Hearing 19: Natural Features and Landscapes

Questions from the Hearing Panel

As foreshadowed by paragraph 12 of Minute 1, having read the Section 42A Report (and the associated specialist report by Mr Bentley) for the above, the Hearing Panel members have a number of questions that they would appreciate being answered by the Section 42A Report author(s) in writing prior to the hearings commencing.

Paragraph or Plan reference	Question
8.2	Are there any specific rules for which you would recommend non-notification clauses?
	Many rules and rule requirements include discretionary and non-complying activity statuses under this Chapter. It would not be appropriate to have non-notification clauses attached to these provisions due to the unanticipated range of effects from these activities which may require public or limited notification. VAL rule requirements which are restricted discretionary activities generally already have non-notification clauses. Plantation forestry and (as recommended by the S42a report) horticultural planting, woodlots and shelterbelts are controlled activities in VAL. A non-notified activity status could be appropriate for these activities, although there may be cause to retain discretion to notify given the potential scale of the activity and the fact that there are no particular constraints on the size of plantings under NFL-R3 and as amended to a controlled activity. *There is some inconsistency with how the Chapter manages non-notification for activities in the SKIZ as some restricted discretionary activities (NFL-R2.18 and 22) which default to discretionary activities have non-notification requirements. On the other hand, there are several rules that apply only in the SKIZ for earthwork activities that have a controlled activity status (NFL-R2.6, 10 and 14), which default to a discretionary activity, that do not have non-notification requirements. As these rules apply to a specific zone within ONL where development is anticipated, albeit with constraints attached, non-notification clauses may be appropriate.*
8.4	Whilst your point about not needing to integrate with adjoining Council plans is understood, has any work been done to compare, or ground-proof, the proposed PDP provisions with those of adjoining Councils?
	Yes, the Outstanding Natural Features and Landscapes Planning and Landscape Analysis by Boffa Miskell, 20 February 2018 reviewed the approach in other district plans including Ashburton, Waimakariri, Hurunui, Christchurch, Queenstown and Dunedin. The report found some general commonalities between district plans in the approach to managing activities and that whilst it is not necessary for the same provisions to be applied in each district, a degree of consistency is needed to provide an appropriate level of identification and protection by following the direction of the RPS (Particularly P19-20).

Paragraph or Plan reference	Question
	https://www.selwyn.govt.nz/__data/assets/pdf_file/0020/251183/Landscape-Planning-Assessment-Final-Page-1-37.pdf
9.9.1	What is the relationship between 'significant landscapes' and 'VAL's', or are they indeed essentially the same?
	'Significant landscapes' are used in some district plans but essentially mean the same thing as a 'visual amenity landscape'. Other district plans use terms such as 'rural amenity landscape' or 'significant amenity landscape'. The important distinction is that these are not outstanding natural landscapes under S6 RMA but are 'second tier landscapes', designated for the maintenance or enhancement of amenity purposes under s7 RMA.
10.4.3	But do not the words "break the skyline" as notified also provide some uncertainty as to what that means, i.e. where is applied from, which views (public or private view points) etc?
	Yes to some extent. However there is a recommended amendment to insert a definition of a ridgeline, including a diagram. This will provide guidance on compliance with NFL-REQ1.3 and NFL-REQ6.4 which are the main rule/ rule requirements that implement this policy. 'Break the skyline' in this sense essentially means development or use that can be seen on a ridge or hill (or high point) and seen against the sky, therefore amplifying its visual presence. It would be relevant from both public and private views.
10.5.2	Can you please review the s42A report/Reply report for H15 and advise us whether a similar policy to the new policy you are recommending here is required, i.e. providing a cross to the EI Chapter required with respect to the Natural Features Chapter?
	The EI Chapter does not presently include any cross referencing to the Earthworks chapter. I note that in the reply report for the Earthworks hearing stream, it was identified that there is a need to have cross-referencing to the EI Chapter within the Earthworks Chapter to ensure compliance with the National Planning Standards. The author is recommending a note to achieve this. I do not believe a policy is required in the Earthworks chapter however as the Earthwork rules are not referenced in the EI Chapter – the provisions in the EI Chapter have primacy. This is not the case for the NFL Chapter as the provisions in the NFL Chapter governing earthworks are cross referenced from within the EI Chapter. *I note that the National Planning Standards require that earthworks provisions are located in the Earthworks Chapter. There may be some reordering necessary in the NFL and CE Chapter and then appropriate cross-referencing between the Earthwork Chapter and NFL/CE Chapters to ensure compliance with the National Planning Standards.*
10.24	But is the word "avoid" appropriate at all in P2 which relates to the VAL's not ONL's. Does the chapter include non-complying activities for rules being exceeded in VAL's?
	The use of the term 'avoid' in the context of NFL-P2 could be deemed appropriate even for activities that are not non-complying, as this is managing the effects of the activity rather than the activity always being considered

Paragraph or Plan reference	Question
	inappropriate. For example, woodlots are a controlled activity (as recommended), but the control is reserved to the siting of plantings and how it relates to the landform. In order to maintain the integrity of the VAL, it is important to avoid visually prominent development and land uses that break the skyline, as identified by NFL-P2. Conditions can therefore be imposed on a controlled activity resource consent that achieve these outcomes. If the Panel wished to explore a different threshold, the use of the word 'minimise' could be considered.
11.4	You state: *"To avoid this unintended outcome, I acknowledge there is a need to include wording in the NFL Chapter policies to ensure consistency with the EI Chapter. I consider that this should provide some relief to network infrastructure operators so that where a resource consent is triggered under the NFL Chapter, this should recognise and provide for important infrastructure. <u>I do not consider that a change to NFL-R1 is required however."</u>* Please clarify why a change to Rule 1 is not also required, i.e. as a follow up to the changes to the policies, to make this clear to readers of the Plan.
	The intent was to follow legal advice commissioned after the EI Hearing and to include a policy to enable important infrastructure to be considered on a case by case basis in NFL, taking into account the various constraints that infrastructure providers are subject to and methods they use to minimise adverse effects. Excluding important infrastructure from NFL-R1 would lead to a logic gap where the rule is referenced in the EI Chapter through EI-REQ12 but then there is an exclusion built-into the rule, which suggests that this linkage is redundant. The EI Chapter would have primacy which may mean the activity could be permitted under EI rules, which may not be appropriate in ONL or VAL. *However I acknowledge there is some tension between the rules of the EI and NFL Chapter and how important infrastructure is addressed. This was noted in the legal advice received where certain activities are discretionary activities in the EI Chapter (e.g. EI-R20 Electricity Transmission Lines, EI-R31 Other Renewable Electricity Generation[1]) and other important infrastructure activities are potentially non-complying activities through the reference in EI-REQ12. Important infrastructure subject to EI-REQ12 and NFL-R1 could thus be subject to the gateway test, hence the importance of ensuring there is policy support embedded in the NFL Chapter to recognise that important infrastructure may be appropriate in ONL when considered against operational and functional need.*
11.5	Same question as above, applicable to Manawa Energy, would an amendment to R1 not assist to clarify/implement the recommended change to the Policy?

[1] It is noted that both the NPS-ET and NPS-REG apply respectively to electricity transmission and renewable electricity generation which is a matter of distinction compared to other important infrastructure. I discuss this more below.

Paragraph or Plan reference	Question
	Operational, maintenance and repair activity is a permitted activity in the EI Chapter for network utility infrastructure. For upgrading and newly established infrastructure, the issue applies as described above where there could be a logic gap created.
11.40 – 11.42	Please respond to the statement by Ms Wharfe for Hort NZ (para 6.16): *The s32 Report introduces Rule NFL-R3 to include horticultural plantings with no clear reasons set out why they have been included in the rule, given that the expert reports did not identify horticultural plantings as an issue, apart from vineyards.* Can you please confirm if there is in fact a sound basis for including in the NFL chapter specific controls on horticultural plantings (other than for vineyards) from the s32 Report and the landscape reports referred to in your report.
	The landscape report[2] focusses on the effects of vineyards although the landscape planning assessment[3] notes at p28 that orchards (as well as woodlots and vineyards) are distinct activities from domestic gardens where there is a linear arrangement, singular species and regularity of form and result in different effects. Commercial orchards with pole structures, netting and/or polytunnels would likely have a negative effect on ONL in the same manner as vineyards. *Mr Bentley comments further on this from a landscape perspective:* *'Horticultural plantings can have an adverse effect on the landscape if located and sited inappropriately. For example, vineyards, with their straight lines, can interrupt and be incongruous to the natural patterns and forms of the landscape. Whilst vineyards have specifically been identified, horticultural plantings could entail other types of planting or land use where rows of planting (and infrastructure to support that planting, such as posts and wires) can, if planted insensitively, could amplify landscape effects'.*
12.2	Your recommendation for REQ1 is to retain NC status for breaches of the height rule. Can you please respond to the Telco's letter (Mr Horne's para 17) in particular how NC status will align with your recommended new Policy 3, which recognises the needs of important infrastructure.
	As discussed there is some tension between the EI and NFL Chapter and how the enabling approach to important infrastructure in the EI Chapter is reconciled with Council's duty to protect ONL from inappropriate development. I note that for some activities such as the National Grid, a discretionary activity is required in the EI Chapter for new lines (EI-R20). For other activities, such as telecommunications structures, cross-linkage to NFL rules may mean a more stringent non-complying activity is a requirement. *The approach taken as a response to legal advice and submissions has been to mirror the various criteria in the NFL Chapter that were in the EI Chapter relevant to NFL. The policy anticipates that there will be some important infrastructure development in NFL but this will be considered on a case by case*

[2] Landscape Characterisation and Evaluation Report 12 December 2018.

[3] Outstanding Natural Features and Landscapes Planning and Landscape Analysis, 20 February 2018

Paragraph or Plan reference	Question
	basis taking into account the various constraints that infrastructure providers are subject to and methods they use to minimise adverse effects. Thus infrastructure providers that cannot demonstrate they have used this process will fail the gateway test and the activity will likely be seen as inappropriate, to be avoided. *The alternative to this approach would be for important infrastructure, or at least certain important infrastructure unlikely to be able to comply with NFL Rules such as telecommunication equipment, not to be subject to the gateway test at all and be considered a discretionary activity. This is what the Telco's seek. This would provide more certainty and would be more consistent with the approach taken with the National Grid and Renewable Electricity Generation, although this type of infrastructure is subject to the imperatives of a National Policy Statement.* *Direction in the NPS Electricity Transmission and NPS Renewable Electricity Generation has been reflected through a discretionary activity in the EI Chapter. This leaves other important infrastructure to demonstrate the merits of why they need to be located in an ONL on a case by case basis, which is supported by recommended NFL-P3. This may be appropriate given the lack of a national policy statement to support other important infrastructure.*
12.46	Can you please review whether there may still to scope to make this change (and the Panel will ask Orion to comment on this too).
	Orion's submission point seeks the exclusion of important infrastructure from NFL-R1. This would mean the activity would default to the provisions of the EI Chapter which may mean the activity could be permitted under EI rules, which may not be appropriate in ONL or VAL. The Orion submission may give the scope necessary to amend the activity status to a discretionary activity as the effect of the Orion submission relief if fully accepted would be to effectively permit important infrastructure subject to the constraints in the EI Chapter, which would likely give rise to adverse effects on ONL/VAL. A discretionary activity would still enable a full effects assessment however.
15.3	Flock Hill Station has requested removal of the ONL from part of its property to facilitate a proposed FHSZ. This is not supported in the s42A Report. Please respond to Ms Stewart's planning evidence for this submitter where she recommends the ONL is retained but the relevant NFL rules are excluded from application to the proposed new zone, as has been done with the Porter's Ski Zone (SKIZ) and Grasmere Zone (GRAZ).
	The principle of this is consistent with Mr Bentley's advice to avoid 'carve outs' from ONL mapping but rather to account for a particular use or activity zone within the ONL through the provisions of the PDP. In this, the particular objectives and policies of the NFL Chapter remain applicable however it is recognised that through the provisions of the special purpose zone, development can occur in this particular area in accordance with the special values of the ONL. I note that Mr Bentley has opined that the proposed suite of rules would not compete or erode the broader ONL but this is likely to be revisited again in more detail through the rezoning hearings.