
**OPENING STATEMENT OF ANDREW CAMERON MACLENNAN:
NFL – NATURAL FEATURES AND LANDSCAPES**

- 1 This statement provides an update on my understanding of the key issues related to Chapter 14: NFL – Natural Features and Landscapes since I prepared my section 42A report¹ and supplementary evidence² on this topic.
- 2 The matters addressed in this statement of evidence, in relation to each section, are set out below.

Code of Conduct

- 3 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 2023. 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.

Recommended amendments

- 4 To assist the Hearing Panel and signal to the submitters where my views may be changing in response to the evidence, I have attached as Appendix 1 to this statement, a tracked change version of the NFL chapter. I am conscious that I have not heard questions from the Hearing Panel to submitters, and therefore these views are preliminary and no s32AA assessment has been included to support these changes. A full analysis and s32AA will be provided in the reply report.
- 5 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

¹ Chapter 14: NFL – Natural Features and Landscapes (4 May 2022)

² Brief of supplementary evidence of Andrew Cameron Maclellan – NFL – Natural Features and Landscapes (11 October 2022)

Appearance	Explanation
Black text	Text as notified.
Black text with <u>underlining</u> or strikethrough	Amendments recommended in section 42A report.
Red text with <u>underlining</u> or strikethrough	Additional amendments recommended in supplementary evidence where there has been no previous amendment to the 'as notified' provision text.
Black text with <u>red</u>	Text that was recommended to be deleted in s42A report but now recommended to be retained ("un-deleted") by supplementary evidence.
Red strikethrough with <u>black-underlining</u> .	Text that was recommended to be inserted in s42A report (black underline) but now recommended to be deleted by supplementary evidence (red strikethrough).
Blue text with <u>blue</u> or strikethrough	Text that is recommended to be inserted or deleted as part of this summary statement.

- 6 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.

Scope of Evidence

- 7 In my view, the outstanding issues can largely be grouped into five main themes:
- 7.1 Amendments to NFL-O1.
 - 7.2 Amendments to NFL-P1 and NFL-P2.
 - 7.3 Amendments to NFL-P3.
 - 7.4 Links to the Coastal Environment Chapter.
 - 7.5 Amendments to APP9 to reflect Te Tangi a te Manu.
- 8 There is also a range of more discrete issues that have been raised in evidence, including a cross reference to the EIT chapter within NFL-P3 and minor amendments to NFL-P4.

Amendments to NFL-O1

- 9 Several submitters seek amendments to NFL-O1 seeking:
- reference to 'inappropriate subdivision, use and development',
 - deletion of subclause (3) related to 'restoration',
 - re-drafting of the structure of the objective,
 - re-framing the objective to enable appropriate use and development ONL/F's and HVNFL's.
- 10 I agree with the submitters who consider that language of the objective should be amended to better reflect the language within section 6(b) of the Resource Management Act 1991, these changes are set out in Appendix 1.
- 11 I disagree with submitters who suggest that the addition of clause (3) could be interpreted as requiring the restoration of ONL/F's in every circumstance. In my view NFL-O1(3) needs to be read in conjunction with NFL-P4 which is the policy that gives effect to this part of the objective. When read together I consider it is clear that the restoration of ONL/F's is promoted where natural values have been reduced or lost. As such, I disagree any additional amendments are required.

Amendments to NFL-P1 and NFL-P2

- 12 Several parties seek amendments to the concept of 'landscape capacity' set out within NFL-P1 and NFL-P2. These concerns relate to:
- the costs, resources and time required to reliably identify landscape capacity across the Otago region,
 - the 'capacity to absorb change' approach being inconsistent with section 6(b) of the RMA, as it may promote the maximum permissible harm, and
 - additional references to landscape 'values' within NFL-P2.
- 13 I agree in part with Mr Brown for Mt Cardrona Station, that the reference to 'limited' in NFL-P2(1) will create implementation issues as every landscape will have a 'limited' capacity to absorb change. I consider it would be more appropriate that, 'limited' be replaced with 'little', which would better reflect the intent of the policy. I note that

including reference to 'little' capacity to absorb change aligns with Policy 3.3.31³ of the Queenstown Lakes PDP which is the result of a recent Environment Court decision.

- 14 I have also suggested a number of minor amendments to improve the readability of the NFL-P1 as set out in Appendix 1.
- 15 Mr Devlin for Glenpanel Limited has correctly raised within his evidence that my supplementary evidence has two different versions of the chapeau of NFL-P2. To clarify, I support the addition of: 'from inappropriate subdivision, use and development' as set out in para 11 of my supplementary evidence. I agree that the chapeau in para 18 of my supplementary evidence is incorrect. This change is reflected in Appendix 1.

Amendments to NFL-P3

- 16 Several submitters have sought the amendments or the removal of NFL-P3. The key criticisms of NFL-P3 are:
- the drafting of the policy sets too high a bar for section 7 landscapes,
 - there is no defining characteristic to distinguish between ONL/F's and HVNFL in APP9, and
 - the pORPS lacks rationale for identifying HVNF/L's.
- 17 I retain the position set out in the s42a report and supplementary evidence. I consider that using the same criteria for the identification of ONL/F and HVNF/L's is common within district plans. I note that HVNF/L's and significant natural landscapes have been identified within the QLDC PDP and DCC the 2GP, using similar criteria to APP9.⁴

Links to the CE Chapter

- 18 Mr Bathgate for Kāi Tahu ki Otago and Ms O'Callahan for Port Otago consider that the application of the NFL provisions in the coastal environment remains uncertain.

³ Policy 3.3.33 states:

Avoid adverse effects on the landscape values of the District's Outstanding Natural Features and Outstanding Natural Landscapes from residential subdivision, use and development where there is little capacity to absorb change.

⁴ Policy 33.43 of the QLDC PDP, and Section 10 and Appendix A3.3 of the DCC 2GP.

- 19 I agree in part with these concerns. In my supplementary evidence I included amendments to policies NFL-P1 to NFL-P3, in addition to NFL-P6, to confirm the NFL provisions do not apply to natural features and landscapes in the coastal environment. I agree further amendments are required to NFL-O1, NFL-P4, NFL-P5, and NFL-P6 to confirm that these provisions do not apply in the coastal environment. These are set out in Appendix 1.

Amendments to APP9 to reflect Te Tangi a te Manu

- 20 Mr Coombs for Contact and Ms Styles for Manawa Energy seek further changes to align APP9 with NZILA's Te Tangi a te Manu – Aotearoa New Zealand Landscape Assessment guidelines.⁵
- 21 In my supplementary evidence, I recommend amending the notified APP9 to broadly capture the intent of the 'Typical factors' listed in paragraph 4.29 of the NZILA guidelines rather than replacing APP9 with the content of paragraph 4.29.
- 22 I agree in principle with Mr Coombs and Ms Styles that APP9 should be aligned with Te Tangi a te Manu. However, I am mindful that several district councils have gone through considerable effort to identify ONL/F and HVNFL in accordance with the criteria which is largely aligned with APP9. Therefore, if the Hearing Panel were supportive of that updating APP9 to align fully with the NZILA guidelines, I consider the direction within NFL-M1 may also need to be amended to ensure that territorial authorities are not required to re-map recently identified features or landscapes. Two potential options for APP9 are set out in Appendix 1, the version of APP9 set out in my supplementary statement and a version that aligns with Te Tangi a te Manu.

Other matters

- 23 Ms McLeod for Transpower has suggested including a cross-reference within NFL-P3 to EIT-INF-P13 for consistency with NFL-P2. As currently drafted, the EIT-INF-P13 does not relate to HVNF/L, so that would leave HVNF/L in a situation where it is not managed by either the NFL chapter or the EIT chapter. If an amendment is made to the EIT chapter, then I would support this addition.
- 24 Mr Farrell for Trojan Holdings & Wayfare Group Ltd suggested an addition to NFL-P4 to emphasise that the restoration of the natural values of these areas. I support this suggestion.

⁵ https://nzila.co.nz/media/uploads/2022_09/Te_Tangi_a_te_Manu_Version_01_2022_.pdf

A handwritten signature in black ink, appearing to read 'Andrew Cameron MacLennan', is positioned above a solid horizontal line.

Andrew Cameron MacLennan

30 April 2023

Appendix 1

NFL – Natural features and landscapes

Objectives

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 outside the coastal environment*⁶ 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 from inappropriate subdivision, use and development⁷, and
- (2) the maintenance or enhancement of highly valued natural features and landscapes, and
- (3) the restoration of outstanding natural features and landscapes.⁸

Policies

NFL-P1 – Identification

~~In order to manage~~⁹ outstanding and *highly valued natural features and landscapes outside the coastal environment*¹⁰, by identifying¹¹:

- (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 use or development while protecting the values that contribute to the natural feature and landscape being considered outstanding or maintaining the values that contribute to the natural feature and landscape being¹² highly valued.

⁶ 00301.054 Port Otago

⁷ 411.076 Wayfare, 206.062 Trojan, and 311.059 Trustpower

⁸ 226.29 Kāi Tahu

⁹ 226.298 Kāi Tahu

¹⁰ 00301.054 Port Otago

¹¹ 226.298 Kāi Tahu

¹² 00239.163 Federated Farmers

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 by:

- (1) avoiding adverse *effects* on the values of the natural features and landscapes where there is little limited¹³ or no capacity to absorb change¹⁴ ~~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*.
- (3) managing the adverse effects of infrastructure on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13.

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

Maintain or enhance *highly valued natural features and landscapes* outside the coastal environment¹⁵ by:

- (1) avoiding significant adverse effects on the values of the natural feature or landscape, and
- (2) avoiding, remedying or mitigating other adverse effects.

NFL-P4 – Restoration

Promote restoration of the areas and values of outstanding and *highly valued natural features and landscapes* outside the coastal environment¹⁶ where those areas or natural values have been reduced or lost.

NFL-P5 – Wilding conifers

Reduce the impact of *wilding conifers* on outstanding and highly valued natural features and landscapes outside the coastal environment¹⁷ by:

- (1) avoiding the planting afforestation, and replanting of plantation forests and permanent forests¹⁸ with *wilding conifer* species listed in APP5 within:
 - (a) areas identified as outstanding natural features or landscapes, and
 - (b) buffer zones adjacent to outstanding natural features and landscapes where it is necessary to protect the outstanding natural feature or landscape, and
- (2) supporting initiatives to control existing *wilding conifers* and limit their further spread.

¹³ 00014.063 Mt Cardona Station

¹⁴ 00318.034 Contact Energy

¹⁵ 00301.054 Port Otago

¹⁶ 00301.054 Port Otago

¹⁷ 00301.054 Port Otago

¹⁸ 00140.031 Waitaki DC

NFL-P6 – Coastal features and landscapes

Natural features and landscapes located within the coastal environment are managed by CE-P6 and implementation of CE-P6 also contributes to achieving NFL-O1¹⁹.

~~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-P13.²⁰~~

Methods

NFL-M1 – Identification

Territorial authorities must:

- (1) include in their *district plans* a map or maps and a statement of the values of the areas of outstanding and *highly valued natural features and landscapes* in accordance with NFL-P1,
- (2) include in their *district plans* a statement of the capacity of outstanding and *highly valued natural features and landscapes* to accommodate change in use and development without their values being materially compromised or lost, in accordance with NFL-P1,
- (2A) collaborate with Kāi Tahu to identify the areas, values, and capacity of outstanding natural features and landscapes, and highly valued natural features and landscapes of significance for Kāi Tahu in accordance with NFL-P1,²¹
- (3) recognise that natural features and landscapes may span jurisdictional boundaries and work together, including with the Regional Council and adjoining Regional Councils,²² to identify areas under (1) to ensure that the identification of natural features and landscapes are treated uniformly across district boundaries and, where appropriate, regional boundaries,²³ and
- (4) prioritise identification under (1) in areas that are likely to contain outstanding natural features or landscapes and are likely to face development or growth pressure over the life of this RPS.

NFL-M2 – Regional plans

Otago Regional Council must prepare or amend and maintain its *regional plans* to:

- (1) control the *use* and development of *water bodies, the beds of rivers and lakes, and wetlands* in order to protect outstanding natural features and landscapes in accordance with NFL-P2, and maintain and enhance *highly valued natural features or landscapes* in accordance with NFL-P3, and

¹⁹ 000306.074 Meridian; 00321.036, 00321.037 Te Waihanga; 00310.014 Telecommunication Companies

²⁰ 000306.074 Meridian; 00321.036, 00321.037 Te Waihanga; 00310.014 Telecommunication Companies

²¹ 00223.128 Ngāi Tahu ki Murihiku

²² 00013.016 ECan

²³ 00013.016 ECan

- (2) provide for and encourage activities undertaken for the primary purpose of restoring highly valued natural features or landscapes in accordance with NFL-P4.

NFL-M3 – District plans

Territorial authorities must prepare or amend and maintain their *district plans* to:

- (1) control the *subdivision, use* and development of *land* and the use of the surface of *water bodies* in order to protect outstanding natural features or landscapes in accordance with NFL-P2, and maintain and enhance *highly valued natural features or landscapes* in accordance with NFL-P3,
- (2) provide for and encourage activities undertaken for the primary purpose of restoring highly valued natural features or landscapes in accordance with NFL-P4, and
- (3) manage *wilding conifer* spread in accordance with NFL-P5.

NFL-M4 – Other incentives and mechanisms

Local authorities are encouraged to consider the use of other mechanisms or incentives to assist in achieving the outcomes sought by the policies in this chapter, including:

- (1) funding assistance for restoration projects (for example, through the Regional Council's ECO Fund),
- (2) purchase of *land* that forms part of a natural feature or landscape,
- (3) development or design guidelines (for example, colour palettes for *structures* in or on natural features or landscapes),
- (4) rates relief for *land* that is protected due to its status as an outstanding natural feature or landscape,
- (5) education and advice,
- (6) waiver or reduction of processing fees for activities where the primary purpose is to enhance the values of highly valued natural features or landscapes, and
- (7) advocating for a collaborative approach between central and local government to fund and carry out *wilding conifer* control.

Explanation

NFL-E1 – Explanation

The policies in this chapter are designed to require outstanding and *highly valued natural features and landscapes* to be identified using regionally consistent attributes, then managing activities to either protect outstanding natural features and landscapes in accordance with section 6(b) of the RMA~~1991~~²⁴ or maintain *highly valued natural features or landscapes* in accordance with section 7 of

²⁴ Clause 16(2), Schedule 1, RMA

the RMA-1991.²⁵ This distinction recognises that these areas have values with differing degrees of significance and that, generally, those classified as ‘highly valued’ will have greater capacity to accommodate land use change and development without values being adversely affected. The policies seek to control the impact of *wilding conifers* which are a particular threat to Otago’s natural features and landscapes, in a way that recognises the regulations in the NESPF.

Principal reasons

NFL-PR1 – Principal reasons

Natural features include resources that are the result of natural processes, particularly those reflecting a particular geology, topography, geomorphology, hydrology, ecology, or other physical attribute that creates a natural feature or combination of natural features. Landscapes include the natural and physical attributes of *land* together with air and *water*, which change over time and which is made known by people’s evolving perceptions and associations. Natural features and landscapes also have significant cultural value to Kāi Tahu. There are many sites of significance across Otago, reflecting the relationship of Kāi Tahu with the *land, water* and sea.

The provisions in this chapter assist in protecting Otago’s outstanding and *highly valued natural features and landscapes* by requiring:

- the identification of outstanding and *highly valued natural features and landscapes* using regionally consistent criteria,
- the protection of outstanding natural features and landscapes and maintenance of *highly valued natural features and landscapes*,
- an ongoing reduction in the impact of *wilding conifers* on natural features and landscapes, and
- specified actions on the part of Otago’s *local authorities* in managing natural features and landscapes.

Implementation of the provisions in this chapter will occur primarily through *regional plan*²⁶ and *district plan* provisions, however *local authorities* may also choose to adopt additional non-regulatory methods to support the achievement of the objectives.

Anticipated environmental results

NFL-AER1 The number, type, extent and distribution of identified outstanding and *highly valued natural features and landscapes* are maintained over the life of this RPS.

NFL-AER2 The values of outstanding and *highly valued natural features and landscapes* are not reduced or lost.

²⁵ Clause 16(2), Schedule 1, RMA

²⁶ Clause 16(2), Schedule 1, RMA

NFL-AER3

Within areas identified as outstanding or *highly valued natural features or landscapes*, the area of *land* vegetated by *wilding conifers* is reduced over the life of this RPS.

APP9 – Identification criteria for outstanding and highly valued natural features, and landscapes ~~and~~ (including seascapes)²⁷

The areas and the values of outstanding and highly valued natural features, and landscapes ~~and~~ (including seascapes)²⁸ 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). |
| | <u>(d) Land use including settlements, buildings and structures.</u> ²⁹ |
| Sensory attributes | (e) <u>(e)</u> Legibility or expressiveness – how obviously the feature, or landscape or seascape <u>or seascape</u> ³⁰ demonstrates its formative processes. |
| | (e) <u>(f)</u> Aesthetic values including memorability and naturalness. |
| | (f) <u>(g)</u> Transient values, including presence of wildlife or other values at certain times of the day or year. |
| | (g) <u>(h)</u> Wild or scenic values. |
| | <u>(i) Experiential attributes, including the sounds and smells associated with the landscape.</u> ³¹ |
| Associative attributes | (h) <u>(j)</u> Whether the values are shared and recognised. |
| | (i) <u>(k)</u> 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) <u>(l)</u> Historical and heritage associations. |
| | <u>(m) Recreational values.</u> ³² |

Or

²⁷ 00301.054 Port Otago

²⁸ 00301.054 Port Otago

²⁹ 00310.015 The Telecommunications Companies

³⁰ 00301.054 Port Otago

³¹ 00310.015 The Telecommunications Companies

³² 00231.095 Fish and Game

APP9 – Identification criteria for outstanding and highly valued natural features, and landscapes ~~and seascapes~~³³

The areas and the values of outstanding and highly valued natural features, and landscapes ~~and seascapes~~³⁴ are identified using the following attributes-factors:³⁵

- | | |
|-------------------------------------|--|
| <u>Physical (natural and human)</u> | <ul style="list-style-type: none">(a) <u>Geology and geomorphology.</u>(b) <u>Topography and hydrology (including drainage patterns).</u>(c) <u>Climate and weather patterns.</u>(d) <u>Soil patterns.</u>(e) <u>Vegetation patterns.</u>(f) <u>Ecological (flora and fauna) and dynamic components.</u>(g) <u>Settlements and occupation.</u>(h) <u>Roads and circulation.</u>(i) <u>Land use – cadastral pattern.</u>(j) <u>Buildings.</u>(k) <u>Archaeology and heritage features.</u>(l) <u>Tāngata whenua features.</u> |
| <u>Associative</u> | <ul style="list-style-type: none">(m) <u>Tāngata whenua creation and origin traditions manifest in landscape features.</u>(n) <u>Tāngata whenua associations and experience – (historic, contemporary, and future) including pūrākau, whakapapa, tikanga, and mātauranga.</u>(o) <u>Tāngata whenua metaphysical aspects such as wairua and mauri.</u>(p) <u>Legal personification of landscape features.</u>(q) <u>Shared and recognised values of a landscape derived from community life including the community’s livelihood, its history and reason for being in that place, places of social life and gathering, places associated with metaphysical meanings such as retreat, contemplation, and commemoration.</u>(r) <u>Landscape values associated with identity such as attributes that are emblematic for an area, places that are central to a community (main street, wharf, park), features that are anthropomorphised. Landscapes that are engaged through activities such traditional food and resource gathering, recreational use, food and wine that reflect a locale, tourism based on landscape experience or appreciation of a landscape’s qualities.</u> |
| <u>Perceptual</u> | <ul style="list-style-type: none">(s) <u>Geomorphic legibility (how obviously a landscape expresses the geomorphic processes).</u>(t) <u>Wayfinding and mental maps (legibility or visual clarity of</u> |

³³ 00301.054 Port Otago

³⁴ 00301.054 Port Otago

³⁵ 00311.066 Trustpower

landmarks, routes, nodes, edges, and areas of different character).

- (u) Memorability.
- (v) Coherence (the extent to which patterns reinforce each other, coherence between human patterns and underlying natural landscape).
- (w) Aesthetic qualities.
- (x) Naturalness.
- (y) Views.

Note that physical, associative, and perceptual factors are sometimes transient: they may be present occasionally or seasonally or in different weather conditions. An assessor should be awake to such transient attributes that may not be immediately apparent.