

Before the Independent Hearings Panel at Gore District Council

Under Schedule 1 of the Resource Management Act 1991

In the matter of Hearing Submissions and Further submissions on the Proposed
Gore District Plan.

Hearing Panel Minute 18 – Section 32AA Report of Mishka Banhidi on behalf of Gore District Council

Date: 29 November 2024

Introduction:

1. My full name is Mishka Banhidi. My Hearing Stream 7 Energy and Infrastructure Section 42A report sets out my qualifications and experience as an expert in planning.
2. I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's practice Note 2023, as applicable to this independent hearing panel.
3. I have prepared this report to provide a response to the request by the Hearing Panel Minute 18 (10 September 2024) which directed the following:
 - a) At paragraph 12, page 2, the preparation of a draft Natural Character chapter that reflects the position of the Hearings Panel, which is set out in paragraphs 10 and 11 as follows:
 - (1) The primary objective of the Natural Character chapter is to provide an overview of the approach to, and outcomes for, natural character within the Proposed District Plan (PDP) and an integrated approach to the various provisions
 - (2) Such an approach does not require a restructuring of the PDP, but rather the inclusion of a new chapter while retaining the existing provisions in their current location.
 - (3) The draft chapter will at the very least require objectives describing the overall outcomes to be achieved, and potentially policies of both principle and process.
 - (4) The focus of the chapter will be recognising the high order provision of section 6(a) of the RMA.
 - (5) The chapter will consider the management of environmental effects in areas that are modified.
4. The purpose of this report is to evaluate the draft natural character chapter as required under Section 32AA of the Resource Management Act 1991 (The RMA) and to keep all potentially interested submitters informed as to the rationale and process involved in the development of this chapter.
5. This report is supported by the supplementary evidence of Mr Mike Moore (Landscape Architecture) included as Appendix 3 and a Memorandum of Counsel included as Appendix 4.
6. This report identifies consequential amendments that may be required to integrate the proposed natural character chapter into the PDP, these amendments will be discussed in the Section 42A report for hearing stream 9 because they do not relate directly to the natural character chapter requested by Minute 18.

Background to Draft Natural Character chapter:

7. The notified PDP included reference to natural character of rivers within the Part 2 Natural Features and Landscapes chapter - (NFL), Appendix 5 Landscape Values – (ONL-APP) and in the various objectives, policies, rules and standards as outlined in paragraph 7 of Minute 18. These provisions relate primarily to stream setback standards.
8. The Section 32 Evaluation reports (most notably the Section 32 evaluation reports on Natural Features and Landscapes, Rivers and their margins, and Public access) support the notified PDP provisions related to the natural character of rivers.
9. Submissions from Southland District Council (S146.051, S146.052 & S146.057) request any provisions relating to natural character of rivers be located in a natural character specific chapter, providing scope for the introduction of this chapter into the PDP.
10. Submissions from Waka Kotahi New Zealand Transport Agency (S112.184), and Alliance Group (S121.107), also relate to natural character and provide additional scope for this chapter, in particular these submissions request clarification of the provisions which relate to the Maitara River High Natural Character Feature (HNCF) noting that the HNCF does not appear to be operationalised within the PDP.
11. The Southland District Council submissions were discussed in Hearing Stream 1 and Mr Matt Heale's hearing stream 1 Right of reply (paragraphs 40 to 48) outlined options for inclusion of a specific natural character chapter, while remaining neutral on a recommendation to accept the submissions or reject them.
12. The Hearing Panel has requested a draft chapter which will provide an overview of the approach to, and outcomes for, natural character within the Proposed District Plan (PDP) with the intention of providing an integrated approach to the various provisions. I have requested additional expert evidence from Landscape Architect Mike Moore (attached as Appendix 3) to inform the development of this Natural Character Chapter
13. Mr Moore's evidence has outlined what natural character is, which waterbodies the provisions should relate to, what activities need to be managed and has recommended provisions that should be included in the PDP to preserve natural character.
14. Mr Moore's evidence has informed the proposed Natural Character Chapter overview section which briefly explains what natural character means in relation to waterbodies, and provides contextual information on the purpose of the proposed chapter and supporting Appendix 6.
15. While the PDP identifies the Maitara River as a High Natural Character Feature in the NFL chapter and the Appendix 5. Mr Moore identifies that the direction in section 6(a) of the RMA is to protect natural character of waterbodies in general, not only those with pre-existing high natural character values. As such Mr Moore has not undertaken a mapping and ranking exercise to identify the relative levels of natural character present in the district's waterbodies. Taking this into consideration I have reconsidered the Maitara River HNCF classification, and I now consider this classification is not appropriate as it suggests that the natural character values of the river have been ranked in relation to those present in other waterbodies. I recommend removing the reference to the Maitara River HNCF from the NFL chapter, Appendix 5, and any other instances

where it appears in the PDP. The consequential amendments associated with this recommendation to remove reference to the HNCF will be identified and assessed in the hearing stream 9 Section 42A report.

16. Mr Moore has recommended the inclusion of an objective to preserve the natural character of waterbodies within the Gore district from inappropriate subdivision, use and development. This is in line with the requirements of the RMA and the direction from the hearing panel and as such I have included an objective to this effect in the draft chapter attached as Appendix 1. The proposed objective NATC-O1 is as follows:

“Natural Character values of rivers, streams and their margins are preserved and protected from inappropriate subdivision, land use and development.”

17. The protection outcome set by this objective is similar to the outcome set out in the notified NFL objective NFL-O1 to protect the values and characteristics of the Outstanding Natural Features and Landscapes, however the proposed objective NATC-O1 is more specific in its application to waterbodies and also introduces an outcome to preserve natural character of rivers to better reflect the direction of section 6(a) of the RMA.

18. Mr Moore has recommended the inclusion of two policies, one to avoid or mitigate adverse effects on natural character, and the other to encourage restoration of natural character. This is also in line with the requirements of the RMA and the direction from the hearing panel and as such I have included policies to that effect in the draft chapter attached as Appendix 1. The proposed policies NATC-P1 and P2, are as follows:

NATC-P1

“Avoid adverse effects on the natural character values of rivers and streams described in Appendix 6 by:

1. *Avoiding development and land use that results in significant adverse effects on natural character values and avoiding or appropriately mitigating other adverse effects on natural character values; and*
2. *Managing activities that affect the natural character values, including structures within close proximity to the river margins, mineral extraction and earthworks, indigenous vegetation removal and activities on the surface of the water.”*

NATC-P2

“Provide for and encourage the restoration and/or enhancement of the natural character of rivers, streams and their margins where:

1. *Restoration and/or enhancement will achieve long-term improvement in natural character; and/or*
2. *It will assist in the restoration of indigenous biodiversity or ecosystems and angling fisheries species; and/or*

3. *It will support improved health and abundance of taonga species; and/or*
 4. *Riparian margins provide a buffer from activities that may adversely affect the natural character values of the river; and/or*
 5. *Riparian margins provide spawning or other significant habitats for at risk or threatened species.”*
19. In essence the proposed NATC policies are the same as the notified NFL policies, with the exception that direction not relevant to natural character has been removed, which has narrowed the scope of the policies.
 20. The policy direction in NATC-P1 is broken into two parts, with the first part providing direction to applicants and decision makers on resource consents to avoid significant adverse effects, and appropriately mitigate other adverse effects on natural character values. The second part of the policy talks about managing activities, and this direction informs the content of the PDP rules managing the activities specified in the policy.
 21. The policy direction in policy NATC-P2 is intended to provide guidance on resource consent assessments and is not linked to any rules specifically.
 22. Proposed Policy NATC-P3 replicates the direction of the notified NFL-P3 in relation to the location of critical infrastructure and is intended to align with the policy direction across the plan and give effect to the higher order direction of policy 8 of the National Policy Statement on Electricity Transmission 2008. Proposed policy NATC-P3 is as follows:

“Avoid the placement of critical infrastructure within rivers and their margins, unless

1. *There is no reasonable alternative due to the operational need or functional need for the location; and*
 2. *Adverse effects on natural character values can be avoided or appropriately mitigated.”*
23. Proposed Policy NATC-P4 replicates the direction of the notified NFL-P4 in relation to assessing resource consents. This policy is intended to align the policy direction between the NFL and NATC chapters, and to address process as directed by Minute 18. This policy refers plan users to proposed Appendix 6 which is intended to provide plan users with guidance on the general principles of natural character values to enable better informed and consistent decision making on resource consents. Proposed policy NATC-P4 is as follows:

When assessing resource consents within close proximity to river margins, consider the effects on natural character values of the waterbody, taking guidance from the values identified in Appendix 6 and the following matters:

1. *The extent to which adverse effects on any natural character values can be managed, avoided or appropriately managed; and*

2. *The extent to which the proposed activity preserves or enhances any natural character values of the waterbodies; and*

3. *The operational need and functional need for the activity to be undertaken within close proximity to rivers and their margins.”*

24. Mr Moore has recommended rules to control activities that threaten the preservation of natural character of waterbodies, such as buildings and structures, earthworks, Indigenous vegetation removal and activities on the surface of the water. These recommendations align with the rules and river and stream setback standards included in the notified PDP as follows:

TABLE 1: RULES RELATED TO THE PRESERVATION OF NATURAL CHARACTER

Activity that threatens the preservation of natural character of waterbodies	Rules in PDP
Buildings and structures	Rules in each zone chapter require buildings and structures to be setback from the banks of waterbodies, with the setback distances being relative to the order of the waterbody. The specific building setback rules are as follows: LLRZ-S7, GRZ-S7, MRZ-S7, GRUZ-S7, RLZ-S7, SETZ-S7, NCZ-S5, LCZ-S6, MUZ-S5, TCZ-S6, LIZ-S5, GIZ-S5, NOSZ-S4, SARZ-S5, AIRPZ-S4, MPZ-S4, CCZ-S2 and FDZ-S5.
Earthworks	Rule EW-S3 requires earthworks to be setback from the banks of waterbodies, with the setback distances being relative to the order of the waterbody.
Indigenous vegetation removal	Rule ECO-R1 restricts the clearance of indigenous vegetation
Activities on the surface of the water (motorised activities)	Rule ASW-R7.2 permits some use of motorised watercraft at low speeds, jetboating for events between set dates, or at Beattie’s beach. Other uses of

	motorised watercraft are a discretionary activity.
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25. Mr Moore's recommendations also discuss rules related to quarrying, mining and woodlots near waterbodies. These activities are only permitted in the General Rural Zone (GRZ) and any rules controlling these activities will be best placed within that zone chapter. Any recommended consequential changes to GRZ chapter to reflect this advice will be included in the hearing stream 9 Section 42A report
26. Minute 18 included direction to consider the management of environmental effects on natural character in areas that are modified. Mr Moore's evidence identifies that natural character exists on a continuum, whether outstanding, high or significantly modified, and that section 6(a) of the RMA directs the preservation of natural character, not just the preservation of natural character that is already of outstanding or high value. This advice is reflected in the overview section of the natural character chapter, policy NATC-P2 which encourages restoration and/ or enhancement of natural character and in the proposed Appendix 6 guidance on natural character values.
27. When considering highly modified or degraded waterbodies, I understand that the duty to preserve the natural character that exists should be interpreted as keeping the natural character of the waterbody safe from further degradation, which does not preclude restoration or enhancement where this is proposed. This interpretation is based on the plain language meaning of the word preserve, and the context of Part 6(a) of the RMA which also specifies protection of natural character from inappropriate use.
28. For completeness I note the Hearing Panel considered that restructuring of the PDP was unnecessary and suggested the inclusion of a new chapter while retaining the existing provisions in their current location would be appropriate. Mr Moore's evidence does not provide commentary on this point, however the recommendations in his evidence supports this. I discuss this further in the Section 32AA analysis below.

Procedural matters:

29. The draft NATC chapter, NATC Appendix, this report and the supporting expert evidence has been prepared without input or circulation with any submitters or stakeholders in order to not prejudice or advantage any party.
30. As noted above, this report is supported by a Memorandum of Counsel included as Appendix 4. This memorandum seeks direction from the hearing Panel on the process that should be followed in relation to service of this chapter on submitters and their potential further involvement with this natural character topic. This process needs to be confirmed by the hearing panel.
31. From a planning perspective, while the Natural Character chapter was not included in the notified version of the proposed district plan and submitters have not been able to provide submissions on the proposed chapter, it is however noted that the objective and policies proposed are largely similar to the NFL objective and policies. I consider that at the least, the submitters who made submissions on any part of the NFL chapter should

be served notice of this chapter, along with any submitters who provided submissions on any of the rules listed in Table 1, because their submissions may (or may not) be equally valid when considering the issue raised in their submission from a natural character perspective, given the overlap and similarities between the two topics.

32. For completeness I note that where consideration of submissions on the NFL objective and policies result in recommended changes to the wording of these policies the Section 42A report for Hearing Stream 9 will identify if a consequential change to the associated NATC objective or policy will be required, and recommended changes to the chapter will be circulated with the Section 42A report prior to the hearing.

Recommendation:

33. I recommend the following:

- a. The recommended Natural Character chapter is considered for inclusion in the PDP as included in Appendix 1.
- b. The recommended Natural Character Appendix 6 is considered for inclusion in the PDP as included in Appendix 2.
- c. Consequential amendments to NFL chapter and Appendix 5 to remove reference to the Mataura River HNCf. Specific reference to all the necessary consequential amendments will be included in the hearing stream 9 Section 42A report and recommended changes to the chapters will be circulated with the Section 42A report prior to the hearing.
- d. Consequential amendments to change the matters of discretion reference to natural character in the zone chapter stream setback standards (for example LLRZ-S7) from Appendix 5 to Appendix 6 across the PDP as necessary, including all rules identified in table 1 above. Specific reference to the necessary consequential amendments will be included in the hearing stream 9 Section 42A report and recommended changes to the chapters will be circulated with the Section 42A report prior to the hearing.

Section 32aa:

Relationship with higher order documents

34. The proposed NATC chapter (and in particular the proposed objective and policies) will be consistent with, and give effect to the following higher-ranking policies which refer to natural character:
- a. Section 6(a) of the RMA which highlights the preservation of the natural character of rivers and their margin as a matter of national importance.
 - b. Policy 8 of the National Policy Statement on Electricity Transmission 2008 which states that planning and development of electricity transmission systems should seek to avoid adverse effects on outstanding natural landscapes and areas of high natural character.
 - c. Policies 7 & 8 of the National Policy Statement for Freshwater Management 2020 (NPS-FM) which state that the loss of river extent and values is to be avoided to the extent practicable (Policy 7), and the significant values of outstanding water bodiesⁱ is to be

protected (Policy 8). In particular the Appendix 6 NATC description of general natural character values reflects the natural character values that must be considered under the NPS-FM Appendix 1B.

- d. Southland Regional Policy Statement 2017 Objective BRL.1 which looks for all significant values of lakes and rivers to be maintained and enhanced. Supporting Policy BRL.1 refers to avoiding, remedying or mitigating adverse effects on natural character, however the directive is specific to activities in the beds of rivers and applies to regional plans. In the context of the Gore district, I consider it is appropriate to give effect to Policy BRL.1 (and therefore Objective BRL.1) despite policy BRL.1 only referencing regional plans, because the District Plan provisions relate to and can affect the significant values of lakes and rivers.
35. Comparing notified objective NFL-O1 with the proposed objective NATC-O1, the proposed objective NATC-O1 is more specific in its application to the natural character of water bodies, and it includes direction to preserve natural character. The proposed NATC-O1 more clearly and directly gives effect to the RMA and higher order documents than the notified objective NFL-O1.

Effectiveness and efficiency

36. The proposed NATC chapter and Appendix will improve the effectiveness and efficiency of the plan. Where there was ambiguity or potential for illogical outcomes when applying the direction in the NFL objectives and policies to rules related to natural character, this has been addressed. Objectives and policies have been updated and migrated to their own chapter to more clearly align with higher order documents. The HNCF classification that does not appear to be operationalised in the plan has been removed, improving the effectiveness of the PDP.
37. The guidance in proposed Appendix 6 will enable more consistent and efficient resource consent application preparation and decision making than the notified NFL chapter and Appendix 5, which was unclear in the distinction between natural character values and wider landscape values.
38. The proposed NATC chapter and Appendix will enable the Council to effectively administer the PDP in a clear and consistent manner.

Costs and benefits

39. The benefits of the NATC chapter and Appendix include the removal of ambiguity and illogical outcomes, for example in relation to the differentiation between landscape values generally and natural character values more specifically, which could lead to unnecessary consents or consent assessment. The proposed changes intend to be clear on what is required in terms of PDP administration, and the PDP is interpreted in a consistent manner. There are no apparent costs associated with the proposal.

Risk of acting or not acting

40. There is potential for increased degradation of natural character of waterbodies if the proposed NATC chapter and Appendix, due to incomplete and confusing policy direction.

There is potential for unnecessary resource consent assessment and confusion in relation to the type of expert evidence that would be required to support applications for resource consent if the proposed amendments are not made.

Conclusion as to the most appropriate option.

41. The proposed NATC chapter and Appendix are considered to be a more appropriate way to achieve the purpose of the Act and alignment with national direction than the notified version of the PDP
42. Regarding the consequential amendments identified in this assessment, a specific 32AA will be included in the hearing stream 9 material. At this stage the recommendations are generally considered to be minor in scope and primarily focus on enhancing the clarity and comprehensibility of the existing recommended provisions. These amendments will not significantly alter the intent of the existing provision framework. Instead, they seek to clarify existing objective, policies and resource consent requirements, making it easier for decision makers and plan users to understand and implement them. The consequential changes are not expected to have any substantive impacts on the environment, social or economic conditions, or community well-being.

Signed:



Mishka Banhidi
Consultant Planner

29 November 2024

Appendix 1: Recommended draft Natural Character Chapter (NATC)

Appendix 2: Recommended draft Natural Character Appendix 6 (NATC-APP)

Appendix 3: Supplementary evidence in response to Minute 18 - Mike Moore.

Appendix 4: Memorandum of Counsel on behalf of Gore District Council in relation to Minute 18 Natural Character.

ⁱ Outstanding water bodies means a water body, or part of a water body, identified in a regional policy statement, a regional plan, or a water conservation order as having one or more outstanding values. The Water Conservation (Mataura River) Order 1997 clause 3 declares the protected water bodies include outstanding fisheries and angling amenity features.