

**IN THE MATTER of
the Resource Management Act 1991**

AND

**IN THE MATTER of
hearing of submissions and further
submissions on the Proposed
Waimakariri District Plan**

AND

**of hearing of submissions and further
submissions on Variations 1 and 2 to the
Proposed Waimakariri District Plan**

**MINUTE 6 – MATTERS AND QUESTIONS
ARISING FROM HEARING STREAM 4 AND
THE NEW NPS-IB**

PURPOSE

- (1) The purpose of this Minute is to:
 - (a) Formally request that the Council provides a memorandum to the Hearings Panel on its intended approach to giving effect to the National Policy Statement on Indigenous Biodiversity, which comes into force on 4th August 2023
 - (b) Put a series of questions to Council s42A report authors to respond to in preparing their Reply Reports to the Panel, due by 11 August 2023.
 - (c) Put further questions to Council's s42A report author on the Strategic Directions chapter.
 - (d) Provide guidance and make requests to s42A report authors.

GIVING EFFECT TO THE NEW NATIONAL POLICY STATEMENT ON INDIGENOUS BIODIVERSITY

- (2) We are aware that the National Policy Statement on Indigenous Biodiversity (NPS-IB) has now been gazetted and comes into force on 4th August 2023. We signalled at the commencement of Hearing Stream 4 that we would be asking the Council to provide us a memorandum setting out their understanding of the requirements of the NPS-IB, and based on that understanding, how they intend to proceed in respect to the NPS-IB. This Minute formalises the request to the Council.
- (3) Submissions on the ECO-Ecosystems and Indigenous Biodiversity is scheduled for Hearing Stream 11, in March 2024, providing some lead time. While noting that there may be other chapters impacted, including the Strategic Directions, given this timing, the Hearings Panel requests that this memorandum be provided no later than **Friday 29th September 2023**. On receipt of the memorandum, the Hearings Panel will determine if any further information or submitter input is necessary.

QUESTIONS TO HEARING STREAM 4 SECTION 42A REPORT AUTHORS FOR REPLY REPORTS

- (4) As signalled during and at the end of the hearing, the Hearings Panel has questions that we would like answered in the Section 42A report author's Reply Reports. For ease, we have set these questions out in order of the Section 42A reports and provisions of the relevant Chapters of the PDP. The questions are attached as Appendix 1. We request that these Reply Reports be provided no later than **4pm Friday 11th August 2023**, unless otherwise agreed with the Chair.
- (5) This list of questions is not exhaustive and Section 42A authors are also invited to respond to other matters arising from the hearing that are not contained in the list in Appendix 1. This includes matters that the authors have deferred in their statements of

supplementary evidence. Each Reply Report is to append a fully updated Appendix B, recommended responses to submissions and further submissions.

- (6) In their Reply Reports, Section 42A report authors are also requested to provide a fully updated Appendix A “recommended amendments” to their respective chapters showing:
- (a) Any further recommended amendments to the chapters having read and heard evidence through the hearings process. These are to be shown in a consistent manner across the rights of reply, using the same annotation, which clearly delineates the recommended amendments from the Section 42A report and further recommended amendments following the hearing.
 - (b) Each recommended amendment to the chapter(s) being footnoted to the relevant submission(s) that the amendment(s) relates to.

FURTHER QUESTIONS ARISING FROM HEARING STREAM 1

- (7) The Hearings Panel has carefully considered the Reply Reports received on Hearing Stream 1. We have further questions for Mr Buckley arising from his Reply Report and the body of his Section 42A report, which is set out below in italics. Given the importance of the answer to this question for the PDP as a whole, we request that this reply be given no later than **4pm Friday 11th August 2023** in advance of Hearing Stream 5 commencing.

In paragraph 28 of your Reply Report, you advise that, should the Strategic Directions (SD) Objectives have primacy over other objectives, the framework of the other objectives and subservient provisions would need to be reassessed as to the degree that the SD Chapter and the Plan itself would give effect to the Council’s requirements under s75(A) of the RMA.

- 1. Can you please elaborate, with examples, on why you consider it necessary to reassess the framework and plan should the SD Chapter objectives have primacy. In particular, how would Council’s s75 requirements be impacted?*
- 2. What are the advantages and disadvantages of the SD Chapter Objectives having primacy over the Objectives in other Chapters?*

If you remain of the view that there is no primary, please set out your opinion on what the value and purpose is of the Strategic Direction objectives if they are to be seen as simply having been used to develop other objectives and policies in other chapters of the Plan?

- (8) In responding to the questions above, the Panel notes that in your s42A and Reply Reports you use language that indicates that the SD Chapter objectives do have primacy, which we have found difficult to reconcile with your advice in your Reply Report that there is no primacy. We have provided examples below and would appreciate you clarifying in your response to our questions above:
- Para 28 Reply Report “subservient provisions”

- Table 4B S42A Report Forest and Bird submission point 192.31 “The benefits of infrastructure are recognised in policy EI-P1 and is not considered to be a strategic direction matter that is required to provide “high level direction” for the District Plan.
- Table 4B S42A Report IAL submission point 254.19 “The proposed change to SD-O3(3) is inconsistent with other objectives and policy within the district plan and would result in the provision of infrastructure having dominance over all over parts of the district”
- Page 4 Answers to Panel Preliminary questions in response to Para 65 question: “While I consider the purpose of the Strategic Objectives is to provide direction for the development of more detailed provisions relating to strategic issues”.

GUIDANCE AND REQUESTS TO COUNCIL S42A REPORT AUTHORS

- (9) During the course of Hearing Stream 4, Council s42A report authors asked for the Hearings Panel to provide direction on how to respond to submissions that had supported a provision but sought amendments. In those instances the Report Author had recommended that the submission be rejected as they did not recommend any amendments as they considered the submitter’s relief was already provided for in the relevant provision. The Hearings Panel’s position is that such submissions should be “accept in part”.
- (10) During the course of hearing from the report authors, we were told of corrections to the s42A reports that had been provided to us. For transparency and ease, s42A report authors are requested to provide updated s42A reports showing these amendments in tracked changes. The Hearings Administrator is asked to put these on the Council website and provide the updated reports to the Hearings Panel.

CORRESPONDENCE

- (11) Submitters and other hearing participants must not attempt to correspond with or contact the Hearings Panel members directly. All correspondence relating to the hearing must be addressed to the Hearings Administrator, Audrey Benbrook, on 0800 965 468 or audrey.benbrook@wmk.govt.nz.



Gina Sweetman

Independent Commissioner – Chair - on behalf of the Hearings Panel members

21 July 2023

APPENDIX 1 – LIST OF QUESTIONS TO SECTION 42A AUTHORS

NFL – Āhuetanga o te whenua - Natural Features and Landscapes

1. Would it be appropriate to relocate NFL-R8 and R9 to the EI chapter if they are deemed to be infrastructure?
2. What is the intent of NFL-R8? What effects does it seek to manage?
3. Do the National Planning Standards require councils to identify significant amenity landscapes in district plans?
4. Please provide further advice on the application of Regulations 13 and 15 of the NES-PF to rules in a district plan, in respect of significant amenity landscapes. In particular, is it permitted to have a more onerous activity status than controlled?
5. Do you remain of the view that EI-P5 is more directive than NFL-P1, NFL-P3 and NFL-P4, and would provide a pathway for consenting infrastructure, taking into account the legal opinion from the Proposed Selwyn District Plan¹ hearings and any other legal advice you may wish to obtain.
6. Please respond to the points raised in the Forest and Bird speaking notes dated 17 January 2023.

NATC - Āhuetanga o te awa - Natural Character of Freshwater Bodies

7. Please provide comment on Transpower's requested amendments to NATC-P2, NATC-P4 and NATC-P6.
8. Please set out any updated recommendation in respect to NATC-P3, including the outcome of any discussions with Ngāi Tuahuriri.
9. Please advise whether you consider the rule framework is consistent with the objective and policy framework, and if there is any inconsistency, can this be addressed.
10. Please respond to the points raised in the Forest and Bird speaking notes dated 17 January 2023.

CE - Te taiao o te takutai moana - Coastal Environment

11. Please respond to Fulton Hogan's requested amendment to NATC-P5.
12. Please respond to the points raised in the Forest and Bird speaking notes dated 17 January 2023.

PA - Tomonga mārea - Public Access

13. Please respond to Federated Farmers and DoC's evidence on PA-P3, as to whether you recommend any further amendments.

¹ Provided by Chris Horne from Chorus et al.