

Opening Statement

Section 42A Hearing Report and Rebuttal Evidence

Hearing 21B: Landscapes

Jane Macartney

29 October 2020



Introduction

1. My name is Jane Macartney. I am the author of the s42A hearing report and rebuttal evidence which address submissions received on the PWDP's objectives, policies and rules for the landscapes topic.
2. In this opening statement, I provide a brief summary of:
 - a. the legislative framework for identifying landscapes and features in the PWDP;
 - b. Boffa Miskell's landscape study that informed the notified PWDP;
 - c. how landscapes are identified and managed in the PWDP;
 - d. submitter requests for map amendments; and
 - e. outstanding issues for submitters, including those who wish to be heard today.

Legislative framework for landscapes and features

3. As discussed in my s42A report, the legislative and planning framework for landscapes is extensive. In summary, this includes:
 - a. the matters of national importance in section 6(a), (b) and (e) of the RMA that require Council to recognise and provide for:
 - the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands and lakes and rivers and their margins and the protection of them from inappropriate subdivision, use and development
 - the protection of ONF and landscapes from inappropriate subdivision, use and development
 - the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga
 - b. Sections 7(c) and (f) of the RMA that require Council to have particular regard to the maintenance and enhancement of amenity values, and the maintenance and enhancement of the quality of the environment.
 - c. the NZCPS which supports the achievement of sections 6 and 7 of the RMA with respect to managing landscapes within the coastal environment (namely Policies 1, 6, 7, 13 and 15)
 - d. three other NPSs and three NESs;
 - e. the WRPS which the PWDP must give effect to – namely the objectives, policies and implementation methods in Chapters 3, 6, 10 and 12. From the list of outstanding natural features and landscapes in the Waikato Region in Section 12A, only two are located in Waikato District – Mount Pirongia and Mount Karioi. Section 12B sets out the approach required for the identification of outstanding landscapes and features, seascapes or landscapes with other specific amenity values. In applying this prescribed approach, the WRPS states that continuing refinements in best practice should be taken into consideration, for instance as a result of future research or professional guides.
 - f. the Waikato River Settlement Act and accompanying Vision and Strategy; and
 - g. the Waikato-Tainui and Maniapoto Environmental Plans.

Boffa Miskell's Landscape Study

4. With this legislative framework in mind, Council commissioned Boffa Miskell to prepare the 'Waikato District Landscape Study' (June 2018) to inform the PWDP. Ms Ryder co-authored this study and is here today to answer any questions the panel may have in her capacity as Council's landscape expert.

5. A key objective of this study was to develop a consistent approach to the identification of particular landscape features across the district, thereby replacing the different approaches taken in the Franklin Section and Waikato Section of the Operative District Plan.
6. This landscape study was developed in collaboration with Council's Iwi Reference Group and notes that the Maori world view of landscapes can be significantly different from non-Maori. In this regard, Ms Angeline Greensill, representing Tainui o Tainui, wishes to speak to us this morning about their concern that the PWDP reflects a Eurocentric approach to landscape. Their submission refers to notified Policy 1.5.7.2 which acknowledges that landscape means more than a tract of land or a view or scene, and that landscape can be explained as a reflection between people and place.
7. Boffa Miskell's landscape study describes the meaning of 'landscape' as a multi-dimensional concept that includes natural science, heritage, aesthetic and cultural values. These values are based on the now commonly termed 'Pigeon Bay criteria' which have been reinforced in various Environment Court decisions. A recent review by the NZ Institute of Landscape Architects has reordered these criteria into three broad dimensions – these being biophysical, sensory and associative. This study notes that the WRPS assessment criteria which relate to Maori culture and traditions are part of the associative cultural dimension – this is because the Maori world view of landscapes does not clearly fit the 'Pigeon Bay criteria'.
8. Using a scoring system for these three dimensions, the landscape study resulted in the identification of 13 ONF, 3 ONL, 15 SAL, and NCA within the coastal environment on the PWDP's planning maps as notified. It has also resulted in some landscapes and features, currently protected through an ONF/ONL status in the operative plan, either not being recognised at all (in the case of some geoheritage sites) or being assigned a 'downgraded' status (such as a SAL for the Waikato River and its margins). This has resulted in various opposing submissions such as those from Dr Bruce Hayward for the Geopreservation Society of NZ and Waikato-Tainui who wish to speak today.

Identification and management of landscapes in the PWDP

9. Chapter 3 contains the framework of objectives and policies relevant to this landscapes topic. In response to submissions, I have recommended various amendments to this framework which I consider necessary and/or appropriate to give effect to high order documents, including the WRPS and NZCPS.
10. Landscapes identified by Boffa Miskell's study are annotated on the planning maps. I have recommended various amendments to maps including the need to clearly distinguish between High NCA and Outstanding NCA, as directed by the WRPS, and improve overall legibility of map symbols so that the plan is much easier to interpret.
11. Rules for the management of landscapes are set out in zone chapters. These rules set out circumstances where activities are permitted and when resource consent is required. A significant number of opposing submissions consider that the notified earthwork rules are unreasonable in that resource consent would be required for routine maintenance of this type of existing infrastructure. Where identified landscapes have already been compromised to some extent by these types of development, I consider that it is fair and reasonable to permit earthworks that maintain them for reasons of safety and routine farming operations. I have recommended permitting earthworks for the maintenance of existing tracks, fences or drains within an identified landscape or natural character area.

12. I have recommended that schedules be introduced for ONF/ONL/NCA/SAL, in accordance with case law. Without these, there is no clear directive as to what attributes of each landscape area need to be protected/managed when a resource consent application is assessed. Submitters have expressed general support for the draft schedules that have been developed with assistance from Ms Ryder.

Submitter requests for map amendments

13. Some submitters whose properties contain identified landscapes request the complete removal of, or a reduction in the extent of the overlay. I have relied on the expertise of Ms Ryder to address these matters which has resulted in recommendations for the notified overlay on their properties to either remain without change, be reduced, or for ground-truthing to occur to accurately determine the extent of the particular overlay.
14. In response to NZTA, Ms Ryder ground-truthed the ONF (Taupiri Range) that is located within the designated Huntly Bypass. The removal of some of this feature was consented as part of the designation approval and it is therefore appropriate for the planning maps to accurately record its actual physical extent. Boffa Miskell has produced an amended map of the ONF in this vicinity which is acceptable to NZTA and is included as an attachment to this opening statement.
15. Some submitter properties affected by a SAL overlay still require ground-truthing. On 15 October 2020, I emailed four landowners to request permission for Boffa Miskell to visit their properties prior to this hearing. In those cases, either no reply was received or the landowners declined. I had one telephone conversation with one landowner whose primary concern appeared to be the notified earthworks rule for the maintenance of farm tracks, although they were also concerned that a site visit might disrupt their stock. In that discussion, I noted my recommendation to allow this maintenance work as a permitted activity.
16. Today we will hear from Mr and Mrs Stark, Ms Kirstie Hill on behalf of the Hill Country Farmers Group, Federated Farmers, Mr Bernard Brown and Ms Lizbeth Hughes on the notified version of the PWDP and my recommendations for the mapped overlays and associated rules, some of which remain unacceptable to them.

Landscape status of the Waikato River

17. As the hearings panel will already be aware, 5 original submissions request that the whole of the Waikato River within the Waikato District be assigned an ONF/ONL status. In effect, this would result in the current outstanding status in the operative WDP being rolled over into the PWDP. Waikato-Tainui will speak to their submission this morning, including their alternative approach of a cultural landscape overlay which is offered as part of their rebuttal evidence. The panel will also be aware that the Turangawaewae Marae Board is unable to attend today's hearing due to another commitment, but will instead present their case via a Zoom video hearing next Monday (2 November).
18. As discussed in my rebuttal evidence, Waikato-Tainui acknowledges that the methodology currently used by landscape architects (which has evolved since the operative plan) does not support the whole of the Waikato River within the Waikato District being assigned an outstanding status. While Boffa Miskell supports the river delta and its islands retaining its ONF status, their compartmentalised assessment, as opposed to a holistic view of the river in its entirety, notes the degraded nature of many locations which has led to their conclusion

that the existing outstanding status of the river upstream of the delta should instead be downgraded to a SAL.

19. On behalf of Waikato-Tainui, Mr Gavin Donald sent to Council on Friday last week, a draft framework of provisions for a cultural overlay. These provisions were emailed to the panel and all submitters that day and were posted on Council's website.
20. In reference to Waikato-Tainui's legal submissions, I have not disputed that their submission is 'on' the PWDP. I have also acknowledged in my evidence that submitters would have reasonably contemplated that the plan could be amended so that the applicable overlay for the river falls somewhere between a SAL as notified, and an ONF/ONL as requested in the submission. As such, the proposed cultural overlay falls within this range. While I support in principle the general concept of a cultural overlay, the concern that I highlight for the panel is whether the draft provisions now put forward could have been reasonably contemplated by affected landowners. In my view, the issue is whether the rule framework for the cultural landscape overlay is more restrictive and extensive than the rule framework for the notified ONF/ONL overlays, therefore resulting in potential prejudice to landowners. The rule framework proffered by Mr Donald extends some distance beyond the edges of the actual waterbody.
21. To assist the panel, I have prepared this table below which outlines the rules applying to an ONF/ONL in the Rural Zone (which apply to the Waikato River and the islands within it) and the rules that would apply to the proposed cultural landscape overlay as proposed by Waikato Tainui.

Table showing comparison of provisions between ONF/ONL and Cultural Landscape Overlay

Notified ONF/ONL provisions Rural Zone applies to the Waikato River water body and the islands within it.	Proposed Cultural Landscape Overlay submitted by Mr Donald Includes the Waikato River water body, the islands within it and 37 metre wide river margins. Note this overlay affects all nine zones – Rural, Country Living, Business, Business Town Centre, Residential, Village, Industrial, Heavy Industrial, Reserve Zones.
Rule 22.1.2 Permitted Activity P7 Farming	Farming is permitted in all nine zones affected by overlay
Rule 22.1.5 Discretionary Activity D15 Afforestation	Non-commercial and recreational activities on surface of water, navigational aids and safety structures on surface of the water = permitted activities
Rule 22.2.3.4 Earthworks for maintenance of existing tracks, fences or drains is permitted	Customary activities, cultural events, conservation activities, emergency

subject to conditions, otherwise default to DA	services training and management activities, and temporary events = permitted activities
Rule 22.3.1 Any dwelling = DA	Commercial activity on surface of water = RDA
Rule 23.3.3 Buildings and structures = DA	Any activity that does not comply with activity-specific condition of a PA/RDA or any activity not listed as a PA/RDA = DA
Rule 22.4.5 Subdivision = DA	Subdivision = DA

22. This table indicates that there would be little change in development restrictions if the cultural overlay were to just apply to the water body and the islands within it, noting that in Chapter 12 of the PWDP states that lakes and rivers are zoned Rural Zone. I also do not expect the number and scale of any future built developments within the river to be significant. However, the critical difference is in respect to the spatial extent of the overlay because it includes the water body plus 37 metres beyond the banks of the river, thereby capturing land located in all nine zones. This has the effect of triggering resource consents for the construction of any building on the land area within this overlay. This could include a new dwelling that is located on a relatively small site in an urban zone, or a farm building on a property in the Rural Zone.
23. This overlay would also potentially affect more than 1000 landowners, the clear majority of which have not further submitted. The submission from Waikato-Tainui does not clearly signal to these landowners that development of their land within 37 metres of the river would be subject to these provisions, thus raising a potential scope issue. By contrast, Ms Ryder advises that any ONF/ONL status for the Waikato River would not consequently result in the river margins being included with a uniform width. Rather, the extent of the ONF/ONL would be defined by the attributes of the natural feature.
24. If the panel is satisfied that there is no potential prejudice to landowners, then I suggest that the drafting of the proposed provisions be refined to better ensure that they are clear and workable. As currently drafted, I can foresee some difficulties in interpreting and applying the provisions. In this respect, I do not consider that there is clarity in respect to how objectives are measured, or that there is clear guidance in the policies as to how the values are recognised and identified. The draft provisions also include a policy that deals with navigational safety on the river, which I expect to be a regional council function, and, as noted above, the rule for the overlay permits farming in all nine zones, including urban zones where residential, business and industrial development should be the key focus. Following direction from the panel, Council staff can be available to work with Waikato-Tainui to finalise the provisions, including the necessary s32AA evaluation.

Landscape status for geoheritage sites

25. Turning now to the submission from the NZ Geopreservation Society, Dr Bruce Hayward will be presenting this afternoon. In summary, Dr Hayward's evidence opposes the methodology used by landscape architects in that it effectively discounts the ability to apply an ONF status to particular geoheritage sites that require protection and he considers that this has often led to misinterpretation of the RMA, NZCPS and WRPS.

26. I agree with Dr Hayward that the statutory framework does not assist the identification of geoheritage sites that contribute in very important ways to both landscape and geoscience studies. The criteria in the WRPS, consistent with case law, apply equally to both features and landscapes. However, geoheritage sites are only considered as part of physical attributes in landscape assessments which means that they would never meet the existing criteria for an ONF. This is further frustrated by the fact that some geoheritage sites are located underground (such as cave systems) and therefore not part of what people typically associate as a 'visual landscape'.
27. Appendix 2 to my rebuttal evidence illustrates that some geoscience sites are in relatively remote locations where there is likely to be little risk of damage through earthworks or building. However, this is not the case for all geoheritage sites. Some are susceptible to damage through earth disturbance – including private farm quarries, farm tracks and Council's own road works. I agree with Dr Hayward that there is a risk of losing our geoheritage sites unless they are appropriately identified and managed through district plan provisions. I also consider that this is a pressing issue that the WRPS needs to address when it is next reviewed.
28. A few geoheritage sites listed in Dr Hayward's submission are already captured within the recommended ONF/ONL overlays – examples being the Bridal Veil Falls, Mount Karioi and the Waikato Delta and sandspit, although the majority are not.
29. On 19 October, I invited Dr Hayward and Ms Ryder to meet at the Tuakau office to discuss the potential solutions set out in my rebuttal evidence. For geoscience sites located wholly or partly within any landscape overlay, this could involve Dr Hayward's assistance in expanding the list of attributes in the recommended schedules to refer to geoheritage values and the risks to those sites.
30. For other geoheritage sites not within any of these overlays, I support in principle a new schedule to identify their geological values and a nuanced policy framework to recognise their unique sensitivities and requirements for preservation and management. However, in my view, this approach would also be problematic in that it raises a scope issue where more than 500 private landowners, whose properties contain geoheritage sites, have not lodged submissions on this matter and may not have realised this submission was relevant to their property.
31. Dr Hayward's evidence also acknowledges this potential prejudice issue but suggests a solution could be to add assessment criteria for the identification of ONF (as is the case with the AUP and the Northland RPS for example). However, it is my view that this would not solve the issue because without the identification of geoheritage sites on planning maps, there is no trigger for a resource consent that would then require a landowner and Council staff to turn their minds to these assessment criteria.
32. It is also my view that most landowners would not be familiar with the field of geoscience and this situation is further frustrated without having a clear starting point of geoheritage sites being accurately delineated on the planning maps. While the Geopreservation Inventory is a publicly available document, I suspect most people would not know of its existence or how to easily and accurately apply that data to their property. This inventory also does not contain the complete list of geoheritage sites noted in the Society's submission.
33. My preferred solution is to therefore undertake focused engagement with affected landowners based on geoheritage maps and data and an opportunity for them to lodge submissions through

a variation to the proposed plan. Alternatively, if the panel considers that there is scope, then Council staff are available to work alongside Dr Hayward to ascertain what geoh heritage sites do meet the geoscience ONF criteria. Consideration will also need to be given in respect to the objective and policy framework for these geoh heritage sites.

Legal submissions and rebuttal evidence from DoC

34. I refer to section 6 of the legal submissions on behalf of DoC which relates to the weighting afforded to the dimensions and attributes of ONF. As this is a technical matter, Ms Ryder will speak to this.
35. Evidence was provided by Mr Andrew Riddell for DoC on 20 August. Further evidence was provided by Mr Riddell last week which appears to be a response to my rebuttal evidence filed in September.
36. My rebuttal evidence acknowledged that Mr Riddell was not involved in the preparation of DoC's original or further submissions. Rather than stating that Mr Riddell's view was 'inconsistent' with DoC's submissions (which is a statement incorrectly made in DoC's legal submissions), I instead stated that his views 'differed somewhat' from those submissions, only because Mr Riddell's evidence suggested improvements to the notified objectives and policies so that they more clearly align with statutory directions in the NZCPS and WRPS. My rebuttal evidence therefore accepted the majority of Mr Riddell's requested wording.
37. Mr Riddell's second set of evidence notes his concern in respect to four policies. The first of these is the wording of clause (a)(ii) in Policy 3.5.2 shown in my rebuttal evidence (and below) which is unchanged from the notified version.

3.5.2 Policies – Recognising natural character

(a) Recognise that there is a range of natural character from pristine to modified and that the following characteristics and qualities natural elements, patterns, processes and experiential qualities which contribute to natural character include:

- (i) natural elements, patterns and processes
- (ii) ~~(i)~~ areas or waterbodies in their natural states or close to their natural state;
- (iii) ~~(ii)~~ coastal or freshwater landforms, geology and geomorphology and landscapes;
- (iv) ~~(iii)~~ coastal or freshwater physical processes, including the natural movement of water and sediment;
- (v) ~~(iv)~~ vegetation and cover, habitat value and biodiversity;
- (vi) ~~(v)~~ biological processes and patterns;
- (vii) ~~(vi)~~ water flows and levels, and water quality; ~~and~~
- (viii) the natural darkness of the night sky
- (ix) transient and dynamic attributes
- (x) places or areas that are wild or scenic
- (xi) ~~(vii)~~ the experience of the above elements, patterns and processes
- (xii) the context or setting.

38. Mr Riddell's preference is for clause (a)(ii) to read:

- (ii) areas or waterbodies, including the extent to which these are in their natural states or close to their natural state;

39. In my opinion, the suggested phrase ‘including the extent to which these are’ reads more like an assessment criteria rather than a policy, and the prefacing clause (a) already recognises that there is a range of natural character from pristine to modified. However, I invite Mr Riddell to clarify his position this afternoon.
40. Mr Riddell’s second concern relates to Policy 3.5.3 which sets out policy actions to protect natural character. Mr Riddell is concerned that there is ambiguity in clause (a)(viii) in that the recognition of farming operations does not identify a policy action, unlike the other clauses. He suggests that this ambiguity would be removed by including a reference in clause (a)(viii) to the ‘avoid directives’ in clauses (i) and (ii) of this same policy. Mr Riddell’s amendment is shown below in green text:

3.5.3 Policy - Protecting the natural character qualities of the coastal environment

- (a) Protect natural character in the coastal environment, including the characteristics and qualities of identified outstanding and high natural character areas in the coastal environment from inappropriate subdivision, use and development by:
- ~~(i)~~ ~~managing the adverse effects of subdivision, use and development on natural character in the coastal environment;~~
 - (i) avoiding subdivision, use and development within an Outstanding Natural Character Area which would result in its natural character being damaged, diminished or compromised.
 - (ii) avoiding significant adverse effects of subdivision, use and development on natural character for an area within the coastal environment that is not identified as an Outstanding Natural Character Area.
 - ~~(ii)~~ ~~avoiding significant adverse effects of subdivision, use and development;~~
 - ~~(iii)~~ ~~avoiding subdivision, use and development within areas of outstanding natural character, where it would damage, diminish or compromise natural character;~~
 - ~~(iv)~~ (iii) avoiding activities that damage the stability functioning of identified coastal dune systems;
 - ~~(v)~~ (iv) requiring appropriate building setbacks from riparian and coastal margins;
 - ~~(vi)~~ (v) ensuring that activities are carried out in a way that maintains or enhances water quality in the coastal environment;
 - ~~(vii)~~ (vi) enabling and concentrating development within existing settlements to avoid development sprawling along the coastline;
 - ~~(viii)~~ (vii) recognising historic farming operations that continue today; while meeting (i) and (ii) of this policy;
 - ~~(ix)~~ (viii) avoiding the establishment of new plantation forestry.
41. In my opinion, adding cross-references in this manner is not necessary as all clauses in this policy need to be collectively assessed, and no clause is given pre-eminence over another.
42. Thirdly, Policy 3.5.4 concerns the protection of the natural character of wetland and lakes and river and their margins. Mr Riddell considers that clause (a)(iv) in this policy should be amended as structures and earthworks have the potential to undermine the natural character of these features. At this point, I am not recommending any further change beyond what I have set out in my rebuttal evidence. This clause appears to be specific to indigenous vegetation and I consider the bracketed words are confusing. I have shown Policy 3.5.4 from my rebuttal evidence below:

3.5.4 Policy - Protecting the natural character of wetlands, and lakes and rivers and their margins

- (a) Protect the natural character qualities of wetlands, and lakes and rivers and their margins from inappropriate subdivision, use and development by:
- (i) avoiding adverse effects on freshwater bodies and their margins that are identified as having outstanding natural character
 - (ii) avoiding significant adverse effects on freshwater bodies and their margins which are not identified as having outstanding natural character
 - ~~(iii)~~ ensuring that location, intensity, scale and form of subdivision, use and development are appropriate;
 - ~~(iv)~~ minimising, to the extent practicable, indigenous vegetation clearance and earthworks disturbance modification (including earthworks, disturbance and structures);
 - ~~(v)~~ encouraging any new activities to consolidate within, and around, existing developments or, where the natural character and landscape values have already been compromised, to avoid development sprawling; and
 - ~~(vi)~~ requiring appropriate building setbacks of activities from wetlands, lakes and rivers.
- (b) Where man-made influences are dominant, it may be appropriate that activities result in further adverse effects on natural character, though opportunities to remedy or mitigate should still be considered.

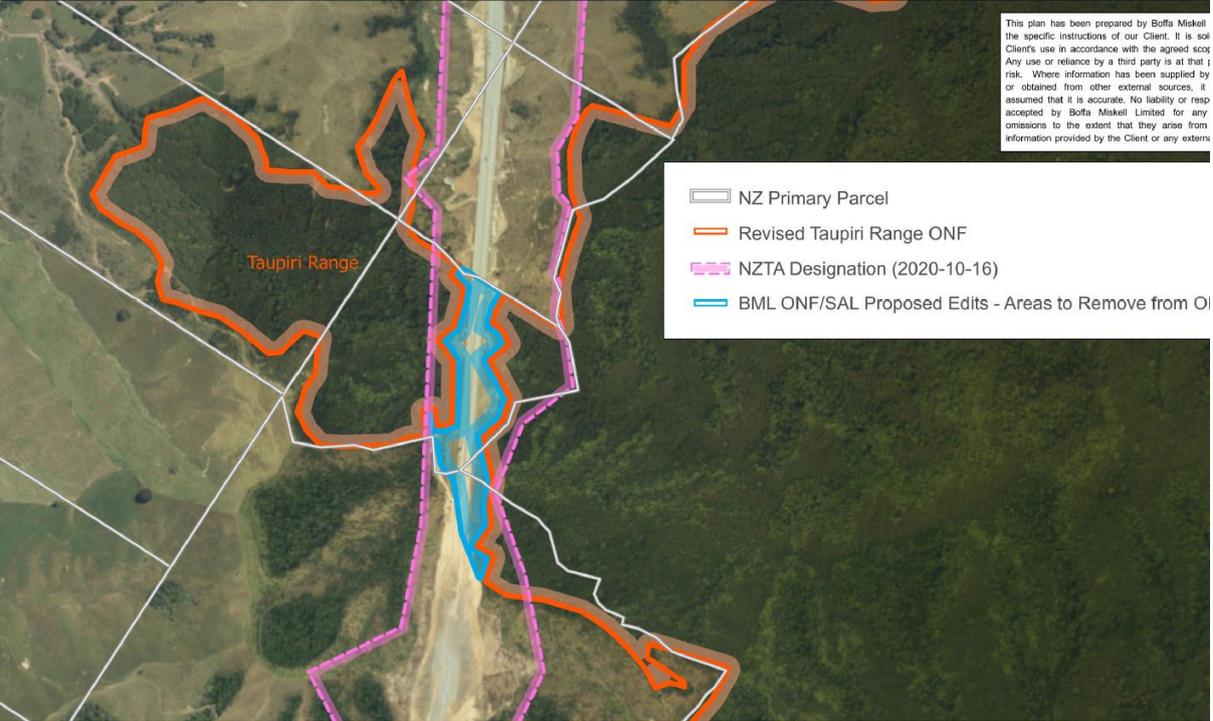
43. Lastly, Mr Riddell raises a concern in respect to my recommendation for clause (a)(vi) in Policy 3.5.4 (shown above) so that it explicitly refers to the setback of buildings from waterbodies. Mr Riddell considers that activities can also have an adverse effect on the natural character of waterbodies, and cites two examples of carparking areas and monocultural forestry. If there were rules in the PWDP that required activities to be set back from waterbodies, then I would support this view. However, the plan rules only deal with building setbacks, and not activity setbacks, from waterbodies. By adding the word 'building' to clause (a)(vi), this provides certainty and clear alignment between the policy and the setback rules.
44. This concludes my opening statement. I look forward to hearing from the submitters today and both Ms Ryder and I are happy to answer any questions that the hearings panel may have.

Jane Macartney

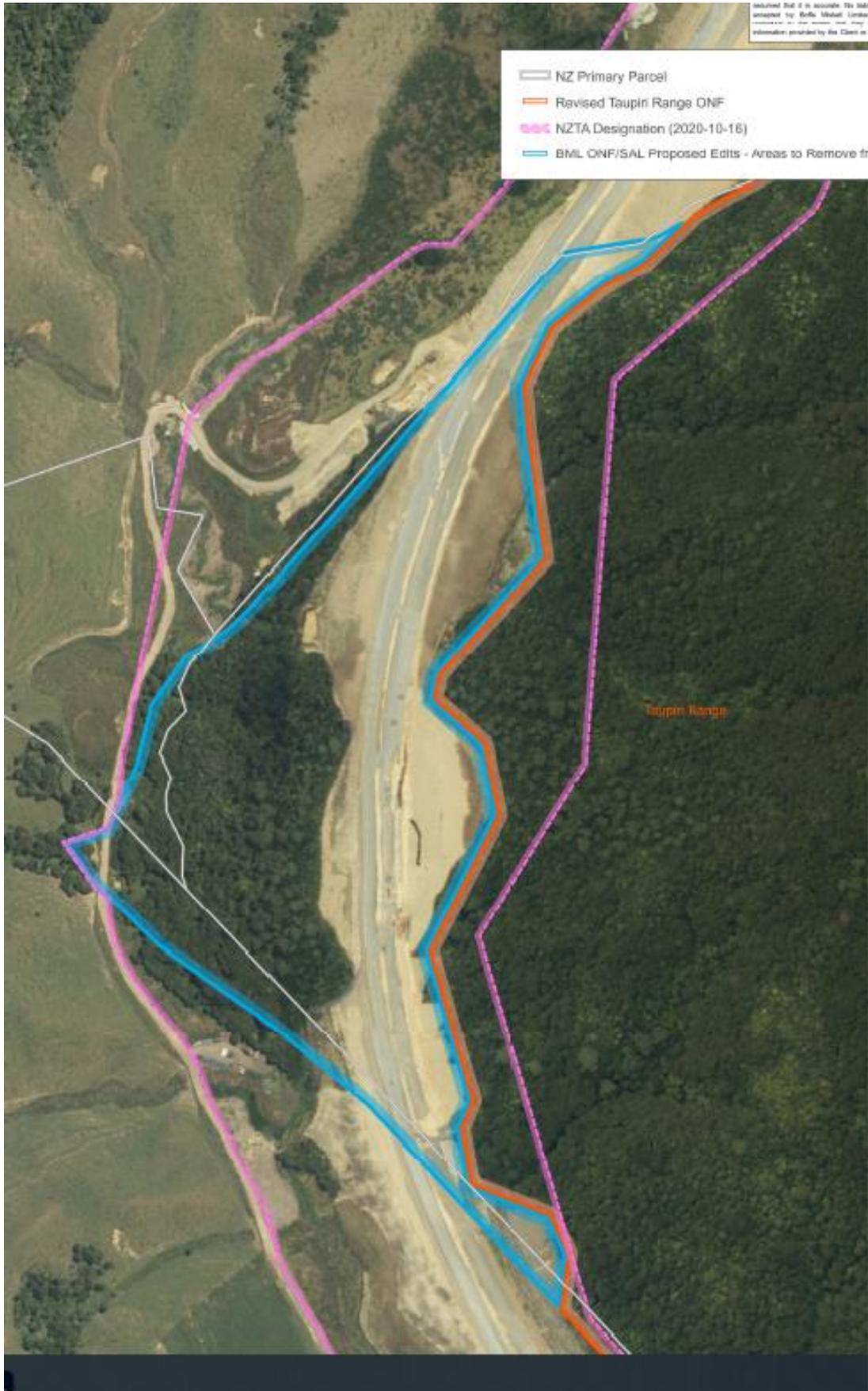
29 October 2020

Attachment I
Amended ONF overlay – Huntly Bypass

File Ref: becs.onfl.aprx / Taupiri Range - NZ







10. Where information has been supplied by the Client or derived from other external sources, it has been reviewed but it is accepted that its liability or responsibility is accepted by Boffa Mackell Limited for any errors or omissions in the information provided by the Client or any external source.

- NZ Primary Parcel
- Revised Taupiri Range ONF
- NZTA Designation (2020-10-16)
- BML ONF/SAL Proposed Edits - Areas to Remove from ONF

