

Hearing Stream 7A

Questions from the Hearing Panel

Having read the Section 42A Reports, the Hearing Panel has questions that they would appreciate being answered by the Section 42A Report author(s) at the hearing, both verbally and written.

This is in the interests of running an efficient hearing.

Please note this list of questions is not exhaustive. The Panel members may well ask additional questions during the course of the hearing.

Paragraph or Plan reference	Question
Para 55	Is this recommended amendment consistent with the recommendations from other authors across the other Zone chapters? If not, why would it be appropriate to only include reference to these provisions here and not in other Zone chapters?
Para 65	Will the deletion of all hours of operation controls, and relying on NOISE-R19 (which relates to noise levels specified in a Table) really provide sufficient protection for the amenity of adjacent neighbours for all school activities outside normal school hours, or would this be better managed by a (global) consent process where bespoke conditions can be developed for certain activities?
Para 79	The advice note reads as if it applies <u>only</u> to permanently relocated buildings, i.e. not to 'regular' buildings. Would it be clearer by addition of the word 'also'? <i>"This rule also applies to permanently relocated buildings."</i> Please review this recommendation in light of recommendations made by other Zone chapter authors in respect to the same submission point(s).
Para 120	Have you considered the recommendations from other reporting officers about the inclusion of reference to anticipated built form and amenity values in response to other submission points from Kainga Ora?
Para 137	RESZ-05 provides for housing choice, and so how does it provide specifically for residential activities such as those requested by the submitter Corrections? Are you instead referring to <u>RESZ-04</u> as providing for diverse social opportunities? (Also your recommendation to amend RESZ-05 would change 'residential unit types' to 'residential activities' which may at least in part grant Corrections' requested relief)?
Para 145	You state that:

Paragraph or Plan reference	Question
	<p><i>I note that I have recommended an amendment to RES-O4 removing the reference to 'small scale' from the non-residential activities objective.</i></p> <p>Where is this addressed in the Report?</p>
Para 172	<p>Is there any scope from the words “advocate for” for potentially strengthening RESZ-P4 to take a more regulatory approach as (opposed to an ‘encourage’ approach) to sustainable design for new builds?</p> <p>If there was determined to be scope, would you support this?</p>
Para 174	<p>What exactly is meant by “universal design” in RESZ-P4?</p>
Para 200	<p>As a matter of interest (as this has not been raised in submissions) how is RESZ-P10 essentially any different to RESZ-P8, noting that retirement villages must surely come within the ambit of RESZ-P8, which covers “all ranges of residential units, types, sizes and densities”?</p> <p>Is the only difference relating to exclusion of retirement villages from the LLRZ, and if so could RESZ-P8 be amended accordingly and RESZ-P10 deleted?</p>
Para 206 – RESZ-P10	<p>Clause 1 does not appear to flow from the chapeau of the policy. Is there any scope to amend this?</p>
Para 211	<p>You state that:</p> <p><i>In relation to the specific amendments sought by Summerset, I disagree that RESZ-P12 needs to provide guidance on the purpose of ODP’s.</i></p> <p>But would it not be useful to readers of this Chapter to understand what the purpose of an ODP is, either through a brief description or cross referencing to another chapter (UFD) where ODP’s are dealt with in more detail?</p>
Para 228	<p>You state:</p> <p><i>Firstly, this policy provides the policy support for LLRZ-BFS1 which sets the permitted site density of one residential unit per 5,000m² of net site area or one residential unit on any site less than 5,000m².</i></p> <p>There are two things to arise:</p> <p>Firstly, you appear to be taking the unusual approach where a policy is to be assessed as to whether it supports a Building Standard, rather than the other way around?</p> <p>Secondly, is RESZ-P14 too prescriptive whereas it may be seen to read as a rule rather than a policy?</p>
Para 235	<p>Is there a typo in here which refers to the RESZ Chapter being retained as notified – are you recommending RESZ-P14 is retained as notified?</p>

Paragraph or Plan reference	Question
Para 251	As above.
Para 244 & 278	Please clarify – is ‘plantation forestry’ a permitted activity in the LLRZ? If so, how is this appropriate?
Para 290	Please clarify whether there is scope through submissions to add a new definition for “Vehicle or Boat Repair or Storage Services”, and if not is this appropriately a clause 16(2) matter – will there be any natural justice issues by introducing a definition for a term that is already used in other rules in the Plan.
Para 382	<p>Is it really necessary to have a permitted activity rule for “<i>gardening, cultivation and disturbance of land for fence posts</i>”?</p> <p>If these activities are excluded from the definition of earthworks, it would mean they are not managed by the Earthworks Chapter.</p> <p>However, it is not clear why such benign activities would automatically be subject to the ‘catch all rule’ and therefore be discretionary activities. Would it not be a case of <i>de minimis</i> or negligible effects and therefore they are simply not controlled in a District Plan?</p>
Para 396	As per a previous question, how will the deletion of all hours of operation restrictions for schools (educational facilities) be consistent with maintaining the amenity of a residential neighbourhood – is there an evidential basis that you are relying on for this recommendation, and is it appropriate to rely entirely on noise standards to control all coming and going, and activities on a site, after hours?
Para 464	Given that Tier 1 Councils can no longer set minimum car parking rate requirements, why is it necessary to effectively ensure that an off-street parking space can be provided in front of a garage?
Para 466	In relation to the submission from WDC, what are the (planning) reasons why you would support a 2m setback for buildings and structures applying to accessways?
Para 570	To what extent could the submitter’s concern be addressed, in any event, by existing use rights (i.e. current lawfully established rural sales would be able to continue at the same or similar scale etc)?
Para 579	You state that you disagree any amendment to educational facility is required. Is it lawful to amend a National Planning Standard definition irrespective?

MRZ – Medium Density Residential Zone

Paragraph or Plan reference	Question
Para 59	Is the submitter really attempting to define constraints, or is this a case of the submitter is suggesting some examples of constraints to be included so as to assist with interpretation of what might validly be considered constraints?
Para 68	As per our question to Mr Mclennan (his para 79 for RESZ and LLRZ): The advice note reads as if it applies <u>only</u> to permanently relocated buildings, i.e. not to 'regular' buildings. Would it be clearer by addition of the word 'also'? <i>"This rule also applies to permanently relocated buildings."</i> Please review this recommendation in light of recommendations made by other Zone chapter authors in respect to the same submission point(s).
Para 79 & 80	As per our question to Mr Mclennan (his para 382): Is it really necessary to have a permitted activity rule for <i>"gardening, cultivation and disturbance of land for fence posts"</i> ? If these activities are excluded from the definition of earthworks, it would mean they are not managed by the Earthworks Chapter. However, it is not clear why such benign activities would automatically be subject to the 'catch all rule' and therefore be discretionary activities. Would it not be a case of <i>de minimis</i> or negligible effects and therefore they are simply not controlled in a District Plan?
Para 115	As per our question to Mr Mclennan (his para 396): <i>"... how will the deletion of all hours of operation restrictions for schools (educational facilities) be consistent with maintaining the amenity of a residential neighbourhood – is there an evidential basis that you are relying on for this recommendation, and is it appropriate to rely entirely on noise standards to control all coming and going, and activities on a site, after hours?"</i>
Para 191	Other reporting officers have recommended a 4m setback applies in respect to the rail corridor. Please explain why you consider a 5m setback should apply to the MRZ, compared to 4m in other zones.
Para 210	Please consider that part of the Waimakariri DC submission point which requests that "pedestrian or cycle facilities" be included in clause 1.

FC – Financial Contributions

Paragraph or Plan reference	Question
Para 65	<p>The intent of your recommendation is understood, but the Panel has some concerns at the uncertainty of creating a new rule FC-R2 specific to the SPZ(KN) which is the same as FC-R1 save for the following clause, which appears quite unusual, and uncertain as to how it will be applied, i.e:</p> <p><i>“To implement the objectives for the SPZ(KN), Council will exercise particular discretion in how it applies this rule”</i></p> <p>Do you have any comment on whether FC-R1 could be retained as applying to all relevant zones, but with a relevant Matter of Discretion developed to allow for appropriate assessment of applications within the SPZ(KN)?</p>
Para 67	<p>Please evaluate that part of the Retirement Villages Association of NZ submission point (and other retirement industry submitters) who have sought a specific retirement village regime. Our review of your assessment in 8.2.2 is that it is limited to the interface with development contributions.</p>
Para 75	<p>You have agreed that <i>“the relationship between financial contributions and development contributions requires clarification”</i>, also noting that this is clarified in the s32 Report.</p> <p>However, you have recommended rejecting the submission seeking such clarification. Is there some text that can be introduced into the PDP (e.g. in the Introduction Section of this Chapter) to assist with clarifying the relationship between DCs and FCs?</p>
Para 91	<p>Given the fairly widespread and fundamental opposition to the FC provisions, can you please elaborate on whether these notified provisions are in use elsewhere in NZ and/or have been subject to other Plan Review processes.</p>
Para 96	<p>This sentence does not appear to be complete.</p>
Para 137	<p>You have said you consider Kainga Ora’s relief is acceptable, in respect to the payment of a financial contribution prior to the issue of a code of compliance certificate; however, you have not suggested an amendment in this regard. Is this because you have recommended a controlled activity status? If you were to include this wording, please set out how you consider it would be vires or enforceable.</p>
Para 142	<p>Please set out which submission point you are relying on to recommend that the rule be amended to have a controlled activity status. Would submitters to Variation 2 be aware that there was potential for the activity status to change from the summary of submissions?</p>

Paragraph or Plan reference	Question
	<p>Please set out what the consequences of amending the activity status would be, as it appears to the Panel that a resource consent would now be required where there are more than 2 units proposed on a site. Have you reviewed how DCs are taken without requiring a resource consent and whether it is possible to align with those processes?</p>
<p>Para 143</p>	<p>You state:</p> <p><i>However, I cannot agree with the wording to alter the threshold for triggering contributions from two units as notified to three units. Assuming the MDRS, three units at three storeys each is up to 9 dwellings per parcel, which could impose a substantial loading on services, and depending on location, may require financial contributions.</i></p> <p>The Panel's understanding of the MRDS is that it permits a maximum of three dwellings per site and separately permits a maximum building height of 11m + 1m for a pitched roof, both as a permitted activity, and therefore would not permit nine dwellings on one site. Please set out your understanding of the MDRS and if the Panel are correct, please reconsider your assessment.</p> <p>In addition, please comment on the submitter's point regarding Council should be planning for the permitted level of development, i.e.</p> <p><i>Rule FC-R1(1) should apply to more than three residential units, on the basis that the MDRS permit up to 3 units per site and this level of development should be planned for by Council in terms of infrastructure requirements and funding ...</i></p>
<p>Para 154</p>	<p>You state:</p> <p><i>The Kainga Ora wording for payment to occur prior to the issue of the s224c certificate is acceptable to me, however, I note that social housing does not necessarily require the issuing of a s224c certificate, and Council itself may not be the building authority, so there may be no visibility over it.</i></p> <p>Please explain this comment, as this rule is specific to subdivision activities. Would social housing that does not involve subdivision be captured by rule 1?</p>
<p>Para 155</p>	<p>You state:</p> <p><i>However, and as above, I cannot agree with the wording to alter the threshold for triggering contributions from two units as notified to three units. Assuming the MDRS, three units at three storeys each is up to 9 dwellings per parcel,</i></p>

Paragraph or Plan reference	Question
	<p><i>which could impose a substantial loading on services, and depending on location, may require financial contributions.</i></p> <p>Please explain how this is relevant to the subdivision rule.</p>
Para 183	<p>You state that your recommended amendments to FC-S2 will clarify the relationship with development contributions, as similar to the changes you have recommended to FC-S1. However, the changes to FC-S1 are quite different and do not appear to provide such clarification. Please elaborate on this.</p>

ECO – Ecosystems and indigenous biodiversity

Paragraph or Plan reference	Question
Para 33	<p>Please confirm your statement – is it the case that if a landowner was opposed to listing of an SNA then it was therefore not listed in the PDP as notified?</p>
Para 104	<p>Please provide your position on the Strategic Directions s42A report authors recommended addition (6) to SD-O1.</p> <p>Mauri is not defined in either the NPS-FM or the PDP. The Panel understands that the exact meaning of ‘mauri’ is not readily definable given it relates to a combination of physical and ecological elements, as well as amenity aspects and a range of te ao Māori concepts, both physical and metaphysical. Hence, the objectives and policies of the NPS-FM do not refer directly to ‘mauri’ but achievement of the policies will achieve the protection of mauri, without having to define it.</p> <p>Seen in this light, should clause (6) be reworded to focus on health and wellbeing which if protected, will also protect mauri?</p>
Para 110	<p>Please respond to HortNZ’s concerns regarding how to measure, at a practical level, the concept of “net gain” or as amended “at least no overall loss” ... and “Across the District” (as per the chapeau)?</p>
Para 132	<p>You recommend the following change to ECO-O1:</p> <p>“ECO-O1 - Ecosystems and indigenous biodiversity</p> <p>Overall, The quality and extent of there is an increase in indigenous biodiversity <u>is maintained so there is at least no overall loss</u> throughout the District, comprising:</p> <p>Given the requirement of clause 1.7 of the NPS-IB, is the phrase ‘quality and extent’ adequate?</p>

Paragraph or Plan reference	Question
Para 183	Please explain how reference to the coastal environment in your recommended ECO-P5 relates to ECO-P7?
Para 213	<p>We have reviewed the Forest and Bird submission point. Please set out how you consider there is scope within this submission to apply the NPS-IB definition and include the new Appendix.</p> <p>If there is scope for these amendments in line with [192.2], is there also scope to amend the definition of ‘biodiversity offset’ to remove reference to compensation, which is different to offsetting?</p>
Para 219/224/230	<p>In practice, what is the process/how is it known in advance which other <u>unmapped</u> SNA areas will meet the SNA criteria?</p> <p>How will Council necessarily become aware of an area (that may qualify as an SNA) if it is developed without the need for a resource consent (as it is not a mapped SNA) but will actually have effects that would be deemed inappropriate in an SNA, i.e. ‘the horse will have bolted’?</p> <p>How will your process in para 230 be implemented in practice? Will it mean that any landowner wishing to remove indigenous vegetation must carry out an SNA assessment for that land? If so, will there be any natural justice issues from imposing such an onus on future applicants at this late stage of the plan review process, or would landowners have been aware of this on notification of the PDP?</p>
Para 253	<p>You have recommended deleting reference to ‘or unmapped SNA’ from the ECO-R1 title, but this will leave the term ‘mapped SNA’ in that rule.</p> <p>However, you have also recommended deleting ‘mapped SNA’ and definition (refer you para 245iii) and amending that term to ‘Significant Natural Area’</p> <p>How is this consistent?</p>
Para 273	Would deleting ECO-Sched 2 be a backward step in terms of removing useful recorded data and information for landowners, and readers of the Plan, to be aware of? Will this information be retained in Council’s systems so as to be accessible to the public?
Para 302	For the Panel’s information can you please elaborate on the process that will be followed to identify SNAs, including the involvement of landowners.
Para 328a	Is there any evidential basis that you are aware of to support your recommendation, based on the submission of Forest and Bird, for a maximum clearance along a fence line of only 1 metre?

Paragraph or Plan reference	Question
	(At another Plan review forum evidence was heard that farmers often rely on a small vehicle with a blade to clear vegetation along fence lines, as to do this on foot is onerous and 1 metre would not provide sufficient width for mechanised assistance).
Para 346	In respect of your recommended amendment to (1)a.iv, do you mean for defining or delineating a property boundary?
Para 357	Please explain how individual trees can meet SNA criteria?
Para 389/390	<p>What guarantees/safeguards can realistically/practically be put in place to ensure the additional bonus allotment and dwelling has no effects on the SNA they are meant to be protecting?</p> <p>Are you aware of any examples here or in other districts where this approach has been used and what the outcomes have been?</p>
Para 521	<p>You state:</p> <p style="text-align: center;"><i>However, I consider that as ECO-P4 relates to areas of indigenous vegetation / habitats outside SNAs, then the avoid directive is inappropriate as it does not align with s6(c) of the RMA and s30 of the RMA, and also I consider it likely that areas containing such species may meet the SNA criteria anyway.</i></p> <p>Do you mean likely or unlikely? Why is this, given your earlier statements that the whole district has not had an ecological survey?</p>
Para 543	This clause needs to be amended to refer to the updated NES.
Paras 545, 551, and section 3.17	<p>Have you considered whether this amendment is best addressed in the EI chapter since it relates to infrastructure? Is your approach to what we understand to be the District plan approach to dealing with matters relating to infrastructure?</p> <p>Did you consider the possibility of putting that part of ECO-R2 into the EI chapter as an alternative relief?</p> <p>There are possibly also a number of general submissions that seek all provisions affecting infrastructure to be included in the EI chapter.</p>
Para 559 – clause 1 of the rule	Did you also recommend to delete “mapped” from this clause?
Para 559 – recommended clauses j and k	If we were to include these two clauses, is there any need to include the amendment to clause 2?
Para 649	Is the inclusion of “mapped” here consistent with your other recommendations?

Paragraph or Plan reference	Question
Para 675	What would the consequence be of including direct reference to “wetlands” in ECO-P2(3) instead of “certain” SNAs?
Para 679	Can a consent authority not ‘require’ pest control/management through resource consent conditions?
Para 720	Why is it that ECO-R2 contains a rule relating to no clearance within certain distances of waterbodies but ECO-R1 does not? What are the different effects being managed?
Para 729	Please explain how recognise and provide for (which has a very high weighting in the RMA) is consistent with the NPSIB wording which is manage? How would nature-based solutions be recognised and provided for in the Plan and in resource consents?
Para 757	What are the implications for farmers if they are irrigating in an area that is later determined to be within the buffer to an SNA? Should this rule refer to known/identified or mapped SNAs?
Para 780	Have you conferred with Ms Steele on the recommended new ECO-APP4?
Para 786	<p>In respect of your recommended amendment to Clause 6 to include “any adverse effects”, what are the adverse effects on that need to be managed?</p> <p>In respect of your recommended new clauses 12 and 13, would these not be covered by clauses 2 and 3?</p>
Para 837	Nevertheless, would it not be more efficient to provide the exclusions in the definition rather than repeat then throughout the ensuing rules, or do you consider the rules are more nuanced than that?