

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.

**Statement of supplementary planning evidence of Mishka Banhidi on behalf of Gore
District Council for Hearing Stream 9 – Natural Features and Landscapes**

Date: 10 February 2025

Introduction:

1. My full names is Mishka Banhidi. My Section 42A reports sets out my qualifications and experience as an expert in planning.
2. I confirm that we are 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 statement of evidence to provide a response to expert evidence and statements presented in relation to Hearing Stream 9 – Natural Features and Landscapes and the Natural Character Chapter. This includes the evidence of:

Alliance Group (s121 & FS27)

- a. Doyle Richardson

New Zealand Transport Agency (s112.073)

- a. Helen Dempster

Stoney Creek Station Limited (s3 & FS25)

- a. Claire Perkins
- b. Benjamin Espie

Southland Federated Farmers of New Zealand (s126 & FS17)

- a. Kate Sannazzaro
- b. Rachel Shalini Thomas
- c. Bernadette Ellen Hunt

Transpower (s101 & FS30)

- a. Ainsley Jean McLeod

Recommendations Overview

4. The Section 42A report for the Natural Features and Landscapes and the Natural Character Chapters provides an overview of issues raised in submissions and the changes recommended relating to those chapters. I do not propose to repeat those here but instead focus on responding to submitters evidence, and in particular matters which remain in contention.
5. Further recommended amendments to the Natural Features and Landscapes Chapter are provided in **Appendix A** to reflect the recommendations made within this evidence.

6. Further recommended amendments to the Natural Character are provided in **Appendix B** to reflect the recommendations made within this evidence.

Detailed Responses to Evidence seeking changes to Section 42A Recommendations

7. Evidence received by the following submitters in support of the Section 42A recommendations is acknowledged. For conciseness, this report will focus on responding to the matters which remain in contention.

Alliance Group:

8. Alliance has stated their support for the Section 42a recommendations, however, considers that NFL-P1 is contradictory between the first sentence and subsequent subclauses, and seeks confirmation that their interpretation of the policy is correct, specifically that the meaning of “avoid” adverse effects on the values and characteristics of ONFLs means:
 - (i) avoid development and land use that results in significant adverse effects on landscape values, and avoid or mitigate other adverse effects on landscape values, and
 - (ii) ensure buildings and structures have minimal impact on the landscape.

Assessment:

9. *Alliance’s support for the 42a recommendations generally is acknowledged.*
10. *I agree with the interpretation of the NFL-P1, rather than avoiding specific activity types, the policy is intended to require that significant adverse effects are avoided, and other adverse effects are either avoided or mitigated.*

New Zealand Transport Agency (NZTA)

11. NZTA has stated their support for the Section 42a Recommendations

Stoney Creek Station Limited (SCSL)

12. SCSL through Ms Perkins and Mr Espie have stated their general support for the Section 42a Recommendations. SCSL raise concerns relating to the proposed earthworks provisions, and the proposal for these rules to apply to ONLs.

Assessment

13. *As outlined within my 42a assessment, the recommendations relating to NFL-R3 - Land Disturbance and Earthworks within an identified ONF/L, have been developed from a landscape perspective, with input from Mr Moore (Councils Landscape Architect) and Mr Espie (SCSL Landscape Architect). I stand by my recommendation that NFL-R3 is an appropriate mechanism for managing land disturbance and earthworks within the ONL from a landscape perspective. I would recommend that alignment with the district wide*

earthworks standards is explored through the upcoming hearings process, but note my position within the s42a Assessment that Geotech matters have not been considered.

14. *I have not addressed Ms Perkins evidence relating to the earthworks chapter specifically, as this has been addressed through the Minute 27 response and will be discussed in the appropriate upcoming hearing 11.*

Southland Federated Farmers of New Zealand:

15. Ms Sannazzaro has provided planning evidence on behalf of Southland Federated Farmers of New Zealand (SFF).
16. Scoping has been raised as an issue in relation to the Natural Character Chapter. Minute 18 outlines the scoping basis for the introduction of a Natural Character Chapter. The proposed NATC Chapter does not introduce any additional rules into the PDP, however introduces an objective and subsequent policies to give effect to section 6(a) of the RMA. In my professional planning opinion, the proposed NATC does not introduce any out of scope matters.
17. I believe this matter will be further addressed by Ms Chadwick during hearing stream 9.
18. The outstanding concerns of SFF are summarised as follows:
- a) Inclusion of the NATC through submissions is not good planning practice and should instead be notified as a variation to enable engagement and consultation.
 - b) There is limited scope for a NATC. SFF consider the provisions in the NATC apply more widely than those submitted on by Southland District Council submissions, and more widely than those submitters identifying Natural Character as a matter of discretion.
 - c) SFF's preferred relief is that the Council withdraw the NATC – relying instead on the current plan drafting for natural character – and undertake further engagement, consultation and development regarding natural character.
 - d) Alternatively, SFF have requested amendments to the chapter. These are listed and addressed below.
19. In the 'Overview section' SFF seek to limit natural character as applying to the waterbody and its margins, and not an 'area' of land in general.

Assessment:

20. *I do not recommend accepting this relief. Keeping 'area' general, means that if the natural character extends beyond, or within the margins, then at resource consent stage the spatial extent of natural character can be considered more fluid. In many instances natural character along the Mataura River may not extend to 20m from the river, if more structure were applied this could result in a harder line approach being taken in regards to processing.*

21. Insert a definition of 'natural character' based on the RPS definition, however, exclude cultural values from this.

Assessment:

22. *While I appreciate the request to align with the SRPS definition, in lieu of a natural character definition plan users are able to default to the SRPS definition as this forms part of the factual matrix. The proposed chapter has incorporated the expert evidence of Mr Moore -Landscape Architect to inform proposed Appendix 6. This creates a more informed and context driven resource to assist plan users when determining the natural character values of river, streams, and their margins. On balance, I do not agree it is necessary to include a natural character definition as I do not believe this will add any tangible value.*
23. Identify the extent of a riparian margin. Ms Sannazzaro considers it would be helpful to clearly identify those margins, preferably as policy. The current approach of the PDP has proposed 20m for high order rivers, 10m for middle order rivers and 5m for low order rivers. As currently worded, the policies refer to '*in close proximity*' to rivers, which in my opinion is uncertain and subjective. It also introduces a high level of uncertainty into the PDP.

Assessment:

24. *It is noted that the trigger for considering the policies within this chapter is where the river and stream setbacks are breached, which in my view provides for the certainty that is being sought through this evidence. "In close proximity" provides for a more general term within the policies rather than linking directly to the rule, this enables a true effects based assessment on the actual impacts on the natural character of the river or stream, and is more likely than not, able to provide for effects based justification for activities within these areas.*
25. NATC-P1 should be redrafted to reflect the management of adverse effects not avoidance. Clause 1 is unclear in terms of what effects need to be avoided, versus mitigated. SFF are concerned that it is not clear what amounts to appropriate or inappropriate subdivision, land use or development.
26. Clause 2 of the policy should be removed as there is currently no provision for natural character in the notified PDP in relation to these activities (i.e., in the EW or ECO chapters).

Assessment:

27. *In terms of appropriate or inappropriate subdivision, land use or development, this is addressed within Appendix 6 and will depend on the context of the river/ stream and level of natural character present.*
28. *Underlying zones provide for setbacks from rivers and streams. SFF are welcome to expand on what activities they believe are not managed through the PDP that should be.*

29. NATC-P2 should be redrafted to provide some context as to what 'natural character' is in relation to Council functions, and what might be restored or enhanced; or simplified to "encourage the restoration and/or enhancement of the natural character of rivers, streams and their margin".

Assessment:

30. *The purpose of Appendix 6 is to provide additional information to help interpret the policy. Incorporating this into each policy is not recommended as this will make for a very long and repetitive chapter.*
31. Delete NATC-P3. The overall intent of NATC-P3 could be captured in a redrafted NATC-P1.

Assessment:

32. *I disagree with this request, NATC-P3 provides for a policy aligning with the NFL chapter that provides for the management of infrastructure. I do however acknowledge that one amendment made to the NFL Chapter was not carried over into the drafting of this policy and as such recommend the below amendment to reflect the changes sought by DOC (s109.074), and address within section 6.10.5 of the s42a Natural Features and Landscapes.¹ Specifically:*

- NATC-P3 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.

33. SFF request NATC-P4 is amended to clearly identify the activities that the PDP has otherwise identified as having the potential to impact the natural character of waterbodies. Ms Sannazzaro considers NATC-4 and Appendix 6 raise concerns about what a natural character assessment entails, and who is qualified to undertake such an assessment. If a professional assessment of some form will be required, then an analysis of the cost and benefit of requiring such an assessment should be undertaken.

Assessment:

34. *The stream setback rule triggers identify the activities that require further consideration to ensure the preservation of the natural character of water bodies. A list of specific activities that the PDP considers inappropriate is not recommended as this would preclude consideration of each individual river context at the resource consent stage. The setbacks are general standards set to give a district wide indication of general river margin extent. The policy guides resource consent considerations for other rules that*

¹ Hearing Stream 9 Natural Features and Landscapes Chapter Section 42a.

include NATC considerations (Discretionary or Non-complying activities), not just rules relating to river setback breaches.

35. *Discretionary consents enable council un-restricted discretion, a less prescriptive policy is often useful in that context, with more directive input from Appendix 6, to enable all factors to be considered. Including those supportive of development.*
36. *Regarding whom is suitably qualified to undertake an assessment, this is not a new concept introduced to the PDP. A suitably qualified person in this instance would be a landscape architect, the same as through the NFL chapter. Any resource consent application would be expected to provide information commensurate with the proposed activity. This proposal has not resulted in a change, in the notified version of the PDP this would have been required, albeit through the NFL chapter rather than the NATC Chapter.*
37. SFF consider Appendix 6 is unnecessary. It is helpful to identify both characteristics and qualities that contribute to natural character, and the natural character attributes that should be preserved, but these should be stated as policy.

Assessment:

38. *I disagree that Appendix 6 is unnecessary, in my opinion the appendix provides valuable context that assists plan users. ~~Incorporating the~~ Appendix 6 into a policy or policies would result in an extremely long policy which I do not recommend. However, the submitter is welcome to provide some suggested wording that provides for the context of the Appendix 6, whilst avoiding an unnecessary wordy policy.*

Transpower New Zealand Limited (Transpower):

39. Ainsley Jean McLeod has provided evidence on behalf of Transpower and identified the following submission points which are outstanding and further evidence has been provided. These are not repeated in detail here however outstanding concerns are summarised below:
- a) NFL-P1 - concern that this policy does not give effect to NPS-ET and SRPS in relation to the national grid.
 - b) NFL-P3 – Recommends minor amendment to policy.
 - c) INFR-P7 - Recommends amendments to expand on the policy.
 - d) Queries the cross referencing to the NFL chapter within the INFRA Chapter.
 - e) The relationship between the infrastructure chapter and other chapters in the Proposed District Plan.

NFL-P1 and NFL-P3 Assessment:

40. While I acknowledge Ms McLeod's position that the policy may be in conflict with the NPS-ET in regards to the National Grid, the requested relief results in an already lengthy policy becoming significantly longer. In my view, the policy becomes too long to by trying to provide for this specific activity. However, I do not disagree with the intent of the requested relief based on Ms McLeod's evidence. As an alternative the panel may wish to consider expanding on the existing NFL-P3 which has been developed as the specific policy for infrastructure, rather than having NFL-P1 as a catch all for activities generally, as well as more specifically the national grid. The following may be a more practical solution to achieve the intent of the relief requested:

- NFL-P3 Avoid the placement of ~~critical~~ infrastructure within identified Outstanding Natural Features and Landscapes, unless, having regard to the operational needs or functional needs of the activity
1. There is no reasonable alternative ~~due to the operational or functional need~~ for the location; and
 2. Adverse effects on landscape values can be avoided or appropriately mitigated, or
 3. Notwithstanding NFL-P1 clauses (1), (3) and (4), for the National Grid,
 - a. enabling the reasonable operational, maintenance and minor upgrade requirements of established National Grid assets;
 - b. seeking to avoid adverse effects of the development of the National Grid on landscape values, including by having regard to the extent to which any adverse effects have been avoided, remedied or mitigated by the route, site and method selection

Cross Referencing Assessment:

41. In regards to Ms McLeod's query regarding the cross referencing of the NFL Chapter within the INFR Chapter, my reference to this within the s42 Assessment was to the s42a Infrastructure and Energy recommendation. I recommended note 1 be amended to clarify that the rules and standards in Part 3 (Area Specific Matters) of the plan do not apply to the activities managed under the INFR Chapter. As discussed within that hearing stream, this was intended to exclude the underlying zone rules but purposely keep the district wide chapters in play. I still stand by this recommendation.

42. I understand the appeal for plan users for a one-stop shop approach for infrastructure, however as outlined within the Right of Reply to Hearing Stream 7², the National Planning Standards lack clear direction regarding the location of provisions that relate to multiple district-wide matters. It has been the approach of the PDP that the plan should be read as a whole. This approach is supported by the following notes within the NFL Chapter and INFR Chapter respectively:

² Right of Reply planning evidence of Tina Carlson-McColl and Mishka Banhidi on behalf of Gore District Council for Hearing Stream 7 – Minute 27 National Planning Standards, Earthworks, Energy & Infrastructure Chapters

Note 1	Provisions in Other Chapters
	The provisions in this chapter apply in addition to the provisions of the other chapters in the District Plan and the plan should be read as a whole. This chapter also implements other chapters in the District Plan that do not have specific rules such as Sites and Areas of Significance to Māori and Mana Whenua.

Figure 1: Note 1 NFL Chapter

Note 1	Provisions in Other Chapters
	The provisions in this chapter apply in addition to the provisions of the other district wide chapters in the District Plan and the plan should be read as a whole. This chapter also implements other chapters in the District Plan that do not have specific rules such as Sites and Areas of Significance to Māori and Mana Whenua. This Rules and standards in Part 3 - Area Specific Matters (zones) do not apply to activities managed under this chapter, unless expressly identified within the chapter. Roads are defined as a utility, however the rules in this Chapter do not apply to the construction, management, upgrading or use of Roads of the Transport Network. These activities are managed by Subdivision and Transport Chapters. Airports and approach control services are defined as network utilities. Some Airport Related Activities are also defined as network utilities. However, the rules in this Chapter do not apply to Airport Activities or Airport Related Activities within the Airport Zone (Chapter 3.15) and Transport Chapter.

Figure 2: Note 1 INFR Chapter

43. *In my view the above notes make it clear that the provisions of other chapters also apply and that the plan should be read as a whole,. Therefore all relevant permitted activity rules are required to be met for an activity across both chapters for any operation, replacement, upgrade, repair or removal of infrastructure. It may be possible that an infrastructure activity meets the permitted rules under the INFR Chapter but require consent under the NFL chapter. Given the NFL Chapter is seeking to protect landscape values, in my view this is appropriate.*
44. *While there could be bespoke rules developed for infrastructure within an ONFL placed within the INFR Chapter, in my view it is more appropriate to utilise the existing rules within the NFL Chapter. Further to this, I do not believe it is an onerous undertaking to refer to two chapters for the development of infrastructure, particularly, as infrastructure operators are well versed in consenting requirements. Referring to the NFL chapter whilst proposing development within an ONFL, would be an expected approach when preparing a resource consent.*

INFR-P7 Assessment:

45. *I do not recommend amending INFR-P7 to include specific reference to individual sensitive environments, as this is self-evident within the policy provided that Part 2 of the plan is still considered. However, if the panel are of a mind to accept Ms McLeod's relief that the plan should not be read as a whole, and infrastructure be managed exclusively under the INFR Chapter, then the requested relief within paragraph 57 of Ms McLeod's evidence may be an appropriate option.*

NATC-P1 Assessment:

46. *In my view consistency should be achieved where possible between NATC-P1 and NFL-P1. Please refer to paragraph 40 above*

NATC-P3 Assessment:

47. *In my view consistency should be achieved where possible between NATC-P3 and NFL-P3. Please refer to paragraph 40 above*

NATC-P4 Assessment:

48. *I agree that the recommendations within the NFL S42a for NFL-P4 should have been carried over to NATC-P4 and therefore recommend the policy should be amended as follows:*

- NATC-P4 When assessing resource consents within close proximity to *river* margins, **include consideration of** ~~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 **described within Appendix 6** 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.**
 4. **The benefits of the proposed activity to the health, safety and well-being of people and communities.**

Sensitive Environment Definition Assessment:

49. *Regarding Transpower's requested relief for an amendment to the definition for 'sensitive activities', I am open to considering an amendment to this definition. At face value, this amendment could be considered as a consequential amendment of the introduction of the NATC Chapter however Transpower is invited to provide evidence and reasoning justifying this request. Changes to part of this definition will be considered as part of Hearing Stream 10, which may give time for further consideration of any further amendment.*

Section 32AA Evaluation:

50. The proposed recommendations seek to improve the effectiveness and efficiency of the Natural Character and Natural Features & Landscapes chapters. The need for a detailed assessment under Section 32AA is not necessary.
51. The recommendations are minor in scope and primarily focus on enhancing the clarity and comprehensibility of the existing recommended provisions. These amendments do not significantly alter the intent of the existing provision framework. Instead, they seek to clarify existing rules and requirements, making it easier for decision makers and plan users to understand and implement them. The changes do not have any substantive impacts on the environment, social or economic conditions, or community well-being.
52. The proposed amendments are considered to be a more appropriate way to achieve the objectives than the notified version of the PDP.