



Mackenzie

DISTRICT PLAN REVIEW

TOMORROW'S MACKENZIE
KA AWATEA HŌU

Section 42A Report: Plan Change 20 – Strategic Chapters

Reply Report

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1. Purpose and Scope of Report

1. The purpose of this Reply Report is to outline where my recommendations on PC20 have altered, either as a result of the questions arising from the Hearing Panel, submitter evidence or matters traversed at the hearing. It also addresses other matters arising in submitter evidence or during the course of the hearing where I consider further comment may be of benefit to the Hearing Panel. As such, other than where stated in this Reply Report, my opinions and recommendations remain as set out in the Section 42A Report¹ and in the Response to Minute 2.²

2. Format of Report

2. For ease, this report is structured in the same order as that of the Section 42A Report. For the reasons noted above, it does not however traverse all matters/topics contained in the Section 42A Report.
3. A full set of the changes recommended to provisions are contained in **Appendix 1** to this Report, incorporating recommendations made in the Section 42A Report, the Response to Minute 2 and in this Reply Report. Changes recommended in the Section 42A Report are shown by way of ~~strikeout~~ and underlining. Changes recommended in the Response to Minute 2 and in this Reply Report are shown by way of ~~red strikeout~~ and red underlining. Changes previously recommended to be deleted but now recommended to be reinstated are shown in ~~red without underlining~~. Footnoted references to the relevant submitter(s), and where applicable, submitter evidence, identify the scope for each recommended change.
4. Where required, an evaluation under s32AA of the RMA is undertaken of any further changes recommended.

3. Strategic Directions

Reverse Sensitivity (and Managing Adverse Effects)

5. Several submitters sought changes to various provisions within the strategic direction chapters in relation to reverse sensitivity. ECan also more broadly sought a new strategic objective or additions to various objectives, relating to management of the effects of activities. This was further commented on in the evidence from Philip Mitchell (Genesis), Sue Ruston (Meridian), Mark Geddes (ECan) and Karen Rosser (Envirowaste).
6. I note that the evidence of Mr Geddes suggests that an alternate way to address this at a strategic level could be through an objective that relates more broadly to managing conflicting or incompatible activities.³ The potential for this type of strategic direction to be included was

¹ Section 42A Report: Plan Change 20 – Strategic Chapters, 19 October 2022.

² Response to Minute 2 – s42A Author, 8 November 2022.

³ Evidence of Mark William Geddes, 14 November 2022, at [46]-[47].

considered as part of the drafting, and engagement on the content of the strategic directions included the following:

Compatibility / conflicts

A key purpose of the District Plan is to manage activities to ensure Mackenzie is a great place to live, work and play. Sometimes this means determining whether activities are appropriate in certain locations when they may generate nuisance or amenity effects on their neighbours. The flip side of this is ensuring that important existing activities are able to operate and adapt without being limited by the establishment of activities that might be more sensitive to their established effects.⁴

7. Ultimately, such an objective was not included, because it was more broadly considered to be a sub-set of what was sought in ATC-O1, in terms of the desirability of the District.⁵ With respect to protection of infrastructure, I continue to consider that this is a sub-set of overall ensuring that an activity is appropriately recognised and provided for and therefore already encompassed in ACT-O4 and ATC-O5.
8. However, having given this further consideration in light of the range of evidence received, I accept that there would be benefit in one overarching objective that more specifically addresses compatibility and conflicts. This would, in my view, encompass the changes sought by Ms Ruston and Mr Mitchell in relation to ATC-O4 and UFD-O1, the changes sought to ATC-O3 by Ms Rosser, as well as the changes sought by ECan in the manner identified by Mr Geddes. While I consider that this would implicitly cover reverse sensitivity effects, I am comfortable with explicit wording being added in relation to these effects, as this will provide clearer direction. I consider that such an objective would best fit in the ATC – A Thriving Community chapter.
9. Potential wording for this objective was circulated to the Hearing Panel and submitters immediately prior to the hearing, to allow for questions from the Hearing Panel and to provide submitters the opportunity to comment on whether it would address their concerns. This process has led me to refine the recommended wording further, in particular to reflect that:
 - a. It is not just the location of activities that require management in relation to potential conflict, for example, mitigation measures such as acoustic insulation may be used;
 - b. Rather than seeking to ‘reduce’ conflicts, I agree that ‘minimise’ is a more appropriate word; and
 - c. The outcome sought should relate to existing activities that are important rather than all existing activities. What is ‘important’ (and therefore necessitates protection) will then be determined through future chapters of the Plan.
10. While I understand it was the preference of some other planning experts to include further clauses relating to reverse sensitivity in other objectives, I do not consider this to be necessary

⁴ <https://letstalk.mackenzie.govt.nz/dpr-stage-one>

⁵ Section 32 Report: Strategic Direction Chapters Plan Change 20 Mackenzie District Plan, July 2022, p. 11.

as this will result in duplication. While noting the strong direction in relation to reverse sensitivity in the NPSREG and NPSET, I consider this is reflected in the recommended wording of clause (2), whereby the level of their significance will influence the level of protection through the provisions in other plan chapters.

Recommendation

11. I recommend, for the reasons given above, that a new objective be inserted in the ATC – A Thriving Community Chapter of the Strategic Direction section relating to management of activities in terms conflicts and compatibility (as ACT-06). The addition recommended is set out in **Appendix 1**.
12. In terms of s32AA of the RMA, in my view, the new objective is an appropriate way to achieve the RMA as it:
 - a. Is directed towards addressing a resource management issue that has been identified by a range of submitters as being significant to the District;
 - b. Relates to how resources are to be managed to best provide for the community's wellbeing, by acknowledging the need to manage potential conflict;
 - c. Provides overarching direction in relation to management of particular types of effects (s5(2)(c));
 - d. Will assist in the maintenance and enhancement of amenity values and the quality of the environment (s7(c) and s7(f));
 - e. Will assist the council to carry out its functions under s31, by helping to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the rural areas of the District;
 - f. Will assist in giving effect to Objective 5.2.1(i) and Policy 5.3.2(2)(b) of the CRPS as it relates to avoiding conflicts between incompatible activities, (noting that the CRPS policy is more narrowly focused on the location and design of development).
 - g. Will not result in unjustifiably high costs on the community or parts of the community. Any requirements or restrictions that may result from provisions designed to achieve this outcome are considered to be justified by the outcomes sought.
 - h. Is considered to be sufficiently certain and does not have high risk.

ATC-O1

13. The Hearing Panel identified that the ECan submission raised public access matters.⁶ As noted in my response to the Hearing Panel, as the submitter did not identify any specific relief, this matter was not included in the summary of submissions, and was not commented on in the Section 42A report. However, this matter was addressed further in the evidence of Mr Geddes, who sought an additional clause be added to ATC-O1.⁷ Setting aside the question of scope, I do not consider it necessary for the objectives to refer to public access. This is because unlike Mr

⁶ Directions of the Hearings Panel – Minute 2, 1 November 2022, page 4.

⁷ Evidence of Mark William Geddes, 14 November 2022, at [37]-[39].

Geddes⁸, I do not consider that just because a matter is included in section 6 of the RMA, it automatically makes it a key strategic matter or significant resource management matter in a local context. As noted in the Section 42A report, the intent of the chapters is also not to traverse every matter of national importance, nor in my view is public access a complex matter affecting more than one chapter of the Plan.

14. I accept Mr Geddes' comment that "*Public access is a very relevant issue to the Mackenzie District given its extensive area of lakes and rivers and the high public use of the district for recreation activities*"⁹ (my emphasis). However, I note that recreation is already addressed in clause (1) which refers to there being a range of recreation activities. This is broader than, but would also encompass, access to lakes and rivers for such activities. Access to rivers and lakes is also relevant in terms of the relationship of Māori with these water bodies. However, this is also already reflected in the wording of MW-O1, which seeks to recognise and provide for the relationship of mana whenua with the District's water bodies.
15. On the above basis, I do not consider that an additional, more specific, reference to public access is required at a strategic direction level.
16. For completeness I also note that Ms Ruston pointed out that while CRPS Policy 10.3.5 promotes access, that is subject to conditions.¹⁰ I understand that Mr Geddes, in response to questions from the Panel, accepted that these caveats might need to be brought through into the direction. While I agree with this, this indicates to me that more detailed thought needs to be given to the drafting and in my view this type of more nuanced direction, including further consideration of tensions between access and safety and operational requirements, would be more appropriately located in the public access chapter.

ATC-O2 Rural Areas

17. The Section 42A report did not recommend any changes to ATC-O2 in response to submissions. In his evidence, Mr Geddes has suggested further alternate wording for this objective. This includes introducing into the objective reference to primary production activities. This appears to relate to a comment that "*...if the intention is to allow primary production, then this could be explicitly stated.*"¹¹
18. For the avoidance of doubt, the drafting intent was not to focus on primary production activities in rural areas over and above other activities. As previously noted, a large proportion of the District is rural in nature. However, there are a range of activities in these areas, and unlike other districts, there is not such a focus on the productive capacity of these areas. For example, there is a large amount of conservation land that is not used for primary production activities, but which is still important to the District's wellbeing in terms of the contribution to well-being in terms of tourism and recreation activities. I therefore consider that refocusing the objective

⁸ Evidence of Mark William Geddes, 14 November 2022, at [29].

⁹ Evidence of Mark William Geddes, 14 November 2022, at 37(d).

¹⁰ Statement of Evidence by Susan Ruston, 15 November 2022 at [74].

¹¹ Evidence of Mark William Geddes, 14 November 2022, at [52(a)].

to emphasise primary production over other uses of rural land would not be a better way to achieve the achieve the purpose of the RMA, in the context of the Mackenzie District. As such, I do not recommend any changes to ATC-O2.

ATC-O4 Renewable Electricity

19. In asking questions of Ms Ruston, the Hearing Panel queried the use of the word “*assets*” in ATC-O4. Genesis’ legal submissions also note the distinction between the notified wording of “*assets*” and the use of the word “*activities*” in the re-wording sought in their submission.¹² On reflection, I agree that reference to assets narrows the objective and does not reflect that it is renewable electricity generation and electricity transmission activities, as a whole, that should be recognised, and provision made for them. I therefore consider it would be appropriate to amend this reference.
20. In relation to other changes sought in the evidence of Genesis and Meridian, I continue to consider that clauses (a) and (b) are largely captured in the notified drafting; and that clause (c) is now encompassed in the recommended new objective ATC-O6. As noted in the Section 42A report, in terms of clause (d) I consider what is sought is not something that can be achieved through the District Plan. In particular, I consider that the District Plan provides a framework for proposals to be assessed against, but the outcome sought – that the energy needs of the District’s communities and economy are provided for through renewable electricity generation - is something that can only be achieved through proposals being brought forward.
21. However, for completeness, I note that if the Hearing Panel is minded to include a further clause in this objective along the lines of what is sought, I consider it could be recast to refer to an increase in the overall supply of renewable electricity generation, which I consider is something which the framework of the District Plan can influence. This would better align with the NPSREG objective which refers to the increasing the proportion of New Zealand’s electricity generated from renewable energy sources. This is also reflected in the proposed Waimakariri and Selwyn District Plans, which respectively seek, at an objective level that: there is greater renewable electricity generation (EI-O1(3)); and an increased renewable electricity generation output for national, regional, and local use (EI-O4). I do however note that in those plans, these matters sit in the Energy chapter rather than at the strategic direction level. In my view, this approach would similarly be appropriate in the Mackenzie District Plan.

Recommendation

22. I recommend, for the reasons given above, that ATC-O4 is amended to refer to “*activities*” rather than “*assets*”.
23. In terms of section 32AA, this change is more appropriate as it gives better effect to the NPSREG and NPSET.

¹² Legal Submissions on Behalf of Genesis Energy Limited, 22 November 2022, at [38].

ATC-O5 Adaption and Resilience

Submissions

24. In response to submissions, I recommended that ATC-O5 be amended to explicitly refer to integration in the management of natural hazard risk and climate change effects. Ms Ruston has suggested amended wording which I agree is more succinct.¹³
25. I accept that Mr Geddes¹⁴ and Ms Snoyink¹⁵ still support inclusion of a separate objective specific to natural hazards. However, I note that the matters encompassed by ATC-O5 are more broadly about how management of natural hazard risk is integrated with the effects of climate change; and relate more broadly to community adaption and resilience. This objective, at a strategic level, is therefore not intended to be the overarching outcome sought in relation to natural hazards. The natural hazard risk within Mackenzie District is also not as extensive or complex as is the case in other districts, particularly given Mackenzie does not include any coastal areas. I therefore continue to consider that a broader objective relating to the outcomes sought in relation to natural hard risk are more appropriately located in the Natural Hazard chapter and need not be elevated to the Strategic Direction level in this Plan.

Recommendation

26. I recommend, for the reasons given above, that the objective is amended to refer to “*Management of*” rather than “*The approach to managing*”.
27. The scale of change does not require a section 32AA evaluation because it is a minor change to provide greater clarity.

Natural Environment (NE-O1 Natural Environment)

Submissions

28. In response to submissions, I recommended that the ‘list of values’ be deleted from NE-O1. In response to this, Ms Thorne states that deletion of the listed values strips out any reference in the objective to those values that are unique and relevant to the Mackenzie District.¹⁶ Ms Snoyink is also concerned that without the list of special factors which make the Mackenzie District unique, NE-O1 loses specificity.¹⁷ I also note that the deletion I recommended was in response to the Forest & Bird submission. Given the deletion is not supported by Ms Snoyink, and for the reasons expressed by her and by Ms Thorne, I agree that it is more appropriate to reinstate the list. Both also suggest a further addition to clarify that the list is not exhaustive. I also agree with this addition.

¹³ Statement of Evidence by Susan Ruston, 15 November 2022 at 113.

¹⁴ Evidence of Mark William Geddes, 14 November 2022, at [79]-[84].

¹⁵ Written Statement of Nicola Lee Snoyink, 16 November 2022, at [7].

¹⁶ Evidence of Lisa Thorne, 17 November 2022, at [27].

¹⁷ Written Statement of Nicola Lee Snoyink, 16 November 2022, at [9].

29. Both Ms Thorne and Ms Snoyink also sought deletion of the term ‘important’ from the chapeau of the objective. I understood from Ms Thorne’s response to Panel questions that she considered the notified version of NE-O1 addressed all natural values, and therefore she considered the recommended inclusion of “*important*” added a new gateway that didn’t apply under the notified wording. However, in my view, the notified version did not apply to all natural values, rather it applied to those making the District unique, contributing to its character, identity and well-being, or having significant intrinsic values. The concern raised by submitters was that there might be values that were not unique etc, but which were still important, and in their view should therefore be encompassed at a strategic level. The change recommended reflected this, ensuring that all important values were captured.
30. Setting this aside, I do not agree that recognition and protection of all natural environment values are a matter that should be addressed at the strategic objective level. This view takes into account the direction in the NP Standards for Strategic Direction chapters to contain objectives that address **key** strategic or **significant** matters for the District, and which are intended to guide decision making at a strategic level (my emphasis). As such, while I agree that other values need to be considered throughout the Plan, I do not consider that direction is required in relation to them at the strategic level.
31. In response to a question from the Hearing Panel, Ms Snoyink also expressed a view that the listed values could be expanded to refer to natural character. For completeness, I note that in the drafting phase, reference to natural character was considered. However, ultimately it was concluded that natural character is generally understood to be a combination of factors that are already encompassed by the other values listed. It was therefore not considered necessary to separately refer to natural character. I continue to hold this opinion.
32. In relation to the introduction to the Natural Environment chapter, Mr Pye seeks an amendment to refer to renewable energy resources in the list of resources in the first paragraph.¹⁸ Noting that these reflect those within the notified objective, I do not agree with referring to energy resources in the context of this particular paragraph. I do however consider that it would be appropriate to refer to energy resources in the second paragraph, which relates to resource use.

Recommendation

33. I recommend, for the reasons given above, that the introduction to the NE – Natural Environment Chapter is amended to refer to energy resources in the second paragraph.
34. I recommend, for the reasons given above, that NE-O1 is amended to reinstate the list of examples, but with an addition to note that the list is not exclusive.
35. In terms of section 32AA, I consider that the reinstatement of the list ensures that the values which have already been identified as having particular importance to the Mackenzie District are identified at the strategic level; however it does not preclude the identification of other

¹⁸ Statement of Evidence of Christopher Edward Pye, 15 November 2022, at [41.3].

important natural environment values through other stages of the MDPR. I also accept that it better ensures that this chapter of the Strategic Direction chapters responds to those resource management issues of particular importance to the Mackenzie District, and matters of national and regional importance that are particularly relevant within the District. Overall, I consider the changes are appropriate to achieve the purpose of the RMA.

Urban Form and Development (UFD-O1 Urban Form and Development)

36. In their submission, ECan sought that UFD-O1 include reference to highly productive land. As noted in the Section 42A report, this was prior to the NPSHPL being approved, and the specific direction in the NPSHPL therefore had not been considered at the time the submission was lodged. While my view in relation to this remains as set out in the Section 42A report, I note that in his evidence, Mr Geddes suggested that an alternative approach to adding reference to highly productive land in UFD-O1 might be for reference to be added to NE-O1 instead.¹⁹ While I do not consider this to be necessary, I consider that this would be a more appropriate location for reference to highly productive land than UFD-O1 for the following reasons:
- a. UFD-O1 is specific to urban growth. The NPSHPL, while including direction on highly productive land, applies on a much broader basis than just to urban growth;
 - b. In respect to urban growth, Policy 5 of the NPSHPL, while generally directing that the urban rezoning of highly productive land is avoided, provides detail in clause 3.6 as to when exceptions are to be applied to this. A broad clause in UFD-O1 relating to protection or avoidance would therefore not reflect the nuances of the NPSHPL;
 - c. NE-O1 relates to natural resources, which includes soil resources, and the matters addressed in it would apply to urban growth in any case; and
 - d. The wording of NE-O1, which seeks that important values are recognised and provided for and, where appropriate, protected, in my view better aligns with the nuances of the direction in the NPSHPL.
37. Notwithstanding the above, I do not consider that it is necessary to include highly productive land in NE-O1, on the basis that the natural resource values identified are those of particular importance in the Mackenzie District context. I do not understand highly productive land to be of particular importance to this District. Therefore, while the District Plan will be required to give effect to the NPSHPL, I do not consider it to be necessary to include direction relating to highly productive land in the Strategic Direction section.

¹⁹ Evidence of Mark William Geddes, 14 November 2022, at [94].