

**WAIMAKARIRI DISTRICT COUNCIL**  
**MEMORANDUM TO DISTRICT PLAN HEARING PANEL**

**FILE NO AND TRIM NO:** DDS-14-01 / 231116185049

**DATE:** 8 December 2023

**MEMO TO:** Proposed District Plan Hearings Panel

**FROM:** Council s42A Reporting Officers

**SUBJECT:** Proposed District Plan (PDP) Strategic Directions Primacy Memorandum

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**Introduction**

1. This memo is in response to Minute 11 dated 2 October 2023 from the Hearings Panel regarding whether the Strategic Directions Chapter (SD and UFD) be given primacy, or not. The Hearings Panel directed that s42A authors provide their assessment of any potential implications that may arise on a particular chapter's objectives should the Strategic Directions Chapter be given primacy, or not.
2. This memo draws together the assessments by various s42A authors for chapters heard in Hearing Streams 2, 3, 4 and 5, and presents an overview summary of the implications associated with each of the "primacy options".

**Differing Approaches to Primacy for Strategic Directions**

3. Council's memo on 'The issue of 'Primacy' for Strategic Directions and Urban Form and Development', in response to Minute 10, in paragraph 9 identified five distinct approaches towards primacy. These are (underline bold emphasis added):
  - (a) SD objectives have no "primacy" and sit on the same level as other objectives in the plan;
  - (b) SD objectives have "primacy" in one of the following different senses (dependent on how the district plan is crafted):
    - (i) SD objectives **inform** objectives and policies contained in other chapters;
    - (ii) Objectives and policies in other chapters must be expressed and achieved as **being consistent** with the SD objectives;
    - (iii) SD objectives are used to **resolve conflict** with objectives and policies in other chapters; and
    - (iv) SD objectives **override** all other objectives and policies in the plan.

These approaches have been used in the primacy assessments within this memo.

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## **Individual Primacy Assessments / Concluding Overarching Statements**

4. Below are individual s42A Reporting Officer primacy assessments for all approaches ((a), (b)(i), (b)(ii), (b)(iii) and (b)(iv)) as detailed in paragraph 3 above, for the various PDP chapters in Hearing Streams 2, 3, 4 and 5. The assessments also include statements as to whether s42A authors agree or disagree with whether giving primacy to some or all strategic directions will resolve conflicts within the PDP. These are ordered by s42A Reporting Officer.
5. Authors also note that in some of the individual assessments below there may be suggested changes to strategic directions if recommendations are accepted. For ease of assessment, collective amendments have not been proposed as part of this memo, excepting where an illustrative example is proposed. Report authors recommend that the Hearings Panel provide further directions on drafting considerations after the conclusion of the hearings process.
6. Finally, s42A Reporting Officers note that if the Hearings Panel were minded to alter the primary status of strategic directions from the position of the PDP as drafted, or as recommended in s42A reports, that there may be further implications for objectives across the full range of chapters within the PDP.

**FROM:** Peter Wilson, Senior Policy Planner

**SUBJECT:** Strategic Directions Primacy Assessment for Overarching Matters, Natural Character of Freshwater Bodies, Coastal Environment, Earthworks

1. The Commissioners have asked individual s42A authors for their views and recommendations on if the strategic directions – objectives and policies – in the proposed District Plan have primacy, and what this means in response to submissions and consequential amendments to the plan provisions.
2. To preface my response, I note that I was not involved in the preparation of the proposed District Plan prior to notification. I had some involvement in Variation 1 immediately prior to notification, but not on strategic directions.

*Strategic objectives or policies with primacy*

3. I have considered the matter from a first principles perspective considering case law. My understanding, based on *King Salmon*<sup>1</sup> and in a consenting context, *Davidson*<sup>2</sup> is that lower order plans must give effect to higher order policies where these higher order policies address the matter in question. ‘Give effect to’, means implement. *Davidson* requires decision-makers, in a consenting context, to only look one level up in any given policy hierarchy.
4. I have also considered the relevance of *Port Otago Ltd v Environment Defence Society*. My understanding of the principles of this judgement is that the context of the plan has a bearing on how the tests of *King Salmon* (and *Davidson*) are applied. In this sense I consider that *Port Otago* would potentially lend support to an approach that relied on a ‘structured analysis’ of the objectives of the plan to determine where more directive policies should prevail (or the extent to which they prevail), rather than full reliance on the use of an overarching strategic chapter which has full primacy.
5. In this context, strategic objectives or policies are not the end point of conflict or tension resolution within a district plan, as the higher order documents, with their objectives and policies will have greater weight in the event of tension or conflict due to *Davidson*. Given the complexity of the higher order documents, and their rate of change, I consider it near impossible to write strategic objectives and policies that would in effect ‘read down’ the complex content of the higher order provisions and encapsulate them within district plan strategic directions, thus enabling these strategic directions to function with ‘strong primacy’, in the sense of (iii) and (iv).
6. The challenge with this exercise is such that I consider there is no halfway-house of strategic directions that achieve some of the task but not all of the task. Strategic objectives and policies, which have primacy, but which reflect only some of the higher order provisions may actually result in further complexity and conflict, in so far as the strategic directions become inconsistent with the higher order provisions they are supposed to implement. In such cases, I believe that the

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<sup>1</sup> Environmental Defence Society Incorporated v The New Zealand King Salmon Company and Ors, <https://www.courtsofnz.govt.nz/cases/environmental-defence-society-incorporated-v-the-new-zealand-king-salmon-company-limited-ors>

<sup>2</sup> R J Davidson Family Trust v Marlborough District Council [2018], [https://www.trc.govt.nz/assets/Public-notices/Airport-Farm-Trustee/Evidence-submitted-at-Hearing/Case\\_law\\_-\\_x\\_7.PDF](https://www.trc.govt.nz/assets/Public-notices/Airport-Farm-Trustee/Evidence-submitted-at-Hearing/Case_law_-_x_7.PDF)

*Davidson* approach of looking above to higher order provisions would override the plan's strategic directives anyway, rendering them somewhat redundant.

7. A practical example may assist. The PDP contains a coastal environment overlay, with a corresponding chapter containing provisions that give effect to and implement the higher order New Zealand Coastal Policy Statement, the Canterbury Regional Policy Statement, and the Canterbury Regional Coastal Plan. The NZCPS in particular has nuance and detail that is challenging to implement, even in the context of the relatively large set of coastal environment objectives, policies, rules, and standards. If a strategic direction objective or policy was written to say, give primary or overarching direction on a matter like, for example residential development or enabling energy and infrastructure, then this is likely to be inconsistent with the NZCPS and regional requirements in respect of the coastal environment. However, as the strategic objective or policy has primacy, it overrides the coastal environment provisions, which do give effect to the NZCPS. Thus a three-way conflict is created between the higher order documents, the strategic objectives and policies, and the coastal environment chapter provisions themselves.
8. I have considered if it is theoretically possible to write a strategic objective or policy that captures both the nuance of the higher order documents as well as the chapter provisions. Given the nuance and detail, I consider that by the time such a policy is written, it would likely be as lengthy as the chapter provisions themselves, if all the detail is to be appropriately captured within the strategic objective or policy, begging the question of what purpose the strategic objective or policy would serve if it simply replicated the chapters.

#### *Strategic objectives or policies without primacy*

9. My understanding based on discussions with my colleagues is that the PDP strategic directions were not written to have primacy in the context of (iii) and (iv) 'strong primacy'. Instead, they were written to be reflective of the chapter provisions themselves – an attempt to explain concisely the focus of the chapter's rules, objectives and policies. This is 'primacy' in the sense of (i) and (ii) as outlined above.
10. However, I consider that given the detail in the chapter provisions, the problem of effective aggregation occurs. In the process of simplifying and explaining the chapter provisions in less words, critical detail can be lost, rendering the strategic objectives and policies inconsistent with the chapter provisions that they reflect, and creating another form of inconsistency.
11. Not all of the chapter provisions have strategic directions, as some were deemed to be too minor relative to others. The key strategic or significant resource management matters are covered.

#### *Conflict resolution*

12. Some of the discussion on the issue of primacy appears to be predicated on the concept that the strategic objectives and policies resolve conflict arising from the chapter provisions in some way. If so, it is not clear to me how this could operate. For instance, the chapter provisions must already implement higher order policy, and integrate with each other to ensure plan readability. Where conflict occurs, the relevant chapter objectives and policies will determine the weight to be given to the relevant rules in the first instance. If conflict still exists after this, the *Davidson* approach would be to look the next level up to the regional plans and policies to get assistance in resolving the conflict, and from there, to national policy if required. Recourse to Part 2 RMA can only occur if the higher order policies haven't covered a matter.

13. Strategic objectives or policies would not assist in this conflict resolution exercise, as they are not higher order documents, and given the above discussions, probably cannot be drafted in a way to reflect the chapter nuance.

#### *Directive requirements*

14. I consider that there may be exceptional cases where directive or overriding legislation may enable a directive strategic objective to be written and placed in a district plan and for that strategic objective to be similarly directive and decisive upon the plan itself. An example is the Canterbury Earthquake Recovery Act and the strategic objectives in the Christchurch City District Plan that flowed from it.
15. However, given the multiple tensions and competing requirements and outcomes within the overall ambit of sustainable management and Part 2 RMA, and the national direction instruments that flow from it, I consider that these cases of clear and directive objectives are rare.

#### *The National Planning Standards*

16. The National Planning Standards 2019 (NPS) require district plans to have a district-wide matter entitled “strategic directions”, which must have an “urban form and development” chapter. All other chapters covering strategic direction matters are optional.

17. Page 32 of the NPS outlines what is required of the strategic direction section:

*1. If the following matters are addressed, they must be located under the Strategic direction heading:*

- a. an outline of the key strategic or significant resource management matters for the district*
- b. issues, if any, and objectives that address key strategic or significant matters for the district and guide decision making at a strategic level*
- c. policies that address these matters, unless those policies are better located in other more specific chapters*
- d. how resource management issues of significance to iwi authorities are addressed in the plan.*

*2. Rules must not be included under the Strategic direction heading.*

*3. An Urban form and development chapter must be included under the Strategic direction heading.*

*4. Each strategic direction matter must be its own chapter and be included alphabetically under the Strategic direction heading.*

18. I note a set of different requirements, which “if” addressed, must be under the strategic direction heading. This set of requirements starts with key strategic or significant resource management matters for the district, followed by issues (if any), and objectives that address key strategic or significant matters for the district and guide decision making at a strategic level.

19. The requirement for policies in the strategic direction section is optional, with it being noted that these may be better located in more specific chapters.

20. I note the specific requirement for resource management issues of significance to iwi to be defined.

21. I consider that the issue of outlining high-level or strategic resource management matters (in a) or issues (in b) may have become conflated with the issue of primacy or conflict resolution, which does not appear in the NPS at all. I also note the optional nature of the strategic matters, apart from urban form and development, and the option of the policies to be located in other more specific chapters.
22. I consider that it is good planning practice to outline the strategic matters and issues, but if the chapter provisions deal with these, then it can be addressed in the chapter provisions.

### **Implementation**

23. Given my views on the impossibility of writing strategic objectives and policies that both resolve conflict and give effect to higher and lower order provisions at the same time (“strong primacy as set out in in (iii) and (iv)”), as well as the challenges in writing strategic objectives and policies that accurately reflect the chapter provisions (“primacy in the sense of (i) and (ii)”), I consider that it would be better to amend the strategic directions section titles and headings to outline what the content of this section actually is – which is a list of strategic matters are more of an outcome. I consider that the NPS provides for this approach.
24. This approach would be achieved by removing the SD objective numbering, apart from urban development (SD-O2) and reformulating them as strategic outcomes (SO). I consider that they are primarily written as outcomes already. In the language of older plans, they are anticipated environmental results that apply at the scale of the district.
25. I consider that SD-O2 – urban development, or reformulated, as SO-O7, so that it can sit above the existing and required UFD chapter, encapsulates the range of RMEHA and MDRS outcomes appropriately. I consider that it should be moved to the UFD chapter as it relates primarily to the UFD objectives.
26. The other approach would be to delete the strategic objectives in their entirety if they cannot be made to work. My preference is to retain them however, in the reformulated fashion as suggested above.
27. I note that other s42 officers have recommended amendments to their strategic objectives and policies. As the strategic objectives and policies which relate to my s42A reports are combinations and aggregations of a number of chapters across a number of authors, I would struggle to give recommendations alone (“the aggregation issue” as outlined above).
28. Instead, as I consider that the strategic objectives cannot fulfil their task of directive primacy (in the sense of (iii) and (iv), if amendments are to be made to that chapter narrative text above the chapter as follows would be required (or similar):

“These strategic objectives/outcomes are not directive upon the chapter provisions”

Peter Wilson  
Senior Policy Planner

**FROM:** Jessica Manhire, Policy Planner

**SUBJECT:** Strategic Directions Primacy Assessment for Hazardous Substances, Contaminated Land, Light and Noise

1. I have undertaken this exercise for the Hearing Stream 3 and 5 chapters of Hazardous Substances, Contaminated Land, Light and Noise for which I am the s42A report author. I have undertaken this in accordance with the different primacy approaches set out in paragraph nine of Mr Buckley's memorandum dated 29 September 2023.

2. Primacy approaches (a), and (b) (i) and (ii)

If approach (a) was undertaken then there is the risk that the Strategic Directions Chapter is inconsistent with the other chapters in the plan, which would not be good plan making. I consider that (b) (i) and (ii) was the approach when drafting the Proposed District Plan. The s32 reports considered the relationship of the proposed objectives, policies and methods and how the strategic directions are delivered by the topic and any other chapters, if relevant. The introductions to the chapters note that the provisions in the chapters are consistent with the Strategic Directions.

### **3. Hazardous substances**

3.1 The Hazardous substances s32 specifically considered five of the strategic objectives that included relevant content for the chapter.

3.2 It was considered that SD-O1: Natural Environment may be relevant where locations are sensitive to the development of a major hazard facility. The Hazardous Substances Chapter includes standards to protect significant natural areas from hazardous substances, and provisions to prevent the spillage and leakage of hazardous substances which could adversely affect freshwater.

3.3 SD-O3: Energy and infrastructure was considered to be relevant as the use of hazardous substances is generally enabled in the District Plan, recognising the need for such activities and that other controls are in place that are the main method for managing risk (and adverse environmental effects).

3.4 SD-O4: Rural land was considered to be relevant as the use of hazardous substances for primary production is generally enabled in the District Plan, recognising the need for such activities and that other controls are in place that are the main method for managing risk (and adverse environmental effects).

3.5 SD-O5: Ngāi Tahu mana whenua/Te Ngāi Tūāhuriri Rūnanga may be relevant where sites may be sensitive to a proposed major hazardous facility located in close proximity to sites or resources identified.

3.6 SD-O6: Natural hazards and resilience was considered to be relevant where hazardous facilities wish to establish in areas prone to natural hazards. The Proposed District Plan contains rules for hazardous substance storage and use; and any new major hazard facility, or addition to a major hazard facility in hazard areas.

3.7 I consider that the Hazardous Substances Chapter continues to be consistent with these Strategic Directions objectives and achieves (b) (i) and (ii) above.

#### **4. Contaminated land**

4.1 The s32 considered there are no specific strategic direction objectives relating to the management of contaminated land, which is a function that is more specifically managed through other higher order legislation and regional plans.

4.2 I consider SD-O1 is relevant to the Contaminated Land Chapter. The Contaminated Land Chapter is consistent with SD-O1 (and the s42A reporting officer's recommended amendments) regarding the natural environment.

#### **5. Light**

5.1 The Light s32 specifically considered SD-O2, as this objective includes relevant content for the chapter. It was considered that the proposed provisions for light give effect to the objective by revising the management of light spill and glare to better reflect the character of the receiving environment. The Light Chapter "recognises existing character...and amenity values" consistent with SD-O2.

5.2 The s32 notes that the Urban Form and Development directions also seek to manage reverse sensitivity effects from new development in relation to infrastructure and rural production.

5.3 Reverse sensitivity effects may include effects from light spill and glare as set out in the s32 evaluation:

*"These effects are addressed through the management of activities within zones, and district wide rules for light that specify expected levels and any requirements for shielding (or other characteristics)."*<sup>3</sup>

5.4 The reporting officer's recommended amendment of UFD-P10 from "minimise" to "avoid or mitigate" reverse sensitivity effects is consistent with the language of the Light Chapter objectives and policies. Mitigate is to lessen the rigour or the severity of effects and the Light Chapter seeks to do this. For example, LIGHT-P1(1) "remediating or mitigating adverse effects from light spill or glare on the receiving environment".

5.5 I consider that the Light continues to be consistent with these Strategic Directions objectives and achieves (b) (i) and (ii) above.

#### **6. Noise**

6.1 The Noise s32 specifically considered the provisions in the Noise Chapter are consistent with the direction of the Strategic Directions Chapter. It stated:

*"In particular, the management of adverse effects from noise support strategic direction objectives that seek to provide good quality urban environments, opportunities for business development within industrial zoned areas, efficient operation of strategic infrastructure, maintenance of rural character and rural amenity values and to manage reverse sensitivity effects relating to strategic and significant infrastructure and primary production.*

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<sup>3</sup> Light s32, page 14



*The Urban Form and Development Chapter also contains strategic objectives and policies that respond to district and urban development higher order policy direction.”*

6.2 I consider the chapter continues to be consistent with these Strategic Directions objectives and achieves (b) (i) and (ii) above.

**7. (iii) SD objectives are used to resolve conflict with objectives and policies in other chapters; and**

7.1 My view is that the plan does not need to specify that the SD objectives are to be used to resolve conflict with objectives and policies in other chapters. I was involved in the drafting of the Proposed District Plan and each chapter of the Proposed District Plan went through an integration and review phase to ensure integration and resolve any conflicts between provisions. This included testing the chapter against resource consent scenarios.

7.2 This occurred for the chapters of Hazardous Substances, Contaminated Land, Light and Noise. However, I concur with the legal advice from Buddle Findlay attached to the response to Minute 10, that not all tensions are apparent and foreseen. There may be some inconsistencies that are still to be resolved or that will not be foreseen until the resource consent stage. I recognise the SD objectives may be used by plan users to resolve conflicts where there is ambiguity and uncertainty in how different objectives and policies should be applied. However, I consider higher order policy, such as the RMA or RPS, can also be used to provide further direction where this is required.

7.3 I consider there to be no conflict between provisions in the chapters of Hazardous Substances, Contaminated Land, Light and Noise and between provisions and the Strategic Objectives as they were drafted to be consistent.

**8. (iv) SD objectives override all other objectives and policies in the plan.**

8.1 The chapters objectives, and other provisions are informed by and consistent with the SDs but they were not drafted to override all other objectives and policies of the plan.

8.2 I have considered whether there are implications if the strategic directions were to override all other objectives and policies in the plan. To do this, I have looked at each of the chapter objectives and considered whether there are any matters that are not covered by the Strategic Directions and whether I consider these matters would need to be elevated if the SDs were given primacy.

| <b><i>Provision</i></b> | <b><i>Chapter Objectives (including amendments recommended by s42A/right of reply)</i></b> | <b><i>Assessment against Strategic Directions</i></b>                 |
|-------------------------|--|---|
| HS-O1<br>HS-O2          | <b>Hazardous substance use, storage and disposal</b>                                       | SD-O6 <sup>6</sup> addresses risk from natural hazards, but not other |

<sup>6</sup> SD-O6: “The District responds to natural hazard risk, including increased risk as a result of climate change, through:

1. avoiding subdivision, use and development where the risk is unacceptable; and
2. mitigating other natural hazard risks.”

|       |   |  |
|-------|---|--|
|       | <p>Hazardous substance use, storage and disposal activities are <u>enabled and located, and in the case of flood events managed,</u><sup>4</sup> so that:</p> <ol style="list-style-type: none"> <li>1. risk to people, property and the environment from any major hazard facility is minimised, including avoiding unacceptable risk to sensitive activities;</li> <li>2. risk to any sensitive area is minimised; and</li> <li>3. risk to land and water as a result of <u>natural hazards, including flood events,</u><sup>5</sup> is minimised.</li> </ol> | <p>risks. Consistent language is used in both e.g. avoiding unacceptable risk</p> <p>Sensitive environments addressed by the Hazardous Substances Chapter include SASM, SNAs. SD-O2(10) addresses SASM. Indigenous biodiversity is addressed by SD-O1(1).</p>  |
|       | <p><b>Sensitive activities</b><br/>The location of any new sensitive activity minimises reverse sensitivity effects on any existing major hazard facility and avoids unacceptable risk to the sensitive activity.</p>   | <p>Reverse sensitivity effects are addressed within residential zones and new development areas in Rangiora and Kaiapoi (UFD-P10), industrial activities (UFD s42A reporting officer's recommended amendment), and rural areas (SD-O4(2)). However, the Strategic Directions do not cover other reverse sensitivity effects such as on commercial activities, as reverse sensitivity provisions have equal weighing wherever they appear in the PDP.<sup>7</sup></p> |
| CL-O1 | <p><b>Contaminated land</b><br/>The subdivision, use and development of contaminated land does not adversely affect people, property, and the environment.</p>  | <p>Adverse effects of contaminated land on people, property and the environment are not covered by the strategic directions. For instance, health is not a matter covered by the Strategic Directions.</p> <p>SD-O1 covers the natural environment.</p>  |
| CL-O2 | <p><a href="#">Benefits of contaminated land remediation</a><br/><a href="#">Remediation of contaminated land, using good practice approaches to protect against the risk posed by the</a></p>  | <p>Remediation of contaminated land is not covered by the Strategic Directions.</p>  |

<sup>4</sup> Fuel Companies [276.2]

<sup>5</sup> Ecan [316.34]

<sup>7</sup> Strategic Directions Right of Reply.

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|----------|--|---|
|          | <a href="#">contaminants to human health and the environment, results in positive effects for the health and wellbeing of communities, cultural values, and the environment.</a> <sup>8</sup>  |   |
| LIGHT-O1 | <p><b>Outdoor lighting</b><br/>Outdoor lighting enables a range of activities including work, rural primary<sup>9</sup> production, recreation activities, sport, entertainment, and transportation to occur beyond daylight hours while:</p> <ol style="list-style-type: none"> <li>1. minimising adverse effects on amenity values, health and safety, ecology, significant natural values, areas of historic or cultural significance; and</li> <li>2. maintaining the safe operation of the transport system.</li> </ol> | <p>Outdoor lighting is not specifically addressed.</p> <p>Adverse effects of outdoor lighting is not specifically addressed.</p> <p>SD-O2 and UFD-P2 address amenity values.</p> <p>Health and safety is not specifically addressed.</p> <p>Ecology is addressed by SD-O1.</p> <p>SD-O1 addresses significant natural values.</p> <p>Areas of cultural significance is addressed by SD-O2 and SD-O5.</p> <p>Areas of historic significance is not addressed.</p> <p>Safe operation of transport system addressed by SD-O3(1).</p> |
| LIGHT-O2 | <p><b>Sky glow</b><br/>Dark sky visibility is maintained and enables ongoing use of the Oxford Observatory.</p>  | <p>Sky glow is not addressed.</p> <p>SD-O2 addresses recognition of existing character and amenity values for urban development and infrastructure.</p>   |
| NOISE-O1 | <p><b>Adverse noise effects</b><br/>Noise does not adversely affect human health, communities, natural values and the anticipated amenity values of the receiving environment.</p>   | <p>Adverse noise effects are not specifically covered by the Strategic Directions, except for noise sensitive activities within the Christchurch Airport Noise Contour.</p> <p>Human health is not specifically covered.</p> <p>Natural values covered by SD-O1.</p>  |

<sup>8</sup> Kainga Ora [325.95]

<sup>9</sup> NZPork [169.25, HortNZ [295.105]

|          |  |   |
|----------|--|---|
|          |  | Amenity values is addressed but only in relation to urban development and infrastructure.   |
| NOISE-O2 | <p><b>Reverse sensitivity</b><br/>The operation of regionally significant infrastructure and strategic infrastructure, activities within Commercial and Mixed Use Zones and Industrial Zones <u>and/or identified-existing noise generating activities <a href="#">protected by any noise control overlay identified through the Noise Chapter rules</a></u><sup>10</sup> are not adversely affected by reverse sensitivity effects from noise sensitive activities.</p> | <p>Reverse sensitivity effects are addressed within residential zones, new development areas (UFD-P10), industrial activities (UFD s42A reporting officer’s recommended amendment), and rural areas (SD-O4(2)).</p> <p>The Strategic Directions do not cover other reverse sensitivity effects such as on commercial activities, as the reverse sensitivity provisions have equal weighing wherever they appear in the PDP.<sup>11</sup></p> <p>Considerations such as amenity values and functionality of urban development is covered by SD-O2.</p> |
| NOISE-O3 | <p><b>Rangiora Airfield</b><br/>The avoidance of noise sensitive activities within the 65dBA and 55dBA Ldn Noise Contours for Rangiora Airfield.</p>   | <p>Covered by SD-O3. The broad term ‘managing’ is used so is consistent.</p>  |

## Conclusion

8.3 The following matters within the Hazardous Substances, Contaminated Land, Light and Noise Chapters are not covered by the Strategic Directions:

- Risks from Hazardous Substances is not specifically covered. However, the Strategic Directions do cover risks from natural hazards. Some environments potentially sensitive from hazardous substances are covered by the SDs.
- Reverse sensitivity effects are addressed within residential zones, new development areas (UFD-P10), industrial activities (UFD s42A reporting officer’s recommended amendment), infrastructure (SD-O3) and rural areas (SD-O4(2)). However, the Strategic Directions do not cover other reverse sensitivity effects such as on commercial activities. I note that amenity values and functionality of urban development is covered by SD-O2.
- Adverse effects of contaminated land on people, property and the environment, and remediation of contaminated land, are not covered by the strategic directions. For instance, health is not a matter covered by the Strategic Directions. The natural environment is covered by the Strategic Directions.

<sup>10</sup> North Canterbury Clay Target Association [61.3], Daiken [145.24]

<sup>11</sup> Strategic Directions Right of Reply.

- Outdoor lighting is not specifically addressed. However, the SDs do cover relevant matters in relation to outdoor lighting effects such as amenity values. Adverse effects on health and safety and areas of historic significance are not specifically addressed.
- Dark sky visibility and the ongoing use of the Oxford Observatory is not covered by the Strategic Directions.
- Adverse noise effects on human health is not specifically covered by the SDs. Amenity values is addressed but only in relation to urban development and infrastructure.

**9. Are there any implications if the SD objectives override all other objectives and policies in the plan?**

- 9.1 Higher policy support is already provided by the RMA and the RPS, so, in my view, these matters above do not need to be elevated as strategic matters. The strategic matters for the district were already determined when the Strategic Directions Chapter was drafted.
- 9.2 The strategic directions might be the most important to the plan and district as a whole as they address key strategic matters for the district and guide decision-making at a strategic level, but I do not consider the strategic directions to be most important to each individual chapter. My view is that the Hazardous Substances, Contaminated Land, Light and Noise chapters' objectives and policies would be the most relevant for these topics as they more specifically address these topics.

**FROM:** Shelley Milosavljevic, Senior Policy Planner

**SUBJECT:** Strategic Directions Primacy Assessment for Natural Features and Landscapes and Signs

1. The Hearings Panel directed, via Minute 11, that s42A report authors provide their own professional opinion of the potential implications on a chapter's objectives if the Strategic Directions (SD) objectives (including Urban Form and Development (UFD)) were given primacy, or not.
2. This must be done in accordance with the approach set out in paragraph 9 of Mr Buckley's 29 September 2023 memo, which set out the following different approaches to primacy for SD:

(a) SD objectives have no "primacy" and sit on the same level as other objectives in the plan;

(b) SD objectives have "primacy" in one of the following different senses (dependent on how the district plan is crafted):

(i) SD objectives inform objectives and policies contained in other chapters;

(ii) Objectives and policies in other chapters must be expressed and achieved as being consistent with the SD objectives;

(iii) SD objectives are used to resolve conflict with objectives and policies in other chapters; and

(iv) SD objectives override all other objectives and policies in the plan.

3. I note that 'primacy' is typically defined as '*being pre-eminent or most important*'.
4. As set out in paragraph 31 of Andrew Willis' 5 September 2023 memo (contained within Mr Buckley's 29 September 2023 memo), I agree that the PDP already does create SD objective primacy in line with (b)(i) and (b)(ii) above, and that frames my assessment below.
5. As an overarching comment, I note that the SD objectives are generally less directive than the more specific and detailed objectives and policies of the other chapters, except for the directive UFD objectives and policies, which were developed to give effect to the NPS-UD. I do not consider the UFD objectives and policies are relevant to NFL or Signs chapters as they primarily relate to provision of residential, commercial, and industrial land to meet demand.

#### **Natural Features and Landscapes (NFL) chapter SD primary assessment**

##### *Strategic Directions Objectives relevant to NFL*

6. The NFL s32 report identified SD-O1 as the most relevant SD objective. I concur that SD-O1, clause (3) specifically, is relevant and consider it relates to s6(b) of RMA, which identifies the protection of outstanding natural features (ONF) and landscapes (ONL) from inappropriate subdivision, use, and development, as a matter of national importance:

*"SD-O1 - Natural environment*

*Across the District:*

.....

*(3) outstanding natural features and outstanding natural landscapes are identified and their values recognised and protected;*

....  
“

7. I note that Significant Amenity Landscape (SAL) are not included in SD-O1(3), which only relates to ONL/ONFs. In my opinion, there are no SD objectives that relate to maintaining the values of the SAL.
8. I consider the New Zealand Coastal Policy Statement (Policy 15 specifically) and the Canterbury Regional Policy Statement (Chapter 12 specifically) are the key higher order documents that relate to the NFL chapter. Neither of these require the SD objective that relates to NFL to have primacy over the PDP's other objectives and policies based.
9. I note that Mr Buckley stated in his Strategic Directions response to preliminary questions<sup>12</sup> that *“SD-O1(3) is requiring protection as an absolute, which is more restrictive than the s6(b) requirement to limit this protection to ‘inappropriate subdivision, use, and development’. I now consider the submission requesting SD-O1(3) be amended to reference the intent of s6(b) should now be accepted. Subject to further consideration of evidence presented to the hearing, I will address this amendment in my written right of reply.”*
10. This matter was overlooked in the Strategic Directions Reply Report. However, I have spoken to Mr Buckley regarding this, and he indicated that, on reflection, the SD objectives are supposed to give guidance and not specific policy, which is what the specific chapters do. As such, Mr Buckley indicated he was no longer minded to amending the SD-O1(3) on this basis. For the purpose of this assessment, I will use the Strategic Directions Right of Reply<sup>13</sup> version of the SD objectives, of which no amendments are recommended to SD-O1(3).

*Potential implications on NFL objectives if SD objectives not given primacy as per primacy approach (a)*

11. I consider that the NFL objectives and policies are more directive than SD-O1(3). Therefore, in my opinion, if primacy approach (a) was to apply, I cannot foresee any implications given the general principle that the most directive objectives and policies apply.

*Potential implications on NFL objectives if SD objectives given primacy as per approaches (b)(i) and (b)(ii)*

12. The following statement occurs within the Introduction of each chapter of the PDP including the NFL:

*“The provisions in this chapter are consistent with the matters in Part 2 - District Wide Matters - Strategic Directions and give effect to matters in Part 2 - District Wide Matters - Urban Form and Development.”*

13. I consider that this statement indicates that strategic objectives have some level of primacy as the PDP was developed so that the chapter provisions were consistent with them, which aligns with primacy approaches (b)(i) and (b)(ii).
14. The implications of this are that the SD objectives are less directive than NFL objectives and policies and therefore provide more guidance for considering a proposal in its context.

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<sup>12</sup> [https://www.waimakariri.govt.nz/data/assets/pdf\\_file/0029/137765/STRATEGIC-DIRECTIONS-COUNCIL-PRELIMINARY-QUESTIONS.pdf](https://www.waimakariri.govt.nz/data/assets/pdf_file/0029/137765/STRATEGIC-DIRECTIONS-COUNCIL-PRELIMINARY-QUESTIONS.pdf)

<sup>13</sup> [https://www.waimakariri.govt.nz/data/assets/pdf\\_file/0028/137773/03\\_Right-of-Reply-Stream-1-and-2-Strategic-Directions.pdf](https://www.waimakariri.govt.nz/data/assets/pdf_file/0028/137773/03_Right-of-Reply-Stream-1-and-2-Strategic-Directions.pdf)

15. For activities proposed within an ONL or ONF, I consider that as NFL-O1 and NFL-O2 are more directive than SD-O1(3), the relevant NFL objective, along with the applicable NFL policy, and the objectives and policies of any relevant other chapters, such as Energy and Infrastructure, particularly EI-P5 which has an effects management cascade, would apply accordingly.
16. For activities proposed within the SAL, I consider that SD-O1(3) would not be relevant as it only refers to ONL/ONFs, and therefore just NFL-O3 and NFL-P4, along with any other relevant chapters, would apply only.
17. Therefore, if the PDP's SD primacy approach of (b)(i) and (b)(ii) is retained and there is no hierarchy between objectives, I consider that NFL is satisfactorily provided via its directive objectives and policies and SD-O1(3). I concur with the view of Mr Buckley that SD-O1(3) does not need to be amended to remove its absolute protection as this is not required given the SD objectives are generally less directive as they provide a strategic overview.

*Potential implications on NFL objectives if SD objectives given primacy as per primacy approach (b)(iii) and (b)(iv)*

18. I cannot see how SD primacy approach (b)(iii) '*SD objectives are used to resolve conflict with objectives and policies in other chapters*' and (b)(iv) '*SD objectives override all other objectives and policies in the plan*' would apply in practice.
19. In my opinion, resolving conflicts is something that should be considered when assessing a proposal and taking into account its full context (location, purpose, constraints, etc), and would be guided by the most directive and relevant objectives and policies. As the SD objectives are generally less directive than the more specific and detailed objectives and policies of the other chapters, I do not consider that this would be possible. I concur with paragraph 61 of the Buddle Findlay memo contained within Mr Buckley's memo which states that "*plans do not need to resolve all conflicts and there is no need to establish a hierarchy for strategic objectives (as between themselves). There are established principles for resolving conflicts in these situations.*"
20. In the example of a conflicting activity within an ONL or ONF could be an infrastructure proposal. SD-O1(3), which seeks ONL or ONF protection, while SD-O3(2) seeks for infrastructure to be enabled while managing effects. Therefore, as these SD objectives already conflict between themselves to some extent, I cannot see how giving them primacy via SD primacy approach (iii) or (iv) would assist this conflict resolution, as the conflict already exists within the SD objectives. As outlined above, such proposals need to be considered within their full context.
21. If (b)(iii) or (b)(iv) were to apply and the SD objectives were used to resolve conflicts or override all other provisions, I consider a potential implication would be that the significance of the SAL, which is the Ashley River / Rakahuri, could be overlooked as it is not included in the SD-O1(3), which only refers to ONLs and ONFs. While SD-O1(2) indirectly relates to the SAL, it is not specifically in the context of its landscape or amenity values, which informs its SAL status. In the example of a proposal for infrastructure within a SAL, then SD-O3(2) would prevail over the NFL-O3 and NFL-P4, and while SD-O3(2) includes consideration of managing effects, it is in the context of enablement, not maintenance of values. Thus, if SD primacy approach (iii) or (iv) were to apply, then I consider SD-O1(3) would need to be amended to include maintenance of the SAL's values.
22. Furthermore, if SD-O1(3) had (iii) or (iv) level primacy over the NFL objectives then it's 'higher level' absolute protection would override the more directive NFL objectives that require non-absolute protection (from inappropriate subdivision, use and development), which would then conflict with the non-absolute protection of s6(b) of the RMA, NZCPS and CRPS.



## Signs chapter - SD primary assessment

### *Strategic Directions Objectives relevant to Signs*

23. The Signs s32 report (which I authored) identified SD-O2 and SD-O3 as the most relevant SD objectives to signs. I also note that as SIGN-O1 considers landscape values and natural values (in terms of the impact of signs on them), then SD-O1 is also applicable.
24. For the purpose of this assessment, I will use the Strategic Directions Right of Reply<sup>14</sup> version of the SD objectives. I consider the following SD objective clauses are of most relevance:

#### *"SD-O2 Urban development*

##### *Urban development and infrastructure that:*

....

*2. ~~that~~ recognises existing character, planned urban form and amenity values, and is attractive and functional to residents, businesses and visitors;*

...

*6. provides opportunities for business activities to establish and prosper within a network of business and industrial areas zoned appropriate to their type and scale of activity and which support district self-sufficiency;*

...."

#### *"SD-O3 Energy and infrastructure*

##### *Across the District:*

*(1) improved accessibility and multi-modal connectivity is provided through a safe and efficient transport network that is able to respond to technology changes and contributes to the well-being and liveability of people and communities;*

...."

#### *"SD-O1 Natural environment*

##### *Across the District:*

....

*2. the natural character of the coastal environment, freshwater bodies and wetlands is preserved or enhanced, or restored where degradation has occurred;*

*3. outstanding natural features and outstanding natural landscapes are identified and their values recognised and protected;*

...."

25. There are no higher order documents that relate to signs. I do not consider that signs meet any of the six SD criteria outlined in paragraph 8 of Andrew Willis' memo contained within Mr Buckley's memo. I therefore think it is appropriate that there is no direct SD objective for signs.

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<sup>14</sup> [https://www.waimakariri.govt.nz/\\_data/assets/pdf\\_file/0028/137773/03\\_Right-of-Reply-Stream-1-and-2-Strategic-Directions.pdf](https://www.waimakariri.govt.nz/_data/assets/pdf_file/0028/137773/03_Right-of-Reply-Stream-1-and-2-Strategic-Directions.pdf)

*Potential implications on Signs objectives if SD objectives not given primacy as per primacy approach (a)*

26. In my opinion if primacy approach (a) was to apply, the implications would be minimal given the most directive objectives and policies typically apply. Then in the case of a sign proposal, while SD-O1, SD-O2, and SD-O3 indirectly relate to signs, they are not as directive as SIGN-O1.

*Potential implications on Signs objectives if SD objectives given primacy as per approaches (b)(i) and (b)(ii)*

27. The following statement occurs within the Introduction of each chapter of the PDP including Signs:

*“The provisions in this chapter are consistent with the matters in Part 2 - District Wide Matters - Strategic Directions and give effect to matters in Part 2 - District Wide Matters - Urban Form and Development.”*

28. I consider that this statement indicates that strategic objectives have some level of primacy as the PDP was developed so that the chapter provisions were consistent with them, which aligns with primacy approaches (b)(i) and (b)(ii). The implications of this are that the SD objectives are less directive than the Sign’s objective and policies and therefore provide more guidance for considering a proposal in its context. Therefore, if the PDP’s SD primacy approach of (b)(i) and (b)(ii) is retained and there is no hierarchy between objectives, I consider that signs are satisfactorily provided via the Signs chapter objective and policies, SD-O1, SD-O2 and SD-O3, and the provisions of any other relevant chapters.

29. I do not consider that signs meet any of the six SD criteria outlined in paragraph 8 of Andrew Willis’ memo contained within Mr Buckley’s memo. Therefore, it is appropriate that the provisions are indirectly connected in this context. In my opinion, given the Signs objective and policies are so directive, and signs are a relatively limited issue so therefore not a strategic matter, it is not necessary to have specific SD objective coverage if the SD objectives are doing primacy approaches (b)(i) or (b)(ii).

*Potential implications on Signs objectives if SD objectives given primacy as per primacy approach (b)(iii) and (b)(iv)*

30. I cannot see how SD primacy approach (b)(iii) ‘SD objectives are used to resolve conflict with objectives and policies in other chapters’ and (b)(iv) ‘SD objectives override all other objectives and policies in the plan’ would apply in practice. As outlined above, I consider that resolving conflicts is something that should be considered when assessing a proposal and taking into account its full context (location, purpose, constraints, etc), and would be guided by the most directive and relevant objectives and policies. As the SD objectives are generally less directive than the more specific and detailed objectives and policies of the other chapters, I do not consider that this would be possible.

31. I concur with paragraph 61 of the Buddle Findlay memo contained within Mr Buckley’s memo which states that *“plans do not need to resolve all conflicts and there is no need to establish a hierarchy for strategic objectives (as between themselves). There are established principles for resolving conflicts in these situations.”*

32. If (b)(iii) or (b)(iv) were to apply and the SD objectives were used to resolve conflicts or override all other provisions (respectively), I consider that in terms of coverage of SIGN-O1 within the SDs - SD-O2 provides for amenity and character, SD-O3 considers transport safety, and SD-O1 covers natural and landscape values. Therefore, as there is a SD objective gap in relation to heritage values, in the

scenario of a sign on a heritage item, heritage values could be overlooked as there is currently no SD objective relating to heritage.

**FROM:** Andrew MacLennan, Consultant Planner

**SUBJECT:** Strategic Directions Primacy Assessment for Energy and Infrastructure and Transport

- 1 The following is a summary of the EI and TRAN s42A authors response to matters relating to 'primacy' set out within the TRAN and EI reply reports dated 30 November 2023.
- 2 Within paragraphs 146 – 162 of the EI reply report I have set out my view on the primacy approach.<sup>15</sup>
- 3 Within paragraphs 72 – 87 of the TRAN reply report I have set out my view on the primacy approach.<sup>16</sup>
- 4 In summary, for both the EI and TRAN chapters, I assessed the five versions of 'primacy' set out in Mr Buckley's memo dated 29 September 2023<sup>17</sup>, being:
  - 'No primacy' approach;
  - 'Inform' approach;
  - 'Consistent with' approach;
  - 'Resolve conflicts' approach; an
  - 'Override' approach.

- 5 Each of the potential approaches listed within paragraph 9 of Mr Buckleys memo are considered below.

**No primacy approach**

- 6 I note that the 'Interpretation and application of this chapter' section of the SD Chapter provides as explanation as to the purpose of the strategic objectives. It states:

*"For the purpose of District Plan development, including plan changes, the strategic objectives in this chapter provide direction for the more detailed provisions contained in the District Plan.*

*For the purpose of District Plan implementation, including the determination of resource consent applications:*

*the strategic objectives may provide guidance for related objectives and policies in other chapters; and*

*the relevant objectives and policies of the District Plan, including strategic objectives in this chapter, are to be considered together and no hierarchy exists between them."*

- 7 In my opinion, this explanation implies that in the context of plan development the strategic objectives already have a degree of primacy over the chapter provisions, as the latter 'provide direction' to the former. If a 'no primacy' approach is preferred, an amendment to the 'Interpretation and application of this chapter' section would be required. I do not recommend this

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<sup>15</sup> [https://www.waimakariri.govt.nz/\\_data/assets/pdf\\_file/0026/149804/STREAM-5-ENERGY-AND-INFRASTRUCTURE-ROR-ANDREW-MCCLENNAN.pdf](https://www.waimakariri.govt.nz/_data/assets/pdf_file/0026/149804/STREAM-5-ENERGY-AND-INFRASTRUCTURE-ROR-ANDREW-MCCLENNAN.pdf)

<sup>16</sup> [https://www.waimakariri.govt.nz/\\_data/assets/pdf\\_file/0025/149803/STREAM-5-TRANSPORT-ROR-ANDREW-MCCLENNAN.pdf](https://www.waimakariri.govt.nz/_data/assets/pdf_file/0025/149803/STREAM-5-TRANSPORT-ROR-ANDREW-MCCLENNAN.pdf)

<sup>17</sup> [https://www.waimakariri.govt.nz/\\_data/assets/pdf\\_file/0020/143408/RESPONSE-TO-MINUTE-10-PRIMACY-APPROACHES-FOR-PDP-CHAPTERS.pdf](https://www.waimakariri.govt.nz/_data/assets/pdf_file/0020/143408/RESPONSE-TO-MINUTE-10-PRIMACY-APPROACHES-FOR-PDP-CHAPTERS.pdf)

approach, as I consider it is helpful that the SD Chapter 'provide direction' to plan development processes.

#### **'Inform' approach**

- 8 As set out in the above paragraphs, in my view this is the way the current SD chapter applies within the Proposed Plan. I understand this reflects the way the Proposed Plan was developed. In the context of both the EI and TRAN chapters, I understand that the provisions of these chapters have been informed by the relevant strategic objective being SD-O3 – Energy and Infrastructure.
- 9 If this approach was to be adopted, I consider no additional amendments would be required to the EI or TRAN chapters or the SD-O3.

#### **'Consistent with' approach**

- 10 I consider this is largely the same as the 'inform' approach discussed in the paragraph above, albeit that be 'consistent with' is slightly more directive. In the context of the EI and TRAN chapters, I consider the provisions of the EI and TRAN chapters are 'consistent with' the relevant strategic objective (SD-O3).
- 11 If this approach was to be adopted, I consider no additional amendments would be required to the EI or TRAN chapters or the SD-O3.
- 12 Note: within my initial reply report, responding to a question from the Hearing Panel, I have recommended an amendment to SD-O3 to ensure that the strategic objective gives effect to the RPS and the NPSET. Regardless of which approach to 'primacy' is preferred by the Hearing Panel, I still recommend the amendment to SD-O3.

#### **'Resolve conflicts' approach**

- 13 I consider this approach would also be problematic, I consider 'conflicts' within objectives should be resolved by assessing a proposal on a case-by-case basis and the resolution of the 'conflict', if one exists, would be contextual and depend on the effects of the proposal, the location, etc.
- 14 In the context of the EI chapter, in my view, this is not necessary as the provisions of the EI have been drafted in a manner that resolves conflicts via the nature of the language within the provisions. Where potential conflict may occur, such as the establishment of regionally significant infrastructure within sensitive environments (i.e., SNA's, ONL/F's, etc) EI-P5 sets out a pathway for those activities that resolves the conflict.
- 15 In the context of the TRAN chapter, in my view, this is not necessary as the provisions of the TRAN have been drafted in a manner that resolves conflicts via the nature of the language within the provisions.
- 16 If the 'resolve conflicts' approach is preferred, I consider a considerable re-think of SD-O3 and the rest of the SD chapter would be required in order to establish a decision-making framework that could assist in resolving conflict with objectives and policies in other chapters. I do not recommend this approach.

#### **'Override' approach**

- 17 I consider this approach would also be problematic, in the context of both the EI and TRAN chapters, I note that the relevant strategic objective SD-O3 provides a high-level outcome statement which is further particularised in the objectives, policies, and methods in the EI and TRAN chapters. As currently drafted, I do not think this approach it would assist plan

implementation. If SD-O3 as to 'override' all other objectives and policies, in my view there is not enough detail within SD-O3 to helpful in a decision-making context.

- 18 As an example, SD-O3(2)(a) and (b) directs that infrastructure is able to operate efficiently and effectively 'while' managing adverse effect on the surrounding environment. If this was the 'overriding' provision, in my view, decision makers would have enough detail within the objective to balance those potentially competing outcomes.
- 19 If the 'override' approach is preferred, I consider a considerable re-think of SD-O3, and the rest of the SD chapter would be required in order to provide a great deal more specificity as to outcomes sought. This is likely to be an impossible task given the complexity of a District Plan. I do not recommend this approach.

**FROM:** Alan Matheson, Consultant Planner

**SUBJECT:** Strategic Directions Primacy Assessment for Special Purpose Zone (Kainga Nohoanga)

**Special Purpose Zone (Kāinga Nohoanga) (“SPZ(KN)”)**

The following analysis of options has not relied on the assessment of Mr Wilson.

*Primacy options – (b)(i) and (ii) ‘inform’ and ‘being consistent’*

1. In my view, primacy approaches (b)(i) and (ii) are already achieved within the SPZ(KN)chapter as this was the approach that was taken when drafting the Proposed Plan.
2. The s32 report for the Historic Heritage chapter identified the most relevant strategic direction to the SPZ(KN)chapter as being SD-O5(clause 4) *Ngāi Tahu mana whenua / Te Ngāi Tūāhuriri Rūnanga*, which was complemented by SD-O2(clause 8) *Urban development* and UFD-P9 *Unique purpose and character of the Special Purpose Zone (Kāinga Nohoanga)*.
3. The two objectives and one policy were crafted partly in response to the provisions of the NPS-UD (refer to Objective 5, Policy 1 clause (a)(ii) and Policy 9 clause (b)) and also the objectives and policies within the CRPS.
4. The drafting of the SD, UFP and SPZ(KN) objectives and policies follow both Options (b)(i) and (b)(ii) in that they provide context and information as to where the SPZ(KN) fits within the urban/rural environments.

*Primacy options – b(iii) and (iv) ‘resolve conflict’ and ‘override’*

5. In my opinion, as there are specific strategic and urban form and development objectives and policies already included in the Proposed Plan, there would be no consequential implications for the SPZ(KN) chapter with either of these options.

**FROM:** Bryony Steven, Policy Planner

**SUBJECT:** Strategic Directions Primacy Assessment for Public Access, Activities on the Surface of Water, Historic Heritage and Notable Trees chapters

1. The following is an assessment of primacy for the Public Access, Activities on the Surface of Water, Notable Trees, Historic Heritage and SASM chapters in the Proposed Plan.
2. The primacy assessment is based on the primacy options set out in the memorandum to the Hearings Panel titled 'The issue of 'Primacy' for Strategic Directions and Urban Form and Development'. These primacy options are outlined in paragraph 3 at the outset of this memorandum.
3. The primacy assessment for the Historic Heritage chapter also includes an assessment of the Sites and Areas of Significance to Māori (SASM) chapter because of the interrelationship between the two chapters. Mr Alan Matheson, s42A report author for the SASM chapter has co-authored this assessment where the SASM chapter applies.

#### **Public Access**

##### *Primacy options – (b)(i) and (ii)*

4. In my view, primacy approaches (b)(i) and (ii) are already achieved within the chapter as this was the approach that was taken when drafting the Proposed Plan. The s32 report for the chapter identified the most relevant strategic direction to the chapter as SD-O1. I consider that PA-O1 is consistent with the outcomes sought for the natural environment in SD-O1, specifically that people have access to natural areas for recreation.

##### *Primacy option – (b)(iii) and (iv) 'full primacy'*

5. Public Access is an RMA s6 matter that requires the District Plan to recognise and provide for (d) *"the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers"*. The District Plan must also give effect to the New Zealand Coastal Policy Statement 2010 (NZCPS) that includes Objective 4, Policy 18 'Public open space', Policy 19 'Walking access', and Policy 20 'Vehicle access'.
6. Both the RMA and the NZCPS direct that public access is to be 'maintained and enhanced'. I consider this direction is not adequately reflected in SD-O1(4) in the phrasing *"people have access to a network of natural areas"*. Under primacy approach (b)(i) and (ii), I do not consider this to be an issue as the SDs provide guidance for strategic matters and the objectives across the Plan provide specific direction as appropriate to each chapter. However, should the Plan have 'full primacy' ((b)(iii) or (iv)), I consider that SD-O1(4) would not give full effect to the RMA and the NZCPS direction for public access.
7. In my view, for full primacy to be successfully applied to the Proposed Plan, SD-O1 would need to be rewritten in order to give full effect to the RMA s6(d) and the NZCPS to appropriately achieve the purpose of the Act.
8. However, I consider that the application of full primacy is unnecessary to manage tensions between public access and other activities as there are existing mechanisms that manage this tension. These mechanisms include Council's ability to take an esplanade reserve or esplanade strip on subdivision (including the ability to specify closure of the strip for a specified period (RMA sch 10(7)) and Council's



ability to waive such a requirement in full or in part. I consider these conflict resolution tools provide flexibility and discretion that have the potential to result in more positive outcomes for this particular resource management issue than could be achieved under full primacy.

9. I therefore favour primacy option (b)(i) and (ii) as it relates to the Public Access chapter.

**Activities on the surface of water:**

*Primacy options – (b)(i) and (ii)*

10. In my view, primacy approaches (b)(i) and (ii) are already achieved within the chapter as this was the approach that was taken when drafting the Proposed Plan. The s32 report for the chapter identifies that the proposed ASW provisions are consistent with SD-O1. In particular, I consider that ASW-O1 is consistent with the provision in SD-O1 for public access and recreation, and natural and amenity values.

11. However, the SDs do not specifically provide for ‘activities on the surface of water’. Under the intended function of the SDs (as stated within the SD chapter introduction), I consider this is appropriate as activities on the surface of water are not a strategic issue for the district and the chapter does not satisfy the criteria identified in Mr Willis’ memorandum to the Panel<sup>18</sup>. I therefore consider that primacy option (b)(i) and (ii) are already achieved in relation to the ASW chapter.

*Primacy options – (b)(iii) and (iv) ‘full primacy’*

12. There is no specific higher order direction for activities on the surface of water and I have not identified any tensions between the ASW provisions and other provisions in the Plan. However, as identified in the s32 report, there are several RMA s6 matters that are applicable to the chapter and these matters are reflected within the SDs.
13. Should full primacy be adopted, the plan would not contravene higher order direction for this matter. However, recognising the relationship to the applicable RMA s6 matters, I consider that full primacy may not appropriately provide for s6 matters for this particular resource management issue. Consequently, I can foresee there is the potential for adverse outcomes for activities on the surface of water under full primacy.
14. I consider that the provisions in the chapter are not of strategic importance to the district nor is there a need to resolve tension between the plan’s objectives for this matter. As such, I do not consider that the SDs need to have overriding primacy when considering this resource management issue.
15. In my view, I favour primacy option (b)(i) and (ii) as I consider the outcomes for the ASW chapter would be better provided for under this approach. However, I consider that full primacy could be achieved for this chapter without resulting in inconsistency with higher order direction on this topic.

**Notable trees**

*Primacy options – (b)(i) and (ii)*

16. In my view, primacy approaches (b)(i) and (ii) are already achieved within the chapter as this was the approach that was taken when drafting the Proposed Plan. The s32 report for the chapter identified the most relevant strategic direction to the chapter as SD-O2 *Urban Development*. This SD applies to notable trees through the recognition of existing character and amenity values (noting that there are

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<sup>18</sup> ‘Background to the development of the Strategic Directions and Urban Form and Development chapters and the issue of ‘primacy’ by Mr Andrew Willis within the memorandum titled ‘The issue of ‘Primacy’ for Strategic Directions and Urban Form and Development’ by Mr Mark Buckley.

recommended amendments to SD-O2 in the Strategic Directions Right of Reply report). Similarly to historic heritage, SD-O2 does not specifically identify notable trees and SD-O2 only applies to the urban environment which fails to recognise that notable trees are a district wide matter.

*Primacy options – (b)(iii) and (iv) ‘full primacy’*

17. There is no specific higher order direction for notable trees, however notable trees may be a consideration for RMA s6(e) and (f) matters as discussed in the section 32 report. As such, should full primacy be adopted, the plan would not contravene higher order direction for notable trees. However, recognising the relationship to the applicable RMA s6 matters, I consider that full primacy may not appropriately provide for s6 matters for this particular resource management issue. Consequently, I can foresee there is the potential for adverse outcomes for notable trees under full primacy.
18. I consider that the provisions in the chapter are not of strategic importance to the district nor is there a need to resolve tension between the plan’s objectives for this matter. As such, I do not consider that the SDs need to have overriding primacy when considering this resource management issue.
19. In my view, I favour primacy option (b)(i) and (ii) as I consider the outcomes for the Notable Tree chapter would be better provided for under this approach. However, I consider that full primacy could be achieved for this chapter without resulting in inconsistency with higher order direction on this topic.

Bryony Steven  
Policy Planner

**Combined assessment of HH and SASM**

*(This assessment has been co-authored with Mr Alan Matheson)*

The following analysis of options has not relied on the assessment of Mr Wilson.

20. Having considered the issue of historic heritage with Mr Matheson we considered that the historic heritage and Sites and Areas of Significance to Māori (SASM) chapters overlap in the matters that they cover. In addition, the changes proposed relate to both historic heritage and SASM.
21. There is a strong interrelationship between Historic Heritage and SASM. As one strategic objective is being recommended for the Panel’s consideration, the matter of primacy has been addressed for both chapters.

*Primacy options – (b)(i) and (ii)*

22. In our view, primacy approaches (b)(i) and (ii) are already achieved within the two chapters as this was the approach that was taken when drafting the Proposed Plan.
23. The s32 report for the Historic Heritage chapter identified the most relevant strategic direction to the chapter as SD-O2. This SD applies to historic heritage through the recognition of existing character, amenity values and integration with the urban environment (noting that there are recommended amendments to SD-O2 in the SD Right of Reply report). However, SD-O2 does not specifically identify historic heritage and SD-O2 only applies to the urban environment which fails to recognise that historic heritage is a district wide matter.
24. A submission by Heritage New Zealand [178.6] seeks an SD for historic heritage to be specifically provided within the Plan. In the S42A report, I recommended that the submission be rejected as all

the objectives across the Plan were drafted to have equal weight and historic heritage was not considered to be a matter of strategic importance to the district that needed guidance through an SD.

25. The s32 report for the SASM chapter identified the most relevant SD to the chapter as Objective SD-O5: *Ngai Tahu mana whenua/Te Ngāi Tūāhuriri Rūnanga*, particularly clauses 1, 2, 3, 5 and 6 of that objective.

26. Should the function of the SD chapter be retained I consider that historic heritage is satisfactorily provided for as no hierarchy exists between objectives in the Plan. However, in light of the memorandum by Mr Andrew Willis and the criteria that he identified, I consider that historic heritage should be provided for within a SD. This would also resolve the issues identified in SD-O2 above. Historic heritage does not satisfy all the identified criteria, namely that it is not a strategic issue for the district that requires additional guidance, however, it is an RMA s6 matter of national importance and there is direction provided for heritage through the Canterbury Regional Policy Statement. On this basis, I recommend that the SD chapter be amended to include a new Strategic Direction objective for historic heritage and areas of significance to Māori. Mr Matheson and I consider the following wording, or to like effect, could be appropriate:

27. *“SD-O7 Historic heritage and sites and areas of significance to Māori*

*Across the District:*

(1) *The contribution of historic heritage to the district’s identity, sense of place and wellbeing is recognised and protected.*

(2) *Ngāi Tūāhuriri cultural, spiritual and/or historical values associated with sites and areas of significance to Māori are recognised and protected.”*

28. The proposed SD replicates the purpose of SD-O2(10), and we therefore consider that SD-O2 should be amended to delete clause (10) in order to avoid repetition. The proposed SD also connects closely with SD-O5(2). However, we consider this clause should remain for its relationship to the other clauses within SD-O5.

*Primacy options – (b)(iii) and (iv) ‘full primacy’*

29. Historic heritage is an RMA s6(f) matter that requires the *“protection of historic heritage from inappropriate subdivision, use, and development.”* Historic heritage is also applicable to s6(e) *“the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga”*. Section 6(e) is largely provided for through the SASM chapter in the Proposed Plan. The Proposed Plan also has a relationship to the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA), under which Heritage New Zealand Pouhere Taonga has statutory authority for archaeological sites. District Plans are responsible for the scheduling of historic heritage and providing provisions for their use and protection, however, this function is under the RMA not the HNZPTA.

30. Should full primacy apply, I consider that the Plan as notified would not appropriately achieve the purpose of the Act in relation to historic heritage as there is currently no SD for heritage. To resolve this issue, historic heritage matters would need to be elevated to the SD chapter (noting this is recommended above). In addition, to provide for the relationship between Historic Heritage and SASM, we consider that the inclusion of SASM within the recommended strategic objective would more appropriately achieve the purpose of the Act, should full primacy apply. However, we recognise that there is the potential for tension to exist between SDs under full primacy.

31. In summary, I consider that full primacy could be applied to the Plan in regard to the Public Access, Activities on the Surface of Water, and Notable Trees chapters. Mr Matheson and I are in agreement

that full primacy could be applied to the Plan in regard to the Historic Heritage and SASM chapters. Some amendments would be required to more appropriately achieve the purpose of the Act for Public Access and Historic Heritage when compared to the notified Plan. In my view, there is the potential for adverse outcomes from full primacy for the Activities on the Surface of Water and Notable Trees chapters. I also consider that full primacy would not necessarily resolve conflict as there is the potential for conflict to exist between SDs and therefore the purpose of full primacy as a conflict resolution method may not be achievable.

**FROM:** Andrew Willis, Consultant Planner

**SUBJECT:** Strategic Directions Primacy Assessment for the Natural Hazards Chapter

1. The Hearings Panel directed, via Minute 11, that s42A report authors provide their own professional opinion of the potential implications on a chapter's objectives if the Strategic Directions (SD) objectives (including Urban Form and Development (UFD)) were given primacy, or not.
2. This must be done in accordance with the approach set out in paragraph 9 of Mr Buckley's 29 September 2023 memo, which set out the following different approaches to primacy:

(a) SD objectives have no "primacy" and sit on the same level as other objectives in the plan;

(b) SD objectives have "primacy" in one of the following different senses (dependent on how the district plan is crafted):

(i) SD objectives inform objectives and policies contained in other chapters;

(ii) Objectives and policies in other chapters must be expressed and achieved as being consistent with the SD objectives;

(iii) SD objectives are used to resolve conflict with objectives and policies in other chapters;  
and

(iv) SD objectives override all other objectives and policies in the plan.

### **Primacy Assessment**

#### *Primacy Option (a) - no SD primacy*

3. If the SD objectives have no primacy this would not create issues for the Natural Hazards Chapter as it contains strong requirements that must be applied against all development proposals. It does not rely on SD support to achieve this.

*Primacy Option (b) - (i) SD's inform the Natural Hazards objectives and policies contained in other chapters and (b) (ii) Natural Hazards objectives and policies must be expressed and achieved as being consistent*

4. As set out in paragraph 31 of my memo (contained within Mr Buckley's 29 September 2023 memo), I consider that the PDP already creates SD objective primacy in line with (b)(i) and (b)(ii) above. The Natural Hazards Chapter was drafted cognisant of and informed by the strategic directions and was assessed against these. As such, I do not consider there would be any implications from this level of primacy applying.

*Primacy Option (iii) - SD's provide conflict resolution*

5. Given that there is a natural hazards SD, this supports the topic at the SD level, including when resolving conflict. If there was no natural hazards SD, then primacy option (iii) could create problems

as other objectives may override the requirements for natural hazards management in the natural hazards chapter (e.g. new development is subjected to unacceptable natural hazard risk).

6. I note that there is often tension when reconciling natural hazards management and development as they are often 'competing interests'. Given that there are other SDs covering such things as residential activity, commercial development, urban growth and infrastructure, in addition to natural hazards, I am not sure what would be gained by primacy option (iii) as there is no hierarchy amongst the SDs and the community still needs houses, jobs and infrastructure whilst appropriately managing natural hazard risk. As such, conflict will remain but it will potentially shift to the SD level. At the SD level the conflict may be assessed and determined with reference to high level SDs that do not contain the nuances in the individual chapters and could therefore lead to poor outcomes (see further comments on this below). Because of the high level nature of the SDs, in my opinion conflict resolution is actually best left to a detailed assessment of the proposal at the chapter level.

*Primacy Option (iv) - SD's override all other objectives and policies*

7. My assessment under primacy option (iii) also applies for primacy option (iv). While the natural hazards provisions are generally in accordance with SD-O6 as proposed to be amended (as per Mr Buckley's Right of Reply report dated 16 June 2023), given the high-level wording in SD-O6, this alternative wording may not achieve exactly the same outcome as the Natural Hazards Chapter itself when applied against a specific development proposal. For example, SD-O6 seeks to 'avoid subdivision use and development where the risk is unacceptable'. This is not necessarily the same as specified in NH-O1 and its supporting policies which seek different outcomes for different natural hazards and differentiate between existing urban and non-urban areas. If the SD wording was applied and overruled the more nuanced and accurate natural hazards chapter approach, then risk may not be appropriately managed. Rather, it would be dependent on how SD-O6 is interpreted and applied, and in particular the evidence on what is 'unacceptable', which could cut across or override the natural hazards provisions.
8. I also note that SD-O6 does not include the natural hazard mitigation matters raised in NH-O3, nor natural defences raised in NH-O4. If SD-O6 overrides these objectives then it could be argued that these outcomes are lessor outcomes. While this may be appropriate in some circumstances (e.g. where the adverse effects are low), it may not be appropriate in all circumstances (e.g. where the mitigation is proposed in an area of outstanding natural character). This is a gap in SD-O6 that should be resolved via amendments to SD-O6, or alternatively, these objectives could be removed from the Natural Hazards Chapter (which I do not support) as it is to give effect to the primacy of SD-O6. I note that there is no scope in the submissions on NH-O3 and NH-O4 to do this (all the submissions on NH-O3 were either in support or were neutral, while only one submission sought changes to NH-O4 seeking minor clarification).
9. Applying a theoretical lens, if the implications of SD primacy under (b)(iii) or (b)(iv) are not significant, which may be the case for some topics, the corollary of this is that there is no obvious value from making the SDs have greater primacy than they currently have. There is however a risk (as identified for natural hazards) that unintended outcomes could arise when specific development proposals are assessed under a stronger primacy framework. Noting the potential issues identified above and this potential risk, I do not support applying primacy at the level identified under (b)(iii) or (b)(iv) for the natural hazard provisions.
10. I have reviewed the 'first principles perspective' of Mr Wilson (contained in the appendices) on possible interpretation issues that could arise given various interpretation requirements and directions and agree that these may also cause issues if the SDs have primacy consistent with (b)(iii) or (b)(iv).