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# OFFICER'S RESPONSE TO QUESTIONS FROM THE HEARINGS PANEL

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**DATE:** 19 MAY 2022

**HEARING:** NATURAL CHARACTER

**HEARING DATE:** 30 MAY 2022

**PREPARED BY:** MARK GEDDES, PERSPECTIVE CONSULTING LIMITED

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## Introduction

The purpose of this report is to provide a written response to the questions posed by the Hearings Panel on the respective section 42A report for the Natural Character Chapter.

## Questions and Answers

Paragraph or Plan reference	Question from the Hearings Panel
5.4	<p>The report states:</p> <p><i>There is an error with the relationship between NATC-R3 and NATC-REQ3 in that NATC-R2 only refers to GRUZ, while NATC-REQ3 refers to a number of zones being: GRUZ, GRAZ, MPZ, SKIZ and TEZ. However, with the exception of the PAR submission reference to SKIZ, this matter has not been raised in any of the submissions and therefore subsequently raises a scope issue....</i></p> <p><i>It is recommended the Hearings Panel seek the submitters comments regarding the inclusion of GRUZ, GRAZ, MPZ, SKIZ and TEZ in column 1 of NATC-R3 through the hearing process.</i></p> <p>Can you (or the management team) please comment further on this procedural issue, and whether it is sufficient to canvas the submitters who are appearing at the hearing or whether a Minute is required requesting comments from all submitters prior to the hearing.</p>
Officer response:	<p>After further consideration of this matter, I now consider this is solely a scope issue rather than a procedural issue. As stated at paragraph 5.4 of the s.42a report on the natural character chapter, except for the PAR submission's reference to SKIZ, this matter has not been raised in any of the submissions and is therefore out of scope. Someone could have read NATC-R3 and not decide not to read further on the basis that rule only applies to the GRUZ. It would therefore raise a procedural issue the other zones were included in NATC-REQ3 as originally recommended. Selwyn District Council staff have agreed to address this matter by way of a plan change.</p>
8.10	<p>Note for Senior Planner:</p> <p>The recommendation to amend the 'Relationship between spatial layers' section will need to also be considered by the wider Panel for Hearing 2.</p>
Officer response:	<p>This is for the Selwyn District Council Senior Planner to note.</p>

Paragraph or Plan reference	Question from the Hearings Panel
9.2	Are all surface water bodies and their margins in the district also covered by the SASM chapter?
<i>Officer response:</i>	<i>No. The SASM Chapter identifies several, but not all, surface water bodies and their margins as being of significance to Ngāi Tahu. The Ngā Wai overlay encompasses selected water bodies and their margins that have been determined to be significant areas of mahinga kai or other customary uses for mana whenua. Certain water bodies are also identified as Wāhi Tapu or Wāhi Taonga or identified as Ngā Tūranga Tūpuna to recognise their significance to papatipu rūnanga.</i>
10.39 – 10.40	The recommended change in NATC-REQ2(1)(c) to exclude less than 10m <sup>2</sup> pump sheds and irrigation structures is not underlined as a change in Appendix 2. In addition, the proposed 10m setback distance discussed is not included in the amended clause. Is it supposed to be?
<i>Officer response:</i>	Yes, it is supposed to be and my apologies for the omission. NATC-REQ2(1)(c) should read as follows:  ‘c. 20m from the bank of any surface water body listed in <u>NATC-SCHED3, except for pump sheds and irrigation structures less than 10m<sup>2</sup> and traveling irrigators<sup>1</sup> within 10m of a bank of a surface water body;</u> ’
10.4	Can you comment on whether your recommended amendment (additions/extensions to existing buildings with a maximum floor area of 10m <sup>2</sup> ) could be read in two possible ways - and may potentially enable unlimited area extensions provided the existing building is no more than 10m <sup>2</sup> ?
<i>Officer response:</i>	I accept this amendment could be interpreted the way you suggest and accordingly recommend the following subsequent amendment:  ‘additions/extensions to existing buildings, <u>where the addition/extension has <del>with a</del></u> maximum floor area of 10m <sup>2</sup> ; and’
10.43 and 15.5 and 15.14	The ESAI submission refers to setback requirements from (presumably) artificial lakes and wetlands that are part of residential developments (e.g. stormwater management areas). They are not excluded from the surface water bodies definition. Would these setbacks apply for proposed buildings and structures adjacent to artificial lakes and wetlands and is that appropriate, noting the statement in para 15.14 that the PDP objectives were only intended for natural water bodies?
<i>Officer response:</i>	As currently drafted, the amendments to the definition of ‘surface water bodies’ do not exclude artificial lakes and wetlands that are part of a residential development. I think it would be appropriate to exclude these from the NATC setback requirements or reduce the setback requirements. As stated in paragraph 15.5 of my report, I do not think the drafters of s.6 RMA would have intended to address artificial surface water bodies. However, it is slightly more complicated than that as the damming and raising of many natural lakes for hydro power purposes means that the definition of what is artificial and what is not can be unclear.  This matter could be addressed either through: <ol style="list-style-type: none"> <li>1. amending NATC-REQ2 in line with the submitters request; or</li> <li>2. amending the definition of surface water bodies to exclude: <ol style="list-style-type: none"> <li>a. artificial lakes and wetlands that are part of a residential development;</li> </ol> or </li> </ol>

<sup>1</sup> DPR-0353.159 HortNZ, DPR-0372.069 DHL, DPR-0388.034 Craigmore and DPR-0390.055 RIL

Paragraph or Plan reference	Question from the Hearings Panel
	<p>b. artificial water surface water bodies;</p> <p>While option 2 is not directly in scope of the ESAI submission that requests a reduced setback, it is in scope of the HortNZ submission 077.</p> <p>In the interests of not capturing any former natural lakes that have been raised for hydro-electric power, I recommend not amending the definition of 'surface water bodies' to exclude all artificial water bodies.</p> <p>I'd recommend option 2a. above, or amending NATC-REQ2 as follows:</p> <p>a. 100m from the bank of any lake and any wetland adjoining a lake, or <u>30m from any artificial lake or wetland that was created as part of residential development</u>);</p>
10.60	Can you please check the s32 report and identify where it sets out the reasons (and any cost-benefit analysis) for restrictions on horticultural plantings, woodlots and shelterbelts - for natural character purposes (as opposed to landscape purposes).
Officer response:	<p>Page 33 of the Natural Character s. 32 report briefly describes the costs and benefits of implementing all the PDP natural character provisions. The assessment is broad, addressing all the provisions, rather than specifically referring to any particular provision or land use activity such as horticultural plantings, woodlots and shelterbelts. The assessment lists the 'costs of obtaining consent' and the 'opportunity cost of restricting use of private land' as the economic costs of implementing the provisions. Opportunity costs mean the potential value of using the land that could otherwise be realised without the restrictions. The assessment provides the following summary comments regarding costs and benefits under the heading 'Summary of efficiency assessment'</p> <p><i><u>"The environmental, social, and cultural benefits of managing land use activities in riparian margins in relation to effects on natural character significantly outweigh the costs. The approach seeks to reduce costs as far as possible by avoiding duplication of Canterbury Regional Council functions, although opportunity costs will remain through potential restriction of use of land. These costs may, however, not be large, as opportunity remains to obtain consent for activities close to waterbodies."</u></i> [Emphasis Added]</p> <p>It does not quantify these costs or benefits with any empirical evidence or data (e.g. comparing the loss of land productivity to the benefits of preserving natural character). However, it is not uncommon for this sort of high-level s.32 assessment and in any case it is difficult to compare something that can be easily quantifiable (land value) to something which cannot be easily quantifiable (natural character values). While S.32(2)(b) RMA requires the quantification of the benefits or costs, it does so only if practicable. In the case of the NATC chapter would not be practicable to quantify all the opportunity costs of the many different land use activities that could occur within the setbacks to the more intangible benefits of preserving natural character.</p> <p>As stated above in the underlined text from the s.32 report, consent can be applied for to carry out activities within the setbacks that will reduce opportunity costs. The s.32 provides an extensive assessment of the applicable statutory planning</p>

Paragraph or Plan reference	Question from the Hearings Panel
	<p>documents that provides justification for natural character controls. For example, it is a matter of national importance to preserve natural character and protect it from inappropriate development under s.6 RMA.</p> <p>It is also worth noting that the setbacks required by NATC-REQ3 in relation to horticultural plantings, woodlots and shelterbelts are not large at only 20m from the areas listed in NATC-SCHED2 and NATC-SHED3 and otherwise 10m. 20m is the width of a local road and 10m is half of that. The Panel is also directed 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.</p> <p><a href="#">Report AP (selwyn.govt.nz)</a> – Baseline report  <a href="#">SDC DP Preferred Option Report - Water (selwyn.govt.nz)</a></p>
10.64	As noted above, this suggested process appears to have natural justice issues, how would this capture people who might otherwise have submitted?
<i>Officer response:</i>	This matter has been addressed above in response to the first question.
10.7	Is this inconsistency in the structure of the rules something that you would recommend be amended through a subsequent variation?
<i>Officer response:</i>	Yes potentially. This decision would be made by Selwyn District Council once the decision on submissions is made.
12.8	What rules would give effect to the new policy you have recommended, if any?
<i>Officer response:</i>	All the rules would give effect to the new policy (NATC-P1.5) as this policy would be able to be considered in relation to a consent that breached any of the rules of the NATC chapter.
12.8, 12.16 and NATC-P1(5) in Appendix 2	This proposed new policy seeks 'enhancement <u>or</u> environmental mitigation', presumably based on the wording in CRPS Method 4 for Policy 10.3.2. The environmental mitigation in the CRPS is more about focussing mitigating activities where they achieve the best benefits – i.e. in the riparian margins, for development that might occur outside of the riparian margin, or just generally for enhancement initiatives. As worded, proposed new Policy P1(5) could be interpreted as opening the door to environmental mitigation as an option in riparian margins (which is less than preservation and less than enhancement). Is environmental mitigation needed in this policy – it is not discussed in para 12.8, nor in CRPS Policy 10.3.2? Alternatively, could it be worded 'enhancement, including from environmental mitigation...' or similar?
<i>Officer response:</i>	<p>Part of the wording of this policy was taken directly from CRPS method 4 policy 10.3.2. I agree that mitigation is less than preservation and have deleted it in the amended policy below, along with some other minor improvements</p> <p>5. Prioritising enhancement <del>or environmental mitigation where development, subdivision or changes in use occur which</del> <u>that</u> is proportional to the scale of the development and any adverse effects created.<sup>2</sup></p>
13.3	Is there an inconsistency in the last two sentences – i.e. you are wishing to retain the ability for limited or public notification but the amendment does not provide for this?
<i>Officer response:</i>	The submissions from RWRL, IRHL, RIHL, RIDL are the same and request that a non-notification/limited notification clause is inserted to <u>all</u> the rules, not just NATC-

<sup>2</sup> DPR-0168.001 P Godfrey

Paragraph or Plan reference	Question from the Hearings Panel
	REQ1.10, which is currently the only rule that has a non-notification clause. My comments in paragraph 13.3 primary focus on this request to amend <u>all</u> the rules, whereas the recommendation in the second last sentence of paragraph 13.3 recommends an amendment only to NATC-REQ1.10 in the interests of clarity.
13.3	This paragraph recommends changes to NATC-REQ1.10 re notification, however no changes to this provision are shown in Appendix 2. Should there be?
<i>Officer response:</i>	There are amendments to NATC-REQ1.10 recommended in Appendix 2 of the s.42A report, but I see there is a small error in that the notification clause has been number incorrectly and was indicated by the letter 'x' rather than the number '10'. The following is how it should have been numbered:  X <del>10</del> . Any application required by this rule shall not be publicly or limited notified and the written approval of any party will not be required.'
15.5	The s42A Report addresses the exclusion of artificial watercourses at 15.5 but does not refer to the submissions of HortNZ, only the submission of Federated Farmers. Can you please provide some comment on Hort NZ's submission point.
<i>Officer response:</i>	This is an omission. The Hort NZ submission requests the exclusion of artificial watercourses from the definition of 'surface water bodies'. As with the FFNC submission that requests the same change, I agree with the proposed amendment and the submission points (077) from Hort NZ should be accepted.  For clarity, the Hort NZ submission point 039 in relation to the definition of the 'bank of the surface water body' can be dismissed as the amendment requested appears to be in relation to the definition of 'surface water bodies' not the definition of 'bank of the surface water body' in which the submission point is made.
NATC-REQ3 in Appendix 2	The text is proposed to be changed from 'vegetation plantings' to 'horticultural plantings, woodlots and shelterbelts'. Should the title of NATC-REQ3 also be changed?
<i>Officer response:</i>	Yes, it should be changed to be consistent with text of NATC-REQ3 and NATC-R3.

Paragraph or Plan reference	Questions for Landscape Architect, Mr Paul Smith
<b>Horticultural plantings referenced in several places, including pp 47 - 49</b>	Your evidence appears to rely at least to some extent on the activity controls in the Landscape Study as the basis for controls for natural character purposes. However, does the Landscape Study not have its focus more on outstanding natural landscapes and features? Does it specifically address natural character? As an associated question, would you not consider that horticultural plantings in a Rural zone can be more acceptable in the context of 'natural character', whereas they could have a more significant effect (and be appropriately subject to greater control) in terms of their effects on outstanding natural landscapes? Does the section 32 Report provide a strong basis for including controls on horticultural plantings?
<b>Paul Smith response</b>	1. The description of the landscape attributes for the Te Waihora / Lake Ellesmere (ONL), the Rakaia River (ONL), and the Waimakariri River (ONL) that directly relate to their rivers, and the Rakaia Catchment (ONL) and the Waimakariri Catchment (ONL), that indirectly relate to waterbodies in these two areas include attributes that relate to both natural character and landscape. Therefore, even though the landscape study is focused on the identification of ONLs and ONFs, it goes some way to address natural character for these three waterbodies.

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	<p>2. Visually, I consider that the geometrical shape of horticultural plantings may be more appropriate on relatively flat topography where it can blend in with the patch work of existing agricultural land use activities. Whereas on a hillside, which most ONLs comprise of, a rectangular patch of horticultural plantings would be visually prominent because they would not be visually cohesive with natural patterns and processes of the hill or mountainside that they are situated on. However, there are flat areas of land within the ONLs i.e Rakaia Catchment (ONL) and the Waimakariri Catchment (ONL) where horticultural plantings could be visually absorbed.</p> <p>Cumulatively, the river beds and their braid plains within the district have substantially narrowed over the past 100 years due to the encroachment of agricultural activities that has reduced the naturalness or degree of natural character of these rivers. The continuation of intensive land use activities, even those that are near the rivers banks, i.e within their margins will continue to cumulatively degrade the natural character of these waterbodies. Because these rivers have narrowed, even though long, the continued reduction of their overall size or even encroachment near their banks is likely to be less acceptable when compared with a similar size area of horticultural plantings in a substantially larger ONL.</p> <p>From a policy perspective, Section 6a of the RMA that is a matter of national importance, seeks the preservation of the current natural character of the districts waterbodies and to protect them from inappropriate development. When compared with ONLs and ONFs being a Section 6b matter, this policy wording is stronger. This is because in most situation man made modifications reduce the naturalness or natural character of the districts water bodies and their margins. Therefore, not preserving their natural character.</p> <p>In summary, I consider that visually horticultural plantings may be more acceptable, however, there are areas within ONLs where they would also be acceptable. Cumulatively and from a policy perspective, they would be less acceptable. Based on this, I consider that Council should have oversight on these land use activities located near the districts water bodies.</p> <p>3. I don't consider the S32 Report provides a strong basis for this. This, like the drafting of the Natural Character chapter, appears to be done without a Natural Character Study that would assist in justify its reasoning.</p> <p>Moving forward I consider that Council and Canterbury Regional Council (because they both manage the districts water bodies) undertake / commission a Natural Character Study of the waterbodies in the district, similar to the Landscape Study and Coastal Environment Study. Even though it may be seen as retrospective to the drafting of the PDP, it may 1) provide better guidance to Council and landowners on how to preserve the natural character of the districts water bodies, including the importance of preserving the natural character of their margins and protecting them from inappropriate development, 2) outline potential threats to the natural character of the districts water bodies and their margins and how their natural character could be enhanced, which can be seen as a way of offsetting adverse effects of land use activities and 3) assist</p>

Paragraph or Plan reference	Questions for Landscape Architect, Mr Paul Smith
	landowners with future resource consent applications when assessing a restricted discretionary activity against Schedule 4 in the Natural Character Chapter.