

SECTION 42A REPORT

Rebuttal Evidence

Hearing 21B: Landscapes

Report prepared by: Jane Macartney

11 September 2020

Waikato



DISTRICT COUNCIL

Te Kaunihera aa Takiwaa o Waikato

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I Introduction

I.1 Background

1. My full name is Jane Macartney. I am employed by Waikato District Council as a Senior Policy Planner and am the writer of the original section 42A report for Hearing 21B: Landscapes.
2. My qualifications and experience are set out in the introduction of the s42A report together with my statement to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014.
3. The recommended text changes as a result of this rebuttal evidence are set out in Rebuttal Attachment I. Recommended amendments that are the result of the original s42A report are shown in red, with recommended changes arising from this rebuttal evidence shown in blue.
4. Following the completion of my section 42A hearing report, it has come to my attention that two original submissions and one further submission were not allocated earlier to the landscapes topic. I have therefore addressed these submissions at the end of this rebuttal evidence.

2 Purpose of the report

5. In the directions of the hearings panel dated 26 June 2019, paragraph 18 states:

If the Council wishes to present rebuttal evidence it is to provide it to the Hearings Administrator, in writing, at least 5 working days prior to the commencement of the hearing of that topic.
6. In terms of this direction, Council's rebuttal was due on 3 September 2020. However, Council filed a memorandum on 27 August 2020 that sought leave from the hearings panel to extend the time frame until 5pm on Friday 11 September 2020 for these reasons:
 - a) Late evidence was received from the Geoscience Society on 25 August 2020 and accepted by the hearings panel; and
 - b) Council's landscape expert (Boffa Miskell) was unable to analyse all rebuttal evidence any earlier than 26 August 2020 due to other work commitments.

Council noted in this memorandum that a rescheduled date for Hearing 21 Landscapes would be set once New Zealand returns to Covid Alert Level 1 (this being the result of an earlier request from Waikato-Tainui to the panel) and therefore considered that the delay of Council's rebuttal evidence would not disadvantage any submitters. For reasons of fairness, Council also submitted that legal submissions from submitters are due two working days after the provision of Council's rebuttal evidence i.e. by 5pm on Tuesday 15 September 2020.

The hearings panel agreed to these requests and all submitters were advised of these revised timeframes on 27 August 2020.
7. The purpose of this report is to consider the primary evidence filed by submitters. I do not address every point raised in evidence. I respond only to the points where I consider it is necessary to clarify an aspect of my earlier s42A report, or where I am persuaded to change my recommendation. In all other cases, I respectfully disagree with the evidence, and affirm the recommendations and reasoning in my s42A report.

8. Evidence was filed by the following parties for this landscapes topic:

- a. Genesis [924 and *FS/345*]
- b. Telco companies – Spark [644], Vodafone [646] and Chorus [648]
- c. New Zealand Transport Agency [742]
- d. Waikato Regional Council [81 and *FS/277*]
- e. Transpower [576 and *FS/350*]
- f. Kainga Ora (formerly Housing New Zealand Corporation [749 and *FS/269*]
- g. Hill Country Farmers Group [482]
- h. Department of Conservation [585 and *FS/293*]
- i. Powerco [836]
- j. Ta Ta Valley Limited [574 and *FS/340*]
- k. KiwiRail Holdings Limited [835 and 986]
- l. Federated Farmers of New Zealand [680 and *FS/342*]
- m. Havelock Village Limited [862]
- n. Turangawaewae Marae Trust Board [984 and *FS/139*]
- o. Waikato-Tainui [286]
- p. Geoscience Society of New Zealand [8]
- q. Bernard Brown [669 and *FS/040*]
- r. Liz Hughes [301]

3 Consideration of evidence received

3.1 Evidence in support of the s42A report recommendations

9. Evidence in support of the s42A report recommendations was received from the following parties:

- a. Genesis [924 and *FS/345*]
- b. Telco companies - Spark [644], Vodafone [646] and Chorus [648]
- c. New Zealand Transport Agency [742]
- d. Transpower [576 and *FS/350*]
- e. Kainga Ora [749 and *FS/269*]
- f. Havelock Village Limited [862]

3.1 Evidence that challenges the s42A report recommendations

3.1.1 Waikato Regional Council (WRC)

10. WRC supports most of the s42A recommendations, but seeks that two matters be amended or clarified.
11. The first matter they raise [81.105] concerns about is the statement in my section 42A hearing report that Objective 3.3.1 and Policy 3.3.3 applies to all ONF/ONL within the district, irrespective of whether they are located within or outside the mapped coastal environment.
12. WRC requests that Policy 3.3.3(a)(i) be amended so that there is reference to ONF/ONL within the coastal environment in order to give effect to Implementation Method 12.1.1(a)(i) in the Waikato Regional Policy Statement, shown below:

Implementation methods

12.1.1 Protect values of outstanding natural features and landscapes

Regional and district plans shall:

- a) *identify and provide for the protection of the values and characteristics of outstanding natural features and landscapes from inappropriate subdivision, use and development, including those of regional significance identified in section 12A (Table 12-1) by:*
 - i) *avoiding adverse effects of activities on the values and characteristics of outstanding natural features and landscapes in the coastal environment; and*
 - ii) *outside of the coastal environment, avoiding adverse effects of activities on the values and characteristics of outstanding natural features and landscapes and if avoidance is not possible remedy or mitigate the adverse effects.*
13. I have reflected on my section 42A recommendation (shown in **red text** below) and consider this has inadvertently resulted in the exclusion of activities that occur within the coastal environment.

3.3.3 Policy – Protection from inappropriate subdivision, use and development

- (a) *Ensure that the attributes of identified Outstanding Natural Features and Outstanding Natural Landscapes are protected from inappropriate subdivision, use and development by:*
 - ~~(i)~~ *for areas outside of the coastal environment, avoiding adverse effects of activities on the values and characteristics of Outstanding Natural Features and Outstanding Natural Landscapes and, if avoidance is not possible, remedy or mitigate the adverse effects.*
 - ~~(#)(ii)~~ *requiring buildings and structures to be integrated into the Outstanding Natural Landscape or feature to minimise any visual impacts;*
 - ~~(#)(iii)~~ *managing the adverse effects of building platforms, driveways and roads through appropriate subdivision design;*
 - ~~(###)(iv)~~ *requiring subdivision and development to retain views of Outstanding Natural Landscapes and features from public places; and*
 - ~~(#)(v)~~ *Despite clause (a)(i) above, avoiding adverse effects of extractive industries and earthworks.*
14. While this issue might be resolved by simply retaining the notified version of Policy 3.3.3, which I consider generic and therefore applying to the whole of the district, I

conclude that it is more sensible for Policy 3.3.3 to mirror both clauses a)i) and a)ii) in WRPS Implementation Method 12.1.1 so that it is clear how adverse effects are to be managed within and outside the coastal environment. This is because adverse effects are managed differently, depending on whether an activity occurs within the coastal environment, or outside the coastal environment.

15. I therefore now recommend acceptance of submission [81.105] and amendments to Policy 3.3.3 shown in **blue text** to clearly show the hierarchy for managing adverse effects on ONF and ONL. Other minor amendments are recommended to improve grammar and to enable hyperlinks to be made to defined terms.

3.3.3 Policy – Protection from inappropriate subdivision, use and development

- (a) *Ensure that the attributes of identified Outstanding Natural Features and Outstanding Natural Landscapes are protected from inappropriate subdivision, use and development by:*

(i) for areas within the coastal environment, avoiding adverse effects of activities on the values and characteristics of an Outstanding Natural Feature and Outstanding Natural Landscape;

(ii) for areas outside of the coastal environment, avoiding adverse effects of activities on the values and characteristics of an Outstanding Natural Feature and Outstanding Natural Landscape and, if avoidance is not possible, remedy or mitigate the adverse effects;

~~(#)(iii)~~ requiring buildings and structures to be integrated into ~~the~~ an Outstanding Natural Landscape or ~~feature~~ Outstanding Natural Feature to minimise any visual impacts;

~~(#)(iii)~~ managing the adverse effects of building platforms, driveways and roads through appropriate subdivision design;

~~(##)(iv)~~ requiring subdivision and development to retain views of an Outstanding Natural Landscapes and ~~features~~ Outstanding Natural Feature from public places; and

~~(#)(v)~~ avoiding adverse effects of extractive industries and earthworks.

16. The second matter raised by WRC [81.183 and 81.184] concerns the ONL overlay for Mount Karioi in the amended map provided by Boffa Miskell.
17. WRC is concerned that this amended overlay does not appear to extend to the coastal edge, meaning that it does not capture the cliffs and headlands which are listed in Table 12.1 of the WRPS as characteristics of this particular ONFL.
18. My section 42A recommendation relies on the following technical response and recommendation from paragraphs 20-27 in Ms Ryder's statement of evidence (Attachment 3).

Boffa Miskell's Technical Response

19. Waikato Regional Council (WRC) raises concern regarding lack of the extension of extent of the ONL of Mt Karioi to the coastal edge. WRC suggests that the panel seek further technical clarification from Boffa Miskell to ensure that the proposed District Plan gives effect to the WRPS.
20. The WRPS identifies Mount Karioi as ONFL4 with the following description:

“Distinctive volcanic cone shape, location close to the coast, good quality indigenous vegetation. Cliffs and headlands along the coastal edge. Tramping tracks and botanical values.”

21. The Waikato Landscape Study reviewed both regional and district landscape assessments undertaken which identify Mount Karioi as an Outstanding Natural Feature or Landscape. The district study considered the mountain at a district scale, and has identified two landscape overlays on the landscape, being an Outstanding Natural Landscape and a Significant Amenity Landscape. Collectively these identify the volcanic landscape as a unified landscape area.
22. The WRPS ONFL4 is identified by an underlying technical study, Waikato Regional Landscape Assessment, prepared by Mary Buckland, February 2010. The assessment report however does not include spatial mapping indicating the extent of the ONFL4. However the WRPS does provide a spatial extent at the WRPS Map 12-4, which encompasses the District study’s SAL and ONL.
23. When comparing Regional and District wide landscape studies, there are often differences between the spatial extent of the identified feature or landscape. This is often associated with the scale at which the dimensions of the landscape or feature is assessed at. Notably the Operative Waikato District Plan Landscape Policy Area for Mt Karioi does not match the regional ONFL4 extent and is markedly smaller than this.
24. With regard to the extent of the mapped proposed landscape areas (ONL and SAL) the district landscape study evaluated the full extent of the coastal edge. As part of the mapping exercise the GIS shape files prepared were clipped to the jurisdictional boundaries provided under the Statistics New Zealand Territorial Authority 2020 GIS layer. In my further investigations on this ‘mapping extent’ the Boffa Miskell GIS team have corresponded and confirmed with the Council GIS team that this is the appropriate layer to use.
25. I acknowledge for fullness of the study that the full landward extent of the coastal edge is considered and in my view the cliffs and coastal margin have been considered in the evaluation. Whilst the mapping of the ONL and SAL do not follow the extent of the WRPS ONFL4, the area has been evaluated and considered with the factors, values and associations considered, applying the WRPS identified attributes and further attributes considered for Maori.

Boffa Miskell’s Recommendation

26. It is my view that there is room for extension of those areas identified along the coastal margin to extend to the coastal edge. Whilst the landscape study has considered the landscape as a whole the resultant mapping has applied the jurisdictional boundary for the inclusion into the district planning maps. With regard to the latter, we are able to modify GIS shape files to match the coastal extent and take guidance from Waikato District Council on the common jurisdictional boundary.
27. Accordingly, I consider that WRC’s submission request can be easily resolved with liaison between Council’s GIS staff and Boffa Miskell’s GIS staff in respect to the modification of shape files. This will mean that the planning maps in the decision version of the PWDP will show the ONL and SAL layers for Mount Karioi aligning with the coastal edge and WDC’s jurisdiction. I therefore recommend that submissions [81.183 and 81.184] be accepted.

3.1.2 Recommended amendments

28. I recommend amending the planning maps in the decision version of the PWDP so that the ONL and SAL layers for Mount Karioi align with the coastal edge and WDC's jurisdiction.
29. I recommend the following amendments to Policy 3.3.3

3.3.3 Policy – Protection from inappropriate subdivision, use and development

- (a) Ensure that the attributes of identified Outstanding Natural Features and Outstanding Natural Landscapes are protected from inappropriate subdivision, use and development by:
- (i) for areas within the coastal environment, avoiding adverse effects of activities on the values and characteristics of an Outstanding Natural Feature and Outstanding Natural Landscape;
 - (ii) for areas outside of the coastal environment, avoiding adverse effects of activities on the values and characteristics of an Outstanding Natural Feature and Outstanding Natural Landscape and, if avoidance is not possible, remedy or mitigate the adverse effects;
 - ~~(#)(iii)~~ requiring buildings and structures to be integrated into ~~the~~ an Outstanding Natural Landscape or ~~feature~~ Outstanding Natural Feature to minimise any visual impacts;
 - ~~(#)(iii)~~ managing the adverse effects of building platforms, driveways and roads through appropriate subdivision design;
 - ~~(#)(iv)~~ requiring subdivision and development to retain views of an Outstanding Natural Landscapes and ~~features~~ Outstanding Natural Feature from public places; and
 - ~~(#)(v)~~ avoiding adverse effects of extractive industries and earthworks.

3.1.3 Section 32AA evaluation

30. In my opinion, the amended Policy 3.3.3 in this rebuttal evidence is more appropriate than the notified version. This is because it reflects the hierarchy in, and gives effect to, Implementation Method 12.1.1 a)i) and a)ii) in the WRPS such that, for activities within the coastal environment, adverse effects on the attributes of an ONF are to be avoided. It also recognises Policy 15 of the NZCP, such that for areas outside of the coastal environment, the avoidance of adverse effects takes priority, followed by remediation or mitigation. The result is clear policy guidance for processing resource consent applications involving areas inside and outside of the coastal environment, and therefore a more appropriate way of achieving Objective 3.3.1.
31. I consider there are more risks in not acting (i.e. leaving the notified version unchanged) because of the potential for misinterpretation of policy and costly resource requirements. Making a decision to accept the recommended amendments would reduce these risks, as these are more appropriate ways of achieving Objective 3.3.1.
32. It is appropriate to amend the planning maps for Mount Karioi so that the ONL and SAL overlays coincide with the coastal edge and Council's jurisdiction. The anomaly identified by WRC can be easily resolved by aligning the shape file data used by Boffa Miskell and Council.

3.1.4 Section 42A Recommendations

33. For the reasons given above, it is recommended that the hearings panel:
- (a) **Accept** the submissions from Waikato Regional Council [81.105, 81.183 and 81.184]

3.2 KiwiRail Holdings Limited (KiwiRail)

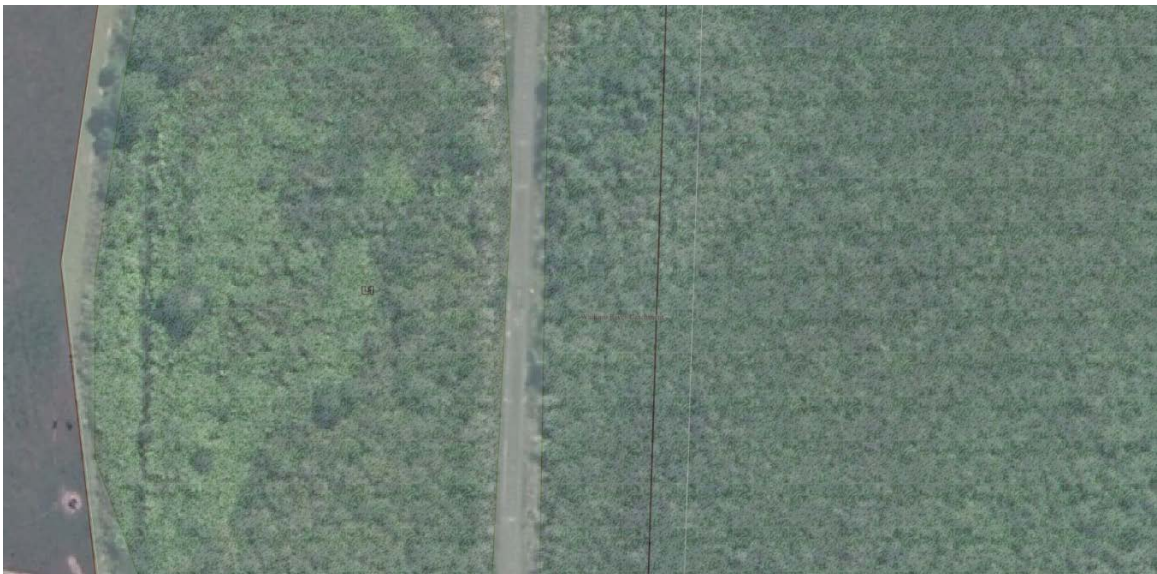
34. KiwiRail's outstanding concerns [835.2 and 986.9] relate to the mapping of the ONF overlay on its designated rail corridor in the vicinity of the Whangamarino Wetland, and Policy 3.3.2.
35. Dealing first with submission [835.2], Ms Pam Butler has provided evidence for KiwiRail stating that they are not seeking to delete the ONF overlay simply because it overlaps their designation or to enable new works to be undertaken without due consideration of any potential adverse effects on the values protected by the overlay. Instead, they seek that the areas to which this overlay applies accurately reflects the values and attributes of the relevant land, taking into account the location of existing regionally significant infrastructure, such as the North Island Main Trunk railway.
36. Because I was unclear as to the relief sought, I emailed Ms Pam Butler to query whether KiwiRail is seeking a reduction in the mapped extent of ONF so that it does not apply to the existing railway lines and ballast, or the complete removal of ONF from their designated corridor.
37. Ms Butler's reply on 27 August 2020 stated the following:
- KiwiRail is seeking to completely remove the ONF layer from the designated railway corridor anywhere where the layer is shown on the District Plan maps, for the reasons set out in my evidence. From my assessment of the Planning maps this appears to be maps entitled 8 Whangamarino and 8.1 Meremere.*
38. In my opinion, the most common sense approach would be to remove the ONF overlay from the existing railway lines and ballast as the outstanding attributes of the Whangamarino Wetland have already been compromised in those areas. This approach would be no different from my s42A recommendation to remove ONF overlay from the designated Waikato Expressway in recognition of parts of an ONF (Taupiri Range) having been physically removed as a result of constructing the Huntly bypass.
39. I do not support the wholesale removal of ONF from KiwiRail's designation. I do not consider that this would be necessary or appropriate given the substantial area of ONF within this designation shown in the following sample aerial map. The designated area (LI) is located between the two red lines.

Sample aerial map of KiwiRail designation traversing Whangamarino Wetland



40. In my opinion, it is important to protect the attributes of the Whangamarino Wetland as required by section 6(b) of the RMA, and particularly given that this wetland is an internationally important Ramsar site.
41. As an aside, I note that the SNA overlay does not apply to the existing railway lines and ballast as shown in the following sample aerial map. This recognises that the 'naturalness' of these areas has been compromised by these particular man-made constructions.

Sample aerial map showing SNA overlay in same location of Whangamarino Wetland



42. Amending the ONF overlay within this designation so that it matches the extent of SNA would enable KiwiRail to carry out works within the scope of their designation without the issue of the ONF overlay triggering a resource consent requirement.

43. My section 42A recommendation also relies on the following technical response and recommendation from Boffa Miskell (paragraphs 35-37 in Ms Ryder's statement of evidence).

Boffa Miskell's Technical Response

44. Further evidence received from Ms Pam Butler on behalf KiwiRail seeks that the areas of the ONF - Whangamarino Wetland accurately reflect the values and attributes of the relevant land, taking into account the location of the existing regionally significant infrastructure, such as the NIMT.
45. With regard to my area of expertise, the identification of areas of landscape value are not based on 'future' use of an area, but the existing condition. Landscape attributes including biophysical factors, sensory and associative values rely on the existing condition of an environment. I note that this site is also recognised as a RAMSAR site and its values also recognised as an existing ONF and proposed ONF.

Boffa Miskell's Recommendation

46. In that regard I support the removal of the ONF mapping extent where modifications associated with the rail corridor exist at this time. I do not support the full removal of the ONF within a designation as it is important that these values are considered at the time of any further modification to ensure future activity avoids adverse effects on the factors, values and associations of the ONF.
47. Accordingly, I recommend that the extent of ONF within KiwiRail's designation be amended so that it matches the extent of the SNA overlay and that submission [835.2] be accepted in part.
48. I now turn to KiwiRail's submission [986.9] which requests this amendment to Policy 3.3.2(b):

3.3.2 Policy – Recognising values and qualities

(b) Recognise the attributes of the Waikato River delta and wetlands, Whangamarino Wetland and Lake Whangape identified as Outstanding Natural Features, including:

[...]

(vii) existing infrastructure, including land transport networks.

49. My section 42A hearing report (at paragraph 152) provisionally recommended that this submission point be rejected pending clarification from KiwiRail as to what land transport infrastructure already existed at these three ONF locations. It is now clear that KiwiRail is only meaning their designated rail corridor which traverses the Whangamarino Wetland.
50. In my opinion, Policy 3.3.2(b) only relates to the attributes of an ONF identified on the planning maps. If the hearing panel agrees that the extent of the ONF shown on planning maps 8 and 8.1 should be amended by removing the area occupied by the existing railway lines and ballast, then I do not consider it necessary to add reference to existing infrastructure, including land transport networks, because this is not an

ONF attribute. For this reason, I now confirm my recommendation to reject submission point [986.9].

3.2.1 Recommended amendments

51. I recommend removing the ONF overlay from the existing railway lines and ballast within the designated rail corridor (LI) shown on planning maps 8 (Whangamarino) and 8.1 (Meremere), so that it matches the extent of Significant Natural Area mapped for this same location.

3.2.2 Section 32AA evaluation

52. In my opinion, the recommended map amendments are appropriate and necessary to accurately reflect the extent of ONF within KiwiRail's designation. Without these amendments, there is an increased potential for resource consents to be triggered if KiwiRail plans to carry out works within the area occupied by the railway lines and ballast. This would not be appropriate given that these manmade elements do not constitute natural and outstanding attributes of the Whangamarino Wetland. I do not consider that the costs associated with resource consent applications can be justified in those instances.

3.2.3 Section 42A Recommendations

53. For the reasons given above, I recommend that the hearings panel:

- a. **Accept in part** the submission from KiwiRail Holdings Limited [835.2] to the extent that the ONF overlay be removed from the existing railway lines and ballast within the designated rail corridor (LI) shown on planning maps 8 (Whangamarino) and 8.1 (Meremere), so that it matches the extent of Significant Natural Area mapped for this same location.
- b. **Reject** the submission from KiwiRail Holdings Limited [986.9].

3.3 Powerco

54. Powerco [836.33] requests the following amendment to Policy 3.4.3(a)(i), shown in black underline below:

3.4.3 Policy – Maintaining and enhancing Significant Amenity Landscapes

(a) Maintain and enhance identified Significant Amenity Landscapes, during subdivision, land use and development, in particular by:

(i) requiring buildings and structures (excluding support structures) to be integrated into the Significant Amenity Landscape to minimise any visual impacts;

55. Paragraph 195 of my section 42A included the statement that I do not support the requested amendment. This is because, while it is apparent that Powerco is referring to its own infrastructure, the term 'support structure' is ambiguous and could lead to the misuse of this policy such that significant adverse effects from particular developments are enabled. I invited Powerco to comment at the hearing as to whether their relief sought is already provided to some extent by other legislation such as the National Policy Statement on Renewable Energy Generation 2011 (NPSREG).

56. Rule 22.3.4.1 specifies a maximum height of 7.5 metres for buildings and structures within SAL. This rule applies to new development and it is not retrospective. Powerco's evidence emphasises that it would be difficult to integrate their 12 metre

high power poles into SAL where their assets are located. They have also confirmed that the NPSREG does not apply to their assets or the nature of their electricity generation activity.

57. As an alternative, Powerco suggests that the words 'excluding support structures' be replaced with 'excluding power poles'. They also state that maintenance or minor upgrading of their existing assets should be permitted and resource consent should not be required for those situations.
58. I remain reluctant to amend this policy as requested as, in my opinion, introducing new power poles (and associated electricity lines) into SAL which exceed a height of 7.5 metres has the potential to compromise the attributes of this identified landscape. I also note that infrastructure in identified areas (which include ONF/ONL is covered in Policy 6.1.2. I accept that there are likely to be locations within SAL which can satisfactorily absorb visual adverse effects from the construction of new electricity infrastructure, however it is my opinion that the merits should be assessed through a resource consent process.
59. In respect to Powerco's maintenance or minor upgrading of their existing assets within SAL, I note that the infrastructure chapter (Chapter 14) specifically allows maintenance as a permitted activity in Rule 14.3.1 P1 as well as minor upgrades in terms of Rule 14.3.1 P2. Coupling these permitted activity rules, there is also an opportunity for Council to consider existing use rights in terms of section 10 of the RMA if more formal permission were sought. This option would require Council to consider the presence and operation of existing transmission infrastructure and whether the maintenance or upgrade activities could be permitted provided that there was to be no appreciable change in the character, intensity and scale of what already exists.
60. For these reasons, my section 42A recommendation to reject Powerco's submission point [836.33] remains unchanged.

3.4 Hill Country Farmers Group (HCFG)

61. HCFG's evidence states that they are the stewards of 21,847ha within the Waerenga, Matahuru, Mangapiko and Whangape sub-catchments of north Waikato. The general concerns expressed in their submission points [482] relate to SAL and are summarised as follows:
- (a) SAL attributes are 'generically and weakly defined'
 - (b) SAL identification is arbitrary considering, in their view, 'the abrupt abandonment of the operative ridgeline and landscape policy areas'
 - (c) Consultation with landowners has been minimal
 - (d) Emphasis has been on a Maaori narrative and world view
 - (e) Ground-truthing is required for justification and certainty
 - (f) SAL 'preserves' the affected landscapes, even though they are not static
 - (g) No certainty is given for fencing, stock exclusion, pest control, public access and Council rates
 - (h) The construction of new tracks within SAL should be considered in the same way as maintaining existing tracks, fences and drains.
 - (i) Resource consent processes can be complex and they hinder necessary farming processes
 - (j) The default to a restricted discretionary activity is supported in place of the notified discretionary activity.
62. The identification of SAL in the planning maps has been informed by the Waikato District Landscape Study (WDLS). The WDLS acknowledges that SAL incorporate working and therefore, dynamic, farming environments but also notes that natural features and landscapes which do not rank as 'outstanding' can nonetheless be required to be 'maintained and enhanced' either as 'amenity values' of part of the wider 'environment' in terms of section 7(c) or 7(f) of the RMA as more of a 'second tier' landscape overlay.
63. It is not intended to preserve or protect SAL which is the mandatory approach required by section 6(b) of the RMA for ONL. Instead, new development that occurs within SAL is to be considered in terms of the less stringent requirement in section 7(c) of the RMA where Council is to have particular regard to the maintenance and enhancement of the quality of the environment. Therefore, new developments may occur with resource consent provided that the attributes of SAL are at least maintained and not compromised.
64. I have considered the range of activities that are permitted within SAL and what new developments would be expected to occur. Permitted activities include farming and new buildings that comply with bulk and location conditions (including a maximum building height of 7.5 metres). Intensive farming that occurs within SAL is a discretionary activity.
65. Given these permitted activity provisions, I consider that it is only the notified rule for earthworks in SAL that would be problematic for landowners because, in my opinion, the area and volume threshold limits for maintaining existing infrastructure

(tracks, fences and drains) are onerous and unreasonable. I otherwise support a resource consent process because there is a risk that permitting earthworks for new infrastructure could compromise these attributes. For this reason, I consider it important for the PWDP to retain SAL provisions, but amend the triggers for resource consent where earthworks are involved.

66. My section 42A hearing report recommended that no area and volume thresholds for earthworks should apply to existing infrastructure. I consider this is a common sense approach given the need for farmers to maintain their infrastructure which is a necessary part of their farming operations. I gave an example of farms often containing substantial lengths of tracks which need to be regularly graded and re-dressed with metal to ensure safe access for vehicles and stock. It would be unreasonable to require resource consent every time this work becomes necessary.

To assist the hearings panel, I have shown below my recommended amendment to Rule 22.2.3.4 for the Rural Zone from Attachment 2 of my s42A hearing report:

22.2.3.4 Earthworks – within Landscape and Natural Character Areas

<u>PI</u>	<u>Earthworks for the maintenance of existing tracks, fences or drains within an identified landscape or natural character area.</u>																								
<u>P2</u>	<p><u>Earthworks that meet all of the following conditions:</u></p> <p><u>(a) earthworks are completed within a 12 month period</u></p> <p><u>(b) earthworks do not exceed the following areas and volumes:</u></p> <table border="1" data-bbox="437 607 1367 1205"> <thead> <tr> <th data-bbox="437 607 1031 752"><u>Landscape or Natural Character Area identified on the planning maps in Schedules 30.XXX</u></th> <th data-bbox="1031 607 1203 752"><u>Area (m2)</u></th> <th data-bbox="1203 607 1367 752"><u>Volume (m3)</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="437 752 1031 844"><u>Significant Amenity Landscape - Hill Country</u></td> <td data-bbox="1031 752 1203 844"><u>1000</u></td> <td data-bbox="1203 752 1367 844"><u>500</u></td> </tr> <tr> <td data-bbox="437 844 1031 952"><u>Significant Amenity Landscape – Waikato River Margins and Lakes</u></td> <td data-bbox="1031 844 1203 952"><u>500</u></td> <td data-bbox="1203 844 1367 952"><u>500</u></td> </tr> <tr> <td data-bbox="437 952 1031 1043"><u>Significant Amenity Landscape - sand dune</u></td> <td data-bbox="1031 952 1203 1043"><u>50</u></td> <td data-bbox="1203 952 1367 1043"><u>250</u></td> </tr> <tr> <td data-bbox="437 1043 1031 1095"><u>High Natural Character Area</u></td> <td></td> <td></td> </tr> <tr> <td data-bbox="437 1095 1031 1146"><u>Outstanding Natural Character Area</u></td> <td></td> <td></td> </tr> <tr> <td data-bbox="437 1146 1031 1198"><u>Outstanding Natural Feature</u></td> <td></td> <td></td> </tr> <tr> <td data-bbox="437 1198 1031 1249"><u>Outstanding Natural landscape</u></td> <td></td> <td></td> </tr> </tbody> </table> <p><u>(c) the height of the resulting cut or batter face in stable ground does not exceed 1.5 metres</u></p> <p><u>(d) the maximum slope of the resulting cut or batter face in stable ground does not exceed 1:2 (1 metre vertical to 2 metres horizontal)</u></p> <p><u>(e) areas exposed by the earthworks are re-vegetated to achieve 80% ground cover within 6 months of commencing the earthworks</u></p> <p><u>(f) sediment is retained on the site through implementation and maintenance of erosion and sediment controls</u></p> <p><u>(g) there is no diversion or change to natural water flows, water bodies or established drainage paths.</u></p>	<u>Landscape or Natural Character Area identified on the planning maps in Schedules 30.XXX</u>	<u>Area (m2)</u>	<u>Volume (m3)</u>	<u>Significant Amenity Landscape - Hill Country</u>	<u>1000</u>	<u>500</u>	<u>Significant Amenity Landscape – Waikato River Margins and Lakes</u>	<u>500</u>	<u>500</u>	<u>Significant Amenity Landscape - sand dune</u>	<u>50</u>	<u>250</u>	<u>High Natural Character Area</u>			<u>Outstanding Natural Character Area</u>			<u>Outstanding Natural Feature</u>			<u>Outstanding Natural landscape</u>		
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<u>Outstanding Natural landscape</u>																									
<u>DI</u>	<p><u>(a) Earthworks that do not comply with Rule 22.2.3.4 PI or P2.</u></p> <p><u>(b) Council's discretion is restricted to the following matters:</u></p> <p><u>(i) for areas within the coastal environment, whether avoidance of adverse effects from earthworks on the attributes of the identified landscape or natural character is achieved in the first instance, and if avoidance is not achievable, remedied or otherwise mitigated.</u></p> <p><u>(ii) for areas outside the coastal environment, the extent to which adverse effects from earthworks on the attributes of the</u></p>																								

	<u>identified landscape or natural character area are avoided, remedied or mitigated.</u>
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67. This recommended rule permits 1000m² and 500m³ of earthworks for SAL (Hill Country) within a 12 month period where associated with new infrastructure. I have not recommended any change to the notified thresholds because it remains appropriate to consider whether adverse effects from earthworks that exceed these thresholds can be managed in a way that maintains the attributes of SAL.
68. HFCG supports my recommended activity cascade to a restricted discretionary activity. I therefore conclude that, subject to accepting this amended Rule 22.2.3.4, the PWDP would not place any unreasonable burdens on the continued use of land within SAL for farming purposes and resource consent would only be required for earthworks that exceed 1000m² or 500m³ for new infrastructure within a 12 month period. The identification of SAL also has no influence on public access or Council rates.
69. HCFG seeks clarification in regard to glasshouses being a permitted activity (i.e. farming), whereas intensive farming is not. They refer to the adverse effects of glare/sun-strike from glasshouses. Their evidence also questions the rationale for Rule 22.3.4.1 which sets a 7.5 metre height limit for buildings in SAL, compared to a 10 metre height limit outside of SAL.
70. Paragraph 193 in my section 42A hearing report raises a similar point in respect to permitted activities within SAL:
- 193. If it is the intention of Rule 22.1.3 to manage the visual impact of buildings that house animals by requiring them to locate outside of a SAL, then it is my opinion that other large-scale buildings or structures that may generate similar adverse visual and landscape effects within a SAL should also be tested through a resource consent process. There are no submissions for this landscape hearing that address this possible anomaly, but I wish to highlight it for the panel's consideration.*
71. Because these matters were not addressed in HCFG's submission for this landscape topic, I consider that there is an issue of scope. However, they may arise in submissions to be addressed in the upcoming Hearing 18 for the Rural Zone or the hearing panel's integration of provisions once all hearings are complete. I have therefore not addressed these matters here in this rebuttal evidence.
72. HCFG has also raised concerns in respect to definitions and subdivision provisions for the Rural Zone. I have not addressed definitions here as these were subject of the earlier Hearing 5 and the rural subdivision provisions are to be considered as part of the upcoming Hearing 18 schedule to commence on 29 September 2020.
73. In response to HCFG's concern that consultation with landowners was insufficient, it is my opinion that Council offered generous opportunities for engagement prior to

notification of the PWDP, including making a draft Proposed District Plan available for public comment and multiple informal drop-in sessions with Council staff across the district following notification of the Proposed District Plan. The submission process also constitutes part of the consultation process and a number of individual landowners whose properties are affected by SAL have submitted so that their concerns can be assessed through the hearing process. This includes an acknowledgement by Boffa Miskell, as Council's landscape experts, that the extent of SAL on some submitter properties needs to be refined, including through a ground-truthing exercise.

74. As a result of HCFG's evidence, my s42A recommendations remain unchanged.

3.5 Ta Ta Valley Limited

75. Mr Adam Jellie has provided evidence on behalf of Ta Ta Valley Limited (TTVL). He has confirmed that Boffa Miskell's amended map showing a reduced extent of SAL overlay affecting their property at 242 Bluff Road is acceptable to the submitter.
76. Mr Jellie also supports the recommended schedule for SAL, but suggests a minor amendment where the heading 'Evaluation' shown in the table below is replaced with 'Attributes'.

Evaluation	
Biophysical	The coastal cliffs and farmland areas on the lower slopes equally demonstrate the formative processes.
	Coastal formative processes along Papanui Point and the coastal edge are visually apparent.
	Lower slopes of modified farmland remain geologically important however the biotic values are degraded.
Sensory	Papanui Point has strong aesthetic coherence with its position on the coastline of Karioi.
Associative	Significant archaeological sites are found on and near to Papanui Point.
	Cultural heritage values associated with both Karioi and Papanui Point are very high

77. I agree with Mr Jellie's view. The biophysical, sensory and associative categories contain a list of the SAL attributes and therefore retaining 'Evaluation' in the heading is confusing. Ms Ryder's statement of evidence (at paragraph 16) suggests that the heading 'Identified Attributes' could be used and I consider this is an even more appropriate alternative.
78. For consistency, it is my opinion that the heading 'Identified Attributes' should replace 'Evaluation' in all recommended schedules for ONL/ONL/NCA/SAL.
79. Mr Jellie has also suggested that it would be more helpful if the list of SAL attributes was more specific. In reply to my email on 3 September 2020, Mr Jellie has provided this example from the 'Natural Character Study of the Waikato Coastal Environment' which he considers clearly stipulates the relevant attributes and provides the descriptors:

Table 2

Coastal Terrestrial Areas – Zone B		
Attributes	Descriptors	Spectrum of naturalness*
Terrestrial Abiotic Systems	<ul style="list-style-type: none"> - Climatic influences (wind, rain, exposure); - Geomorphology and identification of different types of landforms (i.e. peninsulas, cliffs, dunes, wetlands); - Terrestrial coastal processes, including erosion, river mouth processes including sedimentation (within the terrestrial zone); - Freshwater processes. 	The evident intactness of the abiotic systems. The degree (very high to very low) to which physical modifications such as built structures, road cuts, earthworks and reclamation works affect this abiotic attribute.
	Including RPS Assessment criteria: Landforms (Geology/ Geomorphology) Natural Processes (abiotic)	
Terrestrial Biotic systems	<ul style="list-style-type: none"> - The margins of estuaries, wetlands and terrestrial areas in Zone B including the intactness of their natural ecological processes, patterns and elements; - Extent of freshwater communities; - Land cover and associated land use, including the composition, distribution and condition of land cover and the presence of indigenous/exotic species; - Presence of indigenous fauna. 	- The degree (very high to very low) to which modifications affect this biotic attribute. Influences include the presence of exotic species on native communities, physical structures such as infrastructure, housing, roading, tracking, reclaimed land, stop banks, as well as commercial forestry, agricultural and viticulture land use that reduce the naturalness of the biota; - This attribute also includes modifications to freshwater systems, including channelizing watercourses, stop banks, culverts, dams etc. which affect freshwater biota.
	Including RPS Assessment criteria: Vegetation Cover & Type; Land Uses/ Activities/ Structures Habitat Value Natural Processes (biotic)	
Terrestrial Experiential	<ul style="list-style-type: none"> - The experience in seeing, feeling and perceiving the Coastal Significance and Active Coastal Interface; - Aromas, visual and scenic, auditory, sense of wildness, remoteness, isolation, natural darkness of the night sky; - Ephemeral biotic activity (i.e. seasonality of flora, presence of birds); - Ephemeral human activity affecting the naturalness (such as recreation, commercial activities); 	- The degree (very high to very low) to which physical and biotic modifications affect the naturalness experienced. Influences reducing naturalness include the presence of physical structures including ports, reclaimed land, infrastructure, roading, lighting, industrial noises and non-natural aromas;

80. Ms Ryder's response to this request is set out in paragraph 17 of her statement of evidence. Her conclusion is that further detail could be provided in the tables, although it is her opinion that this does not discount the need for site specific assessment so that the site values are evaluated against the broader identified values. I have therefore not recommended any change to these attribute tables.
81. My section 42A report recommended this amendment to Policy 3.4.3:

3.4.3 Policy – Maintaining and enhancing Significant Amenity Landscapes

- (a) Maintain and enhance the attributes of identified Significant Amenity Landscapes, during subdivision, land use and development, in particular by:
- (i) requiring buildings and structures to be integrated into the Significant Amenity Landscape to minimise any visual impacts;
- (ii) managing the adverse effects of building platforms, buildings, driveways and roads through appropriate subdivision design;

- (iii) providing for the continuation of farming activities within hill country landscapes and volcanic features;
- (iv) managing the adverse effects of earthworks; and
- (v) promoting and encouraging maintenance and enhancement of their attributes.

82. Mr Jellie’s evidence now requests these further amendments to Policy 3.4.3 in reliance on their submission point [574.9]:

3.4.3 Policy – Maintaining ~~and~~ or enhancing Significant Amenity Landscapes

(a) Maintain ~~and~~ or enhance the attributes of identified Significant Amenity Landscapes, during subdivision, land use and development within those landscapes, ~~in particular~~ by:

- (i) requiring buildings and structures to be integrated into the Significant Amenity Landscape to ~~minimise any~~manage visual impacts on the attributes;
- (ii) managing the adverse effects of building platforms, buildings, driveways and roads through appropriate subdivision design;
- (iii) providing for the continuation of farming activities within hill country landscapes and volcanic features;
- (iv) managing the adverse effects of earthworks; and
- (v) promoting and encouraging maintenance and enhancement of their attributes.

83. Submission point [574.9] is shown below:

9	3.4 Significant Amenity Landscapes	Oppose	<p>There are a number of SALs noted on various properties. The following objective and policies reference ‘attributes’ and ‘features’ of SALs:</p> <p>Objective 3.4.1(a) state <i>the attributes of areas and features valued for their contribution to landscape values and visual amenity are maintained or enhanced.</i></p> <p>Policy 3.4.2(a) states <i>recognise the attributes which contribute to identified Significant Amenity Landscapes.</i></p> <p>Policy 3.4.3(a)(v) states <i>promoting and encouraging maintenance and enhancement of their attributes.</i></p> <p>TVL understands that the Waikato District Landscape Study was prepared to support the mapping of the SALs and it sets out the areas of SAL and their attributes. It is considered that these attributes should be included in the District Plan as a schedule. Without this detail it is difficult to efficiently assess a resource consent application against the objective and policy.</p>	<ul style="list-style-type: none"> ■ Include in the Proposed Plan a schedule that reflects the outcomes of the Waikato District Landscape Study, which notes the attributes and features that lend itself to the SAL status. ■ If a schedule is not provided, then the relief sought is that all SAL’s be removed from the Plan and associated objectives and policies in chapter 3.4 and rules that reference SALs.
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84. In my opinion, there would clearly be scope to consider these requested edits if a SAL schedule was not recommended. However, my s42A recommendation is to introduce a SAL schedule in order for the attributes to be clearly identified and assessed in resource consent processes. Because I support this schedule, it could be argued, in a strictly technical sense, that this request for these edits should fall away.

85. However, my preference is not to take an overly legalistic view and to accept these edits as they provide clarity, the intent of the policy is unchanged, and I do not consider they would result in prejudice to any party. I also note here that while section 7(c) of the RMA does refer to ‘maintain and enhance’, mirroring this language in Policy 3.3.2 may inadvertently result in a proposal failing this directive and being subject to a more stringent statutory test because it might maintain the SAL attributes, but not enhance them. I do not consider that it would be reasonable to

expect an applicant to demonstrate enhancement of the attributes when maintenance (i.e. status quo) would be acceptable. Although a proposal might demonstrate both maintenance as well as enhancement of amenity values, I do not consider that section 7(c) requires every resource consent proposal to contemporaneously achieve both outcomes.

86. I also agree that the word 'manage' is more appropriate than 'minimise' which is more commonly used in district plans as it enables Council to consider the spectrum of 'avoid, remedy or mitigate' tools that in its assessment, as opposed to insisting that adverse effects be minimised when that outcome might be unattainable or cost prohibitive in some cases.
87. For these reasons, I support this submitter's requested amendments to Policy 3.3.2.
88. My recommendation has a consequential effect on Policy 3.4.2(v). Paragraph 188 of my s42A hearing report reads as follows:

188. However, I do consider that the actions of 'promoting and encouraging' in clause (v) are unnecessary and confusing, as the expectations are unclear and there are no rules that implement these actions. While I acknowledge that there is no specific submission on clause (v), my preference would be to delete it to make Policy 3.4.2 clear and concise.

89. I have reflected on that view and my support of TTVL's request in this rebuttal evidence for 'maintain or enhance' rather than 'maintain and enhance' (the latter of which appears in clause (v)). For consistency with TTVL's latest request, I now recommend that clause (v) be deleted to make Policy 3.4.2 clear and concise.

3.5.1 Recommended amendments

90. I recommend replacing the heading 'Evaluation' with 'Identified Attributes' in the SAL/ONF/ONL/NCA schedules.
91. I recommend amending Policy 3.4.3 as follows:

3.4.3 Policy – Maintaining ~~and~~ or enhancing Significant Amenity Landscapes

(a) Maintain ~~and~~ or enhance the attributes of identified Significant Amenity Landscapes, during subdivision, land use and development within those landscapes, in particular by:

(i) requiring buildings and structures to be integrated into the Significant Amenity Landscape to manage ~~minimise any~~ visual impacts on the attributes;

(ii) managing the adverse effects of building platforms, buildings, driveways and roads through appropriate subdivision design;

(iii) ~~providing for the continuation of farming activities within hill country landscapes and volcanic features;~~

(iv) ~~managing the adverse effects of earthworks; and~~

~~(v) promoting and encouraging maintenance and enhancement of their attributes.~~

3.5.2 Section 32AA evaluation

92. In my opinion, the amendments to Policy 3.4.3 shown above would provide clarity and assistance in the processing of resource consent applications, and this policy will work alongside the recommended schedule for SAL which will list these attributes.

93. Amending the policy in this way is also consistent with the reference to attributes in accompanying Policy 3.4.2, and other objectives and policies that refer to the attributes of identified ONF/ONL.
94. I consider that it is more appropriate to provide for the maintenance or enhancement of attributes. If both outcomes were required, this may inadvertently result in a proposal failing this directive because it might maintain the SAL attributes, but not enhance them. I do not consider that it would be reasonable to expect an applicant to demonstrate enhancement of the attributes when maintenance (i.e. status quo) would be acceptable. I also agree that the word ‘manage’ is more appropriate than ‘minimise’ which is more commonly used in district plans as it enables Council to consider the spectrum of ‘avoid, remedy or mitigate’ tools that are available in its assessment, as opposed to insisting that adverse effects be minimised when that outcome might be unattainable or cost prohibitive in some cases. Unless these amendments are made, there is a risk that resource consent costs become unjustified.
95. Overall, I conclude that the amended Policy 3.4.3 is the most appropriate way of achieving Objective 3.4.1.

3.5.3 Section 42A Recommendation

96. For the above reasons, it is recommended that the hearings panel:
- (a) **Accept** the submission from Ta Ta Valley Limited [574.9]

3.6 Federated Farmers of New Zealand (FF)

97. FF [680.39] disagrees with my s42A recommendation to amend Policy 3.3.2 as follows:

3.3.2 Policy – Recognising values and qualities

(a) Recognise the attributes of the district's mountains, bush clad ranges and hill country identified as Outstanding Natural Features and Outstanding Natural Landscapes including:

- (i) ridgelines and valleys;
- (ii) significant ecological values;
- (iii) indigenous bush and the extent of this bush cover;
- (iv) cultural heritage values associated with these areas;
- (v) recreational attributes including walking and access tracks;
- (vi) existing water reservoirs and dams;

~~(vii) existing pastoral farming activities on the margins of these areas. —~~

(b) Recognise the attributes of the Waikato River delta and wetlands, Whangamarino Wetland and Lake Whangape identified as Outstanding Natural Features, including:

- (i) natural geomorphology, and hydrological processes; biodiversity and ecology;
- (ii) significant habitat values;
- (iii) significant indigenous vegetation;
- (iv) cultural heritage values associated with these areas;
- (v) recreational use of these areas; and

~~(vi) existing pastoral farming activities on the margins of these areas.~~

(c) Recognise the attributes of the west coast dunes identified as outstanding natural features, including:

- (i) natural geomorphology, patterns and processes;
- (ii) significant habitat values;
- (iii) significant indigenous vegetation;
- (iv) cultural heritage values associated with these areas; and

~~(v) existing pastoral farming activities on the margins of these areas.~~

98. FF considers that the framework in Policy 3.3.2 is broad in nature and that it should recognise the type of water storage infrastructure and farming activities which contribute to the attributes of these landscapes in a general sense, rather than restricting recognition specifically to what was existing at a set period in time. They consider that my s42A recommendation incorrectly assumes that the attribute applies to activities outside of the site rather than being part of, and within, an identified site. They say that including reference to pastoral farming activities on the margins of the identified areas is a considered approach, taken to recognise that identified sites can be part of a larger, more fluid landscape.

99. FF considers that the margins of areas can still be within the overlay, but just at the outer extent of it. I disagree. An area is either within a mapped ONF/ONL overlay, or outside of it. I have purposely recommended deletion of the references to

pastoral areas on the margins (i.e. outside of an overlay) because I am concerned that this inadvertently elevates the importance of these marginal areas to equate with the outstanding nature of the identified (mapped) feature or landscape itself.

100. I also consider that retaining these references invites interpretation difficulties as there is no certainty as to how far these margins extend beyond the mapped overlay. I conclude that retaining these references could inadvertently 'freeze' development within pastoral areas located outside of identified landscapes because Policy 3.3.2 is a method that implements Objective 3.3.1 which is to protect ONF/ONL from inappropriate subdivision, use and development.
101. I also do not consider that FF's suggestion to remove the words 'on the margins of these areas' from clauses (a)(vii), (b)(vi) and (c)(v) in Policy 3.3.2 solves the issue either. This is because ONF/ONL are identified on the basis of the attributes contained within the mapped overlays. The recommended ONF/ONL schedules do not explicitly list existing pastoral farming activities as an attribute that is to be protected. My understanding is that the prime focus of the attributes is to describe the 'naturalness' of the identified feature or landscape that existed before manmade elements were introduced, so that it is made clear to district plan users that it is this naturalness that requires protection.
102. FF has correctly pointed out my misunderstanding in respect to their request for a different approach to SAL by adding this note to Policy 3.4.3:
- There are no rules relating specifically to Significant Amenity Landscapes in Chapter 22. However, where discretionary or non-complying activity resource consents are required under rules of this Plan, and where those activities are located within significant amenity landscapes, the proposed activities will be assessed in terms of their consistency with this policy.*
103. They have now clarified that this note represents an 'alert layer' which requires Policy 3.4.3 to be considered only if a discretionary or non-complying activity is triggered by rules that do not directly apply to SAL. They say that there are several other Councils that have used this 'alert layer' approach for landscape and character values that do not meet outstanding status in terms of section 6 of the RMA. They also express the opinion that this 'alert layer' would be the most appropriate method to implement the WRPS.
104. However, I remain reluctant to add such a note to Policy 3.4.3, not just because it is non-statutory, but also because this approach reflects the legislative process required of Council anyway when resource consent applications are considered. Specifically, section 104(1)(b)(vi) of the RMA states that the consent authority must, subject to Part 2, have regard to any relevant provision of a plan or proposed plan. I therefore conclude that FF's request is unnecessary and I am also not persuaded that it is relevant to the test of whether the policy implements the WRPS in the most appropriate way.
105. While FF supports my recommended amendment to Rule 22.2.3.4 to permit earthworks associated with the maintenance of infrastructure, they still wish to pursue their request [680.207] for ancillary rural earthworks to be permitted. As shown below by the PWDP's definition of this term, such works would extend beyond the maintenance of existing fences, tracks and drains as it captures other infrastructure typically associated with farming activities.

Means any earthworks or disturbance of soil associated with:

(a) cultivation, land preparation (including establishment of sediment and erosion control measures), for planting and growing operations;

(b) harvesting of agricultural and horticultural crops (farming) and forests (forestry); and

(c) maintenance and construction of facilities typically associated with farming and forestry activities, including, but not limited to, farm/forestry tracks, roads and landings, stock races, silage pits, farm drains, farm effluent ponds, feeding pads, fencing and sediment control measures.

106. In my opinion, some infrastructure/facilities would likely be permitted by the area and volume thresholds of 1000m² and 500m³ thresholds set out in my recommended Rule 22.2.3.4. However I have some concerns with the use of the words ‘but not limited to’ in this definition of ‘ancillary rural earthworks’ as some new infrastructure facilities not explicitly listed could be extensive in scale such that potential exists for SAL attributes to be compromised, in which case my preference is to assess the merit of such proposals through a resource consent process.

107. FF supports the recommended activity cascade to a restricted discretionary activity in Rule 22.2.3.4. However, they still consider that discretion should be restricted to the matters that they have listed in their submission and shown below:

- (i) visibility from public place;
- (ii) scale of earthworks and effects on the landscape values
- (iii) the purpose and functional need of the earthworks

108. The matters of restricted discretion in my recommended rules for earthworks for all zones that contain identified landscapes are shown below. I note that the word ‘area’ has inadvertently been missed after the words ‘natural character’ in clause (b)(i).

(b) Council’s discretion is restricted to the following matters:

(i) for areas within the coastal environment, whether avoidance of adverse effects from earthworks on the attributes of the identified landscape or natural character is achieved in the first instance, and if avoidance is not achievable, remedied or otherwise mitigated.

(ii) for areas outside the coastal environment, the extent to which adverse effects from earthworks on the attributes of the identified landscape or natural character area are avoided, remedied or mitigated.

109. In my opinion these are more appropriate than the matters requested by FF in that they require Council to consider whether adverse effects can be avoided, remedied or mitigated, depending on whether the identified landscape is located within or outside the coastal environment. I consider that my recommended matters of discretion appropriately reflect Implementation Method 12.1.1(a)(i) and (ii) of the Regional Policy Statement, whereas FF’s requested matters do not.

110. FF has correctly identified [680.220] that my section 42A report did not set out a restricted discretionary activity in Rule 22.3.3 which manages buildings and structures in landscape and natural character areas (rather than a discretionary activity as notified), even though I did express support for this approach.

111. The notified version of Rule 22.3.3 is shown as follows:

22.3.3 Buildings and structures in Landscape and Natural Character Areas

DI	<p>(a) Building or structure located within any:</p> <p>(i) Outstanding Natural Feature;</p> <p>(ii) Outstanding Natural Landscape;</p> <p>(iii) Outstanding Natural Character Area;</p> <p>(iv) High Natural Character Area.</p>
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112. FF [680.220] considers that this notified rule is overly restrictive and that it would inappropriately capture farming related buildings and structures, such as stockyards. They also state [680.221] that a permitted activity response with a default to a restricted discretionary activity is more consistent with the PWDP framework and that the notified rule does not distinguish between appropriate and inappropriate development given the values of ONF/ONL. They say that Rule 22.3.3 should be amended so that it only applies to buildings or structures within an ONF or ONL, and not to any NCA.

113. While I still support a restricted discretionary activity rule, I do not support FF's other requested amendments including their request [680.221] for a permitted activity in Rule 22.3.3.

114. In my opinion, a resource consent process for a restricted discretionary activity is appropriate and necessary to determine whether or not that proposed development is inappropriate. The onus is on the applicant to demonstrate the merits of their case and whether their development is not inappropriate, as district plan rules simply provide the framework for that assessment. I therefore recommend that FF's submission point [680.220] be accepted in part to the extent that Rule 22.3.3 be amended in this way:

22.3.3 Buildings and structures in Landscape and Natural Character Areas

<p>⊕</p> <p><u>RDI</u></p>	<p>(a) Building or structure located within any:</p> <p>(i) Outstanding Natural Feature;</p> <p>(ii) Outstanding Natural Landscape;</p> <p>(iii) Outstanding Natural Character Area;</p> <p>(iv) High Natural Character Area</p> <p><u>(b) Council's discretion is restricted to the following matters:</u></p> <p><u>(i) for areas within the coastal environment, whether avoidance of adverse visual and amenity effects from any building or structure on the attributes of the identified</u></p>
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	<p><u>landscape or natural character area is achievable in the first instance, and if avoidance is not achievable, the extent to which those effects are remedied or otherwise mitigated.</u></p> <p>(ii) <u>for areas outside the coastal environment, the extent to which adverse visual and amenity effects from any building or structure on the attributes of the identified landscape or natural character area are avoided, remedied or mitigated.</u></p>
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115. FF's evidence refers to paragraphs 191 and 232 in my s42A hearing report where I had highlighted a possible anomaly in respect to notified Rule 22.3.3 (shown above) and Rule 22.1.3 RDI (for intensive farming in the Rural Zone). They note that Rule 22.3.4.1 specifies a maximum height of 7.5m for any building in the SAL and that buildings in this identified landscape are therefore managed. I acknowledge that Rule 22.3.4 does manage adverse visual and amenity effects from buildings in SAL.
116. However, my point is that large scale buildings in SAL used for farming (such as glasshouses) are permitted, yet Rule 22.1.3 requires resource consent for a restricted discretionary activity for intensive farming (such as broiler chickens) subject to various prerequisites, which include their location outside of any SAL (RDI clause b)(iii)). I do consider that it is appropriate for an intensive farming operation to be subject to a resource consent assessment in order to address odour and traffic which tend to be the most problematic adverse effects.
117. But it should also be acknowledged that SAL overlays comprise working farm environments. In my opinion, it is not appropriate or necessary to impose a restriction on the location of intensive farming operations in SAL, when other comparatively large farm buildings are permitted. I consider that adverse visual effects on any SAL from any building associated with farming or intensive farming should be treated equally and that Rule 22.3.4.1 is sufficient to address this matter.
118. As noted in my s42A hearing report, I do not have scope to address this matter in this hearing on landscapes. However, a potential solution that I wish to offer the hearing panel is to delete clause RDI(b)(iii) in Rule 22.1.3. I am not aware of any submission in Hearing 18 (Rural Land Use) relating to this specific clause, but the hearings panel may wish to consider this matter as part of integrating all PWDP provisions after the completion of all hearings.
119. While not subject to any specific submission point for this landscape topic, FF's evidence reiterates their general concern that consultation with landowners, in their view, was insufficient. However, it is my opinion that Council offered generous opportunities for engagement prior to notification of the PWDP, including multiple informal drop-in sessions with Council staff across the district. The submission process also constitutes part of the consultation process and a number of individual landowners whose properties are affected by SAL have submitted so that their concerns can be assessed through the hearing process. This includes an acknowledgement by Boffa Miskell, as Council's landscape experts, that the extent of

SAL on some submitter properties needs to be refined, including through a ground-truthing exercise.

3.6.1 Recommended amendments

22.3.3 Buildings and structures in Landscape and Natural Character Areas

<p>⊕</p> <p><u>RD1</u></p>	<p>(a) Building or structure located within any:</p> <ul style="list-style-type: none"> (i) Outstanding Natural Feature; (ii) Outstanding Natural Landscape; (iii) Outstanding Natural Character Area; (iv) High Natural Character Area <p><u>(b) Council's discretion is restricted to the following matters:</u></p> <ul style="list-style-type: none"> <u>(i) for areas within the coastal environment, whether avoidance of adverse visual and amenity effects from any building or structure on the attributes of the identified landscape or natural character area is achieved in the first instance, and if avoidance is not achievable, remedied or otherwise mitigated.</u> <u>(ii) for areas outside the coastal environment, the extent to which adverse visual and amenity effects from any building or structure on the attributes of the identified landscape or natural character area are avoided, remedied or mitigated.</u>
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3.6.2 Section 32AA evaluation

120. In my opinion, the recommended amendments to Rule 22.3.3 are more appropriate ways to achieve the Rural Zone objectives than the notified version. This is because the rule enables the assessment of new buildings and structures within identified landscape and natural character areas to become focused on the potential adverse visual and amenity effects rather than subjecting a proposal to a full discretionary activity assessment. Narrowing the matters of discretion to those that are relevant to landscapes provides for a more effective and efficient resource consent process and provides more certainty around how proposals are to be considered if they do not meet the permitted activity standards.
121. The recommended matters of restricted discretion also reflect the mandatory requirements to protect ONF/ONL/NCA in terms of Implementation Methods 12.1.1 and 12.2.1 in the WRPS, Policies 13 and 15 of the NZCPS and sections 6(a) and (b) in the RMA.
122. Overall, I consider that there is more risk in not acting (i.e. retaining the status quo of the notified rule versions) as the recommended Rule 22.3.3 is more effective and efficient in achieving the Rural zone objectives and it provides more certainty for landowners as to what Council's assessment is restricted to.

3.6.3 Section 42A Recommendation

123. For the reasons given above, it is recommended that the hearings panel:
- (a) **Accept in part** the submission from Federated Farmers of New Zealand [680.220] and the further submissions from *Turangawaewae Trust Board* [FS1139.66], *Mercury NZ Limited* [FS1223.194] and *Te Whakakitenga o Waikato Incorporated (Waikato-Tainui)* [FS1108.75] to the extent of the recommended amendments to Rule 22.3.3.

3.7 Department of Conservation (DoC)

124. Mr Andrew Riddell has provided evidence on behalf of DoC, the first part of which provides a general commentary on the statutory framework for identified landscapes and natural character areas.
125. I acknowledge that Mr Riddell was not involved in preparing the submissions for DoC [585 and FS1293] and therefore, in some cases, he expresses views that differ somewhat from the positions set out in DoC's submissions. For example DoC's further submission [FS1293.3] supports the notified version of Policies 3.3.2, 3.3.3 and 3.3.4 that sit under Objective 3.3.1 and require avoidance of adverse effects on ONF/ONL, whereas Mr Riddell is of the opinion that the 'avoid' directives in these policies are understated.
126. I consider that it would be helpful for Mr Riddell to provide details at the hearing as to how Policies 3.3.3, 3.3.3 and 3.3.4 could be improved to assist the district plan user, including would-be applicants and Council staff in the processing of resource consent applications.
127. Section 5 of Mr Riddell's evidence addresses my assessment of the provisions on natural character. Paragraph 5.3 of his evidence contains this statement:
- 5.3 The Hearing 21B report recommendation in relation to is submission is to accept the submission in part.
128. I assume that Mr Riddell is referring here to Waikato Regional Council's original submission [81.24] which requests a natural character study for the whole of the district. Mr Riddell's following paragraph 5.4 states this:
- 5.4 This is a somewhat misleading recommendation because further natural character assessment, additional to that already undertaken, is rejected on the grounds of (unquantified) cost,¹³ process and on the assertion that the Proposed Plan's natural character objective and policies and rules provide for the preservation of the natural character of wetlands, and rivers and lakes and their margins, and the protection of them from inappropriate subdivision, use and development.
129. However, sections (i) and (j) in paragraph 522 of my s42A hearing report recommend that both WRC's submission [81.24] and DoC's supporting further submission [FS1293.11] be rejected.

130. It would appear that Mr Riddell has inadvertently misread my recommendations on these two submissions. While I acknowledge the benefits of a district-wide study of natural character, the recommendations to reject both these submissions are unchanged for the reasons discussed in my section 42A hearing report.
131. DoC's submission [585.3] requests that Objective 3.5.1(a) be amended in this way:
- 3.5.1 Objectives – Natural character*
- (a) ~~The high and Outstanding~~ Natural Character of the coastal environment is protected from inappropriate subdivision, use and development.
132. My section 42A hearing report recommends that this submission be rejected on the basis that I consider the notified version of Objective 3.5.1 gives effect to Policy 13 in the NZCPS as well as Policy 12.2 and Implementation Method 12.2.1 in the WRPS.
133. Mr Riddell's evidence, however, considers that notified Objective 3.5.1 is an incomplete summary of section 6(a) of the RMA in that it omits the preservation of natural character requirement and only addresses high and outstanding natural values for NCA in the coastal environment.
134. I have reflected on my recommendation on submission [585.3] and now agree with Mr Riddell that Objective 3.5.1 does need to relate to the natural character of the whole of the coastal environment, and not just those areas that I have recommended be specifically mapped as high NCA and outstanding NCA. Accordingly, my recommendation now is for submission [585.3] to be accepted.
135. As noted by Mr Riddell, no submission requests further amendment to Objective 3.5.1 to make clear that the natural character of the coastal environment is to be preserved. However I agree that such amendment would be entirely appropriate to reflect section 6(a) of the RMA, and give effect to Policy 13(1) of the NZCPS, and Policy 12.2 and Implementation Method 12.2.1 in the WRPS. This would assist district plan users and the assessment of resource consent applications. I do not consider anyone is prejudiced by this change because the district plan must give effect to these higher order documents.
136. Mr Riddell also considers that Policy 3.5.2 sets out an incomplete list of characteristics or qualities that make up natural character, compared to those set out in Policy 13(2) of the NZCPS, and that Policy 3.5.3 is not set out clearly. I agree.
137. Paragraph 8.9 of Mr Riddell's evidence helpfully includes a table that sets out the important components of the NZCPS and WRPS to indicate how he considers Policies 3.5.2, 3.5.3 and 3.5.4 should be amended. I generally support these amendments because they provide clear alignment with these higher order documents which must be given effect to. I therefore recommend that Mr Riddell's suggested policy amendments be accepted, subject to what I consider to be minor grammatical amendments.
138. Separate evidence has been provided by DoC's Technical Advisor Ecology (Mr Graeme La Cock) to discuss the dynamic nature of coastal dunes. This evidence supports DoC's submission [585.4] and my section 42A recommendation to amend notified Policy 3.5.3(a)(iv) in recognition of the fact that functioning dune systems are dynamic systems.
139. All recommended amendments to Objective 3.5.1 and Policies 3.5.2, 3.5.3 and 3.5.4 resulting from Mr Riddell and Mr La Cock's evidence are shown below.
140. The remaining parts of Mr Riddell's evidence support the requests from Waikato-Tainui for an ONF/ONL status for the whole of the Waikato River and the Geopreservation Society

for numerous geoheritage sites to be assigned ONF status. These matters will be addressed in later sections of this rebuttal.

3.7.1 Recommended amendments

3.5.1 Objectives – Natural Character

Preserve natural character of the coastal environment and freshwater bodies, by protecting:

- (a) ~~The high and outstanding~~ Natural character of the coastal environment ~~is protected~~ from inappropriate subdivision, use and development.
- (b) ~~The~~ Natural character of wetlands, and lakes and rivers and their margins ~~are protected~~ from inappropriate subdivision, use and development.

3.5.2 Policies – Recognising natural character

- (a) Recognise that there is a range of natural character from pristine to modified and that the following characteristics and qualities ~~natural elements, patterns, processes and experiential qualities~~ which contribute to natural character include:
 - (i) natural elements, patterns and processes
 - (ii) ~~(i)~~ areas or waterbodies in their natural states or close to their natural state;
 - (iii) ~~(ii)~~ coastal or freshwater landforms, geology and geomorphology and landscapes;
 - (iv) ~~(iii)~~ coastal or freshwater physical processes, including the natural movement of water and sediment;
 - (v) ~~(iv)~~ vegetation and cover, habitat value and biodiversity;
 - (vi) ~~(v)~~ biological processes and patterns;
 - (vii) ~~(vi)~~ water flows and levels, and water quality; ~~and~~
 - (viii) the natural darkness of the night sky
 - (ix) transient and dynamic attributes
 - (x) places or areas that are wild or scenic
 - (xi) ~~(vii)~~ the experience of the above elements, patterns and processes–
 - (xii) the context or setting.
- (b) Identify ~~Recognise the natural character qualities of~~ the following areas that are within the coastal environment ~~and identified~~ on the planning maps and in a schedule to the district plan as:
 - (i) an Outstanding Natural Character Area areas; and
 - (ii) ~~high (and very high) natural character areas–~~ a High Natural Character Area

3.5.3 Policy - Protecting the natural character qualities of the coastal environment

- (a) Protect natural character in the coastal environment, including the characteristics and qualities of identified outstanding and high natural character areas ~~in the coastal environment~~ from inappropriate subdivision, use and development by:
 - (i) ~~managing the adverse effects of subdivision, use and development on natural character in the coastal environment;~~
 - (i) avoiding subdivision, use and development within an Outstanding Natural Character Area which would result in its natural character being damaged, diminished or compromised.
 - (ii) avoiding significant adverse effects of subdivision, use and development on natural character for an area within the coastal environment that is not identified as an Outstanding Natural Character Area.
 - (ii) ~~avoiding significant adverse effects of subdivision, use and development;~~
 - (iii) ~~avoiding subdivision, use and development within areas of outstanding natural character, where it would damage, diminish or compromise natural character;~~

- ~~(iv)~~ (iii) avoiding activities that damage the ~~stability~~ functioning of ~~identified~~ coastal dune systems;
- ~~(v)~~ (iv) requiring appropriate building setbacks from riparian and coastal margins;
- ~~(vi)~~ (v) ensuring that activities are carried out in a way that maintains or enhances water quality in the coastal environment;
- ~~(vii)~~ (vi) enabling and concentrating development within existing settlements to avoid development sprawling along the coastline;
- ~~(viii)~~ (vii) recognising ~~historic~~ farming operations ~~that continue today~~;
- ~~(ix)~~ (viii) avoiding the establishment of new plantation forestry.

3.5.4 Policy - Protecting the natural character of wetlands, and lakes and rivers and their margins

- (a) Protect the natural character qualities of wetlands, and lakes and rivers and their margins from inappropriate subdivision, use and development by:
- (i) avoiding adverse effects on freshwater bodies and their margins that are identified as having outstanding natural character
 - (ii) avoiding significant adverse effects on freshwater bodies and their margins which are not identified as having outstanding natural character
 - ~~(i)~~(iii) ensuring that location, intensity, scale and form of subdivision, use and development are appropriate;
 - ~~(ii)~~(iv) minimising, to the extent practicable, indigenous vegetation clearance and ~~earthworks disturbance modification (including earthworks, disturbance and structures)~~;
 - ~~(iii)~~(v) encouraging any new activities to consolidate within, and around, existing developments or, where the natural character and landscape values have already been compromised, to avoid development sprawling; and
 - ~~(iv)~~(vi) requiring appropriate building setbacks of activities from wetlands, lakes and rivers.
- (b) Where man-made influences are dominant, it may be appropriate that activities result in further adverse effects on natural character, though opportunities to remedy or mitigate should still be considered.

3.7.2 Section 32AA Evaluation

141. In my opinion, the amended Objective 3.5.1 is more appropriate than the notified version as it mirrors the requirement in section 6(a) of the RMA to preserve the natural character of the whole of the coastal environment, and not just those areas that I have recommended be specifically mapped as high NCA and outstanding NCA.
142. In my opinion, the amended Policies 3.5.2, 3.5.3 and 3.5.4 are more appropriate ways of implementing Objective 3.5.1 than the notified versions. This is because amended Policy 3.5.2 sets out a complete list of characteristics or qualities that make up natural character that mirror those in Policy 13(2) of the NZCPS.
143. It is also important for Policies 3.5.3 and 3.5.4 to distinguish how adverse effects are to be managed. For Policy 3.5.3, this requires the avoidance of adverse effects on areas within the coastal environment that are identified as having outstanding natural character, and the avoidance of significant adverse effects on areas within the coastal environment that are not identified as having outstanding natural character. The

same approach is required in Policy 3.5.4 for the management of adverse effects on freshwater bodies and their margins.

144. Overall, the amended Objective 3.5.1 and Policies 3.5.2, 3.5.3 and 3.5.4 give effect to Policies 13 and 15 in the NZCPS, and Policy 12.2 and Implementation Method 12.2.1 in the WRPS.
145. I consider that there is a risk in leaving the notified objective and policies unchanged (i.e. status quo option) in that the outcomes required by the higher order documents (the NZCPS and WRPS) are not made clear. This could potentially result in more time consuming and costly resource consent applications as well as undesirable environmental outcomes. I conclude that the amended versions will assist the district plan user, including would-be applicants, Council staff and decision makers.

3.7.3 Section 42A Recommendations

146. For the reasons given above, it is recommended that the hearings panel:
- (a) **Accept** the submission from the Department of Conservation [585.3]
 - (b) **Accept in part** the submissions from Vodafone NZ Limited [646.14], Transpower NZ Limited [576.8], Auckland Waikato Fish and Game Council [433.41], Waikato Regional Council [81.109], Spark NZ Limited [644.14], Chorus NZ Limited [648.14], Federated Farmers of New Zealand [680.46] and the further submission from *Mercury NZ Limited [FS1223.191]* to the extent of the amendments shown for Objective 3.5.1.
 - (c) **Accept in part** the submissions from Vodafone NZ Limited [646.15], Chorus NZ Limited [648.15] and Spark New Zealand Trading Limited [644.15] to the extent of the amendments shown for Policy 3.5.2.
 - (d) **Accept in part** the submissions from Spark NZ Trading Limited [644.16], Chorus NZ Limited [648.16] and Vodafone NZ Limited [646.16] to the extent of the amendments shown for Policy 3.5.3.
 - (e) **Accept in part** the submissions from Transpower NZ Limited [576.9], Spark NZ Trading Limited [644.17], Chorus NZ Limited [648.17], Vodafone NZ Limited [646.17] and Raglan Naturally [831.65] to the extent of the amendments shown for Policy 3.5.4.

4 Evidence in support of an ONF/ONL status or alternative approaches to recognise cultural values for the whole of the Waikato River

4.1 Introduction

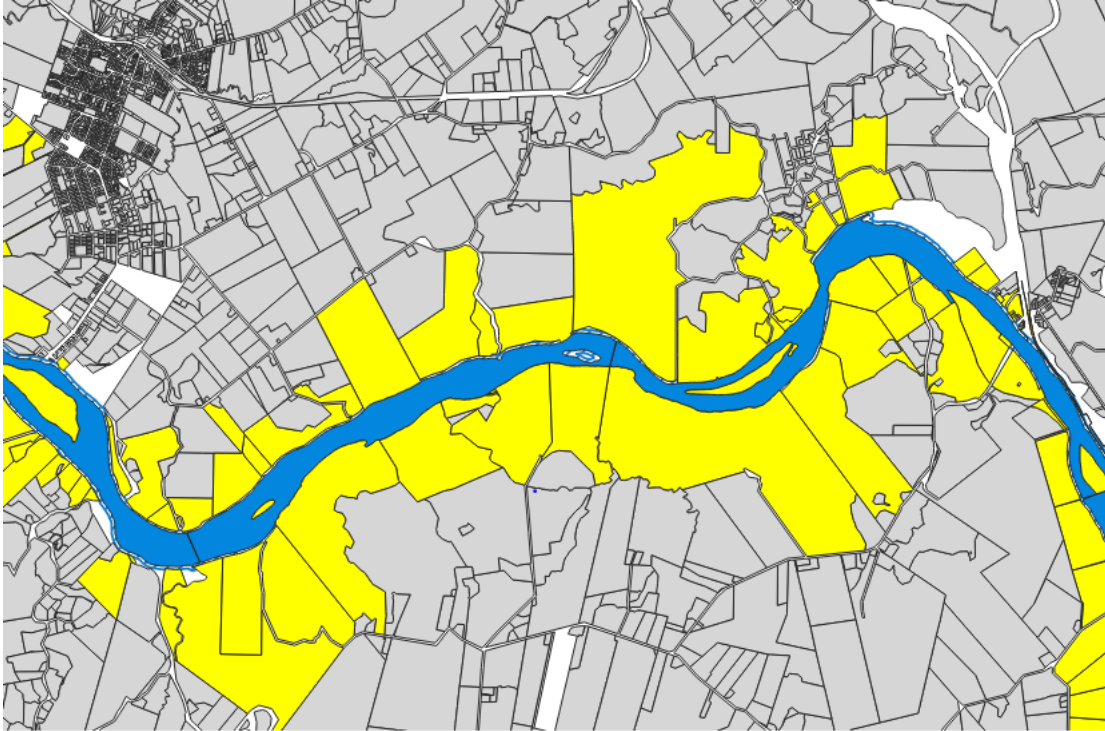
147. Section 13 of my s42A hearing report addresses five original submissions that seek ONF/ONL status or a special zone for the whole of the Waikato River in the PWDP - the Turangawaewae Marae Trust Board [984.18], Waikato-Tainui [286.14], Jackie Colliar [493.5 and 493.6] and the Waikato River Authority [642.5]. This would mean retaining the existing ONF/ONL status that is afforded to the whole of the Waikato River in terms of the Operative WDP.
148. In response to these original submissions, five groups lodged supporting further submissions - (Waikato-Tainui [FS1108.184, FS1108.118 and FS1108.104], the Department of Conservation [FS1293.18], Turangawaewae Marae Trust Board [FS1139.106 and FS1139.91], Pareoranga Te Kata [FS1035.58, FS1035.59 and FS1035.49] and Waikato River Authority [FS1037.5]).
149. Four groups lodged opposing further submissions - (Genesis [FS1345.137, FS1345.124, FS1345.135, FS1345.136, FS1345.97], Mercury NZ Limited [FS1223.177, FS1223.173 and FS1223.169], Riverdale Group Limited [FS1271.10] and Ta Ta Valley Limited [FS1340.37 and FS1340.102]).
150. Evidence on this topic was received from:
- (a) Mr Gavin Donald (planning) on behalf of Turangawaewae Marae Trust Board
 - (b) Mr Gavin Donald (planning) on behalf of Waikato-Tainui
 - (c) Ms Donna Flavell (Chief Executive Officer of Waikato-Tainui)
 - (d) Ms Rukumoana Schaafhausen (Chair of the executive board of Waikato-Tainui)
 - (e) Mr Antoine Coffin (cultural landscape expert) on behalf of Waikato-Tainui
 - (f) Mr Andrew Riddell (planning) and Mr La Cock (ecologist) on behalf of the Department of Conservation
 - (g) Mr Adam Jellie (planning) on behalf of Ta Ta Valley Limited
151. Despite Waikato-Tainui's technical evidence putting forward alternative solutions, the request for an ONF/ONL status for the whole of the Waikato River remains on the table, primarily as a result of the supportive submissions that rely on the Vision and Strategy, as the primary direction-setting document for the Waikato River, and the Waikato-Tainui Environmental Plan.
152. However, given the methodology currently used in landscape assessments for ONF/ONL, which is entirely consistent with the criteria used in the WRPS, there are now acknowledgements in the evidence from Mr Donald and Mr Coffin that there is difficulty in the whole of the Waikato River meeting the threshold to be an ONF/ONL in terms of the statutory framework.
153. This difficulty in meeting the ONF/ONL threshold is the result of how the biophysical, sensory and associative attributes are weighted, as explained in Ms Ryder's technical response accompanying my section 42A hearing report and paragraphs 38-49 in her statement evidence. Therefore, while it is accepted that the

Waikato River and its margins are hugely significant to Maaori in a cultural sense, the weighting system that has been progressively developed by landscape architects over the last decade or so (resulting in the *'Pigeon Bay criteria'*) means that it is not possible for the cultural values of any prominent feature or landscape to 'trump' all attributes. Specifically, as Maaori cultural values are a subset of the associative attributes only (and not the biophysical or sensory attributes), they comprise less than a third of the total weighting framework in contemporary landscape assessments. I acknowledge this methodology is not consistent with the Maaori world view whereby attributes of a particular landscape are considered in a holistic manner rather than being compartmentalised.

154. In recognition of the weakness that exists in contemporary landscape assessments, Mr Donald and Mr Coffin offer two alternative approaches if the hearings panel is not minded to apply an ONF/ONL status to the whole of the Waikato River. They consider that either approach would give effect to the Vision and Strategy, albeit through different mechanisms, therefore recognising the very high cultural values placed on the Waikato River by Waikato-Tainui.
155. Their alternative planning approaches are to either:
- (1) introduce a Cultural Landscape Overlay; or
 - (2) schedule the Waikato River as a Maaori Area of Significance (MAoS).
156. Both approaches would contain additional plan provisions covering the following elements:
- (a) The spatial identification of the Waikato River and its margins on the planning maps. This would include the main water body plus a 32 metre setback on either side, this being determined on the basis of what Mr Donald says is the largest building setback that currently applies to the Waikato River.
 - (b) A schedule that sets out the cultural values of the Waikato River, as identified in paragraph 30 of Mr Coffin's evidence.
 - (c) Objectives and policies that articulate the protection and restoration of the Maaori cultural values of the Waikato River. In terms of the current PWDP structure, Mr Donald suggests that these could be located in Chapter 3 (Tangata Whenua) but, in light of the National Planning Standards, they should be contained in a standalone chapter for now and then relocated to another chapter for Maaori Areas of Significance (MAoS) and Maaori Sites of Significance (MSoS).
 - (d) A discretionary activity rule for new activities, buildings, earthworks and subdivision for all zones within this spatial overlay.
 - (e) An explicit control for surface water activities within this spatial overlay, including a permitted activity provision for non-commercial and recreational use of the Waikato River.
 - (f) A restricted discretionary activity rule applying to the Waikato River catchment to capture Waikato-Tainui values as matter(s) of discretion.
 - (g) Information requirements to provide for cultural value assessments that are commensurate with the scale of a proposal and its associated effects.

- (h) Information requirements for resource consent applicants requiring them to address the Waikato-Tainui Environmental Plan in a way that is commensurate with the scale of a proposal and its associated effects.
157. While I accept there may be merit in introducing a bespoke overlay to recognise Maori cultural values within an identified landscape area, evidence received on behalf of Waikato-Tainui does not provide sufficient details to enable the proposed objective, policy and rule framework to be clearly understood. Subject to the issue of scope which I address shortly, I suggest a further process is required to advance Waikato-Tainui's proposed approach.
158. I am also unclear as to the justification for the proposed 32 metre setback as this is not prescribed in either the Operative WDP or PWDP.
159. In terms of the PWDP, the following building setbacks from the Waikato River apply:
- a. Residential, Business, Business Town Centre and Rural Zones = 28 metres
 - b. Countryside Living Zone = 37 metres
 - c. Village, Industrial and Heavy Industrial Zones = 50 metres
160. Ultimately however, it is my opinion that there is a scope issue if either of these alternative approaches were to be contemplated further, for the following reasons:
- (a) I consider there are difficulties in now proposing that the Waikato River and its margins be scheduled as a MAoS because Hearing 20 for that particular topic has already occurred.
 - (b) No submitter on this landscape topic, or any other topic, has requested that the Waikato River be scheduled as a MAoS or MSoS.
 - (c) I do not consider the scheduling of the Waikato River as a MAoS was reasonably and fairly raised in Waikato-Tainui's submission which requested that the Waikato River be identified as an ONF/ONL. I consider that a person reading that submission would have reasonably contemplated the relief sought to range between:
 - (i) The Waikato River being identified as both an ONF/ONL
 - (ii) The Waikato River being identified as either an ONF or ONL
 - (iii) An alternative landscape status that is less than an ONF/ONL, such as a High NCA or SAL
 - (d) Waikato-Tainui appears to seek a new objective, policy and rule framework for a MAoS, rather than relying on the MAoS framework as notified in the PWDP. This was not contemplated in the submission.
 - (e) I consider that most, if not all, owners of properties abutting the Waikato River would not have reasonably contemplated a new framework of objectives, policies and rules now proposed as part of either of the suggested approaches. I am therefore concerned that landowners may now be prejudiced as they are denied an opportunity to be involved in the development of provisions without having lodged submissions.

161. In order to gauge the extent of any potential prejudice, I requested Council's GIS staff to calculate the number of titles within the district that are located within the proposed 32 metre setback measured from the banks of the Waikato River. They advise that there are more than 1000 titles in this category. Some of these titles do not immediately adjoin the river because of an intervening reserve, road or other title, but are nevertheless still captured by this setback. A small sample of these potentially affected titles located between Tuakau and Pokeno are coloured yellow on the map below.



162. The suggested approaches apply only to the main river channel. Because Mr Donald and Mr Coffin's evidence relies on the Vision and Strategy which applies to the whole of the Waikato River catchment, it is unclear why the river's tributaries are not included, or the whole of the catchment for that matter. If the tributaries were included within an overlay that is determined on the basis of a building setback, then the total number of potentially affected properties would far exceed 1000.
163. These same concerns are raised by Mr Adam Jellie, who has provided rebuttal evidence on behalf of Ta Ta Valley Limited (TTVL). Mr Jellie states (at paragraph 3.3) that without any details of the proposed objective, policy and rule framework, the proposed alternatives could have a material impact on TTVL's sites and many other properties and activities throughout the district. He further states (at paragraph 3.4) that TTVL did not anticipate the proposed provisions arising through this landscapes topic.
164. While Mr Jellie supports the alternative approaches in principle on the basis that they would recognise Maaori cultural values, he emphasises the need for the proponents to assess other reasonably practicable options (as required by section 32AA of the RMA), whether administrative burdens would result from resource consent processes, and the alternative of relying on the Vision and Strategy as a matter to be considered for a restricted discretionary activity rather than the Waikato-Tainui Environmental Plan. I agree.

165. Mr Jellie concludes his rebuttal evidence by stating that TTVL would like to be involved in any future process to advance any proposed approach. He also notes that TTVL is currently engaging with several iwi groups, including Waikato-Tainui and Turangawaewae Marae in relation to its tourism resort consent applications adjacent to, and on, the Waikato River. As part of that forum, TTVL would therefore welcome the opportunity to discuss, as an alternative approach, site-specific PWDP provisions to recognise the significant cultural value of the Waikato River and they offer to present these to the hearings panel as part of the upcoming hearings on the rezoning topic.
166. Lastly, and as touched on above, it is unclear as to how either of the two alternative approaches give full effect to the Vision and Strategy when they do not apply to the whole of the Waikato River catchment. In this regard, I note that no evidence has touched on Plan Change 5 (PC5) to the Operative WDP which was initiated by WDC in 2013 in order to give effect to the Vision and Strategy.
167. PC5 was developed in partnership with Waikato-Tainui and introduced a framework of objectives, policies and rules that apply to the whole of the Waikato River catchment to satisfy the statutory obligation in the Waikato River Settlement Act 2010 for district plans to give effect to the Vision and Strategy. PC5 introduced new objectives that mirror those in the Vision and Strategy and rules that require resource consent applicants to provide details of their engagement with Waikato-Tainui if their proposal is to impact on the Waikato River catchment.
168. I consider that the provisions resulting from PC5 have been carried over into the PWDP to ensure that the statutory obligation to give effect to the Vision and Strategy is not lost. Notwithstanding that the PWDP provisions are to be considered in a holistic manner, I consider the following objectives and policies in Sections A and B of the PWDP to be particularly relevant to the Vision and Strategy:
- (a) Section A: Plan Overview and Strategic Objections – Chapter 1
- Section 1.7.1 Settlements
 - Section 1.7.2. Rivers - Vision and Strategy
 - Section 1.7.3 Joint Management Agreements
- (b) Section B: Objectives and Policies - Chapter 2 Tangata Whenua
- Section 2.1 Introduction
 - Section 2.2 Background (specific reference to the Waikato River in paragraphs (b) and (c))
 - Section 2.3 Legislative context
 - Section 2.10 Iwi Management Plans
 - Strategic Objective 2.11 Tautoko te whakatupuranga and accompanying Policy 2.12 Whakapapa
 - Strategic Objective 2.12.1 Whanaungatanga
 - (a) *Recognise the relationship of tangata whenua with areas of significance, including waahi tapu, urupaa, maunga, and other landforms, mahinga kai, and indigenous flora through provisions which may include:*
 - (i) *cultural value assessments and/or cultural impact assessments*
 - ...
 - (iv) *protection, enhancement and restoration of mauri*

- Objective 2.13 Whenuatanga and accompanying Policy 2.13.1 Tangata whenuatanga
- Objective 2.14 Kaitiaki
- Policy 2.14.1 Kaitiaki
 - (a) *Consult with Tangata Whenua where activities have the potential to adversely affect ancestral lands, water, sites, waahi tapu, and other taonga and which may include:*
 - (i) *establishing who should be consulted*
 - ...
 - (iii) *Tangata Whenua involvement with consent process and representation on hearings*
- Objective 2.15 Waikatotanga and accompanying Policy 2.15.1 Ngaa taonga tuku iho
- Objective 2.16 Tikanga aa-iwi o te takiwaa o Waikato
- Policy 2.16.2 Aahuatanga Motuhake (special features)
 - (a) **Recognise and maintain the cultural significance of wetland, lakes and other bodies including the Waikato and Waipa awa (rivers), coastal areas of Whaingaroa (Raglan Harbour), Aotea and Te Puaha o Waikato (Port Waikato) [my emphasis]**

169. I therefore consider that the PWDP is comprehensive in its recognition of the Vision and Strategy. It would be helpful for Mr Donald to elaborate at the hearing how he considers the PWDP to be deficient in this regard.
170. On 2 September 2020, I discussed the alternative approaches with Mr Donald via video conference where I raised my concern with respect to scope and the need for further details on the proposed objective, policy and rule framework. I am aware that the hearings panel requires these details to be pre-circulated at least 3 days prior to the hearing and that they will confirm the next steps after hearing all evidence. Given the hearing on this topic has been delayed until the country returns to Covid-19 Alert Level 1, there is an opportunity for Waikato-Tainui to circulate information in advance.
171. Because Waikato-Tainui's primary relief seeking an ONF/ONL status for the whole of the Waikato River remains on the table, I note that they have not filed any technical evidence to support that relief. Rather, both Mr Donald and Mr Coffin acknowledge that the application of the WRPS criteria for an ONF/ONL do not enable the whole of the Waikato River to meet the required threshold.
172. Therefore, for the reasons given above, and as at the date of preparing this rebuttal evidence, my section 42A recommendations remain unchanged as I am not able to further progress Waikato-Tainui's alternative approach for a Cultural Landscape Overlay at this stage.

5 Geoscience Society of New Zealand (GSNZ)

5.1 Introduction

173. Dr Bruce Hayward (Chairperson of GSNZ's Geoheritage Subcommittee) has provided extensive evidence to support GSNZ's submissions [8.2 and 8.3] for a total of 43 geoheritage areas to be listed as ONF in the PWDP. Some of these sites exist as ONF in terms of the operative Franklin Section. Dr Hayward has prepared a slide presentation for the hearing that identifies his listed sites.
174. In summary, Dr Hayward opposes the methodology used by landscape architects which, he says, effectively discounts the ability to apply an ONF status to particular geoheritage sites. His evidence sets out his concerns with respect to how the RMA, NZCPS and WRPS are interpreted when it was, according to him, always the intention for these higher order statutory documents to protect important geoheritage sites.
175. Dr Hayward's concern is that the assessment undertaken by landscape architects uses inappropriate criteria designed for assessing landscapes, not criteria designed for assessing the geological values of ONF. He says directions in legislation for the protection of geoheritage sites are not explicit.
176. However, Dr Hayward provides examples of the Auckland Unitary Plan, Northland Regional Policy Statement, and the district plans for Whangarei and the Far North, which list a considerable number of geoheritage sites as ONF, define ONF, and contain assessment criteria for the potential listing of others. Dr Hayward considers that the approach of these plans correctly reflects the legislative framework for the recognition and protection of ONF, as was always intended.

5.2 Analysis

177. Having considered Dr Hayward's evidence, I do agree that the statutory framework does not assist the identification of geoheritage sites that contribute in very important ways to both landscape and geoscience studies. In my opinion, there is no separate recognition of geoheritage sites in the WRPS or the NZCPS that must then be given effect to in district plans. The criteria in the WRPS, consistent with case law, apply equally to both features and landscapes. The WRPS does not distinguish between a feature and landscape. Geoheritage sites are only considered as part of biophysical attributes in landscape assessments. This means a geoheritage site would never meet the existing criteria for an ONF.
178. In my opinion, the potential for geoheritage sites to qualify as an ONF is even further frustrated by the fact that some are located underground (such as cave systems) and therefore not visible and part of what people typically associate as a 'landscape'. Some geoscience sites are in relatively remote locations where there is likely to be little risk of damage from earthworks and building. However, this is not the case for all geoscience sites. Some are susceptible to damage through earth disturbance – including private farm quarries, farm tracks and Council's own road works. I consider that it is critical to manage potential adverse effects on all geoscience sites in a way that is consistent with the approach for ONF and I agree with Dr Hayward that there is a risk of losing our geoheritage unless these special sites are appropriately identified and managed through district plan provisions. I consider this is a pressing issue that WRPS needs to address when it is next reviewed.

179. Ms Ryder's evidence (paragraphs 50-60) accepts that geoh heritage sites are important in their own right. However, she does not accept the criticism that landscape architects are not properly assessing geoh heritage sites as ONF. Ms Ryder's evidence is that landscape architects consider features in a different context and within a framework that considers both abiotic and biotic attributes as part of the biophysical dimension. Landscape architects approach this with a multi-dimensional consideration of both natural features and natural landscapes. In contrast, Mr Hayward's approach involves a biophysical focus toward the natural features and is not scale related.
180. A few sites listed in GSNZ's submission are already captured within the recommended ONF/ONL overlays – examples being the Bridal Veil Falls, Mount Karioi and the Waikato River delta and sandspit. These overlays would therefore afford protection to these particular landscapes in terms of section 6(b) of the RMA.
181. Some other sites listed by GSNZ are contained in an SAL overlay – such as the Pukekawa Scoria Cone. This particular geoh heritage site is located within a number of private landholdings and has been modified over the years as a result of farming activities and residential development on the lower slopes. While this site is an existing ONF under the operative Franklin Section, Ms Ryder's recommendation is for development within any SAL to be managed in terms of the less restrictive section 7(c) of the RMA.
182. I have discussed a potential way forward with Ms Ryder to address some of Dr Hayward's concerns. That is, for geoh heritage sites located wholly or partly within an ONF/ONL/NCA/SAL overlay, the list of attributes in the recommended schedules could be expanded, with assistance from Dr Hayward as a geoscience expert, to refer to the geoscience values under the biophysical attributes and an explanation of the risks to those sites.
183. For other geoh heritage sites that are not located within any ONF/ONL/NCA/SAL overlay, I do support in principle the introduction of a new schedule to identify the geological values of these geoh heritage sites and a nuanced policy framework to recognise their unique sensitivities and requirements for preservation and management.
184. At the same time however, I consider that this approach would be problematic in that it raises a scope issue. This is because, in my opinion, not all private landowners would have been fully aware of the submission by NZGS requesting that geoh heritage sites within their properties be identified on the PWDP planning maps, included in a schedule, and be subject to an objective, policy and rule framework to manage activities and built development within or near these sites. I am therefore concerned that this would result in a situation of prejudice in that these landowners would be denied an opportunity to be involved in the development of provisions without having had lodged submissions.
185. To help illustrate this point, I have set out a series of maps in Rebuttal Attachment 2 using information from the NZ Geopreservation Inventory for all sites noted in GSNZ's submission. The mapped extent of these geoscience sites within the aerals is approximate only as I have not used more accurate shape file data expected to be held by GSNZ. For each of these sites, I have noted the zone, whether they are identified in any landscape overlay in terms of the operative or proposed provisions, the number of private landholdings, and whether the affected landowners are

submitters on this topic. This map information indicates that there are at least 500 private landowners whose properties contain geoscience site and who have not lodged further submissions on the geoscience matter in this landscapes topic.

186. This potential prejudice issue is acknowledged in paragraph 13.6 of Dr Hayward's evidence where he states it may be too late to undertake a non-prejudicial addition of any of their proposed ONF to the PWDP as part of the current process (as opposed to those that are currently ONF). Instead, he requests that criteria for identifying ONF be added in the PWDP.
187. A potential solution to this issue would be for more focused engagement with affected landowners on this topic, with assistance from GSNZ, and then an opportunity for affected parties to lodge submissions through a variation to the PWDP.
188. I acknowledge that geoscience is a different discipline from landscape expertise and that they are equally important in assisting with the preparation of plans for territorial authorities. In this respect, I agree with Dr Hayward that it was unfortunate not to have drawn on geoscience expertise in the initial preparation of the PWDP. However, I consider that there are options available to properly address GSNZ's requests – by expanding the list of attributes in the recommended schedules to account for geoheritage sites, and a variation to the PWDP.

5.3 Section 42A Recommendation

For the above reasons, it is recommended that the hearings panel:

- (a) **Accept in part** the submissions from the Geopreservation Society of New Zealand [8.2 and 8.3] to the extent that the schedules for ONF/ONL/NCA/SAL reflect the attributes of geoscience sites that are located wholly or partly within these identified landscape overlays.

6 Bernard Brown

6.1 Introduction

189. Mr Bernard Brown [669 and FS1040] owns two properties at 759 Wainui Road and 16 Whaanga Road in Raglan. His evidence raises a general concern about the usability of the PWDP with respect to multiple overlays, the justification for the extent of ONL/SAL/SNA applying to his properties and the general surrounds, the design of existing carparking spaces on Calvert Road, and the need to provide pedestrian access between Manu Bay and Whale Bay.
190. The SNA topic is to be separately addressed in Hearing 21A scheduled to commence on 16 November 2020. I have therefore not addressed this matter as part of Hearing 21B.
191. Mr Brown contends that the design of the 42 existing carparking spaces on Calvert Road adversely affects amenity values and that these spaces do not comply with the minimum sight distances set out in Table 14.12.5.3 of the PWDP. I have not addressed parking or pedestrian access matters because they sit outside the scope of this hearing topic and the more general review of the district plan. I also note that rules in the PWDP are future focused rather than retrospective. For these matters

however, I suggest that Mr Brown could discuss his concerns with Council's Parks and Reserves staff in the context of reserve management plans for Raglan. There is also an opportunity to lodge submissions on these matters for Council's consideration with the next Long Term Plan and Annual Plan processes.

6.2 Analysis

192. My section 42A recommendations have relied on Boffa Miskell's technical responses and recommendations. I also now rely on paragraphs 33-34 in Ms Ryder's statement of evidence where she respectfully disagrees with Mr Brown's request to identify the Te Akau coast within a SAL on the basis of the values identified in the Waikato District Landscape Study and the WRPS. Paragraphs 28-29 of Ms Ryder's evidence also respond to Mr Brown's submission in respect to mapped ONL/SAL overlays for Mount Karioi.
193. As a result of Ms Ryder's statement of evidence, my section 42A recommendation remains unchanged.

7 Liz Hughes

7.1 Introduction

194. Ms Liz Hughes [301] owns a property at 17 Calvert Road in Raglan. In terms of the PWDP, this property is zoned Rural and located within a SAL.
195. Ms Hughes' evidence raises concerns in respect to SAL restrictions for affected properties, the SNA overlay and public carparking at Manu Bay.
196. The SNA topic is to be separately addressed in Hearing 21A scheduled to commence on 16 November 2020. I have therefore not addressed this matter as part of Hearing 21B.

7.2 Analysis

197. With respect to the SAL overlay, Ms Hughes' main concern appears to be that this would place an unreasonable restriction on building height as she considers her property to be discrete and not visible from the coastal marine area or any other public access point.
198. Rule 22.3.4.1 specifies a maximum height of 7.5 metres for buildings in the Rural Zone that are within a SAL. I consider that this height limit is reasonably generous as it would accommodate a standard two-storey building and no resource consent would be triggered.
199. Ms Hughes' evidence also describes the landscape amenity values she personally experiences at her property and the surrounds. Ms Ryder agrees with these descriptions (as stated in paragraph 30 of her evidence) and her support for an SAL overlay in this location remains unchanged. I therefore do not consider that there is any aspect of Ms Hughes' evidence that would justify the removal of the SAL overlay from 17 Calvert Road or its more general application to this part of Raglan.
200. Similar to the matter raised by Mr Brown, the issue of public carparking at Manu Bay sits outside the scope of this hearing topic and the more general review of the district plan. However, I suggest that Ms Hughes could discuss her concerns with Council's Parks and Reserves staff in the context of reserve management plans for Raglan. There is also an opportunity to lodge submissions on this matter for Council's consideration with the next Long Term Plan and Annual Plan processes.

201. As a result of Ms Hughes' evidence, and Ms Ryder's statement of evidence which confirms the rationale for applying a SAL to this part of Raglan, my section 42A recommendation remains unchanged.

8 Analysis of original and further submissions missing from section 42A hearing report

8.1 Buildings in Identified ONF/ONL/SAL/NCA

8.1.1 Introduction

202. The PWDP contains zone rules that manage the effects of locating buildings or structures within important features and areas that include any ONF/ONL/SAL/NCA. The objective of these rules is to ensure that (particularly visual) adverse effects do not undermine the attributes of these important features and areas that are specifically identified in objectives, policies and on the planning maps.

8.1.2 Submissions

203. The two original submissions listed in the following table:

- (a) request an amendment to Rule 22.3.3 to permit dwellings and accessory buildings within natural features and outstanding landscapes
- (b) refer to Rule 22.3.3 although no specific decision is sought.

731.12	Jean Tregidga	Amend Rule 22.3.3 Buildings and structures in Landscape and Natural Character Areas, by permitting dwellings and accessory buildings within natural features and outstanding natural landscapes.
<i>FS1180.12</i>	<i>Jean Tregidga</i>	<i>Support submissions 731.12</i>
330.149	Andrew and Christine Gore	No specific decision sought, however submission refers to Rule 22.3.3 Buildings and structures in Landscape and Natural Character Areas.

8.1.3 Analysis

204. There is little evidence to indicate significant demand for new rural buildings in the Rural Zone where these overlays apply. I am also concerned that the relief sought by Ms Jean Tregidga [731.12] would establish a permitted baseline as a result of a complying structure, which could then be used to determine how the rule applies to non-farm related buildings. I therefore consider it unwise to establish a permitted baseline of building scale in relation to development within these overlays.
205. Furthermore, the effects of some building developments have the potential to compromise the attributes of nationally important ONF/ONL, which must be protected in terms of section 6(b) of the RMA and the WRPS. In this regard, I note that Ms Tregidga's three titles form part of the Hunua Ranges which are identified in the PWDP as an ONL. It is therefore prudent to test the merits of any new building proposal through a rigorous resource consent process. Overall therefore, it is my opinion that the request from Ms Tregidga is inappropriate and that submission [731.12] should be rejected.

206. Andrew and Christine Gore's submission [330.149] refers to Rule 22.3.3 in respect to the Rural Zone although their position is unclear and no specific decision is sought. I am therefore left to recommend rejection of their submission.

8.1.4 Recommendations

207. For the reasons given above, I recommend that the hearings panel:

- (a) **Reject** the submission from Jean Tregidga [731.12] and further submission from Jean Tregidga [FS1180.12]
- (b) **Reject** the submission from Andrew and Christine Gore [330.149].

8.1.5 Recommended amendments and section 32AA evaluation

208. No amendments are recommended to the rules that manage buildings and structures in any ONF/ONL/SAL/NCA as a result of these submissions, thus no section 32AA evaluation is necessary.