerb and channelling or other watercourses designed to convey stormwater."*
- 2.68 Ms. Wharfe supports the use of the PDP's definition of 'artificial water courses' in place of the recommended amendments excluding artificial water courses from the definition of surface water body suggested in the s.42A report. However, she states this is subject to an amendment being made to the definition of 'artificial water courses' to exclude 'irrigation storage ponds'.
- 2.69 I agree with this suggestion as it would make the definition of 'surface water bodies' more concise. The associated amendment to the definition of 'surface water bodies' and 'artificial



water courses' is provided in **Appendix 2**.

- 2.70 Ms. Wharfe's evidence also states that the HortNZ submission sought an exclusion for 'artificial watercourses' from the definition of 'bank of surface water bodies' and notes the s.42A Report does not specifically address this submission point. As the definition of 'bank of a surface water body' relies on the definition of 'surface water body', Ms. Wharfe also points out that the exclusion of 'artificial watercourses' would also apply to the definition of 'bank of a surface water bodies' and therefore, an exclusion is not necessary, although it could be added for completeness.
- 2.71 I can confirm the s.42A report did not address this submission point and agree with Ms. Wharfe that it is not necessary to provide an exclusion of artificial water courses in the definition of 'bank of a surface water body'. Doing so would require repeating the whole definition of 'surface water bodies', which not be concise and is not necessary. Accordingly, amendments are made to **Appendix 1** to recommend rejection of this submission point.

### Question 18

**Mr William's submissions – please respond to whether the Water Conservation Order for the Rakaia River is meant to be a stand-alone set of controls or rather a framework that guides regional and district rules.**

- 2.72 Water Conservation Orders are a statutory planning document that imposes restrictions and prohibitions on the exercise of regional councils' powers under the RMA as they relate to water. This is set out in the meaning of Water Conservation Orders in section 200 RMA as follows:

***"200 Meaning of water conservation order***

*In this Act, the term water conservation order means an order made under section 214 for any of the purposes set out in section 199 and that imposes restrictions or prohibitions on the exercise of regional councils' powers under paragraphs (e) and (f) of section 30(1) (as they relate to water) including, in particular, restrictions or prohibitions relating to—*

- (a) the quantity, quality, rate of flow, or level of the water body; and*
- (b) the maximum and minimum levels or flow or range of levels or flows, or the rate of change of levels or flows to be sought or permitted for the water body; and*
- (c) the maximum allocation for abstraction or maximum contaminant loading consistent with the purposes of the order; and*
- (d) the ranges of temperature and pressure in a water body."*

- 2.73 Under section 217 RMA water permits, coastal permits, discharge permits cannot be granted contrary to any restriction or prohibition or any other provision in Water Conservation Order. Under sections 62, 67 and 76 of the RMA, a Regional Policy Statement, Regional Plan, or District Plan, must not be inconsistent with a Water Conservation Order. Accordingly, Water Conservation Orders are both a standalone document that restricts certain resource consents and a document that informs regional policy statements, regional plans and district plans.

- 2.74 Section 199 RMA provides that Water Conservation Orders can deal with natural character

matters by stating that Water Conservation Order may provide for the:

- a. preservation as far as possible in its natural state of any water body that is considered to be outstanding; and
- b. protection of characteristics of water bodies that contributes to or are considered to be outstanding, including for its wild, scenic or other natural characteristics.

2.75 Section 3 of the 'National Water Conservation (Rakaia River) Order 1988' declares that the Rakaia River and its tributaries include and provide (amongst other things) for an outstanding natural characteristic in the form of a braided river. However, it does not impose restrictions on district plan rules only regional plan rules. Notwithstanding and notably section 9 of the Order states that resource consents shall not be granted in respect of any part of the Rakaia River or its tributary streams for the purpose of constructing or maintaining stock barriers or facilitating agricultural encroachment into those bodies of water. This provides guidance, albeit limited, for the PDP's NATC and as required by section 76 of the RMA, a district plan cannot be inconsistent a Water Conservation Order.

#### Question 19

**Mr Williams – please respond to the point he made regarding the jurisdictional issue being clouded by where the 'bank' is located and whether this has any potential to result in duplication of controls etc.**

- 2.76 Mr. William's considered there is potentially an issue with the jurisdiction between district and regional council functions in that there is uncertainty as to where the riverbank is located. As I understand it, this is particularly an issue for braided riverbeds. Unfortunately, the Environment Canterbury appeal that endeavored to seek a more practical interpretation of the definition of 'riverbed' has not been successful to date. Figure 1 adequately illustrates what is the riverbed and where the bank edge is located and is consistent with the Courts interpretation. In respect of braided riverbeds, the effect of this is that large parts of the river braids would be considered on the landward side of the bank edge and therefore captured by the NATC setback rules. This interpretation should clarify jurisdiction and prevent duplication.
- 2.77 As I do not know the location of the Diary Holdings Ltd intake structures, I cannot comment further as to whether they are located within the bed or on the landward side of the bank edge. However, Mr. Williams suggested at the hearing there was unlikely to be major changes to the Diary Holdings Ltd intakes structures, just some minor changes regarding fish screens and maintenance. Accordingly, if resource consent was required in relation to the intake structures, I do not think it be a major issue.

#### Question 20

**Manawa – Ms Calland, please respond to para 15, is it explicit in the wording of EI-P1 and EI-P2 that the benefits of important infrastructure should extend to scheduled natural character areas such as Lake Coleridge.**

- 2.78 Paragraph 15 of Ms. Calland's evidence states that it is not explicit within the wording of EI-P1

and EI-P2, that the recognition of the benefits of important infrastructure should extend to scheduled natural character areas such as Lake Coleridge. She states that without explicit guidance, it may become a matter that is challenged through a resource consent process. Ms. Calland does not request the amendment of these policies, but rather requests the amendment of NATC-O1 and NATC-P1 to recognise the benefits of important infrastructure. However, EI-P1 and E-P2 are still relevant to this discussion. EI-P1 states:

**EI-P1**

Recognise the benefits and national, regional, and local importance of important infrastructure by:

1. *enabling the operation, maintenance, and removal of existing important infrastructure throughout the District;*
2. *providing for replacement and upgrades, including new technologies, to network utilities, and the development of new network utilities.*
3. *providing for the functions and responsibilities of network utilities as lifeline utilities during an emergency.*
4. *acknowledging that important infrastructure can have a functional need or operational need to locate in a particular area, including areas with high natural, visual amenity, or cultural value.*

*[Emphasis added]*

2.79 EI-P1 is broadly framed, and I think it adequately recognises the benefits of important infrastructure and its function/operational need to locate in areas of high natural value. I also think it is sufficiently clear that use of the words ‘natural value’ would include areas of natural character. It is likely that the drafter of this policy has not included an extensive list of all areas with high natural, visual amenity, or cultural value as it would create an excessively long policy and is unnecessary as these matters can be referred to generically without losing meaning.

2.80 EI-P2 states:

**EI-P2**

*Minimise the adverse effects of important infrastructure, and renewable electricity generation on the physical and natural environment by:*

1. *encouraging the co-location of structures and facilities where efficient and practicable.*
2. *locating, designing and operating development while minimising the effects on, the amenity values of the surrounding environment, public access and the health and safety of people.*
3. *limiting the presence and effects of development within Outstanding Natural Landscapes, Visual Amenity Landscapes, areas of significant indigenous vegetation and habitats of indigenous fauna, sites of historic heritage and site and areas of significance to Māori to those which:*

- a. *are recognised as important infrastructure; and*
- b. *can demonstrate an operational or functional requirement for the location; and*
- c. *can demonstrate through site, route or method selection the minimisation of effects on the environment; and*
- d. *integrate design measures and management methods to mitigate adverse effects.*

4. ....

2.81 EI-P2 is much more specific than EI-P1 and is focused on limiting the adverse effects of important infrastructure. Clause 3 does not refer to natural character and should do as it would allow for infrastructure activities within natural character areas so long as sub-clauses a. to d are met. It would be logical and consistent to amend EI-P2 to address this matter, although it raises a potential scope issue. While the submitter has not specifically requested amending Policy EI-P2, the nature of the request is to recognise the importance of infrastructure and its functional/operational requirement to locate in areas of natural character. As the suggested amendment serves this purpose, I therefore think it is generally within scope of the submission. Accordingly, I have recommended a small amendment to EI-P2 by inserting the words 'natural character' into its clause 3. An amended EI-P2 is provided in **Appendix 2**.

2.82 Notwithstanding this, the focus of Ms. Callan's evidence is to request the amendment of NATC-O1 and NATC-P1 to recognise the functional need of renewable electricity generation infrastructure to locate in riparian margins.

2.83 The key issue is, is that despite recognition in the EI chapter of the functional need to locate infrastructure in riparian margins, there is a potential issue of conflicting objectives/policies with NATC-O1 seeking to preserve natural character, and EI-P1 seeking to recognise the functional/operational need to locate within areas of natural character. I think the directive guidance on this matter provided by EI-P1 and the amendments suggested to EI-P2 have made this relationship sufficiently clear. However, I can also appreciate the desire for certainty and clarity, particularly considering the scale of the investment made in important infrastructure. Accordingly, I recommend an amendment to NATC-P1 to add an additional clause. The recommended amendment has been drafted to align with EI-P2 and states:

*"while acknowledging that important infrastructure can have a functional need or operational need to locate in the margins of surface water bodies, and if so, must:*

- a. *demonstrate through site, route or method selection the minimisation of effects on natural character values; and*
- b. *integrate design measures and management methods to mitigate adverse effects on natural character values."*

2.84 Note that this amendment does not just relate to the renewable energy generation as requested in the submission point. It uses the broad term 'important infrastructure'. This recognises that renewable energy infrastructure is not the only type of important infrastructure with the need to

locate in this area. The defined term 'important infrastructure' includes electricity generation activities and is therefore within the scope of the submission point. However, the use of the term 'important infrastructure' does broaden the scope of the infrastructure activities and therefore does still raise a scope issue. Notwithstanding, as the submission point DPR-0441.114 on NATC-O1 relates to 'regionally significant' infrastructure, I think the amendment is within scope. If the term 'important infrastructure' is not used, it raises an inconsistency between the EI and NATC chapters. Further, it should be noted that the recommended amendment does not alter the rules. An important infrastructure would still require consent and the amendments are made just to be consistent with the EI chapter. An amendment to NATC-P1 is recommended in **Appendix 2**. As the original recommendation to accept in part has not changed, no amendment is needed to the table of submission points.

- 2.85 However despite this recommendation, I do not think it is necessary to amend NATC-O1 as requested by the submitter to add the statement '*...where practicable while, <sup>21</sup> recognising the functional need of regionally significant infrastructure to be located on the surface and margins of waterbodies*'. While it is not good practice to have a policy that deals with something that is not broadly addressed in an objective, I think this amendment would alter the focus of the chapter and put the location of infrastructure in these areas on an equal footing to the objective of preserving natural character. I think it is important not to alter the primacy of this chapter in preserving natural character and it would be inappropriate to provide a gateway to important infrastructure to locate in these areas without ensuring every effort has been made to protect natural character values. Accordingly, I have not recommended an amendment to NATC-O1 and do not change my recommendation to accept in part submission point DDR-0441.114.

### 3.0 Summary of Proposed Amendments

- 3.1 This section briefly lists each amendment I have proposed in response to the Hearings Panel's questions both before and after the hearing. This section also comments on any scope issues with the proposed amendments and whether a s.32AA RMA further evaluation is needed. This section does not summarise the amendments to the NATC recommended in the s.42A report.
- 3.2 A full copy of the amendments proposed to the NATC is provided in **Appendix 2**. The amendments have been colour coded as follows:
- Yellow** highlight indicates the amendments to the provisions proposed in the s.42A report;
  - Green** highlight indicates the amendments to the provisions proposed in response to the Hearings Panel questions prior to the hearing;
  - Blue** highlight indicates the amendments to the provisions proposed in response to the Hearings Panel questions post the hearing.

#### *Amendments proposed to the definitions of 'surface water bodies' and 'artificial water courses'*

- 3.3 Amendments to the definitions of 'surface water bodies' and 'artificial water courses' are proposed as follows:

Definitions		
Surface water bodies	water	Fresh water or geothermal water in a river, lake, stream, pond, wetland, or any part thereof, <del>which<sup>6</sup> that</del> is not located within the coastal marine area <del>except this excludes the following artificial watercourses: irrigation canal/lake, water supply races, canal for the supply of water for electricity power generation and drainage ditches<sup>7</sup>.</del> All surface water body setbacks specified in this plan shall be measured from the bank <del>edge</del> of the surface water body, as illustrated below.
Artificial watercourses		A watercourse that is created by human action. It includes an irrigation canal, <del>irrigation storage ponds</del> , water supply race, canal for the supply of water for electricity power generation, and farm drainage canal channel. It does not include artificial swales, kerb and channelling or other watercourses designed to convey stormwater.

3.4 I consider that the amendments highlight blue are within in scope of the HortNZ submission point DPR-0353.077. No further s.32AA evaluation is considered necessary as an exemption for artificial surface water bodies is addressed in paragraphs 15.14 to 15.17 of the s.42A report.

#### *Amendments proposed to NATC-P1*

3.5 The amendments proposed to NATC-P1 are as follows:

NATC-Policies	
NATC-P1	<p>Recognise the natural character qualities of surface water bodies and their margins described in <a href="#">NATC-SCHED4</a> and preserve and protect those qualities, and Ngāi Tahu cultural values, from inappropriate subdivision, use and development by:</p> <ol style="list-style-type: none"> <li>ensuring that the location, intensity, scale and form of subdivision, earthworks, buildings, structures, vegetation planting and signs <del>on near<sup>8</sup></del> surface water bodies and <del>/or<sup>9</sup></del> their margins recognises and preserves the natural character of the surface water body <del>by requiring appropriate setbacks<sup>10</sup></del>;</li> <li>...</li> <li>enabling opportunities to restore and rehabilitate the natural character of surface water bodies and their margins, <del>such as through the removal of plant and animal pests<sup>11</sup></del>, and supporting initiatives for the regeneration of indigenous biodiversity values and cultural values.</li> <li><del>Prioritising enhancement or environmental mitigation where development, subdivision or changes in use occur which that is proportional to the scale of the development and any adverse effects created.<sup>12</sup></del></li> <li><del>while acknowledging that important infrastructure can have a functional need or operational need to locate in the margins of surface water bodies, and if so, must:</del> <ol style="list-style-type: none"> <li><del>demonstrate through site, route or method selection the minimisation of effects on natural character values; and</del></li> <li><del>integrate design measures and management methods to mitigate adverse effects on natural character values."</del></li> </ol> </li> </ol>

<sup>6</sup> DPR-0207.002 SDC

<sup>7</sup> DPR-0353.077 HortNZ

<sup>8</sup> DPR-0422.158 NCFF

<sup>9</sup> DPR-0422.158 NCFF

<sup>10</sup> DPR-0422.158 NCFF

<sup>11</sup> DPR-0422.158 NCFF

<sup>12</sup> DPR-0168.001 P Godfrey

- 3.6 The amendments proposed to NATC-P1 highlight green are within scope of the submission from Paula Godfrey DPR-0168.001. The s.32AA RMA further evaluation of these amendments is generally provided under paragraph 12.16 of the s.42A report and therefore does not need to be repeated.

#### *Amendments to NATC-REQ1*

- 3.7 An amendment to NATC-REQ1 is proposed as follows:

NATC-REQ1 Setbacks from Surface Water Bodies - Earthworks and Earthworks Stockpiles	
...	<p>4. All earthworks and earthworks stockpiles, are to be located at least 20m from the bank of any surface water body <b>excluding those required for:</b></p> <ul style="list-style-type: none"> <li>• a conservation activity<sup>13</sup>; or</li> <li>• earthworks required to clear a drain<sup>14</sup>.</li> <li>• <b>for a river crossing that complies with the NESPF.</b><sup>15</sup></li> </ul>

- 3.8 I consider the amendment highlighted blue to be within scope of ESAI submission DPR-0212.050. A s.32AA further evaluation of this amendment is provided below in paragraphs 3.9 to 3.13.
- 3.9 The following points evaluate the recommended changes under Section 32AA of the RMA to amendments in relation NATC-REQ1 that provide an exemption in relation to earthworks required to clear a drain.

#### Effectiveness and efficiency

- 3.10 The recommended amendments will not decrease the effectiveness of NATC-REQ2 in targeting activities that are at risk of adversely affecting natural character and will ensure these activities can be conducted without the need and costs associated with resource consents.

#### Costs and benefits

- 3.11 The amendments will minimise costs and uncertainty to landowners required to clear drains.

#### Risk of acting or not acting

- 3.12 While there is a risk of earthworks adversely affecting natural character, this risk and therefore the risk of acting is considered to be low.

#### Conclusion as to the most appropriate option

- 3.13 I consider the proposed amendments are more appropriate than the notified version of the PDP as they will not decrease the effectiveness of the rules and will be more efficient in minimising unnecessary costs.

#### *Amendments to NATC-REQ2*

- 3.14 The amendments proposed to NATC-REQ2 are as follows:

<sup>13</sup> DPR-0207.033 SDC

<sup>14</sup> DPR-0212.050 ESAI

<sup>15</sup> DPR-0439.023 Rayonier

### NATC-REQ2 Setbacks from Surface Water Bodies – Buildings and Structures

...	<p>1. All buildings and structures shall comply with the following setbacks from any surface water body:</p> <p>...;</p> <p>a. 100m from the bank of any lake and any wetland adjoining a lake, or 30m from any artificial lake or wetland that was created as part of residential development);</p> <p>b. 25m from the bank of any surface water body listed in NATC-SCHED1 or NATC-SCHED2, other than from the bank of any lake and any wetland adjoining a lake, where NATC-REQ2.1.a. applies;</p> <p>c. 20m from the bank of any surface water body listed in NATC-SCHED3, except for pump sheds and irrigation structures less than 10m<sup>2</sup> and travelling irrigators<sup>16</sup> which must be setback a minimum within 10m from a bank of a surface water body listed in NATC-SCHED3;</p> <p>and</p> <p>d. 10m from the bank of any other surface water body, except within the Porters Village Base lower slopes Sub Area, where a 5m setback shall apply from the edge of Porter Stream<sup>17</sup>.</p> <p>Excluded from the above setback requirements are:</p> <ul style="list-style-type: none"> <li>• fences, and signage posts; and</li> <li>• maintenance of existing buildings/structures; and</li> <li>• alterations to buildings/structures existing prior to 2021; and</li> <li>• additions/extensions to existing buildings, where the addition/extension has with a maximum floor area of 10m<sup>2</sup>; and<sup>18</sup></li> <li>• structures associated with river crossings that comply with the NESPF<sup>19</sup></li> </ul>
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- 3.15 The amendments proposed to NATC-REQ2.1a (highlighted green) are within scope of the ESAI submission DPR-0212.052 and considering their limited application do not require a s.33AA further evaluation.
- 3.16 The amendments proposed to NATC-REQ2.1c (highlighted blue) are within scope of submissions DPR-0372.069, DPR-0388.034 and DPR-0390.055. A s.32AA further evaluation is not considered necessary.
- 3.17 The amendments to the exemptions provided under NATC-REQ2.1d (highlighted green) are considered within the scope ESAI DPR-0212.52 submission. An adequate s.33AA further evaluation is provided in paragraphs 10.52-10.56 of the s.42A report and no further evaluation is considered necessary.

### Amendments to EI-P2

- 3.18 Amendments to EI-P2 are proposed as follows:

<sup>16</sup> DPR-0353.159 HortNZ, DPR-0372.069 DHL, DPR-0388.034 Craigmore and DPR-0390.055 RIL

<sup>17</sup> DPR-0345.020 PAR

<sup>18</sup> DPR-0212.52 ESAI

<sup>19</sup> DPR-0439.024 Rayonier



**El-P2**

3. *limiting the presence and effects of development within Outstanding Natural Landscapes, Visual Amenity Landscapes, **natural character areas**, areas of significant indigenous vegetation and habitats of indigenous fauna, sites of historic heritage and site and areas of significance to Māori to those which....*

- 3.19 The amendments proposed are within the scope of submission DPR-0441.114. No s.32AA further evaluation is required as this matter is already provided for in the EI chapter.

## Appendix 1: Updated Tables of Submission Points

### Legend

- Proposed amendments recommended in the initial response to the hearings panel questions are highlight **green**.
- Proposed amendments recommended by the right of reply report are highlighted in **blue**.

Submitter ID	Submitter Name	Submission Point	Plan Reference	Position	Decision Requested	Recommendation	Section of Report
DPR-0212	ESAI	050	NATC-REQ1	Oppose In Part	Amend as follows: 4. All earthworks <u>that are not associated with drain clearance activities and stockpiles</u> are to be located at least 5m 20m from the bank of any surface water body. Insert below NATC-REQ1.4: <u>1.X. earthworks stockpiles that are not associated with drain clearance activities are to be located at least 5m from the bank of any surface water body.</u>	<del>Reject</del> <u>Accept in part</u>	Question 8
DPR-0212	ESAI	053	NATC-R3	Oppose In Part	Amend as follows: <u>Horticultural Planting,</u> Woodlot and Shelterbelt planting	Accept <u>in part</u>	Question 8
DPR-0353	HortNZ	155	NATC-P1	Oppose In Part	<del>Retain as notified</del> <u>Accept and adopt submission points relating to the NATC chapter relating to definition of surface water body.</u>	Accept in part	Question 16
DPR-0353	HortNZ	164	NATC-R1	Oppose In Part	<del>Retain as notified</del> <u>NATC-R1 – Accept and adopt submission points relating to NATC-REQ1.</u>	Accept <del>Reject</del>	Question 16
DPR-0353	HortNZ	077	Surface Water Body	Oppose In Part	Amend as follows: ....within the coastal marine area, <u>except this excludes artificial watercourses.</u>	Accept <u>in part</u>	Question 17

Submitter ID	Submitter Name	Submission Point	Plan Reference	Position	Decision Requested	Recommendation	Section of Report
DPR-0353	HortNZ	039	Bank of a Surface Water Body	Oppose In Part	Amend as follows: ....within the coastal marine area, <u>this excludes artificial watercourses.</u>	<del>Accept in part</del> Reject	Question 17
DPR-0441	Trustpower	114	NATC-O1	Support In Part	Amend as follows: The natural character of surface water bodies and their margins is preserved <u>where practicable while, recognising the functional need of regionally significant infrastructure to be located on the surface and margins of waterbodies.</u>	Accept in part	Question 20
DPR-0212	ESAI	052	NATC-REQ2	Oppose In Part	Amend as follows: 1. All buildings and structures excluding fence and signage posts shall comply with the following setbacks from any surface water body: a. <u>30m</u> <del>100m</del> from the bank of any lake and any wetland adjoining a lake; ....	<del>Reject</del> Accept in part	

## Appendix 2: Recommended amendments

### Legend:

- Proposed amendments recommended by the s42a report are highlighted in yellow.
- Proposed amendments recommended in the initial response to the hearings panel questions are highlighted green.
- Proposed amendments recommended by the right of reply report are highlighted in blue.

*Note to readers: Only provisions that have recommended amendments are included in the table below. All other provisions remain as notified.*

## How the Plan Works

HPW	Relationships between spatial layers and district wide matters
District wide matter	District wide matters contain provisions that address issues that apply across the district. Resource consent(s) may be required under more than one district wide matter or under an area specific chapter. The exception to this is the Transport (TRAN) and Energy and Infrastructure (EI) chapters that are self-contained chapters, where no other district wide provisions apply unless specifically referred to in those chapters.

## Interpretation

Definitions	
Surface water bodies	Fresh water or geothermal water in a river, lake, stream, pond, wetland, or any part thereof, which <sup>20</sup> that is not located within the coastal marine area except this excludes the following artificial watercourses: irrigation canal/lake, water supply races, canal for the supply of water for electricity power generation and drainage ditches <sup>21</sup> . All surface water body setbacks specified in this plan shall be measured from the bank edge of the surface water body, as illustrated below.
Artificial watercourses	A watercourse that is created by human action. It includes an irrigation canal, irrigation storage ponds, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal channel. It does not include artificial swales, kerb and channelling or other watercourses designed to convey stormwater.

<sup>20</sup> DPR-0207.002 SDC

<sup>21</sup> DPR-0353.077 HortNZ  
Proposed Selwyn District Plan

## NATC – Natural Character

Overview
.... Activities such as buildings and structures, earthworks, planting and indigenous vegetation clearance can all affect the natural character of the margins of the District's surface water bodies. <u>Climate change can also affect the natural character of the margins of surface water bodies by changing natural processes. Activities within the margins of surface water bodies can exacerbate the effects of climate change on natural character.</u> <sup>22</sup> With respect to managing the effects of livestock on surface water bodies, Rules 5.70 and 5.71 of the Canterbury Land and Water Regional Plan provide for the exclusion of stock from surface water bodies. <sup>23</sup>

### NATC-Objectives and Policies

NATC-Objectives	
NATC-O1	The natural character of surface water bodies and their margins is preserved and <u>enhanced where appropriate</u> <sup>24</sup> .

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<sup>22</sup> DPR-0407.039 Forest & Bird

<sup>23</sup> DPR-0441.114 Trustpower

<sup>24</sup> DPR-0168.001 P Godfrey  
Proposed Selwyn District Plan

NATC-Policies	
NATC-P1	<p>Recognise the natural character qualities of surface water bodies and their margins described in <a href="#">NATC-SCHED4</a> and preserve and protect those qualities, and Ngāi Tahu cultural values, from inappropriate subdivision, use and development by:</p> <ol style="list-style-type: none"> <li>1. ensuring that the location, intensity, scale and form of subdivision, earthworks, buildings, structures, vegetation planting and signs <sup>25</sup> on near surface water bodies and <sup>26</sup> /or their margins recognises and preserves the natural character of the surface water body <sup>27</sup> by requiring appropriate setbacks;</li> <li>...</li> <li>4. enabling opportunities to restore and rehabilitate the natural character of surface water bodies and their margins, <sup>28</sup> such as through the removal of plant and animal pests, and supporting initiatives for the regeneration of indigenous biodiversity values and cultural values.</li> <li>5. <sup>29</sup> Prioritising enhancement or environmental mitigation where development, subdivision or changes in use occur which that is proportional to the scale of the development and any adverse effects created.</li> </ol> <p>while acknowledging that important infrastructure can have a functional need or operational need to locate in the margins of surface water bodies, and if so, must:</p> <p>(a) demonstrate through site, route or method selection, the minimisation of effects on natural character values; and</p> <p>(b) integrate design measures and management methods to mitigate adverse effects on natural character values.</p>

## NATC-Rules

NATC-R4	Signs
	<p><b>Activity status:</b> PER</p> <p>1. Any sign</p> <p><b>Where:</b> The site is:</p> <ol style="list-style-type: none"> <li>a. any official sign; or</li> <li>b. displayed in a public place for the purpose of direction, warning, township identification and welcome, visitor/ community / <sup>29</sup> historical information,</li> </ol>
	<p><b>Activity status when compliance not achieved:</b></p> <p>2. When compliance with NATC-R4.1 is not achieved: Refer to <a href="#">NATC-REQ4</a> Setbacks from Surface Water Bodies – Signs</p>

<sup>25</sup> DPR-0422.158 NCFF

<sup>26</sup> DPR-0422.158 NCFF

<sup>27</sup> DPR-0422.158 NCFF

<sup>28</sup> DPR-0422.158 NCFF

<sup>29</sup> DPR-0168.001 P Godfrey  
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recreation, <b>conservation</b> , or community activities; <b>or</b> c. displayed for visitor or worker health and safety; <b>or</b> d. for the users of roads, or off-road walking and cycle tracks, and that is for the purpose of direction, track marking, warning, fire restrictions, or interpretation.	
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## NATC-Rule Requirements

NATC-REQ1	Setbacks from Surface Water Bodies - Earthworks and Earthworks Stockpiles	
...	<p>4. All earthworks and earthworks stockpiles, are to be located at least 20m from the bank of any surface water body <b>excluding those required for:</b></p> <ul style="list-style-type: none"> <li>• a conservation activity<sup>30</sup>; or</li> <li>• <b>earthworks required to clear a drain<sup>31</sup>.</b></li> <li>• for a river crossing that complies with the <b>NESPF</b>.<sup>32</sup></li> </ul>	<p><b>Activity Status when compliance not achieved:</b></p> <p>5. When compliance with any of NATC-REQ1.4. is not achieved: RDIS</p> <p><b>Matters for discretion:</b></p> <p>6. The exercise of discretion in relation to NATC-REQ1.5 is restricted to the following matters:  <a href="#">NATC-MAT1</a>  <a href="#">SASM-MAT3</a></p> <p><b>Notification</b></p> <p><b>10.</b> Any application required by this rule shall not be <b>publicly or limited notified</b> and the written approval of any party will not be required.'</p>
NATC-REQ2	Setbacks from Surface Water Bodies – Buildings and Structures	
...	<p>1. All buildings and structures shall comply with the following setbacks from any surface water body:          ...;</p> <p>b. 100m from the bank of any lake and any wetland adjoining a lake, or <b>30m from any artificial lake or wetland that was created as part of residential development);</b></p> <p>b. 25m from the bank of any surface water body listed in <a href="#">NATC-SCHED1</a> or <a href="#">NATC-SCHED2</a>, other than from the bank of any lake and any wetland adjoining a lake, where NATC-REQ2.1.a. applies;</p> <p>c. 20m from the bank of any surface water body listed in <a href="#">NATC-SCHED3</a>, <b>except for pump sheds and irrigation structures less than 10m<sup>2</sup> and</b></p>	<p><b>Activity Status when compliance not achieved:</b></p> <p>2. When compliance with NATC-REQ2.1 is not achieved: RDIS</p> <p><b>Matters for discretion:</b></p> <p>3. The exercise of discretion in relation to NATC-REQ2.2 is restricted to the following matters:  <a href="#">NATC-MAT1</a>  <a href="#">SASM-MAT3</a></p>

<sup>30</sup> DPR-0207.033 SDC

<sup>31</sup> DPR-0212.050 ESAI

<sup>32</sup> DPR-0439.023 Rayonier  
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	<p>travelling irrigators<sup>33</sup> which must be setback a minimum within 10m from a bank of a surface water body listed in NATC-SCHED3; and</p> <p>d. 10m from the bank of any other surface water body, except within the Porters Village Base lower slopes Sub Area, where a 5m setback shall apply from the edge of Porter Stream<sup>34</sup>.</p> <p>Excluded from the above setback requirements are:</p> <ul style="list-style-type: none"> <li>• fences, and signage posts; and</li> <li>• maintenance of existing buildings/structures; and</li> <li>• alterations to buildings/structures existing prior to 2021; and</li> <li>• additions/extensions to existing buildings, where the addition/extension has with a maximum floor area of 10m<sup>2</sup>; and<sup>35</sup></li> <li>• structures associated with river crossings that comply with the NESPF<sup>36</sup></li> </ul>	
<b>NATC-REQ3</b>	<b>Setbacks from Surface Water Bodies – Vegetation Planting</b>	
...	<p>Vegetation plantings 'Horticultural plantings, woodlots and shelterbelts'<sup>37</sup> shall comply with the following setbacks from any surface water body: ' ...</p>	<p><b>Activity Status when compliance not achieved:</b></p> <p>2. When compliance with NATC-REQ3.1 is not achieved: RDIS</p> <p><b>Matters for discretion:</b></p> <p>3. The exercise of discretion in relation to NATC-REQ3.2 is restricted to the following matters:</p> <ul style="list-style-type: none"> <li>a. <a href="#">NATC-MAT1</a></li> <li>b. <a href="#">SASM-MAT3</a></li> </ul>

<sup>33</sup> DPR-0353.159 HortNZ, DPR-0372.069 DHL, DPR-0388.034 Craigmore and DPR-0390.055 RIL

<sup>34</sup> DPR-0345.020 PAR

<sup>35</sup> DPR-0212.52 ESAI

<sup>36</sup> DPR-0439.024 Rayonier

<sup>37</sup> DPR-0212.054 ESAI



## NATC-Matters for Control or Discretion

NATC-MAT1	Natural Character
	<p>1. The extent to which the proposed activity will affect the natural character <u>qualities (as set out in NATC-SCHED4)</u><sup>38</sup> of the surface water body and its margins;</p> <p>2. The effects of the proposed activity on any indigenous vegetation and any effects on mahinga kai and other customary uses <u>and habitat of indigenous fauna</u><sup>39</sup>.</p>

## NATC-Schedules

### NATC-SCHED4 – Natural Character Qualities of Surface Water Bodies

Recognise that the following natural elements, patterns, processes and experiential qualities contribute to the natural character qualities of surface water bodies:

- ...
4. biodiversity, including the extent of indigenous biodiversity<sup>40</sup>.
- ...

## EI – Energy and Infrastructure

### EI-P2

*Minimise the adverse effects of important infrastructure, and renewable electricity generation on the physical and natural environment by:*

- 1. encouraging the co-location of structures and facilities where efficient and practicable.*
- 2. locating, designing and operating development while minimising the effects on, the amenity values of the surrounding environment, public access and the health and safety of people.*
- 3. limiting the presence and effects of development within Outstanding Natural Landscapes, Visual Amenity Landscapes, natural character areas, areas of significant indigenous vegetation and habitats of indigenous fauna, sites of historic heritage and site and areas of significance to Māori to those which...*

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<sup>38</sup> DPR-0427.048 DOC

<sup>39</sup> DPR-0407.041 Forest & Bird

<sup>40</sup> DPR407.042 Forest and Bird  
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