

HORIZONS REGIONAL COUNCIL

PROPOSED ONE PLAN GENERAL HEARING:

CHAPTER 7 LANDSCAPES & NATURAL CHARACTER

SUMMARY OF KEY POINTS ARISING FROM THE S. 42A REPORTS OF OFFICERS FOR PRESENTATION TO THE HEARING PANEL 4TH JUNE 2009

1. Report Authors:

- (a) Team: Fiona Gordon (Senior Policy Analyst HRC) and Clive Anstey (Consultant Landscape Architect) and Christine Foster (Consultant Planner) and John Maassen (Consultant Legal Counsel)
- (b) Roles:
 - Clive Anstey has contributed specialist advice on technical landscape assessment and advice in respect of specific requests or criticisms contained in submissions (captured in his s. 42A and supplementary reports);
 - Fiona Gordon is the principal author of the February 2009 s. 42A report;
 - Christine Foster peer reviewed the February 2009 report;
 - Fiona Gordon and Christine Foster attended most pre-hearing meetings and caucusing and co-authored the Supplementary Report.
 - John Maassen has provided legal review.
- (c) Therefore, I am happy to answer questions related to the two planning reports (February 2009 and supplementary report) with comment from Christine Foster as required; Clive Anstey can answer questions regarding the landscape approach or landscape merit; and John Maassen is available to answer any legal questions.

2. This Presentation:

- (a) The Chairperson's note to officers requests a presentation on each chapter of the proposed One Plan highlighting the *major elements of the approach taken* and the *main changes proposed* by officer reports.
- (b) Our presentation today will therefore focus on:
 - describing the key approach of Chapter 7 as publicly notified
 - changes that I have recommended to respond to submissions
 - answers to the written questions forwarded by the Panel prior to the hearing
- (c) These written notes are by way of brief speaking notes and, by their very nature, heavily abbreviate the detail found in the team's s. 42A reports. Any errors or inconsistencies with the team's reports are unintentional. The detail in those reports should be considered to override any inaccurate abbreviation found in the following notes.

3. The Essence of Chapter 7:

- (a) This hearing addresses three subsets of the subject areas covered in Chapter 7:
 - Outstanding natural features and landscapes
 - The natural character of the coastal environment, wetlands, lakes, rivers and their margins
 - Public access to the coastal marine area, lakes and rivers.
- (b) The starting point for these is sections 6(a), 6(b), 6(d) matters of national importance.
- (c) Bearing in mind regional council's function (s. 30 (1) RMA) to establish, implement and review objectives and policies (a) *to achieve integrated management of natural and physical resources* and (b) *in relation to effects which are of regional significance*.
- (d) Also the purpose of an RPS (s. 59 RMA) which is to provide an overview of the resource management issues of the region and policies and methods to achieve integrated management.
- (e) Also an RPS must state (s. 62 RMA) the significant resource management issues for the region.
- (f) Hence the identification of issues for this region in the POP as:
 - Risks of adverse effects of use and development on natural features and landscapes
 - Risks to natural character.
- (g) For **outstanding landscapes**, Objective 7-2 (a) addresses protection of the characteristics and values of landscapes and features identified in Schedule F.
- (h) Flowing from this, Policy 7-7 seeks to avoid or minimise adverse effects (to the extent reasonable) and to avoid cumulative adverse effects on the characteristics and values of the items in Schedule F.
- (i) Policy 7-7 (c) also states that the policies in Chapter 3 are to be taken into account when assessing activities involving renewable energy and infrastructure of regional importance.
- (j) Points to note:
 - The POP's issue addresses the 'Region's landscapes', while the objective and policy addresses the 'outstanding landscapes' listed in Schedule F, which are noted as "Regional Landscapes" and "Outstanding Natural Features or Landscapes". Hence, the objective, policy and Schedule F do not clearly distinguish between 'regionally outstanding' and 'outstanding' landscapes (whether outstanding in a regional or district sense).
 - It is the characteristics and values described in Schedule F that is the focus of attention – not the listed item for its own sake.
 - The list of items in Schedule F derives from the list of 'outstanding and regionally significant natural features and landscapes' in the operative RPS – with some notable amendments (some of which I discuss in my report).
 - The items in Schedule F are mapped – this is an attempt to illustrate the geographic location and extent of the item and to assist in defining more precisely the areas described in Schedule F, compared with the text description that appears in the operative RPS.

- Those maps are intended to be ‘values envelopes’ – that is defining the area within which the characteristics and values described in Schedule F can be expected to be found (it is acknowledged that there is some fuzziness with respect to specific boundary lines – hence their use as ‘values envelopes’).
- (k) For **natural character**, Objective 7-2 (b) seeks the avoidance of adverse effects in areas that have a high degree of ‘naturalness’ and avoidance, mitigation or remediation elsewhere.
- (l) Policy 7-8 focuses on the preservation of natural character and lists four considerations to be taken into account when making decisions on applications for resource consent.
- (m) For **public access**, there is (for some reason) no explicit objective.
- (n) Policy 7-9 aims to ensure that public access is provided for when activities establish and operate and to protect rare and threatened habitats that might be adversely affected by public access.

4. Core Amendments Responding To Submissions:

- (a) Rather than work through the relief sought by individual submitters, I propose to summarise the changes to the POP provisions that I have recommended and to briefly explain my reasons for those recommendations.
- (b) I will cover each of the subject areas separately, starting with ‘outstanding natural features and landscapes’, then ‘natural character’ and then ‘public access’.

5. Outstanding Natural Features and Landscapes

The recommendations I make to the POP feature the following:

- (a) They retain the focus on all outstanding natural features and landscapes in the region – rather than attempting to distinguish ‘regionally’ outstanding.
- (b) Create a policy framework that addresses natural features and landscapes that are either outstanding in a regional context (Schedule F) or in a district context (ie in district plans) - ie both.
- (c) Consistently adopt the language ‘outstanding natural features and landscapes’ consistent with the RMA (rather than ‘significant’ or ‘regionally important’ which are expressions variously used in the POP).
- (d) Accept the items listed in Schedule F (with some modifications discussed in the reports) as the core list of outstanding natural features and landscapes acknowledged to have characteristics and values that make them outstanding within the region. In addition, add a note to Schedule F to clarify that the Figures in Schedule F are intended to be “value envelopes” to assist plan users in determining the general location of the characteristics and values of the regionally outstanding natural features and landscapes listed in Table F1.
- (e) Seek to protect the characteristics and values of the Schedule F listed items from inappropriate subdivision, use and development (rather than protecting them outright from all development activity). This is an important point raised by a number of submitters – and I accept the point. My recommendations adopt the language of section 6 (b) of the RMA in this regard – seeking to

protect the landscape characteristics and values from inappropriate subdivision, use and development.

- (f) Single out 'significant adverse cumulative effects' from the generality of effects because these are effects that can be considered to be significantly adverse and of a persistent and probably irreversible nature. For these, I recommend avoidance (rather than mitigation or remediation). That is because, where these persistent and irreversible effects affect outstanding natural features and landscapes, I consider a strong policy response is warranted.
- (g) Add a set of assessment criteria that is to be applied when:
 - i. Identifying new entries for Schedule F
 - ii. Identifying outstanding natural features and landscapes in any district plan policy
 - iii. Considering any additions to or alterations to already identified outstanding natural features and landscapes in either Schedule F or in any district plan
 - iv. Considering the values that are relevant and which should be assessed when evaluating the effects of activities on any outstanding natural feature or landscape – whether that is identified in Schedule F or not yet formally identified in the Schedule but clearly found to be outstanding (eg at the time of considering applications for resource consent or plan changes). I note that this goes some way towards addressing a potential 'gap' in the proposed One Plan policy in respect of natural features and landscapes that may have merit, on assessment, as outstanding but which have not yet come to attention or been included in Schedule F or in any District Plan. It is important to note that this amendment received endorsement by all participants in the planning witness caucusing.
- (h) The assessment criteria closely resemble what has become known as the 'Pigeon Bay' landscape assessment criteria (and Mr Anstey can answer any questions about the detail of the criteria).
- (i) Provide a clear, set of assessment criteria that is well-accepted generally today in landscape assessment practice (and accepted by the Environment Court).
- (j) Acknowledge that natural features and landscapes that are outstanding in a district context will best be identified through a district-wide assessment.
- (k) Stop short of directing territorial authorities to undertake landscape assessment for the purpose of identifying outstanding natural features and landscapes in the district context.
- (l) Make it clear that in both the regional and district context, the assessment criteria are expected to be used consistently in the future as the basis for assessing landscape values and for evaluating effects on landscape values.
- (m) In this way, the policy framework provides a clear and consistent framework for territorial authorities (the 'strong signal' requested in submissions).
- (n) The framework also anticipates that Schedule F can be added to over time (by way of a change or at the next review of the RPS).

- (o) The POP does not include any rules prescribing the way land use activities affecting the outstanding natural features and landscapes listed in Schedule F are to be managed – leaving this to be addressed by district plans (ie no change to the publicly notified POP).
- (p) I propose a new non-regulatory method (7-7A) which commits the Regional Council to work collaboratively with Territorial Authorities to develop a consistent and robust characterization of landscape within the Region and to assist Territorial Authorities undertake district-wide assessments of landscape by providing to them whatever relevant resource material the Regional Council has available.
- (q) Method 7-7 clarifies that the Regional Council's involvement in lodging submissions on applications for resource consent and for plan changes will not be in every case – but on a 'may do' basis reflecting the reality that the Regional Council should only become involved where there are issues of regional significance involved.

How the above-described policy framework is manifested in my recommended changes:

- (a) Issue 7-2 (a): consistent language – 'outstanding natural features and landscapes'.
- (b) Issue 7-2 (a): somewhat toned down – deleted reference to 'risks' and now notes landscapes 'can be adversely affected by land use activities and development' (the nature of the effect is not of the same order perhaps as in the sense of a health 'risk' or natural hazard 'risk') . Also deleted reference to the Tararua and Ruahine Ranges, as these are only two of the thirteen natural features and landscapes listed in Schedule F.
- (c) Objective 7-2(a): reference to 'the Region's outstanding natural features and landscapes' and not the 'regionally outstanding'.
- (d) Objective 7-2 (a): protection from inappropriate subdivision, use and development.
- (e) Policy 7-7 split into two: to manage the potentially adverse effects of subdivision, use and development on the characteristics and values of the items listed in Schedule F.
- (f) Policy 7-7 (a) (i): seeks to avoid adverse effects as far as reasonably practicable and, where not practicable, to remedy or mitigate (except for 'significant adverse cumulative effects which are dealt with by:
 - Policy 7-7 (a)(ii): seeks to avoid these.
 - Policy 7-7 (a) (iii) deletes the reference back to Chapter 3 policies (which I consider to be unnecessary and inappropriate if stated as a 'take into account' policy as originally proposed – noting I have no opposition to a note for the purposes of reference back to Chapter 3).
 - Policy 7-7 (b): Establishing the assessment criteria to be applied for all regional and district) landscape assessment and in determining the relevant values for assessment of applications for resource consent and plan changes (ie the exercise of powers and functions under the RMA). Noting that this policy extends to outstanding natural features and landscapes that are not yet included in Schedule F or in a District Plan (it doesn't extend to them explicit policy protection but does ensure that the

relevant factors are considered which should mean that any assessment of effects will give proper consideration to actual and potential effects on their characteristics and values).

- Method 7-7: clarifying that the Regional Council ‘may’ rather than ‘will’ lodge submissions.
- Method 7-7A: the new method re working collaboratively with Territorial Authorities on district-wide assessment.

Notable matters potentially still in dispute:

Without having heard what individual submitters have to say in response to my primary and supplementary reports, my sense is that the following issues will remain:

- (1) Some submitters want the scope of the objective and policies confined to only regionally outstanding natural features and landscapes;
- (2) Some submitters question the merit of the items listed in Schedule F on the basis that no specific assessment was undertaken pre-POP that recommended their inclusion and some want Schedule F to be ‘transitional’ or ‘interim’;
- (3) There is concern about the accuracy of the boundaries of the mapped areas at a detailed level;
- (4) There is some concern at the absolute ‘avoidance’ approach for significant adverse cumulative effects (although, when the point was understood at planning witness caucusing that the focus is on the more ‘extreme’ adverse cumulative effects for the purposes of this policy, that concern appeared to lessen and I have recommended in Supplementary Recommendation SLSNC19 page 33 of my Supplementary Report some additional explanatory text to highlight this point about the significant adverse nature of the effects captured by this concept). Other submitters supported the originally-notified avoidance of all cumulative effects;
- (5) Energy generators and infrastructure submitters are concerned about the deletion of the reference to Chapter 3 policies from Policy 7-7
- (6) Schedule F: Dept of Conservation requests (the detail contained in Supplementary Recommendations SLSNC1 to 13)
- (7) Schedule F: Several submitters want the mapped area of the Tararua Forest Park extended to follow topographical rather than conservation estate boundary lines
- (8) Schedule F: ‘Skyline’ discussed later by Clive Anstey
- (9) Schedule F: Manganui o Te Ao [Clive Anstey to comment]
- (10) Schedule F: Western Coastline [Clive Anstey to comment]

6. Natural Character

The recommendations I make to the publicly notified POP provisions are subtle only and feature the following:

- (a) Retain the basic structure of the objective and policy.
- (b) Retain the avoidance approach for adverse effects in areas with a high degree of natural character (substituting this expression for what the publicly notified POP called ‘high degree of naturalness’).
- (c) Emphasise the importance of rehabilitation and restoration (where practicable) as a means of preserving natural character.
- (d) Extend the policy to ensure that all persons exercising powers and functions (of decision making) under the RMA take into account the list of relevant considerations (and not just in making decisions on applications for consent).

- (e) Consistently use the notion of degree of 'significance' of compromise that could result from development activities – acknowledging that, in some situations, some compromise of a minor degree may be appropriate but that 'significant' compromise may not be.
- (f) Acknowledge that there are some activities, such as marine farming or wind energy generation or transmission infrastructure associated with energy generation, that are reliant on resources that occur only or predominantly in areas of natural character – the amended policy does not seek to resolve within itself the tension between development (effects) and preservation of natural character – it simply acknowledges this resource reliance as a consideration alongside the other preservation-oriented considerations.

How the above-described policy framework is manifested in my recommended changes:

- (a) Objective 7-2 (b): replacing 'naturalness' with 'natural character'.
- (b) Objective 7-2 (b): adding reference to 'rehabilitation' and restoration.
- (c) Policy 7-8: referring to restoration and rehabilitation (not just restoration).
- (d) Policy 7-8 (b): clarifying that the reference to 'need' is not about demonstrating necessity but more about acknowledging that some activities rely on locations within or near areas of natural character because of the particular natural or physical resources that exist there.
- (e) Policy 7-8 (d): clarifying that the concern is with the effects of
- (f) Policy 7-8 generally: amending the way the considerations are expressed to make better sense.

Notable matters potentially still in dispute:

Again, without having heard what individual submitters have to say in response to my primary and supplementary reports, my sense is that the following issues will remain:

- (1) Energy generators remain concerned that the list of considerations in Policy 7-8 requires an evaluation within the policy itself of what constitutes 'inappropriate subdivision, use or development' – and that, if this evaluation is to be required within the policy in this way, the list of considerations needs to more explicitly include the s. 7 (i) and (j) considerations (benefits of renewable energy, responding to climate change) alongside the considerations derived from s. 6 of the RMA.
- (2) Some submitters, notably energy generators, oppose the avoidance approach to effects stated in the objective.

7. Public Access

The recommendations I make to the publicly notified POP provisions are subtle only and feature the following:

- (a) They retain the basic structure of the policy.
- (b) Acknowledge that the potential to compromise to the security of lawfully-established activities is a legitimate reason for restricting public access to or along rivers and lakes structure of the objective and policy (Policy 7-9 (a)).

- (c) Re-state the tense of Policy 7-9 (b) to clarify that it is the act of providing public access (ie 'provision of public access') and not the noun or any individual 'public access' that is the focus of the policy.
- (d) Expand Policy 7-9 (b) to ensure public access for any purpose (not exclusively recreational purposes) shall recognise the need to protect Rare and Threatened Habitats and At-Risk Habitats.

Notable matters potentially still in dispute:

Again, without having heard what individual submitters have to say in response to my primary and supplementary reports, I cannot be conclusive about the areas of residual dispute. However, my sense is that the amendments I propose have addressed most of the issues raised in submissions.

Most of the questions posed by the Hearing Panel prior to the Hearing will hopefully have been sufficiently answered at this point, I wish to turn now specifically to the list of questions (separate document) to cover off anything that may have been overlooked.

Fiona Gordon
4 June 2009