

OFFICER'S RESPONSE TO QUESTIONS FROM THE HEARINGS PANEL

DATE: 5 August 2021

HEARING: PART 1 – Introduction and General Provisions

HEARING DATE: 23 and 24 August 2021.

PREPARED BY: Jessica Tuilaepa – Senior Strategy & Policy Planner

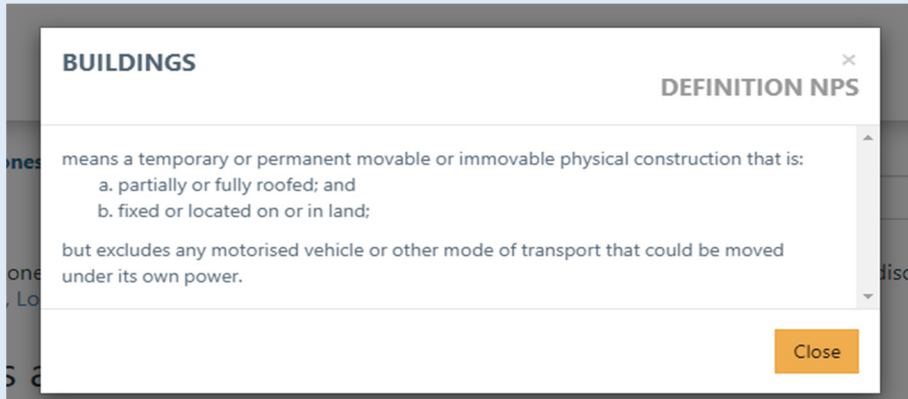
Introduction


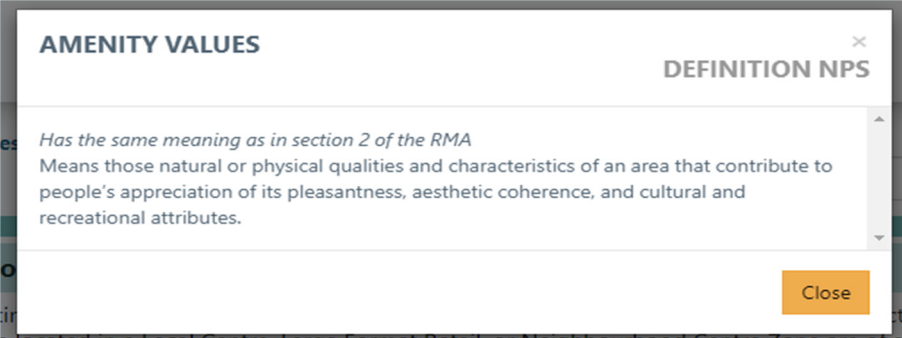
The purpose of this report is to provide a written response to the questions posed by the Hearings Panel on the respective section 42A report for PART 1 – Introduction and General Provisions.

Questions and Answers

Paragraph or Plan reference	Question from the Hearings Panel
Clause 16(2) amendments	<p>Throughout the Section 42A Report numerous recommendations are made to accept submissions with the author stating they will be made under clause 16(2) of Schedule 1 of the RMA. There are three "Reports to Council" (dated 16 December 2020, 03 February 2021 and 07 May 2021) on the SDC webpage containing clause 16(2) amendments.</p> <ul style="list-style-type: none">Can you please confirm that the authority to make clause 16(2) amendments has been retained by the Council and has not been delegated to the Hearings Panel?Have all of the clause 16(2) amendments in the three "Reports to Council" on the SDC webpage be made in the ePlan that is currently available online?Will all of the Hearing 2 recommended clause 16(2) amendments be incorporated into a further 'Report to Council'?If 'yes', what is the timing for that Report and will those clause 16(2) amendments then be made in the ePlan that is currently available online?If 'no', why not and when would the clause 16(2) recommendations be reflected in the ePlan that is currently available online?
<i>Officer response:</i>	<ul style="list-style-type: none">Yes. Council, specifically the Environmental Services Manager, has retained the authority, as per section RS-202 of the Council's delegations manual to make clause 16(2) amendments.Yes, at the time the s42A report for PART 1 was published all three applicable clause 16(2) amendment reports were available on the website and have been incorporated into the PDP.Yes, a report to incorporate the additional clause 16(2) amendments is presently being drafted and will be available online before the hearing date.Amendments will be made to the PDP before the hearing starts.

Paragraph or Plan reference	Question from the Hearings Panel
7.26	Does the District Plan have provisions relating to ‘highly productive land’ which will provide sufficient protection until such time as the National Policy Statement for Highly Productive Land is released? (i.e. other than with respect to the cross boundary issue addressed in paragraph 9.29)
<i>Officer response:</i>	<ul style="list-style-type: none"> The PDP as notified contains reference to Versatile Soils in the UG (UG-P9) relating to the rezoning of land for urban purposes and GRUZ-MAT2, which requires consideration of the effect of building coverage breaches on the rural productive potential of land, but there is no specific reference to ‘Highly Productive Land’. The SD and UG s42A Reports are proposing changes to incorporate reference to ‘Highly Productive Land’ in the respective chapters. However, the level of protection of HPL corresponds to that required for ‘versatile soils’ under the CRPS, until such time as the NPS-HPL is released.
8.10(a)	Is the word “our” in the recommended amendment to the last line of the first paragraph of INTRO2 necessary?
<i>Officer response:</i>	No, please refer to the s42A Report addendum for corrected text.
9.11(b)	Should the last three lines of the Description of the Marine and Coastal Area (Takutai Moana) Act 2011 in HPW3 be underlined?
<i>Officer response:</i>	Yes, please refer to the s42A Report addendum for corrected text.
9.22	<p>Submitters North Canterbury Federated Farmers NZ and Horticulture New Zealand request to include additional information about how to consult with mana whenua.</p> <p>The S42A Report recommends to reject this request because amongst other things, <i>HPW10 is not considered to be the most appropriate place for this information to be located.... these processes and respective contact details are continually evolving...</i></p> <p>Can the author explain why it’s concluded that these processes and respective contact details are continually evolving? When the contact details of Rūnanga offices and the Office of TRONT have remained the same. As with any organisation personnel may change but the Rūnanga office contact details have never changed.</p>
<i>Officer response:</i>	<ul style="list-style-type: none"> My reference to contact details changing was written from my own experience that the liaison between the Rūnanga offices and the Office of TRONT and Council has changed somewhat frequently over the years, but yes, I agree with that office details remain unchanged. My reference to the processes continually evolving, relates to Council’s initiatives to create helpful user guides for the community. Steps are being taken by Council to create and update, or to promote guidance material from other sources that may be of interest to plan users and the wider community. Information guides developed by Council, including information on how to apply for a resource consent or how to lodge a submission, are currently located on Councils website and physical copies are available in some service centres and libraries. These documents are updated as required.

Paragraph or Plan reference	Question from the Hearings Panel
	<ul style="list-style-type: none"> Te Rūnanga o Ngāi Tahu and Environment Canterbury jointly developed a guide for the purpose of assisting with resource consent applications. This guide is presently located on the Council's website as well. (https://www.selwyn.govt.nz/_data/assets/pdf_file/0014/103253/Ngai-Tahu-Consultation-Guide.pdf).
9.35(a)	In the recommended additional row in HPW13 (managing soils and their productive use) are there words missing from the text in the second column?
<i>Officer response:</i>	No, there the word Council is repeated twice in error. Please refer to the s42A Report addendum for correct text.
9.35(b)	Would it be clearer if the recommended amendment to HPW14 was to read: The safe and efficient functioning of the District's telecommunication <u>networks</u> , and <u>its</u> electricity transmission <u>and distribution</u> networks, including protecting important infrastructure from reverse sensitivity effects.
<i>Officer response:</i>	Whilst I agree this would be clearer, I do not consider there is scope to for such an amendment given the specificity of the relief sought by the submitter via submission point DPR-0367.008 by Orion New Zealand Limited.
10.7	Was it the intention that all definitions that originate from the RMA, the National Planning Standards or a National Environmental Policy or Standard be shaded grey in the Definitions section of the ePlan? <ul style="list-style-type: none"> If "yes", have all such definitions (for example access strip, airport, antenna, etc.) been shaded grey in the ePlan that is currently available online? If "no", can you please explain why?
<i>Officer response:</i>	<p>No, the grey shading is a feature of the ePlan software. The provider automatically provides a preformatted list of Planning Standards definitions that the ePlan editors (Council) can opt to use or alternatively, these definitions can be added manually by the user. The ePlan software provides 'pop up' boxes containing both the definition and the source of said definition throughout the ePlan, in addition to the consolidated list located in the Interpretation Section. Readers of the plan can see the origin of the definition in both the interpretation section (through the grey shading) or via a heading in the pop up definition box after clicking on an underlined term in the plan. For example a definition provided by the Planning Standards appears as:</p> 

Paragraph or Plan reference	Question from the Hearings Panel
	<p>However, a definition that is not from the Planning Standards would appear like this:</p>  <p>We have discussed with the ePlan provider that 'definition NPS' is not the most appropriate title as the Planning Standards are not known by the 'NPS' acronym and they are looking into amending this to better reflect the origin of the definitions from the Planning Standards in a future software update (there is no timeframe on this update).</p> <p>Where a definition has been adopted from the RMA and is not also mandated by the Planning Standards it does not presently have grey highlighting, but the text of the definition will have the text "has the same meaning as in section 2 of the RMA" where applicable.</p>  <p>I agree that there may be confusion as my statement in the proposed 'overview' for the Definitions Chapter in Appendix 2 of the PART1 s42A Report indicates that where a term is from the RMA, Planning Standards or NEP or NPS it is in grey as it comes from one of those documents. However, as discussed above, this is not currently the case due to the present capabilities of this particular feature of the software.</p> <p>The intention with the grey shading was to demonstrate where a definition has come from the Planning Standards, it is a mandatory definition that the Council must use and is unable to change, whereas a definition that is not shaded could technically be changed via submission on the proposed Plan. Other definitions provided through the RMA, an NES or NPS are not mandatory and whilst it is best practice to use them, technically a change could be made to ensure the definition suited the Selwyn context.</p>
10.9(a)	<p>Would it be clearer if the recommended "Definitions Overview" text was to read:</p> <p>This part of the District Plan explains the extended meaning of words and phrases developed specifically for <u>the Plan, having regard to and as used in the context in which they are used</u> of it. The definitions herein replace the ordinary dictionary meaning of the subject word or phrase.</p>

Paragraph or Plan reference	Question from the Hearings Panel		
	Definitions only apply where identified in the ePlan with a green dotted underline. In all other instances, words and phrases used in the District Plan are best defined using <u>have</u> their ordinary dictionary meaning.		
Officer response:	Yes, I agree this would provide additional clarity for Plan Users.		
14.25	<p>Rule requirements such LLRZ-REQ5 require ancillary structures to be setback from any road boundary.</p> <ul style="list-style-type: none"> Does the use of rule requirements avoid the need to include the setback requirement in the definition? 		
Officer response:	No. <i>While it is acknowledged that the definition contains requirements to meet locational criteria in addition to other quantitative measures, the definition has been crafted this way to enable small 'ancillary structures' (such as spa pools or wood sheds) to establish as a permitted activity, except where it is located within the road setback requirement, which may detract from street scene amenity values.</i>		
14.39(b)	<ul style="list-style-type: none"> How do "community correction facilities" differ from the defined term "Community Corrections Activity"? Can you please explain why the recommended definition of "Corrections Activity" includes "community correction facilities" given that the discussion at paragraph 14.37 indicates that these are different to prisons and jails, etc.? 		
Officer response:	<ul style="list-style-type: none"> They do not differ, as this phrase was used in an attempt to depict a 'group' of different types of community corrections activities. On reflection the sentence should have used the word 'activities' instead of 'facilities'. The definition of 'corrections activity' includes both community corrections activities and prisons etc. because the associated rules have been drafted to consider 'community corrections activities' as a subset of 'correction activities', for example: <div data-bbox="469 1312 1378 1599" data-label="Complex-Block"> <p>TCZ-R16 Corrections Activities</p> <table border="1"> <tr> <td> <p>Activity Status: PER</p> <p>1. Any <u>corrections activity</u>,</p> <p>Where:</p> <p>a. The activity is a <u>community corrections activity</u>.</p> <p>And the activity complies with the following rule requirements:</p> <p>TCZ-REQ1 Servicing</p> <p>TCZ-REQ5 Fencing and outdoor storage areas</p> <p>TCZ-REQ8 Active frontage</p> </td> <td> <p>Activity status when compliance not achieved:</p> <p>2. When compliance with any of TCZ-16.1.a. is not achieved: NC</p> <p>3. When compliance with any rule requirement listed in this rule is not achieved: Refer to TCZ- Rule Requirements</p> </td> </tr> </table> </div>	<p>Activity Status: PER</p> <p>1. Any <u>corrections activity</u>,</p> <p>Where:</p> <p>a. The activity is a <u>community corrections activity</u>.</p> <p>And the activity complies with the following rule requirements:</p> <p>TCZ-REQ1 Servicing</p> <p>TCZ-REQ5 Fencing and outdoor storage areas</p> <p>TCZ-REQ8 Active frontage</p>	<p>Activity status when compliance not achieved:</p> <p>2. When compliance with any of TCZ-16.1.a. is not achieved: NC</p> <p>3. When compliance with any rule requirement listed in this rule is not achieved: Refer to TCZ- Rule Requirements</p>
<p>Activity Status: PER</p> <p>1. Any <u>corrections activity</u>,</p> <p>Where:</p> <p>a. The activity is a <u>community corrections activity</u>.</p> <p>And the activity complies with the following rule requirements:</p> <p>TCZ-REQ1 Servicing</p> <p>TCZ-REQ5 Fencing and outdoor storage areas</p> <p>TCZ-REQ8 Active frontage</p>	<p>Activity status when compliance not achieved:</p> <p>2. When compliance with any of TCZ-16.1.a. is not achieved: NC</p> <p>3. When compliance with any rule requirement listed in this rule is not achieved: Refer to TCZ- Rule Requirements</p>		
17.4	<p>MANA3 third paragraph – The author recommends accepting submitters amendments to the "tone and terminology" of the paragraph by replacing the words 'harm' and 'limit' with 'impact' and 'may affect' respectively. We understand that Mana whenua chapter was written cooperatively by Council and Mahaanui Kura Taiao staff, so one would presume that it is factually correct.</p> <p>We also understand that there are a number of Iwi and Rūnanga documents that describe how the relationship between mana whenua and their traditional Kaitiakitanga mahinga kai practises has been harmed and has been limited, as a result of past land management practises.</p>		

Paragraph or Plan reference	Question from the Hearings Panel
	<ul style="list-style-type: none"> Does the author consider that by changing the words 'harm' and 'limit' to 'impact' and 'may affect' downplays the issue? If the notified words are replaced as sought by the submitters, will this result in a factually correct statement, given the dictionary definition of the respective words are completely different? <p>We understand that restoration efforts undertaken by land managers today add value to the contemporary relationship between mana whenua and Kaitiakitanga practices.</p> <ul style="list-style-type: none"> In response to the submissions, could that contemporary situation be acknowledged instead of changing the words as sought by the submitters? If "yes", could the author please recommend wording for the Panel's consideration?
<i>Officer response:</i>	<ul style="list-style-type: none"> When drafting my s42A Report I considered that the second sentence of this particular paragraph is looking forward to the future of the relationship of tangata whenua with land, water, sites, wāhi tapu and other Taonga. There may be instances where a development could enhance the ability of Māori to engage in their traditional practices and I considered that the amended wording would better reflect that possibility. However, I agree that historically this has not always been the case and I did not recommend the amendments with the intention of downplaying the issue. On reflection, I now read this paragraph of MANA3 as referencing the relationship in the past and into the future and whilst I do not consider that replacing the words has made the sentence less factually correct, I understand that the amended wording may have unintentionally reduced the severity of historical impacts on Māori engaging in their traditional practices in favour of anticipating future possibilities. I therefore consider that MANA3 should be retained as notified and that the submission points DPR-0212.005 by Ellesmere Sustainable Agriculture Incorporated and DPR-0422.093 by Federated Farmers of New Zealand - North Canterbury be rejected. I do not consider there is scope in submission points (DPR-0212.005 and DPR-0422.093) to instead acknowledge the contemporary situation regarding restoration efforts undertaken by land managers today.
17.8)a)	<p>The word "impact" is neutral with regard to positive or negative effects.</p> <ul style="list-style-type: none"> Would it be clearer if the recommended amendment to the second sentence of paragraph three of MANA3 was to read instead: <p>"These effects <u>may</u> harm impact the relationship ..."</p>
<i>Officer response:</i>	Yes.
General Approach	Rules – should the words 'to the activity (s)' be included between 'prior' and 'being undertaken'?
<i>Officer response:</i>	I note that no submitters have sought to change this clause, therefore there is unlikely to be any scope to change this text even if I was supportive of the amended wording.
Definitions	Public Floor Area. What is the purpose of this definition? I have searched the plan and can find no reference to that term.?
<i>Officer response:</i>	Public Floor Area is only referred to in the Abbreviations to advise people what PFA the abbreviation is of. The Definition is included so that people are able to distinguish between what the Public Floor Area is compared to Gross Floor Area. The rules reference PFA and

Paragraph or Plan reference	Question from the Hearings Panel
	the definition is necessary to advise plan users which aspects of a building are considered to be the PFA.