# BRIEF OF SUPPLEMENTARY EVIDENCE OF ANDREW CAMERON MACLENNAN

## NFL – NATURAL FEATURES AND LANDSCAPES

**Qualifications and Experience**

1       My qualifications and experience are set out in paragraphs 9 to 11 of my section 42A report titled *Chapter 14: NFL – Natural features and landscapes* and dated 4 May 2022.

**Code of Conduct**

2       I have read and agree to comply with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2014. I have complied with the code in preparing my evidence. Other than where I state that I am relying on the advice of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

**Scope of Evidence**

3       This supplementary statement of evidence updates the recommendations I made in my section 42A report titled Chapter 14: NFL – Natural features and landscapes. The matters addressed in this statement of evidence are set out below:

   3.1     Amend NFL-O1 to provide for the restoration of outstanding and highly valued natural features and landscapes.

   3.2     Amend NFL-P1, NFL-P2, NFL-P3 and APP9 to clarify their application when manging natural features and landscapes within the coastal environment.

   3.3     Amend NFL-P2 and Delete NFL-P7 to clarify provisions related to Nationally Significant Infrastructure.

   3.4     Amend NFL-P1 and NFL-P2 to clarify the terminology between the two policies.

3.5     Amend APP9 to align with Te Tangi a te Manu – Aotearoa New Zealand Landscape Assessment guidelines.

4       Where I have recommended additional amendments to provisions, my recommendations are shown in addition to my original section 42A recommendations. The key below sets out how these different recommendations are shown.

**Key to proposed amendments**

| Appearance | Explanation |
|---|---|
| Black text | Text as notified. |
| Black text with <u>underlining</u> or ~~strikethrough~~ | Amendments recommended in section 42A report. |
| <span style="color:red">Red text with <u>underlining</u> or ~~strikethrough~~</span> | Additional amendments recommended in supplementary evidence where there has been no previous amendment to the 'as notified' provision text. |
| Black text with <u style="color:red">red underlining</u> | Text that was recommended to be deleted in s42A report but now recommended to be retained ("un-deleted") by supplementary evidence. |
| <span style="color:red">Red strikethrough</span> with ~~**black underlining**~~. | Text that was recommended to be inserted in s42A report (black underline) but now recommended to be deleted by supplementary evidence (red strikethrough). |

5       In the same way as the original section 42A report recommendations, the scope for all proposed amendments is included as a footnote in the amended provisions. Where the amendments were recommended in the section 42A report, the supporting explanation is in the section 42A report. Where the amendments are recommended through this supplementary evidence, the supporting explanation is contained in this supplementary evidence.

**Errata**

6       Appendix 1 of this evidence includes a table setting out the corrections that have been identified as necessary to ensure a proper understanding of my s42A report. These corrections are confined to the recommendations section of my report only. The recommendations included in the s42A version of the pORPS are all correct.

**Updates**

<u>NFL-O1</u>

7       Kāi Tahu ki Otago (00226.297) submitted on NFL-O1 seeking a new subclause
        be added to the objective requiring the 'restoration of the areas and values of
        outstanding and highly valued natural features, landscapes, and seascapes
        where those areas or values have been reduced or lost'. My section 42A report
        did not respond directly to this submission point. Instead, the assessment in
        paragraph 34 of my report assessed a number of submission points seeking
        greater promotion of restoration and enhancement activities. I disagreed with
        these suggested amendments as I considered they may not achieve the required
        protection or avoidance of adverse effects.

8       Following discussions at the pre-hearing meeting I have reflected on the drafting
        proposed by Kāi Tahu ki Otago in its submission. I consider the drafting of NFL-
        O1 can be improved to acknowledge the benefits of restoring outstanding and
        highly valued natural features and landscapes. I consider including the
        restoration of outstanding and highly valued natural features and landscape into
        NFL-O1 provides alignment between NFL-O1 and the policies and methods to
        achieve it. I note that NFL-P4 promotes the 'restoration' of outstanding and highly
        valued natural features and landscapes, and the requirement to restore
        outstanding and highly valued natural features and landscapes is also set out in
        methods NFL-M2 and NFL-M3. While I acknowledge that the objective should
        prescribe the outcome, and the policies and methods then achieve that outcome,
        in this objective the requirement to restore outstanding and highly valued natural
        features or landscapes was overlooked. This suggested amendment ensures
        alignment of the objective, policy and methods. As such, I recommend the
        following amendment:

**NFL-O1 – Outstanding and highly valued natural features and
landscapes**

The areas and values of Otago's outstanding and *highly valued natural features
and landscapes* are identified, and the use and development of Otago's *natural
and physical resources* results in:

(1)     the protection of outstanding natural features and landscapes, and

(2)     the maintenance or enhancement of *highly valued natural features and
        landscapes.*

*Section 32AA evaluation*

9       I consider the addition of a new limb within NFL-O1 requiring the restoration of outstanding and highly valued natural features and landscape is necessary, and the most appropriate way to achieve the purpose of the Act. I consider the recommended addition assists in ensuring that the life-supporting capacity of outstanding and highly valued natural features and landscape are safeguarded where they have been degraded. I also consider the amendment to NFL-O1 provides better alignment with the policies and methods of the NLF chapter.

10      When the objective is read together with the provisions of the NFL chapter that require the restoration of outstanding and highly valued natural features and landscape, the suggested addition does not change the intent of the provisions as a whole. The recommended change ensures there is a clear link between the objective and the provisions.

NFL-P1, NFL-P2, NFL-P3 and APP9 – Relationship with CE chapter

11      In paragraph 30 of my Section 42A report I analyse the submission points from Port Otago[2] and Kāi Tahu ki Otago[3] which seek to clarify which NFL provisions relate to the coastal environment. I explain that Policy NFL-P6 sets out that CE-P6 manages natural features and landscapes in the coastal environment and that the provisions are clear that the NFL policies do not apply in the coastal environment. Following discussions at the pre-hearing meeting, I agree that further clarification is required in NFL-P2 and NFL-P3 to make it clear that these provisions do not apply to natural features and landscapes in the coastal environment.

12      In the same paragraph of my Section 42A report, I also state that the references to 'seascapes' within APP9 may contribute to the confusion regarding the application of the NFL policies to the coastal environment and I recommended the deletion of these references from APP9. Following discussions at the pre-hearing meeting I have reconsidered my position. I acknowledge that CE-P6 requires the identification of natural features and landscapes in the coastal

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[1] 00226.297 Kāi Tahu ki Otago
[2] 00301.054
[3] 00226.297, 00226.298, 00226.299, 00226.300, 00226.301, 00226.302, 00226.303, 00226.304 Kāi Tahu ki Otago

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environment in accordance with APP9. As such, references to seascapes in APP9 is necessary. For completeness, I note that the term 'seascape' is a subset of landscapes[4]. Given this, I consider the title and introduction to APP9 should also be amended to reflect the drafting within Policy 15 of the New Zealand Coastal Policy Statement 2010, by referring to 'landscapes (including seascapes). For consistency, I recommend consequential amendments are made to the following provisions:

- The definition of 'Highly Valued Natural Features and Landscapes'
- SRMR-I8 (Impact snapshot – Environmental)
- CE-O3
- CE-P6
- CE-M2(2)
- CE-M3(5) and (12)

13      As such, I recommend the following amendment to NFL-P1:

**NFL-P1 – Identification**

In order to manage outstanding and *highly valued natural features and landscapes* outside the coastal environment[5], identify:

(1)     the areas and values of outstanding and *highly valued natural features and landscapes* in accordance with APP9, and

(2)     ...

14      And the following amendment to NFL-P2:

**NFL-P2 – Protection of outstanding natural features and landscapes**

Protect outstanding natural features and landscapes outside the coastal environment from inappropriate subdivision use and development[6] by:

(1)     ...

15      And the following amendment to NFL-P3:

**NFL-P3 – Maintenance of *highly valued natural features and landscapes***

Maintain or enhance *highly valued natural features and landscapes* outside the coastal environment[7] by:

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[4] Policy 15 of the NZCPS states:
*To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:*
[5] 00301.054 Port Otago
[6] 00301.054 Port Otago
[7] 00301.054 Port Otago

(1)   ...

16   And the following amendment to APP9:

**APP9 – Identification criteria for outstanding and highly valued natural features, and landscapes ~~and~~ (including seascapes)**

The areas and the values of outstanding and highly valued natural features, and landscapes ~~and~~ (including seascapes) are identified using the following attributes:

…

| | | |
|---|---|---|
| **Sensory attributes** | ~~(d)~~(e) | Legibility or expressiveness – how obviously the feature, ~~or~~ landscape or seascape[8] demonstrates its formative processes. |

…

*Section 32AA evaluation*

17   Because my recommended changes to NFL-P1, NFL-P2, NFL-P3, and APP9 clarify the application of these provisions, no section 32AA assessment is considered necessary.

NFL-P2 and NFL-P7 – Managing infrastructure

18   In paragraphs 24 and 25 of my Section 42A report, I analyse the submissions received from a number of infrastructure providers who raise concern regarding the tension between the NFL provisions and those contained within the EIT chapter. The submitters noted that while EIT-INF-P13 clearly sets out the direction to manage adverse effects from infrastructure activities located within an ONF or ONL, similar provisions in the NFL chapter are not provided.

19   In paragraph 26 of my Section 42A report, I agreed with the submitters that greater clarity was required to clearly set out the linkages between EIT-INF-P13 and NFL chapter and considered the addition of NFL-P7 to the suite of provisions would remedy this matter.

20   Following discussions at the pre-hearing meeting I consider further refinement is required to clarify and streamline the linkages between EIT-INF-P13 and the NFL

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[8] 00301.054 Port Otago

chapter. I recognise NFL-P2 and NFL-P7 both set out to protect the values of outstanding natural features and landscapes. To avoid duplication and potential confusion, it is my view that NFL-P7 should be deleted and a third limb to NFL-P2 be inserted to provide a signpost to EIT-INF-P13.

21    As such, I recommend the following amendment to NFL-P2:

**NFL-P2 – Protection of outstanding natural features and landscapes**
Protect outstanding natural features and landscapes by:
*….*
(3)    managing the adverse effects of infrastructure on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13.[9]

22     And the deletion of NFL-P7 as follows:

~~**NFL-P7 – Natural features and landscapes and infrastructure**~~
~~Outside of the coastal environment, the effects of Nationally Significant Infrastructure and Regionally Significant Infrastructure on the values of outstanding natural features and landscapes are managed by EIT-INF-P13.[10]~~

*Section 32AA evaluation*

23    Given my recommended changes to NFL-P2 and NFL-P7 clarify the application of these provisions, no section 32AA assessment is considered necessary.

<u>NFL- P1 and NFL-P2</u>

24    In paragraph 129 of my Section 42A report, I analyse the submissions received on NFL-P2 seeking amendments to the policy that would provide more flexibility to contemplate appropriate use, and development in ONLs and ONFs. In response to these submissions, I recommended an amendment to NFL-P2 that links the requirement to 'avoid' adverse effects, to the landscape's capacity to absorb change.

25    At the pre-hearing meeting it was acknowledged that the relationship between NFL-P1 and NFL-P2 was not clear as the language used within the provisions was not consistent. The drafting in NFL-P1(2) refers to the capacity of the landscape to 'accommodate use or development'. Whereas in NFL-P2(1) the

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[9] 00315.073, 00315.074, 00315.075, 00315.076 Aurora Energy
[10] 00315.073, 00315.074, 00315.075, 00315.076 Aurora Energy

phrase 'capacity to absorb change' is used. As such, I recommend that amendments are made to both NFL-P1(2) and NFL-P2(1) to standardise the language by referring consistently to the '<u>capacity</u>' of the natural features and landscapes to '<u>absorb use or development</u>'.

26    As such, I recommend the following amendment to NFL-P1 and NFL-P2:

**NFL-P1 – Identification**

In order to manage outstanding and *highly valued natural features and landscapes* <u>outside the coastal environment</u>[11], identify:

(1)    the areas and values of outstanding and *highly valued natural features and landscapes* in accordance with APP9, and

(2)    the capacity of those natural features and landscapes to ~~accommodate~~ <u>absorb</u>[12] use or development while protecting the values that contribute to the natural feature and landscape being considered outstanding <u>or maintaining the values that contribute to the natural feature and landscape being highly valued</u>[13].

(3)    …

**NFL-P2 – Protection of outstanding natural features and landscapes**

Protect outstanding natural features and landscapes <u>outside the coastal environment</u> by:

(1)    avoiding adverse effects on the values <u>of the natural features and landscapes where there is limited or no capacity to absorb use or development</u> ~~change~~[14] ~~that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding~~, and

(2)    avoiding, remedying or mitigating other adverse effects.

*….*

*Section 32AA evaluation*

27    The recommended changes to NFL-P1 and NFL-P2 ensure the language used in these provisions is consistent. This does not change the application of the provisions, and therefore no section 32AA assessment is considered necessary.

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[11] 00301.054 Port Otago
[12] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00318.034 Contact Energy
[13] 239.163 Federated Farmers
[14] 00318.034 Contact Energy

<u>APP9 - Identification criteria for outstanding and highly valued natural features and landscapes, and seascapes</u>

28      In paragraphs 236 to 241 of my Section 42A report, I analyse the submissions from submitters seeking amendments to the identification criteria for outstanding and highly valued natural features, and landscapes and seascapes in APP9 to reflect Te Tangi a te Manu – Aotearoa New Zealand Landscape Assessment guidelines.[15] My analysis noted that the attributes listed in APP9 (physical attributes, sensory attributes, associate attributes) are largely aligned with the three 'Typical factors' (physical, associative, perceptual) listed in NZILA guidelines, albeit that the NZILA guidelines include more detail for each of these three dimensions. I did not agree any amendments were necessary.

29      Following discussions at the pre-hearing meetings, I have reconsidered this position. I agree that amendments should be made to better align the identification criteria within APP9 with the NZILA guidelines, as this is the most up to date best practice guidance on landscape identification. Two options have been considered to achieve this alignment:

        a.  Replace the notified APP9 with the 'Typical factors' listed in paragraph 4.29 of the NZILA guidelines, or

        b.  Amend the notified APP9 to broadly capture the intent of the 'Typical factors' listed in paragraph 4.29 of the NZILA guidelines.

30      I recommend amending the notified APP9 to broadly capture the intent of the NZILA guidelines. I consider both options will ensure that the criteria used to identify outstanding and highly valued natural features and landscapes is robust. However, I consider the option of capturing the intent of the NZILA guidelines in APP9 will ensure continuity and consistency across the region, as the recently reviewed district plans in the region have used identification criteria similar to APP9 to identify outstanding and highly valued natural features and landscapes.

31      As such, I recommend the following amendments to APP9:

        **APP9 – Identification criteria for outstanding and highly valued natural features, and landscapes and (including seascapes)**

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[15] https://nzila.co.nz/media/uploads/2022_09/Te_Tangi_a_te_Manu_Version_01_2022_.pdf

The areas and the values of outstanding and highly valued natural features, and landscapes and (including seascapes) are identified using the following attributes:

| | | |
|---|---|---|
| **Physical attributes** | (a) | Natural science factors, including geological, topographical, ecological and dynamic components. |
| | (b) | The presence of *water* including in seas, *lakes*, *rivers* and streams. |
| | (c) | Vegetation (native and exotic). |
| | (d) | *Land* use patterns including settlements, *buildings* and *structures*.[16] |
| **Sensory attributes** | (d)(e) | Legibility or expressiveness – how obviously the feature, or landscape (including seascapes) demonstrates its formative processes. |
| | (e)(f) | Aesthetic values including memorability and naturalness. |
| | (f)(g) | Transient values, including presence of wildlife or other values at certain times of the day or year. |
| | (g)(h) | Wild or scenic values. |
| | (i) | Experiential attributes, including the sounds and smells associated with the landscape (including seascapes).[17] |
| **Associative attributes** | (h)(j) | Whether the values are shared and recognised. |
| | (i)(k) | Cultural and spiritual values for Kāi Tahu, identified by working, as far as practicable, in accordance with tikanga Māori, including their expression as cultural landscapes and features. |
| | (j)(l) | Historical and heritage associations. |
| | (m) | Recreational values.[18] |

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[16] 00310.015 The Telecommunications Companies
[17] 00310.015 The Telecommunications Companies
[18] 00231.095 Fish and Game

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*Section 32AA evaluation*

32      I consider the recommended changes to APP9 ensure that the identification criteria better align with the most recent best practice guidelines. When considering the efficiency and effectiveness of the suggested changes in achieving the objective of the NFL chapter, I consider the recommended changes will be slightly more effective in achieving NFL-O1 when compared to the notified version of APP9. NFL-O1 requires the areas and values of Otago's outstanding and highly valued natural features and landscapes be identified. I consider the additional attributes will more effectively achieve the identification of Otago's outstanding and highly valued natural features and landscapes as they provide a slightly broader list of attributes that can be considered when undertaking a landscape assessment. I consider the will be no change in the efficiency of these provisions at achieving NLF-O1 when compared to notified version of APP9.

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Andrew Cameron Maclennan

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11 October 2022

## Appendix 1 - Section 42A Report – Errata

| Provision | S42A Report Paragraph number | Error | Corrected Text |
|---|---|---|---|
| NFL-P2 | 135 | Section 42A recommendations (contained in the analysis and in the s42A version of the pORPS) not correctly shown in report version of the provision. | **NFL-P2 – Protection of outstanding natural features and landscapes**<br>Protect outstanding natural features and landscapes by:<br>(4)  avoiding adverse *effects* on the values <u>of the natural features and landscapes where there is limited or no capacity to absorb change</u>[19] ~~that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding~~, and<br>[...] |

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[19] 00318.034 Contact Energy