

Reply Report

Proposed Otago Regional Policy Statement 2021

14: NFL – Natural Features and Landscapes

Andrew Maclennan

Contents

1.	Introduction	3
2.	Relationship between the NFL chapter the CE chapter	4
3.	Amendments sought by Kāi Tahu ki Otago.....	5
4.	NFL-O1 – Outstanding and highly valued natural features and landscapes	7
5.	NFL-P1 – Identification of outstanding and highly valued natural features and landscapes	10
6.	NFL-P2 – Protection of outstanding natural features and landscapes	13
7.	NFL-P3 – Maintenance of highly valued natural features and landscapes.....	17
8.	NFL-P4 – Restoration.....	19
9.	NFL-P5 – Wilding conifers.....	21
10.	APP9 - Identification criteria for outstanding and highly valued natural features, and landscapes	21

1. Introduction

1. This report forms part of a suite of reply reports that have been prepared to sit alongside and explain the “marked up” version of the final recommendations on the proposed Otago Regional Policy Statement (pORPS). The approach to the whole suite is set out in the first report in this series, *Reply Report – Chapter 1: Introduction and General Themes*. Appended to the suite of reports is a consolidated version of the pORPS containing all final recommendations from the reporting officers.
2. This report is the final set of advice on this chapter and is in addition to:
 - a. Section 42A report on Chapter 14: NFL – Natural Features and Landscapes (27 April 2022)
 - b. First brief of supplementary evidence of Andrew Cameron MacLennan: Chapter 14: NFL – Natural Features and Landscapes (11 October 2022)
 - c. Second brief of supplementary evidence of Andrew MacLennan: HAZ & NFL (Mineral extraction) (24 February 2023)
 - d. Opening statement of Andrew Cameron MacLennan: Chapter 14: NFL – Natural Features and Landscapes (30 April 2023).
3. The hearing for the NFL – Natural Features and Landscapes chapter was held on 1 May 2023. At the hearing the key matters of contention, in my view, were as follows:
 - a. Relationship between the NFL chapter the CE chapter
 - b. Amendments sought by Kāi Tahu
 - c. Whether restoration should be referred to within NFL-O1
 - d. The concept of ‘landscape capacity’
 - e. Whether ‘highly valued natural features and landscapes’ should be included with the pORPS
 - f. Alignment with Te Tangi a te Manu.
4. This report does not address the following provisions because I do not consider there are any additional matters to address as a result of the hearing:
 - a. Policy NFL-P6,
 - b. Methods NFL-M2, NFL-M3, and NFL-M4,
 - c. NFL-E1, NFL-PR1, NFL-AER1 to AER3.
5. My previously recommended amendments to those provisions, in addition to my amended recommendations in this report, are incorporated in the Reply Report version of the pORPS attached to this suite of reports.

2. Relationship between the NFL chapter the CE chapter

2.1. Introduction

6. The relationship between the NFL chapter and the CE chapter is discussed in paragraph 30 of the section 42A report. This matter is also discussed in my first brief of supplementary evidence with amendments recommended for several provisions in the NFL chapter to clarify linkages with the CE chapter.¹

2.2. Submissions and evidence

7. 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.
8. Mr Bathgate² supports the submission of Kāi Tahu ki Otago which seeks further clarity on the applicability of several provisions in the NFL chapter. Within his evidence summary presented at the hearing Mr Bathgate also suggested that the link to the coastal chapter within NFL-P6 should not only refer to CE-P6 but also CE-O3 and the relevant methods of the CE chapter.
9. Ms O’Callahan³ supports the submission of Port Otago which seeks that NFL-O1 be amended to include an exclusion for the coastal environment, and requests that NFL-P6 be deleted or changed to an advice note on the basis that it lacks specific policy direction and is a cross-reference only. Ms O’Callahan also seeks that coastal icons be added to all the provisions within the pORPS that relate to the coastal environment, like the icons used within the Proposed Natural Resources Plan for Wellington (pNRP).

2.3. Analysis

10. 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. However, following a review of the cross references between the CE chapter and other chapters of the pORPS, I now consider a reference within every provision of the NFL chapter stating ‘outside the coastal environment’ is not necessary. I note that Policy CE-P1 which relates to the cross references between provisions clearly states:

(3) the provisions of the NFL – Natural features and landscapes do not apply in the coastal environment.

11. To make it clear to plan user only reading the NFL chapter that the provisions of the NFL chapter do not apply in the coastal environment, I recommended that an advice note is add to the start of the NFL chapter that states:

¹ NFL-P1, NFL-P2, NFL-P3 and APP9.

² Michael Bathgate for Kāi Tahu ki Otago, para [135]-[136]

³ Mary O’Callahan for Port Otago, para [72] and Appendix 1

Advice note: Pursuant to CE-P1 the provisions within this chapter do not apply in the coastal environment.

12. I also agree with Mr Bathgate that the cross reference in NFL-P6 to the coastal chapter should include reference to CE-O3, CE-P6 and the associated methods, as these are the package of provisions that apply to landscape management in the coastal environment. I disagree with Ms O’Callahan that NFL-P6 should be deleted, I agree it is a cross reference only, but including cross-references within policies is consistent with cross references in other parts of the pORPS.
13. In relation to the suggestion that coastal icons be added to the pORPS, while I acknowledge that it does provide clarity within the pNRP, in my view the drafting of provisions can achieve the same result by including appropriate exclusions and cross-referencing within the relevant policies.

2.4. Final recommendation

14. I recommend the inclusion of an advice note below the chapter title as follows:

Advice note: pursuant to CE-P1 the provisions within this chapter do not apply in the coastal environment.⁴

15. In terms of section 32AA, I consider the change is minor, but helps to articulate how the pORPS is to be interpreted and therefore result in provisions that are more efficient and effective in achieving NFL-O1 and the purpose of the RMA.

3. Amendments sought by Kāi Tahu ki Otago

3.1. Introduction

16. Kāi Tahu ki Otago seeks two additional amendments to the NFL chapter:
- a. A new policy that recognises and provides for Kāi Tahu customary uses of natural resources identified as outstanding natural features and landscapes. This policy is discussed in section 14.3 of the section 42A report, with my analysis in paragraphs 43 and 48.
 - b. Amendments to NFL-M1(2A) to provide a tikaka-based approach to landscape identification and description. NFL-M1 is discussed in sections 14.3.2 and 14.12 of the section 42A report, with my analysis in paragraphs 43 to 46 and 194. In the section 42A report, I recommended a new method clause (2A) be added to NFL-M1 in response to the Ngāi Tahu ki Murihiku submission, which provides for collaboration with Kāi Tahu in the identification of natural features and landscapes.
17. The recommended version of NFL-M1 currently reads:

NFL-M1 – Identification

⁴ 00301.054 Port Otago
Proposed Otago Regional Policy Statement 2021

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-P1.⁵
- (3) recognise that natural features and landscapes may span jurisdictional boundaries and work together, including with the Regional Council and adjoining Regional Councils,⁶ 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,⁷ 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.

3.2. Submissions and evidence

18. Mr Bathgate for Kāi Tahu ki Otago⁸ considers that the application of NFL-P2 and NFL-P3 on native reserves and Māori land may create issues by restricting the use of these areas for Kāi Tahu settlement purposes. He seeks an alternate policy approach to these areas, consistent with MW-P4 and MW-M5, including a new policy as follows:

Recognise the rakatirataka of Kāi Tahu over native reserves and Māori land and enable mana whenua to lead approaches on how adverse effects on natural features and landscapes are managed in these areas.

19. In addition, while Mr Bathgate supports the addition of clause (2A) to NFL-M1 he recommends further changes to this clause to allow for a tikaka-based approach to landscape identification and description⁹ as follows:

(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-

⁵ 00223.128 Ngāi Tahu ki Murihiku

⁶ 00013.016 ECan

⁷ 00013.016 ECan

⁸ Michael Bathgate for Kāi Tahu ki Otago, para [134]-[139]

⁹ Michael Bathgate for Kāi Tahu ki Otago, para [140]-[141]

P1tikaka, and record and apply appropriate management responses as determined by mana whenua,

3.3. Analysis

20. In relation to the additional policy sought by Mr Bathgate, in my view the direction sought within the proposed policy is already provided within the pORPS within MW-P4 and MW-M5, and as such I disagree it is required at a policy level within the NFL chapter.
21. In relation to the amendments sought to NFL-M1(2A), I agree this is the appropriate place within the NFL chapter to recognise the role of Kāi Tahu in identifying the areas, values, and capacity of outstanding natural features and landscapes, and highly valued natural features and landscapes. I note that Mr Bathgate has sought to remove ‘significance for Kāi Tahu’, I suggest that this phrase be retained as it ensures that the method is specific to areas of significance for Kāi Tahu which is the focus of the method.

3.4. Final recommendation

22. My final recommended amendments to the notified version of the pORPS are:

NFL-M1 – Identification

Territorial authorities must:

(1) ...

(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 tikaka, and record and apply appropriate management responses as determined by mana whenua,¹⁰

23. In terms of section 32AA, I consider the changes help to articulate how the pORPS is to be interpreted and therefore result in provisions that are more efficient and effective in achieving NFL-O1.

4. NFL-O1 – Outstanding and highly valued natural features and landscapes

4.1. Introduction

24. NFL-O1 is discussed in section 14.5 of the section 42A report, with my analysis in paragraphs [76] to [79]. NFL-O1 is also discussed in my first brief of supplementary evidence with a recommendation to include a new limb requiring ‘the restoration of outstanding and highly valued natural features and landscapes’.

¹⁰ 00223.128 Ngāi Tahu ki Murihiku, 00234.036, 00234.037 Te Rūnanga o Ngāi Tahu

25. The recommended version of this provision reads:¹¹

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*¹² 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 development,¹³ and
- (2) the maintenance or enhancement of *highly valued natural features and landscapes*.
- (3) the restoration of outstanding and highly valued natural features and landscapes.¹⁴

4.2. Submissions and evidence

26. Several parties seek the deletion of clause (3) of NFL-O1¹⁵. Mr Ferguson for Darby Planning LP & Others considers that the meanings of ‘enhance’ and ‘protect’ encompass restoration and, therefore, clause (3) is not required.¹⁶ Mr Ferguson also considers that the structure of NFL-O1 conflates the identification of landscapes with use and development and seeks reference to ‘values’ within the clauses of the objective to link with the purpose of identification.¹⁷
27. Mr Brown for Mt Cardrona Station considers that clause (3) does not align with statutory direction and goes further than what the policy direction for restoration in the NFL chapter otherwise requires, which poses consenting challenges.¹⁸ Ms Hunter for Oceana Gold raises concerns with the direction for restoration of both outstanding and highly valued natural features and landscapes, primarily due to implementation difficulties.¹⁹
28. Mr Devlin for Glenpanel Limited Partnership considers that NFL-O1 restricts ‘appropriate’ developments in and affecting ONF/Ls, as envisaged by section 6(b) of the RMA. Mr Devlin supports the submission of Glenpanel Limited Partnership which seeks changes to clarify that ‘appropriate’ use and development is to be enabled while providing for the matters identified in the objective, and to include reference to ‘values’ and ‘promoting’ restoration.²⁰

¹¹ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

¹² 00301.054 Port Otago

¹³ 00411.076 Wayfare, 00206.062 Trojan, and 00311.059 Trustpower

¹⁴ 00226.297 Kāi Tahu ki Otago

¹⁵ Darby Planning LP & Others, Mt Cardrona Station, Oceana Gold OGL and Glenpanel Limited Partnership

¹⁶ Chris Ferguson for Darby Planning LP & Others, para [10]-[14]

¹⁷ Chris Ferguson for Darby Planning LP & Others, para [15]-[16]

¹⁸ Jeff Brown for Mt Cardrona Station, para [2.1]-[2.3]

¹⁹ Claire Hunter for Oceana Gold, para [14.5]-[14.7]

²⁰ Blair Devlin for Glenpanel Limited Partnership, para [20]-[38]

4.3. Analysis

29. In response to Mr Ferguson and Mr Brown, I agree that the version of clause (3) included within my opening statement, when read on its own, could be interpreted as requiring that all use and development must result in the restoration of ONF/L in all cases. I agree this cannot be justified from a section 32 perspective. In my view there are two drafting options to resolve this. Firstly, clause (3) could be deleted as suggested by Mr Ferguson and Mr Brown, or 'where appropriate' could be added to clause (3) so that it is clear restoration is not required in all circumstances, and the direction within NFL-P4 then fleshes out when restoration is appropriate. I consider both drafting options would be acceptable and would largely achieve the same end result, as the action to be undertaken to achieve the objective is found within NFL-P4.
30. Weighing up both options I agree with submitters that the addition of clause (3) is unnecessary and the approach to restoration is better left to the more specific directions provided by NFL-P4.
31. In response to Mr Devlin, I disagree that the intention of the NFL chapter is to enable development and consider amendments to this effect this would send the wrong message. I also disagree with the suggested addition of 'promoting', as I consider that is direction for the relevant policy to set out rather than the objective.

4.4. Final recommendation

32. My final recommended amendments to the notified version of the pORPS are:

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 from inappropriate subdivision, use and development,²¹ and
 - (2) the maintenance or enhancement of *highly valued natural features and landscapes*.
33. In terms of section 32AA, I consider that the objective is the most appropriate to achieve the purpose of the RMA, as it more clearly demonstrates how the requirements of Section 6(b) of the RMA are given effect to within the pORPS.

²¹ 00411.076 Wayfare, 00206.062 Trojan, and 00311.059 Trustpower

5. NFL-P1 – Identification of outstanding and highly valued natural features and landscapes

5.1. Introduction

34. NFL-P1 is discussed in section 14.6 of the section 42A report, with my analysis in paragraphs [94] to [106]. NFL-P1 is also discussed in my first brief of supplementary evidence.
35. The recommended version of this provision reads:²²

NFL-P1 – Identification

~~In order to manage~~²³ outstanding and *highly valued natural features and landscapes* outside the coastal environment,²⁴ ~~by~~ identifying²⁵:

- (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~~ absorb²⁶ 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 being²⁷ highly valued.

5.2. Submissions and evidence

36. Mr Ferguson supports the submission of Darby Planning LP & Others which seeks the deletion of clause (2) of NFL-P1 due to concerns with the concept of ‘landscape capacity’ being applied at a regional scale. Mr Ferguson considers the costs, resources and time to undertake a region-wide study are unjustified, and it would be more efficient to leave the identification of landscape capacity, as part of the overall suite of tools to manage effects of subdivision use and development on their landscapes, to each district.²⁸
37. Mr Brass supports the submission of DOC which seeks to remove the reference to ‘values’ within NFL-P1 to ensure consistency with the approach taken to managing natural features and landscapes within the CE chapter, and to align with higher order documents such as the NZCPS and RMA.²⁹
38. Ms O’Callahan for Port Otago Ltd considers there is a lack of rationale for identifying highly valued natural features and landscapes, as directed by NFL-P1. Ms O’Callahan also raises concerns with the clarity of the definition for, and the methodology to identify,

²² This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

²³ 00226.298 Kāi Tahu ki Otago

²⁴ 00301.054 Port Otago

²⁵ 00226.298 Kāi Tahu ki Otago

²⁶ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00318.034 Contact Energy

²⁷ 00239.163 Federated Farmers

²⁸ Chris Ferguson for Darby Planning LP & Others, para [18]-[24].

²⁹ Murray Brass for DOC, para [227]-[231]

highly valued natural features and landscapes. Ms O’Callahan supports the submission of Port Otago which seeks the deletion of references to highly valued natural features and landscapes throughout the pORPS.³⁰

39. Mr Bathgate supports the submission of Kāi Tahu ki Otago seeking a minor amendment to improve the readability of NFL-P1.³¹

5.3. Analysis

40. In response to Mr Ferguson, I accept that the requirement to undertake an identification of landscape capacity for all outstanding natural features and landscape and (ONF/L) and highly valued natural features and landscapes (HVNFL) is an onerous task which may not be justified in all circumstances. I consider that a more efficient way of achieving NFL-O1 would be to include a more flexible approach to landscape capacity assessments which would allow territorial authorities to decide when a landscape capacity approach is required, and only require a landscape capacity assessment in areas likely to face development or growth pressure.
41. In my view, this reflects the current application of ONF/L and HVNFL in the Otago region. As highlighted by Ms Hill for Darby Planning LP & Others and Mt Cardrona Station Limited³², in the context of the QLDC for its Proposed District Plan (PDP) the landscape capacity assessments are only required in ‘priority areas’ rather than the whole of the district’s landscapes. In contrast, Dunedin City Council in its 2nd Generation District Plan (2GP) has identified the areas and values of ONF/L and HVNFL, and also the potential threats to those values, but has not gone to the next step of assessing the capacity of those landscapes or features. I consider both of these approaches are appropriate.
42. To achieve this more flexible approach to landscape capacity assessments, I recommend deleting NFL-P1(2), which remove the requirement for landscape capacity assessment to be undertaken in all cases and amending NFL-M1(2) so that it only requires territorial authorities to undertake landscape capacity assessments in areas likely to face development or growth pressure. I also recommend amendments to NFL-P2 to reflect the understanding that landscape capacity may not always be known.
43. In relation to the relief sought by Mr Brass, while I acknowledge that ‘values’ of natural features and landscapes are not referred to in section 6(b) of the RMA, I consider the reference is helpful as it provides a practical method of understanding what needs to be protected. If the values are not identified, it makes it very difficult to determine whether an activity within a landscape is appropriate or not.
44. In response to Ms O’Callahan, I retain the position set out in the section 42A report and supplementary evidence with regard to HVNF/Ls and consider they contribute to giving effect to section 7(c) and (f) of the RMA, and their identification and management is

³⁰ Mary O’Callahan for Port Otago, para [63]-[71] and Appendix 1

³¹ Michael Bathgate for Kāi Tahu ki Otago, para [143]

³² Paragraph [15] of Ms Hill’s legal submissions for Darby Planning LP & Others and Mt Cardrona Station Limited.

common practice throughout New Zealand. I do not support the deletion of the HVNF/L provisions from the pORPS.

45. Within my opening statement, I agreed with Mr Bathgate's minor amendments to NFL-P1 to clarify the drafting. However, as I am recommending the removal of NFL-P1(2), I now consider the drafting of NFL-P1 can be refined to focus solely on the identification of the areas and values of outstanding and highly valued natural features and landscapes.

5.4. Final recommendation

46. My final recommended amendments to the notified version of the pORPS are:

NFL-P1- Identification

Identify the areas and values of outstanding and highly valued natural features and landscapes, in accordance with APP9.³³

~~In order to manage outstanding and highly valued natural features and landscapes 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 use or development while protecting the values that contribute to the natural feature and landscape being considered outstanding or highly valued.~~

NFL-M1 – Identification

Territorial authorities must:

- (1) ...
- (2) in areas likely to face development or growth pressure,³⁴ include in their *district plans* a statement of the capacity of outstanding and highly valued 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 being highly valued ~~change in use and development without their values being materially compromised or lost, in accordance with NFL-P1,~~³⁵

47. In terms of section 32AA, I consider the change is a more efficient method of achieving NFL-O1. As set out above, I consider the amendment provides a more flexible approach to landscape capacity assessments which would allow territorial authorities to decide when a landscape capacity approach is required, and only require a landscape capacity assessment in areas likely to face development or growth pressure. I consider this may be slightly less effective at achieving NFL-O1 as it may mean less will be known about the capacity of landscapes and features in the Otago region.

³³ 00014.065 Mt Cardrona Station

³⁴ 00014.065 Mt Cardrona Station

³⁵ 00014.065 Mt Cardrona Station

48. In terms of the costs and benefits of this approach, from an environmental, social and cultural perspective, I consider this approach will be largely neutral as the areas and values of all outstanding and highly valued natural features and landscapes in accordance will still need to be identified. From an economic perspective, I consider this will reduce the economic cost associated with achieving NFL-O1 considerably as it will ensure that only the areas facing development pressure will be required to undertake landscape capacity assessments. On balance, I consider the suggested approach can be justified from a section 32 perspective as I consider this will provide a more efficient approach to achieving NFL-O1.

6. NFL-P2 – Protection of outstanding natural features and landscapes

6.1. Introduction

49. NFL-P2 is discussed in section 14.7 of the section 42A report, with my analysis in paragraphs [126] to [134]. NFL-P2 is also discussed further in my first brief of supplementary evidence.

50. The recommended version of NFL-P2 reads:³⁶

NFL-P2 – Protection of outstanding natural features and landscapes

Protect outstanding natural features and landscapes outside the coastal environment from inappropriate *subdivision*, use and development³⁷ by:

- (1) avoiding adverse *effects* on the values of the natural features and landscapes where there ~~limited~~limited³⁸ or no capacity to absorb ~~change use or development~~ change use or development³⁹ ~~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*, and
- (3) managing the adverse *effects* of infrastructure on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13.⁴⁰

6.2. Submissions and evidence⁴¹

51. Mr Brown considers the reference to limited capacity in clause (1) of NFL-P2 is unnecessary. He supports the submission of Mt Cardrona Station seeking its deletion. He seeks this relief on the basis that if there is limited capacity to absorb use or development,

³⁶ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

³⁷ 00301.054 Port Otago

³⁸ 00014.063 Mt Cardrona Station

³⁹ 00318.034 Contact Energy, 00014.063 Mt Cardrona Station

⁴⁰ 00315.073, 00315.074, 00315.075, 00315.076 Aurora Energy

⁴¹ Mr Horne for the Telecommunication Companies, Mr Coombs for Contact Energy, Ms McLeod for Transpower, and Mr Shaw for Waka Kotahi support the supplementary evidence version of NFL-P2.

the avoidance of any adverse effects on the values of the ONF/L may not be necessary in every case, and clause (2) of NFL-P2 would capture any adverse effects on the values of the ONF/L⁴². At the hearing, Mr Brown proposed an additional drafting option which included an addition to clause (2) as follows:

(2) avoiding, remedying or mitigating ~~other~~ adverse effects on the values of the natural features and landscapes where there is capacity for use or development.

52. Mr Ferguson for Darby Planning & Others considers it is inappropriate to require the avoidance of adverse effects on identified values of the feature or landscape where capacity to absorb development exists. Mr Ferguson also reiterates the same concerns with the concept of landscape capacity as for NFL-P1. Mr Ferguson prefers the notified clause (1), subject to protection being achieved by ‘maintaining’, rather than avoiding adverse effects on, landscape values⁴³.

53. Mr Brass for DOC⁴⁴ and Mr Bathgate for Kāi Tahu ki Otago⁴⁵ are concerned with the management of outstanding natural features and landscapes being linked to the capacity to absorb changes, as they consider it could promote a ‘maximum permissible harm’ approach. Both parties support the notified version of NFL-P2, and Mr Brass also supports the removal of references to the ‘values of’ natural features and landscapes.⁴⁶

54. Ms Hunter supports the submission of Contact Energy seeking an amendment to NFL-P2 to direct plan users to EIT-EN-P5 (a provision advanced by the submitter as part of its proposed energy sub-chapter of the pORPS) which establishes an effects management framework associated with renewable electricity generation activities.⁴⁷

55. Ms Collie for Matakanui Gold broadly supports the supplementary evidence version of NFL-P2 but seeks several amendments as follows:⁴⁸

Protect the landscape values of outstanding natural features and landscapes outside the coastal environment from inappropriate *subdivision*, use and development by:

(1) avoiding adverse *effects* on the identified landscape values of the natural features and landscapes where there is ~~little or~~ no capacity to absorb the effects of use or development,

(2) ...

56. Mr Devlin for Glenpanel Limited considers there is no policy framework to sit alongside new clause (3) in NFL-O1 regarding restoration, and recommends that clause (2) of NFL-P2 be amended as set out below, or alternatively, a new policy be inserted recognising

⁴² Jeff Brown for Mt Cardrona Station, para [3.1] to [3.6]

⁴³ Chris Ferguson for Darby Planning LP & Others, para [25] to [29]

⁴⁴ Murray Brass for DOC, para [232] to [236]

⁴⁵ Michael Bathgate for Kāi Tahu ki Otago, para [137] to [139]

⁴⁶ Murray Brass for DOC, para [231]

⁴⁷ Claire Hunter for Contact Energy, para [13.1]-[13.4]

⁴⁸ Anita Collie for Matakanui Gold, para [5.20]-[5.23]

activities in an ONF/L that do not involve permanent buildings and ‘are of less concern’. No specific wording is proposed for the new policy.⁴⁹

“avoiding, remedying or mitigating other adverse effects and recognising positive effects where restoration of the values of the natural features or landscapes is proposed.”

6.3. Analysis

57. As noted in the assessment of NFL-P1 above, I now recommend a more flexible approach be taken as to when a landscape capacity assessment is to be used, only requiring landscape capacity assessment in areas likely to face development or growth pressure. In my view, this suggested change to NFL-P1 requires consequential changes to NFL-P2 as NFL-P2(1) assumes that the capacity of natural features or landscapes will be known.

58. In order to align NFL-P2 with my recommended amendment to NFL-P1, I consider a new clause within NFL-P2 is required which relates directly to areas where a landscape capacity assessment has been undertaken, or where the landscape capacity may be at risk of being exceeded. Within these areas, I retain the view that NFL-P2 should include strong direction that the capacity of that landscape is not exceeded. As such, I recommend an additional clause be added to the NFL-P2 which sets this out.

59. I also support the suggestion of Mr Ferguson that NFL-P2(1) should reflect the current drafting in Policy 3.2.4(b) of the RPS19 which states:

‘...maintaining the values (even if those values are not themselves outstanding) that contribute to the natural feature, landscape or seascape being outstanding’

60. I note this drafting is largely aligned with the drafting of the notified version of NFL-P2(1) albeit that ‘avoid’ in the notified version of NFL-P2 is being replaced with ‘maintain’. I consider this amendment is important to ensure that the policy is not a ‘no change policy’, and appropriate subdivision, use and development can still be undertaken if those values are maintained. When read together with NFL-P2(1) and NFL-P2(3), I consider the combination of:

- a. not exceeding the capacity of a landscape,
- b. maintaining the values of the landscape (even those which are not, on their own, outstanding), and
- c. avoiding, remedying or mitigating other effects,

will achieve the requirement within NFL-O1 to protect outstanding natural features and landscapes from inappropriate subdivision, use and development.

⁴⁹ Blair Devlin for Glenpanel Limited Partnership, para [39]-[51]

61. I have also considered whether a definition of ‘landscape capacity’ is required within the pORPS. As noted by Ms Hill⁵⁰, the QLDC PDP includes a definition of ‘landscape capacity’ as follows:

Landscape capacity:

- i. in relation to an Outstanding Natural Feature or Outstanding Natural Landscape, means the capacity of a landscape or feature to accommodate subdivision and development without compromising its identified landscape values;*
- ii. in relation to a landscape character area in a Rural Character Landscape, means the capacity of the landscape character area to accommodate subdivision and development without compromising its identified landscape character and while maintaining its identified visual amenity values;*

62. While I agree this definition provides helpful clarity, I note that the concept is referred to in NFL-P1(2) and NFL-M1(2). As such, rather than including a definition of ‘landscape capacity’, I consider it would be more helpful for the methods within the NFL chapter to articulate what a landscape capacity assessment should include. Given this, I consider NFL-M1(2) should be amended to set out what a landscape capacity assessment should include, using the definition within the QLDC PDP set out above as a guide.

63. In response to Mr Brass and Mr Bathgate, as set out in my section 42A report,⁵¹ I consider that section 6(b) of the RMA is not a ‘no change’ provision and, therefore, NFL-P2 needs to include some flexibility to provide for an appropriate level of development within ONF/Ls. In my view, the drafting proposed by Mr Brass and Mr Bathgate does not achieve this.

64. In relation to Ms Collie’s proposed amendments, I consider that the chapeau of the policy should be consistent with section 6(b) of the RMA and therefore disagree with the reference to ‘landscape values’. I also disagree with the inclusion of ‘the effects of’ as the effects are already captured by clause (1).

65. In response to Ms Hunter, I disagree an additional reference to EIT-EN-P5 is necessary. The NFL and EIT chapters of the PORPS are to be read together and form a package of provisions. The addition of clause (3), which references EIT-INF-P13, is recommended to highlight that this provision supersedes the requirements of NFL-P2(1) and (2). I do not recommend the inclusion of any further cross-references in this policy.

66. I do not consider the amendments sought by Mr Devlin are required as NFL-P4 is the primary policy for implementing restoration. I note that Mr Devlin 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 paragraph 11 of my supplementary evidence. I agree

⁵⁰ Paragraph [20] of Ms Hill’s legal submissions for Darby Planning LP & Others and Mt Cardrona Station Limited.

⁵¹ Paragraph [129] of the section 42A report.

that the chapeau in paragraph 18 of my supplementary evidence is incorrect. This change is reflected below.

6.4. Final recommendation

67. My final recommended amendments to the notified version of the pORPS are:

NFL-P2 – Protection of outstanding natural features and landscapes

Protect outstanding natural features and landscapes from inappropriate subdivision, use and development⁵² by:

(1A) avoiding exceeding the landscape capacity of the natural feature or landscape,⁵³

(1) maintaining ~~avoiding adverse effects on~~⁵⁴ the values (even if those values are not themselves outstanding) that contribute to the natural feature or landscape being considered outstanding, ~~and~~

(2) avoiding, remedying or mitigating other adverse effects, ~~and~~

(3) managing the adverse effects of infrastructure on the values of outstanding natural features and landscapes in accordance with EIT-INF-P13.⁵⁵

68. In terms of section 32AA, this assessment is similar to the section 32AA assessment for NFL-P1 above. I consider the change is a more efficient method of achieving NFL-O1. I consider the recommended amendments provide a more flexible approach to landscape capacity assessments set out in NFL-P1. I consider this more effective than the notified version of NFL-P2 as it provides a greater understanding of what appropriate subdivision, use and development within ONF/L will need to achieve. In terms of the costs and benefits of this approach, I consider this approach will be largely neutral as both notified and proposed version of the policy require the protection of ONF/L, however, the suggested amendments provide a more nuanced approach to how that protection will be achieved.

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

7.1. Introduction

69. NFL-P3 is discussed in section 14.8 of the section 42A report, with my analysis of paragraphs [148] to [155]. NFL-P3 is also discussed in my first and second briefs of supplementary evidence.

⁵² 00301.054 Port Otago

⁵³ 00014.063 Mt Cardona Station

⁵⁴ 00014.063 Mt Cardona Station

⁵⁵ 00315.073, 00315.074, 00315.075, 00315.076 Aurora Energy

70. The recommended version of this provision reads:⁵⁶

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

Maintain or enhance *highly valued natural features and landscapes* outside the coastal environment⁵⁷ by:

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

7.2. Submissions and evidence

71. Ms Hunter and Mr Coombs, both for Contact Energy, consider the drafting of NFL-P3 sets too high a bar for 'lesser-valued' landscapes and is inconsistent with section 7 of the RMA. Ms Hunter states that requiring the avoidance of significant adverse effects of on these landscapes is unjustified. Ms Hunter supports the Contact Energy submission seeking that the policy is deleted, or is otherwise amended to read:⁵⁸

Maintain and enhance highly valued natural features and landscapes by avoiding, remedying or mitigating adverse effects on the values that comprise these features and landscapes.

72. Mr Coombs agrees that these landscapes should be managed through avoiding, remedying or mitigating adverse effects on the values of those landscapes. Mr Coombs also considers clause (2) of NFL-P3 should be amended to refer to avoiding, remedying, or mitigating effects on values.⁵⁹

73. Ms Hunter supports the Oceana Gold submission seeking that NFL-P3 be deleted or otherwise amended to address the broader concerns of submitters regarding the identification and management of highly valued natural features and landscapes.⁶⁰

74. Mr Brass for DOC considers reference to 'values' within NFL-P3 should be removed to ensure consistency with the approach taken to managing natural features and landscapes within the CE chapter, and to align with higher order documents such as the NZCPS and RMA.⁶¹

75. Ms McLeod supports the submission of Transpower that seeks to include a cross-reference within NFL-P3 to EIT-INF-P13 for consistency with NFL-P2.⁶² This change is also supported by Mr Horne for the Telecommunication Companies, subject to amendments to EIT-INF-P13 and/or the definition of 'Regionally Significant Infrastructure'.⁶³

⁵⁶ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

⁵⁷ 00301.054 Port Otago

⁵⁸ Claire Hunter for Contact Energy, para [13.5]-[13.9]

⁵⁹ Brad Coombs for Contact Energy, para [9.11]-[9.12]

⁶⁰ Claire Hunter for Oceana Gold, para [14.1]-[14.4]

⁶¹ Murray Brass for DOC, para [227]-[231]

⁶² Ainsley McLeod for Transpower, para [8.39(e)].

⁶³ For example, Chris Horne for the Telecommunications companies, para [4.13]-[4.15]

7.3. Analysis

76. As discussed above, I retain the position set out in my section 42A report and supplementary evidence with regard to the identification and management of HVNF/Ls. I disagree that ‘avoiding significant adverse effects’ is a test associated with section 6 of the RMA, as opposed to section 7. This is also the test set out in the RPS 2019.
77. In response to Mr Brass, I consider it is appropriate for the chapeau to refer to the maintenance and enhancement of HVNF/Ls, but consider that clause (1) should refer to values as this helps to demonstrate how maintenance and enhancement will be undertaken.
78. In response to Ms McLeod and Mr Horne, I note that amendments have been made within the reply report to include HVNF/L within, EIT-INF-P13. Given this I consider it is appropriate that an additional clause be added to NFL-P3 to clarify that the adverse effects of infrastructure on the values of highly valued natural features and landscapes in accordance with EIT-INF-P13.

7.4. Final recommendation

79. My final recommended amendments to the notified version of the pORPS are:

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

Maintain or enhance *highly valued natural features and landscapes* by:

- (1) avoiding significant adverse *effects* on the values of the natural feature or landscape, ~~and~~
- (2) avoiding, remedying or mitigating other adverse *effects*, ~~and~~
- (3) managing the adverse *effects* of infrastructure on the values of *highly valued natural features and landscapes* in accordance with EIT-INF-P13.⁶⁴

80. In terms of s32AA, I consider the changes suggested are minor in nature, but provide greater clarity as to how the links between the NFL and EIT-INF chapters are to be interpreted.

8. NFL-P4 – Restoration

8.1. Introduction

81. NFL-P4 is discussed in section 14.9 of the section 42A report, with my analysis in paragraphs [161] and [162].
82. The recommended version of this provision reads:⁶⁵

NFL-P4 – Restoration

⁶⁴ 00139.243 DCC

⁶⁵ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

Promote restoration of the areas and values of outstanding and *highly valued natural features and landscapes* outside the coastal environment⁶⁶ where those areas or natural⁶⁷ values have been reduced or lost.

8.2. Submissions and evidence⁶⁸

83. Ms Hunter for Contact Energy has reservations about NFL-P4, largely due to broader concerns related to the identification of highly valued natural features and landscapes in the NFL chapter. Ms Hunter considers that restoration efforts could prove too onerous for landowners, and she also raises concerns with reference to the ‘areas’ of landscapes. Ms Hunter supports the submission of Contact Energy seeking that the policy is deleted, or is amended as follows:⁶⁹

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

84. Mr Farrell for Fish & Game, Realnz, and NZSki suggests an addition to NFL-P4 to emphasise the restoration of the natural values of these areas.⁷⁰

8.3. Analysis

85. As addressed earlier in this report, I disagree with the deletion of provisions identifying and managing HVNF/Ls and consider that the provisions contribute to implementing sections 7(c) and (f) of the RMA. Further, I consider that the drafting of NFL-P4 should be consistent with NFL-O1. As such, I continue to support references to ‘areas’ in addition to ‘values’.

86. As set out in the drafting above, within my opening statement I supported the I amendment proposed by Mr Farrell to include ‘natural’ within NFL-P4. I continue to support this change.

8.4. Final recommendation

87. My final recommended amendments to the notified version of the pORPS are:

NFL-P4 – Restoration

Promote restoration of the areas and values of outstanding and *highly valued natural features and landscapes* where those areas or natural⁷¹ values have been reduced or lost.

88. In terms of s32AA, I consider the changes suggested are minor in nature, but provide greater clarity as to how the policy is to be interpreted.

⁶⁶ 00301.054 Port Otago

⁶⁷ 00206.066 Trojan

⁶⁸ Michael Bathgate for Kāi Tahu ki Otago supports the supplementary evidence version of NFL-P4.

⁶⁹ Claire Hunter for Contact Energy, para [13.10]-[13.15]

⁷⁰ Ben Farrell for Fish a& Game, Realnz and NZSki, para [117]

⁷¹ 00206.066 Trojan

9. NFL-P5 – Wilding conifers

89. A number of submitters, including DCC and DOC, seek that the pORPS is amended to incorporate broader policy direction on managing pest species (in addition to retaining the existing direction in ECO-P9 regarding wilding conifers). Ms Boyd has addressed these submissions in *Reply report 1: Introduction and general themes* and recommends broadening the scope of the LF-LS chapter (including its objectives) to address land environments more widely, as well as a new policy managing pest species that incorporates the content of ECO-P9 and NFL-P5. She has also recommended consequential amendments to delete NFL-P5, NFL-M3(3), the last sentence of NFL-E1, the third bullet point in NFL-PR1, and NFL-AER3. For completeness, I note that Ms Boyd discussed this approach with me, and I agree with her recommendations.

10. APP9 - Identification criteria for outstanding and highly valued natural features, and landscapes

10.1. Introduction

90. APP9 is discussed in sections 14.3.1 and 14.19 of the section 42A report, with my analysis in paragraphs [30] and [236] to [241]. APP9 is also discussed in my first and second briefs of supplementary evidence.

10.2. Submissions and evidence

91. Mr Coombs for Contact Energy⁷² and Ms Styles for Manawa Energy⁷³ consider further changes are required to APP9 to align it with the New Zealand Institute of Landscape Architect's (NZILA) Te Tangi a te Manu – Aotearoa New Zealand Landscape Assessment guidelines.
92. Mr Coombs supports several amendments to APP9 including:⁷⁴
- a. renaming the appendix as 'attributes for outstanding and highly valued natural features and landscapes (including seascapes)',
 - b. referring to the attributes as 'physical, perceptual and associative' as described in Te Tangi a te Manu,
 - c. specifying that the list of attributes is non-exhaustive, and
 - d. providing regional guidance on the appropriate threshold of significance for outstanding and highly valued landscapes.
93. Ms Styles recommends that APP9 is updated to align fully with the NZILA guidelines, or alternatively, cross-references directly to them. Ms Styles considers that appropriate

⁷² Brad Coombs for Contact Energy, para [9.26]-[9.31]

⁷³ Stephanie Styles for Manawa Energy, para [10.28]-[10.29]

⁷⁴ These amendments are also supported by Ms Hunter for Contact Energy in paragraph [13.7]

guidance for territorial authorities in undertaking consistent and robust ONF/L identification across the region should also be provided in the appendix.⁷⁵

94. Mr Bathgate for Kāi Tahu ki Otago recommends changes to APP9 to clarify that the criteria apply to identification of all natural features, landscapes and seascapes in the coastal environment, not just outstanding or highly valued ones.⁷⁶
95. During the hearing there was also a question from the Hearing Panel to Ms Bartlett questioning how Kāi Tahu would like to be referred to within APP9 if the Te Tangi a te Manu approach was used. Ms Bartlett responded by suggesting that 'Tāngata whenua' be replaced with 'Mana whenua'.

10.3. Analysis

96. In my opening statement I stated that I agreed in principle with evidence from submitters seeking alignment with Te Tangi a te Manu, while noting that I was mindful of recent assessments undertaken by several district councils to identify ONF/L and HVNF/L in accordance with criteria which largely aligned with APP9. Two potential options for APP9 were set out for the panel's consideration.
97. Following the hearing, I support the criteria in APP9 being amended to fully reflect Te Tangi a te Manu as I acknowledge that it represents the most recent best practice for landscape assessment. In relation to whether an amendment is required to the methods to ensure territorial authorities are not required to re-map existing areas of ONF/L or HVNFL, I am of the view that the pORPS is forward looking and the new criteria will not require re-mapping of existing areas, and will only take effect when new identification of ONF/L and HVNFL are required.
98. Finally, I support replacing 'Tāngata whenua' with 'Mana whenua' within (l), (m), (n), and (o), as suggested by Ms Bartlett.

10.4. Final recommendation

99. My final recommended amendments to the notified version of the pORPS are:

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

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

- Physical (natural and human)**
- (a) Geology and geomorphology.
 - (b) Topography and hydrology (including drainage patterns).
 - (c) Climate and weather patterns.
 - (d) Soil patterns.

⁷⁵ Stephanie Styles for Manawa Energy, para [10.28]-[10.29]

⁷⁶ Michael Bathgate for Kāi Tahu ki Otago, para [135]

- (e) Vegetation patterns.
 - (f) Ecological (flora and fauna) and dynamic components.
 - (g) Settlements and occupation.
 - (h) Roads and circulation.
 - (i) Land use – cadastral pattern.
 - (j) Buildings.
 - (k) Archaeology and heritage features.
 - (l) Mana whenua features.
- Associative**
- (m) Mana whenua creation and origin traditions manifest in landscape features.
 - (n) Mana whenua associations and experience – (historic, contemporary, and future) including pūrākau, whakapapa, tikaka, and mātauraka.
 - (o) Mana whenua metaphysical aspects such as wairua and mauri.
 - (p) Legal personification of landscape features.
 - (q) 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.
 - (r) 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.
- Perceptual**
- (s) Geomorphic legibility (how obviously a landscape expresses the geomorphic processes).
 - (t) Wayfinding and mental maps (legibility or visual clarity of 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 aware of such transient attributes that may not be immediately apparent.⁷⁷

100. In terms of section 32AA, I consider the recommended change is a more effective method of achieving NFL-O1. I note that the factors listed in Te Tangi a te Manu are now considered best practice for landscape identification and provide a similar, but more detailed list, of considerations when compared to the criteria within the notified version of APP9. I consider the efficiency of this method will be neutral. Both versions of APP9 (notified and recommended) still require a suitably qualified and experienced landscape architect to consider the list of factors and make a professional judgment on the status of landscape. In terms of the costs and benefits of the recommended approach, I consider this approach will provide some social, cultural and environmental benefits as it includes a more detailed list of factors, particularly in relation to the 'Associative' aspects. This will place more emphasis on the 'Associative' aspects when undertaking a landscape assessment. In relation to the economic costs and benefits, I consider this will be largely neutral. As noted in the assessment above, I am of the view that the pORPS is forward looking and the new criteria will not require re-mapping of existing areas and will only take effect when new identification of ONF/L and HVNFL are required.

⁷⁷ 00310.015 The Telecommunications Companies
Proposed Otago Regional Policy Statement 2021