

# Concluding Hearing Report

## Hearing 21B Landscapes

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23 December 2020



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# I Executive Summary

1. Hearing 21B for the landscapes topic was held in the Council Chambers on 29 October 2020, followed by a Zoom video-conference presentation by the Turangawaewae Marae Trust Board on 2 November 2020.
2. This concluding hearing report is the result of Hearing 21B, submitter evidence, matters discussed during the hearing, and a request by the panel for various provisions to be revisited.
3. This concluding hearing report has also had the benefit of input from Dr Bruce Hayward from the Geoscience Society of NZ (GSNZ) and Waikato-Tainui who have commented on my recommended provisions for geoheritage sites and the outstanding landscape status of the Waikato River (waterbody) respectively.
4. Attachment 1 contains Ms Ryder's technical response (dated 9 December 2020) which supports an ONF landscape status for the whole of the Waikato River (waterbody) within the district.
5. Attachment 2 sets out my recommended earthworks rules for identified landscape areas. The only change made to these rules in my rebuttal evidence is for the area and volume thresholds to apply per site, therefore making these rules more clear and certain.
6. Attachments 3 and 4 contain an email and memorandum respectively from Mr Gavin Donald on behalf of Waikato-Tainui. While there is an acceptance of my recommended ONF status for the whole of the Waikato River (waterbody), both documents state Waikato-Tainui's preference for an ONL.

## 2 Objectives and policies relevant to landscapes

7. The panel suggested that the notified objectives and policies in Chapter 3 which are relevant to the landscape topic could be amended further from the recommended versions in my s42A hearing report and/or rebuttal evidence so that they are even more concise and so there is no unnecessary repetition of policy directives contained in higher-order documents, such as those in the WRPS and NZCPS. I agree.
8. I have set out below this framework of objectives and policies from my s42A hearing report and rebuttal evidence, followed by recommendations on how they could be further amended. With the exception of Policy 3.3.2, I have not considered it necessary to undertake any section 32AA evaluation on these further amendments as they do not result in any material change to the notified versions.
9. To assist the panel, I have coloured the following text in this way:
  - Black text – in notified PWDP
  - Red text – recommended in my s42A hearing report
  - Blue text – recommended in my rebuttal evidence
  - Green text – recommended in this concluding hearing report.

## Versions of Objective 3.3.1 and Policy 3.3.2 in s42A Hearing Report

### 3.3.1 Objective – Outstanding natural features and landscapes

- (a) Outstanding natural features and outstanding natural landscapes and their attributes are recognised and protected from inappropriate subdivision, use and development.

### 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.~~

## Recommended amendments to Policy 3.3.2 in this concluding hearing report

10. In my opinion, there should be consistency of language in Policy 3.3.2 so that the term 'attributes' is used in the heading rather than 'values and qualities'.
11. Because the attributes of ONF/ONL are set out in the recommended schedules, it is unnecessary for clauses (a), (b) and (c) to then set out what these attributes are. District plan users can be directly taken to the relevant schedules by including a hyperlink in this policy.
12. The last section of this concluding hearing report deals with the landscape status of the Waikato River and includes a recommendation to identify the whole of the water body (main stem) as an ONF. In that section, I discuss further amendments to Policy 3.3.2 that I consider appropriate if the hearings panel is to accept that recommendation for ONF status. In the meantime, I recommend the following amendments to Policy 3.3.2:

### 3.3.2 Policy – Recognising ~~values and qualities attributes~~

- (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 that are listed in Schedule 30.X and Schedule 30.X.~~
- ~~(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;~~
  - ~~(vi) — 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 that are listed in Schedule 30.X.~~
- ~~(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 ~~an Outstanding Natural Feature;~~ ~~including that are listed in Schedule 30.X.~~
- ~~(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.~~

## Version of Policy 3.3.3 in rebuttal evidence

### 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;~~
  - ~~(iv) — managing the adverse effects of building platforms, driveways and roads through appropriate subdivision design;~~
  - ~~(v) — requiring subdivision and development to retain views of an Outstanding Natural Landscapes and features Outstanding Natural Feature from public places; and~~
  - ~~(vi) — avoiding adverse effects of extractive industries and earthworks.~~

### Recommended amendments to Policy 3.3.3 in this concluding hearing report

13. I have reflected on the policy actions listed in the above-listed clauses (iii), (iv), (v) and (vi) in Policy 3.3.3, and consider that they are unnecessary subsets of the all-encompassing policy actions set out in recommended clauses (i) and (ii).
14. I also support consistency of language in this policy so that the term 'attributes' is used instead of 'values and qualities'.
15. I therefore recommend that Policy 3.3.3 be amended as follows:

#### **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 attributes 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 attributes values and characteristics of an Outstanding Natural Feature and Outstanding Natural Landscape and, if avoidance is not possible, remedy or mitigate the adverse effects;~~
  - ~~(i)(iii) requiring buildings and structures to be integrated into the an Outstanding Natural Landscape or feature Outstanding Natural Feature to minimise any visual impacts;~~
  - ~~(ii)(iv) managing the adverse effects of building platforms, driveways and roads through appropriate subdivision design;~~
  - ~~(iii)(v) requiring subdivision and development to retain views of an Outstanding Natural Landscapes and features Outstanding Natural Feature from public places; and~~
  - ~~(iv)(vi) avoiding adverse effects of extractive industries and earthworks.~~

### Recommended amendment to Policy 3.3.4 in this concluding hearing report

16. The decision version of the PWDP should be as consistent as possible with the National Planning Standards.
17. I therefore recommend that the use of the term 'Specific Area' be replaced with 'Development Area', and that Policy 3.3.4 read as follows:

#### **3.3.4 Policy - The relationships of Maaori with natural resources and land**

- (a) Provide for the consideration of cultural and spiritual relationships of Maaori with Outstanding Natural Features and Outstanding Natural Landscapes as part of subdivision, use and development.
- (b) Provide for the development of Maaori Freehold Land, within Outstanding Natural Features and Landscapes, including within the Whaanga Coast ~~Specific~~ Development Area.
- (c) Provide for Maaori cultural and customary uses of natural resources, including land, water and other natural resources as an integral part of identified Outstanding Natural Features and Outstanding Natural Landscapes.

## Versions of Objective 3.4.1 and Policies 3.4.2, 3.4.3 and 3.4.4 in s42A Hearing Report and rebuttal evidence

### 3.4.1 Objective – Significant amenity landscapes

- (a) The attributes of areas and features valued for their contribution to landscape values and visual amenity are maintained or enhanced.

### 3.4.2 Policy – Recognising Significant Amenity Landscapes

- (a) Recognise the attributes which contribute to identified Significant Amenity Landscapes.

### 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.~~

### 3.4.4 Policy - The relationships of Maori with their resources and land

- (a) Provide for the cultural and spiritual relationships of Maori with Significant Amenity Landscapes during subdivision, use and development.
- (b) Provide for the development of Maori Freehold Land within Significant Amenity Landscapes.
- (c) Provide for Maori cultural and customary uses of natural resources, including land, water and other natural resources as an integral part of identified Significant Amenity Landscapes.

## Recommended amendments to Policies 3.4.2 and 3.4.3 in this concluding hearing report

18. I recommend the following amendments to Policies 3.4.2 and 3.4.3 to remove unnecessary words and add reference to the recommended schedule for SAL.

### 3.4.2 Policy – Recognising Significant Amenity Landscapes

- (a) Recognise the attributes of which contribute to identified Significant Amenity Landscapes that are listed in Schedule 30.X.

### 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; and



- (iv) *managing the adverse effects of earthworks; and*
- (v) *promoting and encouraging maintenance and enhancement of their attributes.*

## Versions of Objective 3.5.1 and Policies 3.5.2, 3.5.3 and 3.5.4 in s42A Hearing Report and rebuttal evidence

### 3.5.1 Objectives – Natural Character

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

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

## Recommended amendments to Policy 3.5.1 in this concluding hearing report

19. I recommend these minor amendments to improve the structure of Policy 3.5.1:

### 3.5.1 Objectives – Natural Character

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

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

## Version of Policy 3.5.2 in section 42A hearing report and rebuttal evidence

### 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

## Recommended amendments to Policy 3.5.2 in this concluding hearing report

20. I have considered Policy 13 in the higher-order NZCPS, which appears to already address the characteristics of natural character listed in the notified version of Policy 3.5.2. Any resource consent application within the coastal environment would need to be assessed in terms of the NZCPS to ensure that its policies are not undermined. I also support reference and a hyperlink to the recommended schedule for NCA.
21. I therefore recommend these amendments to Policy 3.5.2:

### 3.5.2 Policies – Recognising natural character

- (a) Recognise that there is a range of natural character from pristine to modified and that a variety of 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 listed in Schedule 30.X 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

## Recommended amendments to Policy 3.5.3 in this concluding hearing report

22. I have reflected on the policy actions listed in clauses (iii)-(viii) in Policy 3.5.3 and consider that they are unnecessary subsets of the all-encompassing policy actions set out in recommended clauses (i) and (ii). They also repeat some of the directives in Policy 6 of the NZCPS. I recommend consistency of language and reference to the natural character attributes of ONCA.
23. For these reasons, I recommend the following amendments to Policy 3.5.3:

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

- (a) Protect natural character in of 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 within an area within of 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.~~

### Recommended amendments to Policy 3.5.4 in this concluding hearing report

24. I have reflected on the policy actions listed in clauses (iii)-(vi) in Policy 3.5.4 and consider that they are unnecessary subsets of the all-encompassing policy actions set out in recommended clauses (i) and (ii). They also repeat some of the directives in Policy 6 of the NZCPS.
25. I have also reflected on new clause (b) which mirrors Policy 12.2(c) in the WRPS and which I had recommended in my s42A hearing report. If the panel is of the mind to not repeat directives in higher-order documents, then I recommend that this clause also be deleted.
26. I therefore recommend these amendments to Policy 3.5.4:

#### 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.~~

**Earthworks provisions for identified landscape areas**

27. My section 42A hearing report recommends that Rule 22.2.3.4 be amended to permit earthworks within identified landscape areas for the maintenance of existing tracks, fences and drains. This recommendation is supported by submitters, particularly those who farm hill country properties affected by SAL.
28. However, some submitters remain concerned that the recommended Rule 22.2.3.4 for properties that contain SAL in the hill country still requires resource consent for new infrastructure, particularly farm tracks. For example, the Hill Country Farmers Group (HCFG), comprising 50 farmer groups who were represented by Kirsty and Bruce Hill at the hearing, express concern that such provisions represent another layer of restrictions that make it even more difficult for farms to operate in an economic manner. They cite health and safety as reasons for needing new farm tracks.
29. Recommended Rule 22.2.3.4 in my section 42A hearing report follows:

### 23.2.3.4 Earthworks – within Landscape and Natural Character Areas

<u>P1</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>(a) <u>earthworks are completed within a 12 month period</u></p> <p>(b) <u>earthworks do not exceed the following areas and volumes:</u></p> <table border="1" style="margin-left: 20px;"> <thead> <tr> <th><u>Landscape or Natural Character Area identified on the planning maps and in Schedules 30.XXX</u></th> <th><u>Area (m<sup>2</sup>)</u></th> <th><u>Volume (m<sup>3</sup>)</u></th> </tr> </thead> <tbody> <tr> <td><u>Significant Amenity Landscape - Hill Country</u></td> <td style="text-align: center;"><u>1000</u></td> <td style="text-align: center;"><u>500</u></td> </tr> <tr> <td><u>Significant Amenity Landscape - Waikato River Margins and Lakes</u></td> <td style="text-align: center;"><u>500</u></td> <td style="text-align: center;"><u>500</u></td> </tr> <tr> <td><u>Significant Amenity Landscape - sand dune</u></td> <td rowspan="4" style="text-align: center; vertical-align: middle;"><u>50</u></td> <td rowspan="4" style="text-align: center; vertical-align: middle;"><u>250</u></td> </tr> <tr> <td><u>High Natural Character Area</u></td> </tr> <tr> <td><u>Outstanding Natural Character Area</u></td> </tr> <tr> <td><u>Outstanding Natural Feature</u></td> </tr> <tr> <td></td> <td><u>Outstanding Natural Landscape</u></td> <td></td> </tr> </tbody> </table> <p>(c) <u>the height of the resulting cut or batter face in stable ground does not exceed 1.5 metres</u></p> <p>(d) <u>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>(e) <u>areas exposed by the earthworks are re-vegetated to achieve 80% ground cover within 6 months of commencing the earthworks</u></p> <p>(f) <u>sediment is retained on the site through implementation and maintenance of erosion and sediment controls</u></p> <p>(g) <u>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 and in Schedules 30.XXX</u>	<u>Area (m<sup>2</sup>)</u>	<u>Volume (m<sup>3</sup>)</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>	
<u>Landscape or Natural Character Area identified on the planning maps and in Schedules 30.XXX</u>	<u>Area (m<sup>2</sup>)</u>	<u>Volume (m<sup>3</sup>)</u>																	
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<u>Outstanding Natural Feature</u>																			
	<u>Outstanding Natural Landscape</u>																		
<u>RDI</u>	<p>(a) <u>Earthworks that do not comply with Rule 23.2.3.4 P1 or P2</u></p> <p>(b) <u>Council's discretion is restricted to the following matters:</u></p> <p>(i) <u>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>(ii) <u>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.</u></p>																		

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30. Recommended Rule 22.2.3.4 does not indicate any change to the notified area and volume thresholds for Hill Country SAL being 1000m<sup>2</sup> and 500m<sup>3</sup> respectively. These thresholds are half those set out in Rule 22.2.3.1 for rural properties not affected by SAL (i.e. 2000m<sup>2</sup> and 1000m<sup>3</sup>).
31. Some submitters (such as Steven and Theresa Stark [701.7]) who appeared at the hearing request various amendments to the rules for earthworks in any identified landscape areas in the Rural Zone to permit thresholds of 2000m<sup>2</sup> and 1000m<sup>3</sup> (therefore no different for rural properties that do not contain an identified landscape area), and an increase of these thresholds

to 6000m<sup>2</sup> and 3000m<sup>3</sup> for properties greater than 40ha. I note here that the Stark property contains an ONF (Taupiri Range), but not a SAL.

32. The panel requested that I further investigate whether the notified thresholds for SAL could be amended to be more accommodating. This followed a question they put to Mr and Mrs Hill during the course of the hearing as to the scale of earthworks that might be anticipated on their own farm within a 12 month period, and their response, which was that it was difficult to quantify and timing of necessary works was not always certain.
33. My research of other district plans indicates that there is a wide variety of approaches to the management of earthworks in SAL or other 'second-tier' landscapes. A sample of approaches, including those taken by other districts within the Waikato Region, is set out below.

### **Waipa District Plan (operative August 2017)**

34. Permits earthworks for new farm access tracks within visually-sensitive hill country, provided that they:
- (a) do not exceed a volume of 500m<sup>3</sup> per calendar year
  - (b) are not located within 20m of the top of a ridgeline
  - (c) do not result in a cut or fill face height greater than 2 metres or an average height of 1.5m.
35. The default is resource consent for a controlled activity, which requires an assessment of a revegetation plan and visibility from any public place.

### **South Waikato District Plan (operative July 2015)**

36. Permits earthworks in SAL provided that they:
- (a) are for the maintenance of existing farm tracks or formation of farm drains
  - (b) are for the upgrading or operation of existing public roads
  - (c) are part of an approved subdivision
  - (d) are for building works authorised by a building consent and the earthworks area is no greater than twice the area of those building works and occurs on land with an average gradient no greater than 1:8.
  - (e) do not exceed 3 metres vertical ground alteration in a new face or cut and/or fill
  - (f) do not exceed 1000m<sup>3</sup> within a site per calendar year
  - (g) do not exceed 250m<sup>2</sup>
  - (h) involve revegetation of cut and batter faces or filled areas to achieve 80% ground cover within 12 months of commencing the earthworks.
37. The default is resource consent for a restricted discretionary activity.

### **Otorohanga District Plan (operative 2014)**

38. Permits earthworks in the Landscape Policy Area (Hinterland), provided that they:
- (a) do not exceed 5000m<sup>2</sup> for any purpose
  - (b) do not exceed 1000m<sup>3</sup> during a 12 month period if the cut face or fill height exceeds 2 metres
  - (c) do not exceed 5000m<sup>3</sup> during a 12 month period if the cut face or fill height is less than 2 metres

(d) are for the construction of firebreaks, fencelines, survey lines, or the maintenance of any road or track.

39. The default is resource consent for a discretionary activity.

### **Taupo District Plan (operative 2007)**

40. There are no specific earthworks provisions for Amenity Landscape Areas in the Operative Taupo District Plan, and Regional Plan provisions are relied on instead. Iwi have expressed a need for more restrictive earthwork provisions in the reviewed district plan, the draft of which is currently being developed.

### **Thames-Coromandel District Plan**

41. The TCDP manages earthworks within ONF/ONL/HNCA/ONCA, but no 'second tier landscapes' are identified.
42. However, as a comparison, earthworks for the maintenance or repair of existing tracks in these identified landscapes are permitted provided that they:
- (a) do not exceed 1500m<sup>2</sup> and 250m<sup>3</sup> per site per calendar year
  - (b) do not exceed and cut or fill height of 2 metres
  - (c) do not result in a track wider than 5 metres
43. New tracks are permitted in these identified landscapes if they are part of an operational farming activity as at 29 April 2016 and do not exceed a width of 5 metres.
44. The default is resource consent to a restricted discretionary activity if volume does not exceed 200m<sup>3</sup> per site per calendar year and face height does not exceed 1.5 metres.

### **Hastings District Plan (part operative March 2020)**

45. No protective earthworks provisions in SAL exist at the present time. However, the controversial works that involved the creation of a new track at the base of Te Mata Peak (identified as an ONF and SAL) has resulted in Council commencing a review of the SAL provisions as they relate to Te Mata. This may result in a future plan change to introduce rules in the SAL that specify a small earthworks volume for new tracks in SAL, and possibly a default to a restricted discretionary activity.
46. As a comparison, an appeal by Federated Farmers resulted in earthworks for the maintenance of existing tracks in ONF being permitted, subject to a volume threshold of 500m<sup>3</sup> and a maximum cut height of 2 metres.

### **Southland District Plan (January 2018)**

47. Permits earthworks in Visual Amenity Landscapes provided that they:
- (a) are not undertaken at an elevation greater than 700m above mean sea level (with the exception of earthworks ancillary to fencing, track construction, maintenance and firebreak activities)
  - (b) are not on slopes of more than 20%
  - (c) do not exceed 1000m<sup>3</sup> per property in any 12 month period.

48. The default is resource consent to a restricted discretionary activity.

### **Timaru District Plan (March 2005)**

49. There are no specific earthworks provisions for SAL in the Operative Timaru District Plan.
50. Feedback was invited between 7 October and 30 November 2020 on the Draft Timaru District Plan, which includes a provision that permits earthworks in Visual Amenity Landscapes provided that they:
- (a) are for maintaining or repairing existing fencing, farm tracks, walking/cycling tracks and roads
  - (b) do not exceed 1 metre above or below original ground surface
  - (c) do not exceed 1500m<sup>2</sup> in any 12 month period
  - (d) do not change unsealed surfaces of roads and tracks to sealed surfaces.
51. New roads and farm tracks require resource consent to a discretionary activity.

### **General conclusion**

52. This sample of provisions demonstrates that it is not unusual for district plans to contain provisions that manage earthworks within 'second-tier landscapes', with some districts taking a more stringent approach than others.
53. Overall, I remain of the opinion that earthworks for the maintenance of existing farming infrastructure are important and should be permitted. This is because maintenance is integral to any farming operation and the adverse effects associated with existing infrastructure form part of the existing environment.
54. However, new farming infrastructure (such as new farm access tracks) has the potential to erode the attributes associated with SAL (as well as other identified landscape areas). In my opinion, the wide range of new farming infrastructure would result in a level of uncertainty as to the extent of adverse effects if new works were afforded a permitted activity status.
55. The variation in farm sizes, contours and vantage points adds to the difficulty in nominating increased area and volume thresholds that should be permitted for new works. For this reason, I remain of the opinion that a resource consent process for a restricted discretionary activity is appropriate to enable each case to be assessed on its merits. Typically, this would involve the applicant forecasting and describing what works would be required within a time frame that is greater than 12 months as a 'one stop shop' operation, rather than undertaking a much less effective and efficient process by limiting their works within separate, and consecutive 12 month blocks, simply to avoid the need for resource consent.
56. It is also my view that hill country farms which contain SAL are likely to already have farm tracks that provide functional and safe access for stock and vehicles, such that there would be no appreciable demand for new tracks during the life of the new district plan. If there were to be new infrastructure required as a result of a farm conversion (e.g. from drystock to dairying), then potential adverse effects on the SAL attributes should be considered through a resource consent process. In this respect, I do not consider that my recommended default to a restricted discretionary activity is onerous.



57. If the earthworks rules were to be removed for Hill Country SAL, this would leave only one provision that differs from other properties in the Rural Zone – this being the building height rule which specifies a maximum height of 7.5 metres, as opposed to 10 metres for buildings outside of any SAL. However, I do not support any removal of these earthworks rules, on the basis that the Waikato District Landscape Study identifies SAL for their particular landscape attributes and in terms of section 7(c) of the RMA, and because earthworks have the potential to compromise them.
58. Turning now to the notified 50m<sup>2</sup> and 250m<sup>3</sup> thresholds for earthworks in SAL (sand dune)/NCA/ONF/ONL, my section 42A hearing report (at paragraph 242) noted that Bob Carter [510.5] and Sharp Planning Solutions [695.87] requested that these be amended to permit 250m<sup>2</sup> and 50m<sup>3</sup>. I noted my reluctance to accept any increased scale of earthworks because that could potentially increase the risk of diminishing the attributes of these landscape areas. In particular, a five-fold increase in the area of earthworks (from 50m<sup>2</sup> to 250m<sup>2</sup>) could result in drastic adverse visual effects in these particularly sensitive locations, and could compromise the dynamic and natural functioning of sand dunes.
59. While I still do not support any increase in the area or volume thresholds, I consider it unfortunate that no submission has challenged there being any scale earthworks whatsoever within these sensitive locations as a result of the protect/preserve directives in higher-order documents that include section 6 of the RMA, the WRPS and NZCPS. This has meant no change to the 50m<sup>2</sup> and 250m<sup>3</sup> thresholds for SAL (sand dunes)/NCA/ONF/ONL in my recommended Rule 22.2.3.4. There is no common approach to this matter in the sample of district plans noted above. However, I record my preference for any scale of earthworks in these sensitive landscapes to be assessed as a restricted discretionary activity.
60. As noted in my executive summary, the only change I wish to make to the recommended earthworks rules set out in my rebuttal evidence is for the area and volume thresholds to apply per site. I note that this requirement is not always made explicit in the sample of rules I have collated from other district plans, even though that would appear to be the intention. In my opinion, it is important to explicitly refer to a 'site' (which is a defined term) because it means that the rules can be interpreted clearly and with certainty. Without any reference to a 'site', the thresholds become meaningless and could result in them being wrongly applied to the whole of the identified landscape area with difficulties for Council in having to trace and track as earthworks progressively occur. Attachment 2 therefore shows the reference to 'per site' (coloured green) in my recommended earthworks rules.
61. On 15 December 2020, the hearings panel requested that I collaborate with the s42A author (Ms Susan Chibnall) for the Significant Natural Area (SNA) topic (Hearing 21A) to consider whether any alignments could be made within the earthworks rules for these mapped areas in respect to volume and area thresholds, track maintenance and activity status.
62. Ms Chibnall and I both support a permitted activity status for the maintenance of existing tracks, fences and drains within identified landscape areas and SNA. This is because maintenance of this type of infrastructure is an integral and necessary part of farming operations, but it is also an acknowledgement that landowners should be allowed to maintain the status quo situation, irrespective of the zone, where this infrastructure constitutes part of the existing environment. The only difference with the permitted activity rule for earthworks within an SNA is Ms Chibnall's recommendation to permit conservation activities and water reticulation in response to submissions on the SNA topic.
63. Ms Chibnall and I both support a default to a restricted discretionary activity. This does not represent any change to the notified rule for earthworks in an SNA, but it does for identified

landscape areas where the notified default is a discretionary activity. In response to submissions that request a less onerous activity status, my section 42A hearing report recommends a restricted discretionary activity on the basis that the matters to be considered as a result of a rule breach are narrow, rather than expansive, and because this activity status would provide greater certainty for resource consent applicants and Council staff.

64. The earthworks rule for SNA only specifies area and volume thresholds if the works are to occur on Maaori Freehold Land (MFL). While some MFL is located within identified landscape areas, the notified landscape rules do not contain any equivalent provision. Ms Chibnall and I understand that, as a result of various tangata whenua workshops, a new chapter will be introduced into the PWDP that specifically deals with Maaori land. This chapter is expected to set out exemptions from district plan rules regarding earthworks, vegetation clearance and building, to better enable development of MFL within the district, including papakainga housing developments. For this reason, I am not recommending that new provisions for MFL be added into the earthworks rules for identified landscape areas. My preference is for this matter to be addressed more holistically through the new chapter for Maaori land.

### **Fences in landscape and natural character areas**

65. At the hearing, the panel queried whether new fences would require resource consent in terms of Rule 22.3.3. A fence is a 'structure' and therefore this rule would be invoked.
66. In my experience, existing fencelines typically surround ONF/ONL/NCA and it would be an unusual situation to require new fencelines within them. Nevertheless, I do not support the exemption of fences from this rule. In my opinion, it is appropriate that the introduction of any man-made element into an outstanding natural area be assessed through a resource consent process to determine whether they would erode the naturalness of these identified areas. Fences can vary widely in terms of building material, style, height and colour, and there is a risk that some fences could compromise the attributes of these outstanding areas.
67. The situation for fences in SAL is different, in recognition of the fact that this particular landscape comprises working farms with fenced paddocks. Fences are therefore permitted in SAL, with the only building restriction being a maximum height of 7.5 metres.
68. My rebuttal evidence recommends a relaxation in the activity status so that any new building or structure located within an ONF/ONL/NCA would require assessment as a restricted discretionary activity rather than the notified discretionary activity status. I am not recommending any further change to Rule 22.3.3 from the version in my rebuttal evidence shown below.

**Chapter 22 Rural Zone - Recommended amendments to Rule 22.3.3**

**22.3.3 Buildings and structures in Landscape and Natural Character Areas**

<del>D1</del>	(a) Building or structure located within any:
<u>RD1</u>	<ul style="list-style-type: none"> <li>(i) Outstanding Natural Feature;</li> <li>(ii) Outstanding Natural Landscape;</li> <li>(iii) Outstanding Natural Character Area;</li> <li>(iv) High Natural Character Area</li> </ul> <p>(b) Council's discretion is restricted to the following matters:</p> <ul style="list-style-type: none"> <li>(i) <u>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></li> <li>(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></li> </ul>

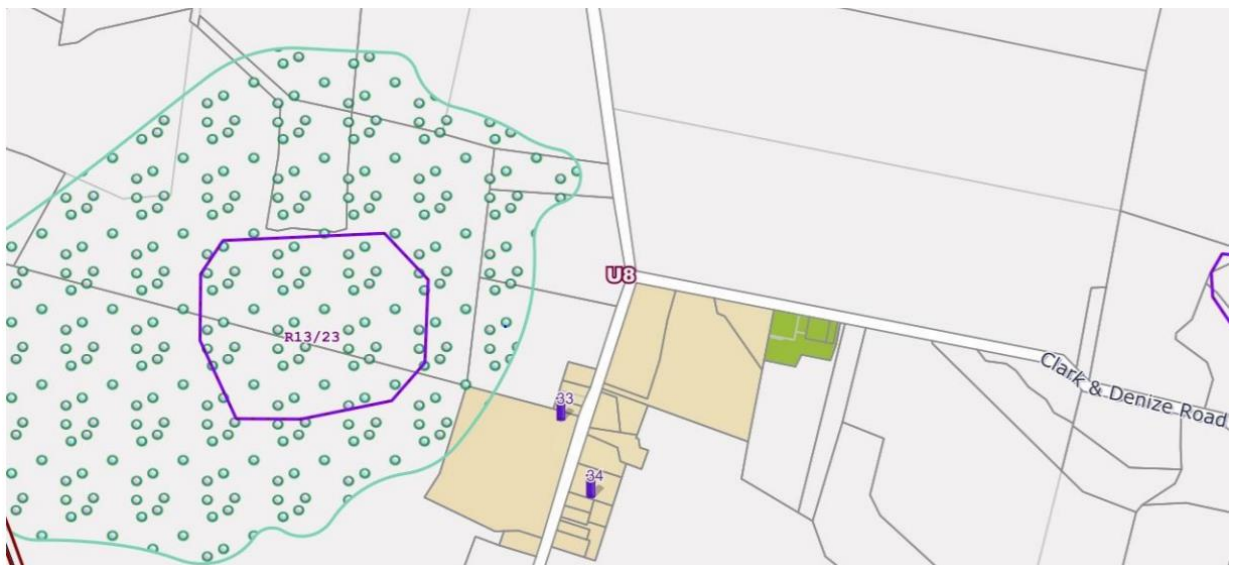
## Geoheritage sites

69. Submission [8] from the Geoscience Society of New Zealand (GSNZ) requests the rollover of these 10 existing ONF geoheritage sites listed in Schedules 5B and 5C of the Franklin Section into the decision version of the PWDP:
1. Daff Road Jurassic Plant Beds
  2. Kaawa Creek – Ngatutura Bay Section
  3. Kellyville Tuff Ring
  4. Onewhero Tuff Ring
  5. Moeweka Quarry Jurassic Fauna
  6. Opuatia Cliff Jurassic Fauna
  7. Port Waikato to Tuakau Bridge Road Jurassic Section
  8. Pukekawa Scoria Cone
  9. Huriwai Beach Jurassic Plant Beds
  10. Waikato River Delta
70. From the above list, the notified PWDP only maps the Waikato River Delta as an ONF. The Onewhero Tuff Ring and Pukekawa Scoria Cone are proposed as SAL. This leaves 7 sites that are not recognised within any landscape area in the PWDP.
71. The GSNZ submission also requests the identification of the following 31 geoheritage sites as ONF in the decision version of the PWDP, the majority of which are not currently recognised in the operative WDP or PWDP:
1. Port Waikato Sandspit
  2. Ngapuriri natural arch and surrounding Waikawau Valley karst
  3. Huriwai-Waikawau coastal section
  4. Waiwiri Beach unconformity and basal Waitemata group
  5. Pukeotahinga Scoria Cone

6. Onewhero Scoria Cone
  7. Kauri Road Scoria Cone
  8. Onepoto Volcanic Cone
  9. Te Kohanga Tuff Ring and Tikorangi Cone
  10. Rasmussen Road Tuff Ring
  11. Waiuku Volcanic Cone
  12. Pokeno Scoria Cone
  13. Serpell Road Tuff Ring
  14. Puketoka Conglomerate
  15. Waikorea Hot Springs
  16. Gibsons Beach Unconformity and Fossil Karst
  17. Taupiri Gorge
  18. Dunphail Bluffs Oligocene Sandstone
  19. Waingaro Springs
  20. Carters Beach Shore Platforms
  21. Raglan Coastal Karst
  22. Te Toro Gorge Lava and Pyroclastic Sequence
  23. Mount Karioi
  24. Papanui Point Volcanics
  25. Bridal Veil Falls Columnar Jointed Basalt
  26. Lake Disappear Blind Valley and Karst
  27. Taranaki Point Karst
  28. Taranaki Point Volcanics
  29. Aotea Dune Field
  30. Helectite Hole Karst (Old Mountain Road Karst)
  31. Nikau Cave and Karst
72. From this second list, there are 5 sites located within ONF/NCA/SAL landscape areas on the PWDP planning maps – these being Te Toro Gorge Lava and Pyroclastic Sequence, Mount Karioi, Papanui Point Volcanics, Bridal Veil Falls Columnar Joint Column and the Aotea Dune Field. My rebuttal evidence recommends that the unmodified portion of the Port Waikato Sandspit be incorporated into the Waikato River Delta ONF. There are 5 sites that appear to be partly located within these identified landscape areas – these being the Waiwiri Beach Unconformity and basal Waitemata group, Gibsons Beach Unconformity and Fossil Karst, Taupiri Gorge, Raglan Coastal Karsts and Taranaki Point Karst. This leaves 20 sites that have not been identified.
73. To assist the panel, Attachment 2 to my rebuttal evidence contains information on all geoheritage sites listed above, including aerial maps, whether they are already identified in the OWDP or PWDP, the zones in which they are located, and the number of affected landowners who did not lodge submissions on this landscape topic. I consider this information helpful in determining the level of prejudice to affected landowners if all 31 sites were to be identified in the decision version of the PWDP. I note that a few of these involve land outside of Council’s jurisdiction – an example being the Carters Beach Shore Platforms.
74. I deal firstly with the 10 existing ONF in the operative Franklin Section. As noted above, the Waikato River Delta is recognised as an ONF and the Onewhero Tuff Ring and Pukekawa Scoria Cone are recognised as SAL in the notified PWDP. This means that the mapping has captured both the landscape and geoscience perspectives. However, the geoheritage values of these 3 sites are not currently recognised in the district plan text. Therefore, following the meeting on

19 October 2020 with Dr Hayward and Ms Ryder, I had recommended in my rebuttal evidence that Dr Hayward's expertise be used to list the geoheritage attributes of these 3 sites in the required ONF and SAL schedules.

75. In drafting this concluding hearing report, I invited Dr Hayward to comment further. He has emphasised that GSNZ remains very concerned with the downgrading of the Pukekawa Scoria Cone, and to a slightly lesser extent, the Onewhero Tuff Ring - from their existing ONF status in the Franklin Section to proposed SAL status in the notified PWDP.
76. This concern of GSNZ is shared by the Auckland Volcanic Cone Society (ACVS) who also attended the hearing and spoke to their submission [FS1012] which states that the Pukekawa Scoria Cone, Onewhero Tuff Ring and Kellyville Tuff Ring are three of the most outstanding volcanoes in the South Auckland Volcanic Field. As already noted, the Kellyville Tuff Ring is not identified as any landscape area in the notified PWDP.
77. In respect to the Pukekawa Scoria Cone, I am acutely aware that, despite its existing ONF status which affords the highest level of protection in terms of section 6 of the RMA, iwi remain very concerned with any development occurring on this prominent feature. The submission from Ngati Tamaoho [567] draws particular attention to the historic gunfighter paa site known as Pukekawa Paa located at its summit and they *"request that the area included in Plan Change 14 Franklin District be removed, so that development is not able to be up the sides of the Hill"*. This is a reference to an area currently identified as a Growth Area within the Village Zone in the operative Franklin Section and which is proposed to remain in the Village Zone in the notified PWDP. The extent of notified SAL, the paa site labelled as R13/23 within it, and the Village Zone (coloured beige) are shown below:



78. I have been involved in numerous discussions with Ngati Tamaoho as an employee of both Franklin District Council and Waikato District Council over the years and have provided policy comments for resource consent applications involving earthworks, subdivision and building development within the Pukekawa Scoria Cone. During the preparation of this concluding hearing report, Ngati Tamaoho contacted me to reiterate their concern with the proposed downgrading of landscape status from ONF to SAL and their opposition to any earthworks and building development that could progress towards the summit.
79. Ms Ryder does not consider that the Pukekawa Scoria Cone or Onewhero Tuff Ring qualify as (landscape) ONF in terms of the evaluation undertaken in the Waikato District Landscape Study,

in addition to the WRPS and amended 'Pigeon Bay criteria'. She considers that these areas are significantly modified to a degree that they do not meet the outstanding threshold. However, Dr Hayward advises that most of the landscape architects that he has liaised with (including Ms Di Lucas who developed the 'Pigeon Bay criteria') say that there is no requirement for these criteria to identify all ONF, nor is there any such directive in Court decisions or other documents, including the WRPS. Instead, Dr Hayward advises that these criteria, or a modification of them should be used for the landscape assessment of ONF/ONL. Dr Hayward's view therefore is that the use of the 'Pigeon Bay criteria' is discretionary and not mandatory.

80. I consider that a solution to this impasse would be for the Rural-zoned portions of the Pukekawa Scoria Cone and the Onewhero Tuff Ring (therefore excluding the Village-zoned portions) to be identified on the planning maps either as 'Significant Geological Sites and Landforms' (to follow an approach taken in the Southland District Plan for example) or 'ONF – geoheritage' (as suggested by Dr Hayward at the hearing), instead of them being identified as SAL. A framework of specific objectives, policies and rules, and a schedule could then apply to these mapped sites.
81. In effect, this alternative approach would provide these important geoheritage features with greater protection than SAL status because any earthworks or building/structure would require resource consent in terms of my recommended rules set out in paragraph 103 of this concluding hearing report. In recommending this approach, I am mindful that this might be wrongly interpreted as dismissing Ms Ryder's consideration that these features should be SAL in terms of her landscape methodology. This is certainly not the intention. I acknowledge Ms Ryder's recommendation for a SAL status, but by identifying them as ONF – geoheritage sites instead, it enables more stringent provisions to apply compared to those for a SAL and also a level of protection that is equivalent to their existing ONF status in the Franklin Section.
82. Dr Hayward considers that calling a site an ONF, rather than something else, does have consequences when dealing with the sites in the coastal environment and given potential changes to the RMA. In my opinion, there would be consequences for the assessment of resource consents even for non-ONF located outside the coastal environment where the NZCPS does not apply. This is because without the use of the word 'outstanding' in the naming of these geoheritage sites, there is a risk that adverse effects on them would not be avoided, remedied or mitigated. This is particularly important in the context of the coastal environment where the avoidance of adverse effects is expected in the first instance. However, I agree that the reference to 'ONF – geoheritage' enables alignment with section 6 of the RMA and the NZCPS and I therefore use this term in my recommended objective, policy, rules and schedule for geoheritage sites.
83. Dr Hayward also wishes this concluding hearing report to note that some ONF in Auckland do not preclude existing residential development. In my view, this could be problematic in that a residential zoning signals an expectation for built development to occur, but it also creates uncertainty for landowners as to what type of development would be acceptable and whether resource consent is likely to be obtained. My preference is to therefore apply geoheritage provisions to rural areas where this conflict does not exist.
84. If SAL were to remain for the Pukekawa Scoria Cone and Onewhero Tuff Ring, the only trigger for resource consent would be if a building within them were to exceed a height of 7.5 metres. Buildings would otherwise be permitted. This outcome would not be acceptable to GSNZ, AVCS or Ngati Tamaoho.
85. I have also noted what appears to be an inadvertent omission in notified Rule 22.2.3.4 which manages earthworks in SAL. This rule applies to SAL in 'Hill Country', the 'Waikato River and

Lakes' and 'sand dune', but there is no reference to other notified SAL which include the Pukekawa Scoria Cone and the Onewhero Tuff Ring. Without a rule to manage any scale of earthworks within these important geoheritage sites, it is my opinion that this could potentially result in drastic adverse effects. This could be the risk even if the standard thresholds for a rural property were to apply (i.e. 2000m<sup>2</sup> and 1000m<sup>3</sup>). I consider that my recommended earthworks rule in paragraph 103 easily rectifies this issue.

86. For the 7 remaining ONF in the operative Franklin Section, it is my opinion that there is only a remote likelihood of any earthworks or development occurring on 6 of these within the life of the new district plan due to their location and/or geotechnical constraints. Furthermore, the likelihood of these sites being disturbed is reduced by the fact that each of these sites is contained in only one or two properties which have established farm accesses and buildings elsewhere. I therefore conclude that these landowners would not be prejudiced if these 6 sites were to be recognised in the PWDP solely for their geoheritage values, and for rules to apply that protect them. This approach would be no different to how they are currently protected as ONF in the operative Franklin Section. The remaining site is the Kellyville Tuff Ring which I consider to be an exception to this approach for reasons which I will discuss shortly.
87. For the reasons give above, I recommend that the following 8 geoheritage sites be identified as 'ONF – geoheritage' in the decision version of the PWDP, and not as (landscape) ONF:
1. Daff Road Jurassic Plant Beds
  2. Kaawa Creek – Ngatutura Bay Section
  3. Moeweka Quarry Jurassic Fauna
  4. Opuatia Cliff Jurassic Fauna
  5. Port Waikato to Tuakau Bridge Road Jurassic Section
  6. Huriwai Beach Jurassic Plant Beds
  7. Pukekawa Scoria Cone
  8. Onewhero Tuff Ring
88. There is one caveat on this recommendation in respect to the Port Waikato to Tuakau Bridge Road Jurassic Section. This is because Dr Hayward's latest advice is that this site has deteriorated since it was made an ONF in the operative Franklin Section. Therefore, this site requires further investigation to ascertain whether it should be identified in the PWDP. Subject to this investigation confirming ONF (geoheritage) status for this site, I propose that these 8 sites be identified on the planning maps as ONF – geoheritage, using shape file data from GSNZ and that their attributes be set out in a new schedule.
89. I now turn back to the Kellyville Tuff Ring to discuss why a different process should be applied to this feature. As illustrated on Page 3 in Attachment 2 to my rebuttal evidence, this feature incorporates Village, Rural and Reserve Zones where existing development has already compromised its geoheritage values to some extent. In my opinion, a modest level of future development should be expected on the 68 affected properties within the life of the new district plan, particularly within the Village Zone, which provides for more intensive built development than the Rural Zone. Given this situation, Dr Hayward's latest view is that it may be more appropriate to downgrade the landscape status of the Kellyville Tuff Ring from ONF to SAL.
90. If the Kellyville Tuff Ring were to be rolled over as an ONF into the PWDP, this could have the inadvertent effect of 'freezing' development that is expected within a substantial land area, particularly in the Village Zone. My preference is to therefore investigate whether the spatial mapping of this feature on district planning maps should be refined to exclude areas that are already developed or where more intensive built development is expected in the Village Zone.

91. This investigation could then be followed by the development of a nuanced set of provisions, separate from those for a (landscape) ONF, so that development is managed in a way that protects the geoh heritage values of the Kellyville Tuff Ring that still remain. I consider that this would provide a more satisfactory outcome for protecting this feature's geoh heritage values compared to applying a SAL. As noted earlier, this is because the notified SAL provisions only require resource consent for any building that exceed a height of 7.5 metres. Furthermore, Ms Ryder does not support the Kellyville Tuff Ring having any landscape status.
92. As discussed in my rebuttal evidence, I remain of the opinion that the most appropriate process to develop specific geoh heritage provisions for the Kellyville Tuff Ring (and other geoh heritage sites) is through a variation or plan change that includes focused landowner engagement.
93. Turning next to the group of 31 sites listed in the GSNZ submission, I have noted that 11 of these are either wholly or partly located within identified landscape areas. Therefore, where this overlap occurs, the geoh heritage attributes of these sites can be added into the required schedules for ONF/ONL/NCA/SAL.
94. Of the remaining 20 sites that are not located within any identified landscape area, I consider that 19 of them would have little prospect of being developed due to their location and geotechnical constraints. Therefore, while I support their recognition in the district plan, there may not be an urgent need to do so.
95. The Taupiri Gorge is an exception to this development potential. As shown on Page 27 of Attachment 2 to my rebuttal evidence, the Taupiri Gorge comprises a substantial land area which is in the ownership of more than 150 private landowners. It includes a portion of the Waikato River, the urupaa on Maunga Taupiri, state highway, the main trunk railway, and a mixture of Rural, Countryside Living and Residential Zones. Similar to the Kellyville Tuff Ring, existing development within the Taupiri Gorge has already compromised its geoh heritage values to some extent and future development should be expected.
96. Like the Kellyville Tuff Ring, I had earlier considered that the Taupiri Gorge should also be a candidate for further investigation to determine whether it should be identified in the district plan at all and, if so, whether certain areas should be excluded before progressing to its identification on planning maps as an ONF - geoh heritage, and the development of a nuanced set of provisions via a variation or plan change with focused engagement from all affected landowners.
97. However, Dr Hayward's latest advice is that GSNZ is prepared to withdraw the Taupiri Gorge from further investigation because of the extent of ONF (Taupiri Range) in the notified PWDP. I note here my recommendation to assign ONF status to the water body that is the Waikato River which is discussed in the next section of this reply. If the panel is to accept that recommendation, this would result in an increase of ONF within the Taupiri Gorge feature.
98. Dr Hayward has also noted that from more recent investigations, a few of the 31 listed sites may not warrant ONF – geoh heritage status. I consider that this is even more reason to defer consideration of these sites to a separate statutory process involving either a variation or a plan change.
99. As raised earlier in my section 42A hearing report and rebuttal evidence, a variation or plan change in terms of Schedule 1 of the RMA would overcome the risk of prejudice to affected landowners. This is because either process would provide them with an opportunity to submit to, and work alongside, Council in developing a nuanced set of provisions to manage each site. Either process would involve the identification of these sites on planning maps, their addition to the schedule of significant geological sites and landforms, and a potential replication of the new



rules that I have recommended in this concluding report for the Rural Zone in other zone chapters. I consider that the recommended new objective and policy in Chapter 3 would already provide the necessary framework for the addition of new chapter rules at a later date.

100. At the hearing, the panel made it clear that they do not have the mandate to order Council to initiate a variation, but they could recommend that course of action in their decision.
101. I have since discussed this potential process for a variation to the PWDP with Council's managers. They concur that despite there being only a very small risk of the most geoheritage sites listed in GSNZ's submission being adversely affected by future earthworks and development, there would still be value in identifying them on planning maps and applying the same provisions that I recommend for the 8 sites to be carried over from the Franklin Section.
102. If there is to be any variation to the PWDP for other topics prior to the PWDP becoming operative, this would provide an ideal opportunity to 'piggy-back' on that statutory process so that the potential mapping of other geoheritage sites can occur in the most cost-effective and efficient way.

### Recommended provisions for ONF – geoheritage

103. I recommend the introduction of the following new objective and policy into Chapter 3 (Natural Environment) and three new rules in Chapter 22 (Rural Zone) to manage earthworks and built development that could occur within the 8 nominated sites.

#### Chapter 3: Natural Environment

##### 3.6 Outstanding Natural Features - Geoheritage

##### Objective 3.6.1 Protect Outstanding Features - Geoheritage

Protect any Outstanding Natural Feature (geoheritage) identified on the planning maps from inappropriate subdivision, use and development.

##### Policy 3.6.2 Manage adverse effects on Outstanding Natural Features - Geoheritage

Manage adverse effects from activities that have the potential to compromise the attributes of any identified Outstanding Natural Feature (geoheritage) listed in Schedule 30.X.

#### Chapter 22: Rural Zone

##### Rule 22.2.3.5 Earthworks within identified Outstanding Natural Features - Geoheritage

<u>PI</u>	<u>(a) Earthworks for the maintenance of existing tracks, fences and drains within any identified Outstanding Natural Feature (geoheritage) listed in Schedule 30.X.</u>
<u>RDI</u>	<u>(a) Earthworks associated with subdivision, use and development within any identified Outstanding Natural Feature (geoheritage) listed in Schedule 30.X.</u> <u>(b) Council's discretion is restricted to the following matters:</u> <ul style="list-style-type: none"> <li><u>(i) the extent to which the identified Outstanding Natural Feature (geoheritage) may have already been compromised by existing development</u></li> <li><u>(ii) the extent to which potential damage or destruction of the identified Outstanding Natural Feature (geoheritage) can be avoided, remedied or mitigated.</u></li> </ul>

**Rule 22.2.3.4 Buildings and structures within an identified Outstanding Natural Feature (geoheritage)**

<u>RDI</u>	<p>(a) <u>Any building or structure located within an Outstanding Natural Feature (geoheritage) identified on the planning maps.</u></p> <p>(b) <u>Council's discretion is restricted to the following matters:</u></p> <p style="padding-left: 20px;">(i) <u>the extent to which the Outstanding Natural Feature (geoheritage) may be already been compromised by existing built development</u></p> <p style="padding-left: 20px;">(ii) <u>the extent to which adverse amenity and visual effects from built development on the Outstanding Natural Feature (geoheritage) can be avoided, remedied or mitigated.</u></p>
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**Rule 22.4.X Subdivision of land containing an Outstanding Natural Feature (geoheritage)**

<u>RDI</u>	<p>(a) <u>Subdivision of land containing an Outstanding Natural Feature (geoheritage) identified on the planning maps</u></p> <p>(b) <u>Council's discretion is restricted to the following matter:</u></p> <p style="padding-left: 20px;">(i) <u>the extent to which the new lot boundaries are likely to result in development that may damage or destroy the Outstanding Natural Feature (geoheritage).</u></p>
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**Section 32AA Evaluation**

104. In my opinion, the new objective provides clarity as to the outcome that is expected if there were a proposal to carry out physical works within the 8 nominated (ONF) geoheritage sites that need to be identified on the planning maps.
105. The new policy is the most appropriate way of achieving this objective as it makes clear the requirement to manage adverse effects on these sites. The identification of each geoheritage site on planning maps and the introduction of a new schedule are effective methods to achieve the objective as it would provide certainty to would-be applicants for resource consents as to the extent of the feature and what attributes need to be protected. In turn, this has benefits for the effective and efficient processing of resource consent applications.
106. Because of their location and geotechnical constraints, I consider that there is very little risk of most of these 8 nominated geoheritage sites being adversely affected from earthworks and/or building, despite my support for new rules that manage them. However, the identification of these sites on maps is a valuable way of educating affected landowners and the wider public about the district's geoheritage. While some of these have not been recognised by Council's landscape experts as ONF, their outstanding value in terms of geoheritage is equally important.
107. Overall, I conclude that these provisions satisfy the mandatory obligation in section 6 of the RMA to protect outstanding natural features from inappropriate subdivision, use and development and therefore achieve the purpose of the RMA to sustainably manage the district's natural resources.

**Mapping and schedule for ONF (geoheritage)**

108. I have discussed with Dr Hayward a timeframe for the development of a schedule for the recommended ONF (geoheritage) and their delineation in the decision version of the planning maps using shape files from NZGS. As discussed, the Port Waikato to Tuakau Bridge Road

Jurassic Section requires further investigation by NZGS to determine whether it currently qualifies as an ONF (geoheritage).

109. Given Dr Hayward's upcoming work commitments, I propose that this mapping information and new schedule be provided for the hearings panel's consideration by Friday 26 February 2021.

### **Landscape status for the Waikato River**

110. Since receipt of the Waikato-Tainui submission [286] in 2018, there have been progressive variations in the relief sought. To assist the panel, I discuss this varied relief below and then confirm Waikato-Tainui's position as at the date of filing this concluding hearing report.

### **Variations in Relief Sought**

#### **(a) Waikato-Tainui submission**

Requests that both an ONF and ONL status applies to the whole of the Waikato River within the district.

#### **(b) Waikato-Tainui Evidence**

The request for an ONF/ONL status remains on the table, but alternative approaches offered involving a Cultural Landscape Overlay or a Maori Area of Significance that would apply to the main river body and river margins extending 32 metres landward of the river banks. No details provided at this stage for a framework of objectives, policies and rules.

#### **(c) Waikato-Tainui's Draft Provisions**

On 23 October 2020, Council received Waikato-Tainui's draft framework of objectives, policies and rules applying to the main river body and river margins extending 37 metres landward of the river banks. This framework was in support of a Cultural Landscape Overlay.

Following the hearing, Waikato-Tainui explained that the 37 metre measurement reflects the required 25 metre wide esplanade reserve adjoining the Waikato River plus the 12 metre building setback for the Rural Zone.

#### **(d) Matters discussed during the course of the hearing**

Waikato-Tainui spoke to their submission [286] in the Council Chambers on 29 October 2020. This was followed by a Zoom video hearing on 2 November 2020 involving presentation of the submission from the Turangawaewae Marae Trust Board.

Both submitters initially outlined their support for the two alternative approaches involving a Cultural Landscape Overlay or a Maori Area of Significance. Following questions from the hearing panel, Waikato-Tainui reverted back to discuss their preference for ONF/ONL status for the whole of the Waikato River within the district as stated in their submission. In effect, this would result in the current outstanding status in the operative WDP being rolled over into the PWDP.

111. My rebuttal evidence highlighted a concern that Waikato-Tainui's requested rule framework for a Cultural Landscape Overlay would be more restrictive and extensive than the rule framework for the notified ONF/ONL overlays, therefore resulting in potential prejudice to landowners.

This is because no original submission requested provisions for a river margin area having a width of either 32 or 37 metres and the notified ONL/ONF overlays do not include any buffer area.

112. To assist the panel, my opening statement at the hearing included the table shown below. This table outlines the rules applying to an ONF/ONL in the Rural Zone, which is the zone that applies to the Waikato River and the islands within it, and the rules that would apply to the Cultural Landscape Overlay as proposed by Waikato-Tainui.

**Table showing comparison of provisions between ONF/ONL and Cultural Landscape Overlay**

<b>Notified ONF/ONL provisions</b>	<b>Proposed Cultural Landscape Overlay submitted by Mr Donald</b>
<b>Rural Zone applies to the Waikato River water body and the islands within it.</b>	<b>Includes the Waikato River water body, the islands within it and 37 metre wide river margins.</b>  <b>Note this overlay affects all nine zones – Rural, Country Living, Business, Business Town Centre, Residential, Village, Industrial, Heavy Industrial, Reserve Zones.</b>
Rule 22.1.2 Permitted Activity P7 Farming	Farming is permitted in all nine zones affected by overlay
Rule 22.1.5 Discretionary Activity D15 Afforestation	Non-commercial and recreational activities on surface of water, navigational aids and safety structures on surface of the water = permitted activities
Rule 22.2.3.4 Earthworks for maintenance of existing tracks, fences or drains is permitted subject to conditions, otherwise default to DA	Customary activities, cultural events, conservation activities, emergency services training and management activities, and temporary events = permitted activities
Rule 22.3.1 Any dwelling = DA	Commercial activity on surface of water = RDA
Rule 23.3.3 Buildings and structures = DA	Any activity that does not comply with activity-specific condition of a PA/RDA or any activity not listed as a PA/RDA = DA
Rule 22.4.5 Subdivision = DA	Subdivision = DA

113. This table indicates that there would be little change in development restrictions if the Cultural Landscape Overlay were to just apply to the water body and the islands within it. I also do not expect the number and scale of any future built developments within the river to be significant.

However, I explained that the critical difference is in respect to the spatial extent of the proposed Cultural Landscape Overlay, because it includes the water body plus 37 metres beyond the banks of the river, thereby capturing land located in all nine zones. This has the effect of triggering resource consents for the construction of any building on the land area within this overlay. This could include a new dwelling that is located on a relatively small site in an urban zone, or a farm building on a property in the Rural Zone.

114. I also explained that this overlay would potentially affect more than 1000 landowners, the clear majority of whom have not further submitted. In my view, the submission from Waikato-Tainui does not clearly signal to these landowners that development of their land within 37 metres of the river would be subject to these provisions, thus raising a potential jurisdiction issue. By contrast, Ms Ryder advised that any ONF/ONL status for the Waikato River would not consequently result in the river margins being included with a uniform width. Rather, the extent of the ONF/ONL would be defined by the attributes of the natural feature.
115. Before adjourning the hearing on 2 November 2020, the panel requested that staff work further with Waikato-Tainui to determine whether their provisions were workable, and whether they could or could not be advanced without running into difficulties with jurisdiction.

**(e) Meeting and email correspondence with Waikato-Tainui**

116. On 12 November 2020, I arranged a meeting with Waikato-Tainui's technical advisors (Mr Gavin Donald and Mr Giles Boundy from GMD Consultants) at Tompkins Wake's Hamilton office to discuss a potential way forward with respect to Waikato-Tainui's submission and evidence. Council's legal counsel, Ms Bridget Parham, was also in attendance.
117. At our meeting, we agreed to investigate the application of a 37 metre buffer measured from the water's edge (rather than the crest of the river bank), and provide a breakdown of the number of affected titles in each zone. We also discussed a potential process involving limited notification of Waikato-Tainui's proposed provisions to affected landowners.
118. On 26 November 2020, I emailed Messrs Donald and Boundy, and Ms Maia Wikaira as follows:

*Boffa Miskell's GIS staff provided this link:*

<https://www.arcgis.com/home/webmap/viewer.html?webmap=c1c570f82de84a01a95ac96d1395e76d&extent=173.8181,-38.15,176.4062,-36.8669>

*The mapping of the Waikato River in this link (coloured purple) is based on NZTOPO50 topographical data created and maintained by LINZ. This data set is generally more accurate than the 'hydro parcels' layer which is a subset of cadastral data and also maintained by LINZ. However, it is important to note that neither data set accurately depicts the water edge. As can be seen from the underlying aerial, this means that considerable portions of the 'actual' Waikato River fall outside the purple area. It also means that there are various instances where the 37 metre 'buffer' falls wholly or partly within the water body itself, rather than on the land margin, so the 'buffer' sometimes ceases to exist.*

*Without ground-truthing the entire length of the river, it is difficult to accurately determine the water's edge, and even if that were to occur, the water edge would vary depending on rainfall events and therefore the quantity and flow of water. In my view, applying a 37 metre buffer from the mapped water's edge would not fully capture Waikato-Tainui's request to create margins with a uniform width along the whole river. Even if the adjoining urban zones were disregarded (as suggested by you at the meeting), the width of land located in the buffer that affects Rural titles would vary.*

*Further to these mapping anomalies, I remain unclear as to the rationale for disregarding urban zones from any application of the 37 metre buffer. This would appear to be inconsistent with Waikato-Tainui's*

submission and evidence that call for a 'whole of river' approach. If the concern is that some developments have the potential to conflict with the Vision and Strategy, then most of this potential would exist in urban zones where intensification of development is expected. I am also unclear as to why new provisions for the requested Cultural Overlay (if that is now the approach to be pursued) are being requested when any resource consent application for land within the Waikato River catchment must be assessed in terms of the V&S – this would include buildings that locate inside the relevant setback for the zone, and any subdivision proposal. It would be helpful if you could explain how the PWDP is deficient in this regard.

Turning now to the number and zoning of titles affected by the requested 37 metre buffer, Council's GIS staff have provided this breakdown based on the NZTOPO50 data set:

Business = 26  
 Business Town Centre = 49  
 Heavy Industrial = 9  
 Industrial = 2  
 Village = 32  
 Country Living = 132  
 Reserve = 113  
 Rural = 357  
**Grand Total = 740 affected titles**

As illustrated by the NZTOPO50 map, the 37 metre buffer falls both within and outside of the notified SAL. In some cases, the 37 metre buffer applies where no landscape area is identified. This means that there are instances where your proposed provisions would not have been reasonably contemplated by landowners, thus raising a jurisdiction issue.

We therefore discussed at our meeting a potential process whereby affected persons would be given an opportunity to submit on the relief now advanced by Waikato-Tainui. These provisions will need further work, but my right of reply will need to confirm what approach is now being pursued by Waikato-Tainui ie: an ONF/ONL status for the water body versus a Cultural Overlay for the water body plus the 37 metre margins. If the Cultural Overlay approach is to be pursued, we need you to confirm a timeframe for when you can provide the provisions that are to sit within a new chapter so that I can advise the hearings panel accordingly.

I would be grateful for a speedy response on all of this, given the hearing panel's request for my right of reply to be filed on Monday 30 November.

#### **(f) Current position of Waikato-Tainui**

119. On 30 November 2020, Mr Boundy confirmed that Waikato-Tainui would no longer pursue their suggested Cultural Landscape Overlay or Maaori Area of Significance and that they seek the following relief instead:
- (a) ONL status for the whole water body being the main stem of the Waikato River (including the islands within it)
  - (b) No change to the notified SAL status for the river margins
  - (c) An additional matter of discretion in the zone rules relating to building setbacks from the Waikato River which refers to this river's cultural values.

#### **Response to current position of Waikato-Tainui**

120. I respond to the current relief now sought by Waikato-Tainui in the order shown above.

**(a) Request for ONL Status**

121. Waikato Tainui's request for an ONL status to apply to the Waikato River water body, upstream of the Waikato River Delta, is consistent with their submission. In terms of administering the district plan, there is no material difference between an ONF and ONL because both categories reflect outstanding naturalness and the provisions that apply to them are exactly the same.
122. Attachment 3 contains the email from Mr Donald (dated 18 December 2020) and Attachment 4 contains his memorandum (dated 22 December 2020) which confirm Waikato-Tainui's acceptance of an ONF for the Waikato River waterbody, but their overall preference for an ONL. In this regard, I note that no evidence was produced by Waikato-Tainui, or any other submitter, during the course of the hearing to support an ONF status, or their preferred ONL status. Ms Ryder's support of an ONF only arose after the hearing, with her latest technical response on 9 December 2020 (Attachment 1), and this is only for the waterbody, and not any area outside of that.
123. As explained by Ms Ryder in her latest technical response, it is more appropriate to assign an ONF status, rather than an ONL, because the water body remains the cohesive biophysical element within a connected landscape. This approach is consistent with the methodology used in the Waikato District Landscape Study.
124. Ms Ryder also explains that her earlier study had taken a compartmentalised approach to the Waikato River because the conditions of the river margins vary. However, Ms Ryder states that, despite its varying biophysical conditions, the water body on its own retains high sensory values which increase in parts of the river, and this includes the islands within it. Therefore, Ms Ryder's overall conclusion (in Section 2.3 of Attachment 1) is that '*...there are suitably high value factors attributed to the waterbody of the Waikato River to identify it as an ONF, whilst addressing the margins in a manner that responds to the changing characteristics along the length of the River (in the Waikato District)*'.
125. The notified version of the PWDP identifies the Waikato River Delta as an ONF. My section 42A recommendation is for the unmodified portion of the sandspit to be added to this ONF. If the hearings panel supports Ms Ryder's latest view, this will result in the entire water body of the Waikato River within the district, and the islands within it, being identified as an ONF. As discussed in my opening statement, I do not expect the number and scale of any future built developments within the river to be significant. Nevertheless, an ONF status is hugely symbolic for how Waikato-Tainui considers the Waikato River in its entirety.

**(b) Request to retain notified SAL along river margins**

124. Waikato-Tainui's current position is to support the notified SAL that applies to most (but not all) of the river margins, although I have recommended some amendments to reduce the extent of SAL for some private properties as a result of submissions and ground-truthing by Boffa Miskell.
125. As a result of recommending ONF for the water body of the Waikato River, there will need to be some minor adjustments to how the SAL for the river margins appears in the decision version of the planning maps. The maps will therefore show a direct interface between ONF and SAL.
126. These minor map amendments will not result in any increase of SAL over private properties. As noted earlier, I have recommended that the extent of SAL on some properties be reduced as a

result of submissions and further investigations by Ms Ryder. Waikato-Tainui has not raised any objection in respect to these SAL amendments.

**(c) Request for amended building setback rules**

127. Instead of pursuing a Cultural Landscape Overlay for the water body and 37 metre wide margins, Waikato-Tainui now request an additional matter of discretion in the zone rules relating to building setbacks from the Waikato River which refers to this river's cultural values.
128. While this was not specifically requested in their submission, I do not see any difficulty with this request. This is because there is already a mandatory requirement for any resource consent involving land within the Waikato River catchment to consider the Vision and Strategy and this includes the following objectives (c), (e), (j) and (l) and strategy (f), with my emphasis in bold, that explicitly refer to Waikato-Tainui's cultural relationship with this river.

**Objectives**

- (b) *the restoration and protection of the relationship with Waikato-Tainui with the Waikato River, including their economic, social, **cultural** and spiritual relationship*
- (c) *the restoration and protection of the relationships of Waikato River iwi according to their tikanga and kawa with the Waikato River, including their economic, social, **cultural** and spiritual relationships*
- (e) *the integrated, holistic and coordinated approach to management of the natural, physical, **cultural**, and historic resource of the Waikato River*
- ...
- (j) *the recognition that the strategic importance of the Waikato River to New Zealand's social, **cultural**, environmental, and economic wellbeing requires the restoration and protection of the health and wellbeing of the Waikato River*
- ...
- (l) *the promotion of improved access to the Waikato River to better enable sporting, recreational and **cultural** opportunities*

**Strategy**

- (f) *recognise and protect waahi tapu and sites of significance to Waikato-Tainui and other Waikato River iwi (where they do decide) to promote their **cultural**, spiritual, and historic relationship with the Waikato River*
129. Paragraph 168 of my rebuttal evidence set out various objectives and policies in the PWDP which I consider give effect to the Vision and Strategy. Policy 2.16.2, shown below, is particularly relevant when considering cultural values of the Waikato River:

**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).*
130. The Vision and Strategy, along with the framework of PWDP objectives and policies, therefore requires would-be resource consent applicants to address the cultural values of the Waikato River if any building were proposed to be located within the required setback from the river bank. This setback varies depending on the zone. However, by adding a reference to the cultural values of the Waikato River in the default rules for all zones that adjoin the river, this requirement is made more explicit and therefore provides more certainty for plan users.



131. The notified version of Policy 3.3.2 only refers to the Waikato River delta and wetlands which are identified as ONF. If the hearings panel accepts an ONF status for the Waikato River waterbody, I recommend minor amendments to clause (a) and (b) in Policy 3.3.2 so that there is explicit reference to this feature. This is a foreseeable consequence of assigning an ONF status to aspects of the river and therefore within scope.
132. The notified version of the PWDP indicates a default to a discretionary activity in all zones for any building that does not comply with the required setback from waterbodies. Because I consider this default to be unreasonable and onerous, my concluding hearing report for Hearing 7 for the General Industrial Zone and Heavy Industrial Zone recommends a default to a restricted discretionary activity instead. This is because the matters relevant to the rule breach should be limited rather than expansive. A restricted discretionary activity provides greater certainty for applicants and Council staff as to what detail needs to be provided and assessed. I therefore recommend a restricted discretionary activity default rule for all zones for consistency.
133. I note the Vision and Strategy also applies to the Waipa River. The Waikato District Landscape Study did not identify the Waipa River as an ONF and no submissions were received on the PWDP requesting this landscape status. However, Policy 2.16.3 specifically refers to the cultural significance of the Waikato River and Waipa River. For consistency, I recommend that the default rule refers to the cultural values of both rivers.

### **Section 42A Recommendations**

134. Paragraph 510 (pages 156-157) of my s42A hearing report sets out my recommendations for submissions on the Waikato River topic to be accepted in part or rejected. These recommendations remain unchanged as a result of this concluding hearing report.

### **Section 32AA Evaluation**

135. In my opinion, it is appropriate to further amend the earthworks rules for identified landscape areas shown in my section 42A hearing report by adding the words 'per site' to the area and volume thresholds. This makes the rules clear and certain for district plan users and resource consent processes. Without this reference, there is some risk that the rules would be interpreted so that the thresholds are calculated on the whole of the identified landscape area, which is not the intention of the rules.
136. In my opinion, my proposed amendments to Policy 3.3.2 set out below are the most appropriate way to achieve Objective 3.3.1 because it makes clear that the whole Waikato River waterbody within the district, including the delta and all islands within it, is an ONF.
137. Identifying this ONF on the planning maps and describing its attributes in an ONF schedule, provides clarity and certainty for would-be resource consent applicants and Council as to what matters need to be addressed in order to ascertain whether any subdivision, use and development within this ONF would be inappropriate. In turn, this identification enables the effective and efficient processing of resource consent applications.
138. My recommended amendments to the default rule for building setbacks from the Waikato River (and Waipa River) are considered to be the most appropriate ways of implementing Policies 3.3.2 and 2.16.2. This is because they make explicit the requirement to consider whether the location of any building within the setbacks would maintain cultural values associated with the Waikato River and Waipa River. While the Vision and Strategy make this assessment mandatory, these references in the rules provide clarity and certainty. It is also my opinion that a default to a restricted discretionary activity is more appropriate than a discretionary activity. This is

because it provides greater certainty as to what matters need to be addressed and therefore a more effective and efficient resource consent process.

139. I consider that there is very little prospect of subdividing or developing any part of the Waikato River ONF because it comprises water and islands with geotechnical constraints. Hence it is my opinion that there would be negligible risk of inappropriate subdivision and development occurring in this location if this ONF were not mapped and if ONF provisions did not apply. Nevertheless, the application of ONF provisions to the Waikato River waterbody enables management of this minor risk. Most important for Waikato-Tainui, the mapping of the entire Waikato River waterbody within the district as an ONF is hugely symbolic to them as they regard the Waikato River as taonga which requires a 'whole of river' approach.
140. Overall, I conclude that the mapping of the Waikato River waterbody, including the delta and islands within it, as an ONF, together with an ONF schedule, and the recommended framework of objectives, policies and rules are the most appropriate way to satisfy the mandatory obligation in section 6 of the RMA to protect outstanding natural features from inappropriate subdivision, use and development and therefore achieve the purpose of the RMA to sustainably manage the district's natural resources.

### **Recommended amendments to Policy 3.3.2 if ONF is to apply to the Waikato River waterbody**

#### **3.3.2 Policy – Recognising ~~values and qualities~~ attributes**

- (a) Recognise the attributes of the district's rivers, mountains, bush clad ranges and hill country identified as Outstanding Natural Features and Outstanding Natural Landscapes ~~including that are listed in Schedule 30.X and Schedule 30.X.~~
- ~~(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;~~
  - ~~(i) — existing pastoral farming activities on the margins of these areas.~~
- (b) Recognise the attributes of the Waikato River's waterbody, delta and wetlands; Whangamarino Wetland, and Lake Whangape identified as Outstanding Natural Features, ~~including that are listed in Schedule 30.X.~~
- ~~(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 ~~an~~ Outstanding ~~n~~Natural ~~f~~Features, ~~including that are listed in Schedule 30.X.~~
- ~~(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.~~

## Chapter 23 Country Living Zone

**23.3.7.5 Building setback – waterbodies**

PI	<p>(a) Any building must be set back a minimum of:</p> <ul style="list-style-type: none"> <li>(i) 23m from the margin of any; <ul style="list-style-type: none"> <li>A. lake; and</li> <li>B. wetland;</li> </ul> </li> <li>(ii) 23m from the bank of any river (other than the Waikato River and Waipa River);</li> <li>(iii) 37m from the banks of the Waikato River and the Waipa River; and</li> <li>(iv) 27.5m from mean high water springs.</li> </ul> <p>(b) PI does not apply to a public amenity of up to 25m<sup>2</sup>, or a pump shed.</p>
<del>DI</del>	<del>Any building that does not comply with Rule 23.3.7.5 PI.</del>
RDI	<p>(a) Any building that does not comply with Rule 23.3.7.5 PI.</p> <p>(b) Council's discretion is restricted to the following matters:</p> <ul style="list-style-type: none"> <li>(i) the extent to which the natural character values of the water body or wetland are maintained.</li> <li>(ii) the extent to which the cultural values of the Waikato River and Waipa River are maintained.</li> </ul>

## Chapter 24 Village Zone

**24.3.6.3 Building setback – water bodies**

PI	<p>(a) A building must be set back a minimum of 30 from:</p> <ul style="list-style-type: none"> <li>(i) the margin of any: <ul style="list-style-type: none"> <li>A. Lake;</li> <li>B. Wetland; and</li> <li>C. River bank, other than the Waikato River and Waipa River.</li> </ul> </li> </ul>
P2	A building must be set back at least 50m from a bank of the Waikato River and Waipa River.
P3	A building must be set back a minimum of 10m from the bank of a perennial or intermittent stream.
P4	A public amenity of up to 25m <sup>2</sup> , or a pump shed within any building setback identified in Rule 24.3.6.3 PI, P2 or P3.
<del>DI</del>	<del>A building that does not comply with Rules 24.3.6.3 PI, P2, P3 or P4.</del>
RDI	<p>(a) A building that does not comply with Rules 24.3.6.3 PI, P2, P3 or P4.</p> <p>(b) Council's discretion is restricted to the following matters:</p> <ul style="list-style-type: none"> <li>(i) the extent to which the natural character values of the water body or wetland are maintained.</li> <li>(ii) the extent to which the cultural values of the Waikato River and Waipa River are maintained.</li> </ul>

## Chapter 25 Reserves Zone

**25.3.5.2 Building setbacks – Waterbodies**

PI	<p>(a) Any <b>building</b> must be set back a minimum of 32m from:</p> <ul style="list-style-type: none"> <li>(i) The margin of any lake with a <b>bed</b> area of 8ha or more;</li> <li>(ii) The <b>bank</b> of any river where the river <b>bed</b> has an average width of 3m or more;</li> <li>(iii) Any <b>wetland</b> with an area greater than 1ha.</li> </ul> <p>(b) Any building must be set back a minimum of 37m from the <b>banks</b> of the Waikato River and the Waipa River.</p> <p>(c) Any <b>building</b> must be set back a minimum of:</p> <ul style="list-style-type: none"> <li>(i) 32m from <b>mean high water springs</b></li> </ul> <p>(d) Conditions (a), (b) and (c) do not apply to any:</p> <ul style="list-style-type: none"> <li>(i) public walkway, cycleway, or bridleway;</li> <li>(ii) boat launching facility;</li> <li>(iii) pump shed up to 25m<sup>2</sup>;</li> <li>(iv) <b>public amenity</b> up to 25m<sup>2</sup>.</li> </ul>
<del>DI</del>	<del>Any building that does not comply Rule 25.3.5.2 PI.</del>
RDI	<p><del>(a) Any building that does not comply Rule 25.3.5.2 PI.</del></p> <p><del>(b) Council's discretion is restricted to the following matters:</del></p> <ul style="list-style-type: none"> <li><del>(i) the extent to which the natural character values of the water body or wetland are maintained.</del></li> <li><del>(ii) the extent to which the cultural values of the Waikato River and Waipa River are maintained.</del></li> </ul>

**Recommended amendments to planning maps**

- (a) Apply an ONF overlay to the whole water body (main stem) of the Waikato River, located upstream of the Waikato River Delta ONF, and including all islands within it.
- (b) Apply this ONF overlay so that there is a direct interface with the SAL overlay along the Waikato River margins.

**Recommended ONF schedule**

- (a) Add the Water River waterbody and its attributes to the required ONF schedule.

**Provision of ONF/ONL/NCA/SAL Schedules to hearings panel**

Development of the ONF/ONL/NCA/SAL schedules require expert input from Council's landscape expert, and Dr Hayward for the schedule that lists ONF – geoh heritage.

I propose that all schedules be provided for the hearing panel's consideration no later than Friday 26 February 2021.

**Conclusion**

This concludes my hearing report. I wish the hearings panel all the best for the festive season and am happy to assist with any further queries they may have when they deliberate on this landscape topic in the New Year.

Jane Macartney  
23 December 2020