

**Before Councillors and Independent Commissioners appointed
by the Gore District Council**

Under the Resource Management Act 1991
(Act)

And

In the Matter of submissions and further submissions
on the Proposed Gore District Plan

And Hearing Stream 9A – Sites and Areas of
Significance to Māori, Ngāi Tahu
Cultural Values

**Supplementary Legal Submissions on
behalf of Hokonui Rūnanga
Incorporated**

Dated: 11 February 2024

INTRODUCTION

1. These supplementary legal submissions are made on behalf of Hokonui Rūnanga Incorporated (**Hokonui Rūnanga**) in relation to Hearing Stream 9A of the PDP. This is a reconvened hearing to hear submissions on the Sites and Areas of Significance to Māori Chapter of the PDP.
2. A hearing on this chapter was convened on 5 December 2024, where Hokonui Rūnanga and the Gore District Council (**Council**) presented opening legal submissions and evidence in support. However, other submitters on this topic were granted leave to file evidence and make submissions to the Panel at a later date. Hokonui Rūnanga reserved its position on the matters raised in submitter evidence.
3. These legal submissions are intended to supplement counsel's opening legal submissions and respond to legal matters that have arisen from both the evidence filed by Southland Federated Farmers of New Zealand (**Federated Farmers**) and Transpower New Zealand Limited (**Transpower**) and the legal submissions on behalf of Transpower.
4. Our submissions do not repeat our earlier legal submissions and those are still relied on in support of the amended relief sought by Hokonui Rūnanga and recommended by Ms Beran in her evidence to be filed on Wednesday 12 February.¹

MAPPING OF SITES OF SIGNIFICANCE TO MĀORI

5. Both Federated Farmers and Transpower seek that Sites and Areas of Significance to Māori be mapped in the PDP to provide certainty to landowners and plan users. Federated Farmers seeks that "known sites" be mapped, with a "traffic light" system for consenting.² Transpower seeks that the PDP identifies Sites and Areas of Significance to Māori and impose appropriate rules on activities that may give rise to adverse cultural effects on those sites or areas.³
6. The approach sought by Federated Farmers and Transpower is not preferred by Hokonui Rūnanga for providing for their cultural values in the Gore District. In her evidence, Ms Beran explains that the rationale for replacing the SASM chapter with a bespoke Ngāi Tahu Cultural Values (**NTCV**) chapter is to avoid confusion and clarify to plan users that the PDP (neither notified or the refined version) does not use mapping as a tool to manage cultural values. Instead, the approach taken is

¹ As directed in the Panel's Minute 38 dated 11 February 2025.

² Statement of Evidence of Rachel Thomas and Bernadette Hunt dated 28 January 2025, at para [25].

³ Statement of Evidence of Ainsley McLeod dated 31 January 2025, at para [1.6].

focused on managing activities that have the potential to impact on Ngāi Tahu cultural values.

7. Accordingly, we submit that it would be inappropriate to require Hokonui Rūnanga to undertake a mapping exercise in this case as mana whenua do not adhere to the concept of identifying specific sites as culturally significant, as all whenua (land) and wai (water) within the district is considered to be important to them.

NGĀI TAHU CULTURAL VALUES CHAPTER

8. Federated Farmers and Transpower oppose the inclusion of the proposed NTCV chapter. Federated Farmers largely opposes the inclusion of the NTCV chapter on the basis that the NTCV chapter has not been subject to community consultation.⁴ Federated Farmers considers that the NTCV chapter should be withdrawn and a SASM chapter renotified.
9. Transpower opposes the inclusion of the NTCV chapter for several reasons, including that the SASM chapter is a mandatory requirement of the National Planning Standards and due to potential issues of scope and public participation.
10. We address these matters below.

Scope

11. Ms McLeod for Transpower notes that the replacement of the SASM chapter with the NTCV chapter potentially raises a matter of scope as no submitter sought this relief in submissions on the notified PDP.⁵
12. The matter of scope to include the NTCV chapter is addressed in our opening legal submissions, and we adopt the law on scope as set out in those submissions.⁶ We reiterate that the issue of scope should be approached in a realistic and workable fashion, rather than from the perspective of legal nicety.⁷
13. We also adopt the reasons why the proposed NTCV chapter is within scope as set out in our opening legal submissions.⁸ In summary, we submit that the NTCV chapter is within scope because:
 - (a) the proposed objectives and policies of the NTCV chapter largely replicate the objectives and policies of the notified SASM chapter, with some exceptions to clarify that no sites of significance are being identified;

⁴ Statement of Evidence of Rachel Thomas and Bernadette Hunt dated 28 January 2025, at para [121].

⁵ Statement of Evidence of Ainsley McLeod dated 31 January 2025, at para [8.55].

⁶ Opening legal submissions for Hokonui Rūnanga Inc dated 3 December 2024, at paras [70]-[72].

⁷ *Royal Forest and Bird Protection Society v Southland District Council* [1997] ZNRMA 408 (HC) at 10.

⁸ Opening legal submissions for Hokonui Rūnanga Inc dated 3 December 2024, at paras [84]-[91].

- (b) all submitters had the opportunity to submit on those provisions;
 - (c) no additional consenting requirements are introduced. The proposed NTCV chapter relies on existing rule triggers and matters of discretion that formed part of the notified PDP;
 - (d) the notified SASM chapter identified the entire Gore District as a site of significance. This would have provided scope for consenting triggers to apply across the entire district. What is now being sought through the NTCV chapter is lesser in scale and much more refined than the notified PDP; and
 - (e) the PDP as notified and the submission of Hokonui Rūnanga broadly raised the issue of the consideration of Ngāi Tahu cultural values. The amended relief seeks to include provisions that clarify how this is to be achieved.
14. Ms McLeod for Transpower acknowledges that many of the provisions between the notified SASM and proposed NTCV chapters are the same or similar, and that it is “possibly semantics” and the same outcome is achieved.⁹ We agree with this assessment.
15. Accordingly, we submit that there are no issues as to scope in terms of the proposal advanced by Hokonui Rūnanga to replace the SASM chapter with the NTCV chapter.

Lack of Consultation

16. Both Federated Farmers and Transpower raise concerns that, as the NTCV chapter was introduced after the PDP was notified and after the submissions period, there has been no public consultation on the proposed NTCV chapter and there is a risk that Council has not complied with their legal obligations on notification and consultation. Federated Farmers seeks that the proposed NTCV chapter be withdrawn and a variation to the PDP be notified introducing a revised SASM chapter following public consultation.¹⁰
17. This point is connected to scope. As we submit the NTCV chapter to be squarely within scope of the PDP and the submissions made on the PDP, we do not consider any further consultation on the NTCV chapter is required. The public has already had the opportunity to participate in the process and submitters were given the opportunity to respond to the proposal to introduce the NTCV chapter. Indeed, they are doing so.

⁹ Statement of Evidence of Ainsley McLeod dated 31 January 2025, at para [8.56].

¹⁰ Statement of Evidence of Rachel Thomas and Bernadette Hunt dated 28 January 2025, at [23].

18. Accordingly, we submit that the Council has discharged its notification obligations under the RMA and further consultation is not required.

National Planning Standards 2019

19. Federated Farmers and Transpower consider that the removal of the notified SASM chapter and replacement with a NTCV chapter is inconsistent with the National Planning Standards 2019.
20. As set out in our opening legal submissions, a SASM chapter is mandatory in a District Plan only if it is “relevant to the district”. As set out above, Hokonui Rūnanga seek the PDP manage activities that have the potential to impact on Ngāi Tahu cultural values, rather than listing and protecting specific sites of significance in the district. On that basis, a *Sites and Areas of Significance* Chapter that implies use of mapping as a planning tool becomes a blunt tool when there is no mapping, and in our submission adds confusion to users of the PDP.
21. This is a determination that only mana whenua can make. Accordingly, we submit that sites and areas of significance to Māori is not relevant to the district and as a result, the PDP does not need to include a SASM chapter in order to be consistent with the National Planning Standards.
22. Ms Beran has provided an analysis of the proposed NTCV chapter against the requirements of the National Planning Standards. Ms Beran considers that the National Planning Standards allows for the inclusion of an alternative cultural values chapter to address other historical and cultural values on a district wide basis.¹¹ We agree with Ms Beran’s assessment and submit that the NTCV chapter is consistent with the National Planning Standards.
23. Additional points supporting this interpretation is:
- (a) Part 7(17) that details provisions relating to identification, scheduling, and management of sites and areas of significance begins with “*If the following matters are addressed....*”, clearly anticipating that they may not be addressed in a District Plan.
 - (b) Part 7(18) of the National Planning Standards that expressly anticipates there may be additional chapters to SASM in the PDP where it states:

Any additional chapters to address other historical and cultural values on a district-wide basis must be included alphabetically under the historical and cultural values heading.

¹¹ Statement of Evidence of Amy Beran dated 18 November 2024, at paras [47]-[48].

24. We therefore do not share the position of Simpson Grierson for Transpower that the question of whether a SASM chapter is “relevant” to the Gore District is not dependant on the regulatory response “proposed and endorsed” by Hokonui Rūnanga. To the contrary, we submit it should be entirely guided by that.

Conclusion on Ngāi Tahu Cultural Values Chapter

25. In our submission, the NTCV chapter is squarely within scope and submitters have had sufficient opportunity to respond with their views on the NTCV chapter.
26. We also submit that the proposal to remove the SASM chapter and replace it with the NTCV chapter is consistent with the National Planning Standards. We therefore do not consider there is any procedural reason why the Panel would be unable to grant the relief sought if considered appropriate.
27. Hokonui Rūnanga maintains its position as set out in our opening legal submissions, as well as in the evidence of Ms Beran, that the proposed NTCV chapter is the most appropriate relief in terms of section 32AA of the RMA.¹²

SOUTHLAND REGIONAL POLICY STATEMENT

28. Ms McLeod for Transpower notes that the PDP must give effect to the Southland Regional Policy Statement (**SRPS**) and that “give effect to” is a strong statutory directive in the RMA as set out in *EDS v New Zealand King Salmon*.¹³
29. We agree that the RMA requires the PDP to “give effect to” the SRPS.¹⁴ On the face of it, this is a strong directive creating a firm obligation on those subject to it. However, the implementation of such a directive will be affected by what must be given effect to. A requirement to give effect to a policy which is framed in a specific and unqualified way may be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.¹⁵
30. Policy TW.4 of the SRPS is relevant to the present circumstances. Policy TW.4 requires, among other things, that those exercising functions under the RMA do so in a manner that recognises and provides for places, sites and areas with significant spiritual or cultural historic heritage value to tangata whenua. This is broadly worded and does not limit the identification of sites and areas of significance is the only way to provide for cultural values . Rather, the provision is broadly worded to signal that

¹² Statement of Evidence of Ms Beran dated 18 November 2024, at Annexure A.

¹³ Statement of Evidence of Ainsley McLeod dated 31 January 2025 at para [5.1], referring to *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* NZSC 38, 17 April 2014.

¹⁴ Section 75(3) Resource Management Act 1991.

¹⁵ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593.

sites of significance could exist, and if they do they would be relevant to decision-making. In addition, Policy TW.4(b) is very clear that only tangata whenua can identify their relationship, culture and traditions with their whenua and wai, wāhi tapu and other taonga.

31. Accordingly, we submit that the provisions of the PDP as proposed by Hokonui Rūnanga would give effect to Policy TW.4 of the SRPS and that the proposed NTCV chapter provisions would not conflict with Policy TW.4 of the SRPS.

SECTION 6(e) RESOURCE MANAGEMENT ACT 1991

32. Ms McLeod for Transpower considers that the proposed NTCV chapter is directed towards the general RMA requirement to consider effects on cultural values, as opposed to the more specific requirement in section 6(e) to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water sites, waahi tapu and other taonga.¹⁶ Ms McLeod considers that locating provisions in the NTCV chapter as opposed to the SASM chapter may alter the regulatory effect of the provision because the SASM chapter clearly responds to matters related to section 6(e) of the RMA, whereas the NTCV chapter address cultural values more generally.¹⁷ Ms McLeod concludes that the introduction of the NTCV chapter and removal of the SASM chapter will result in the Council failing to discharge their obligations under section 6(e) of the RMA.¹⁸
33. In our submission, Ms McLeod has taken an unnecessarily narrow approach in terms of the methods available to achieve the requirements under section 6(e) RMA. Ms McLeod appears to consider that the obligation under section 6(e) is only discharged if specific sites or areas of significance to Māori are identified. We submit that the obligation under section 6(e) is wider than that and can be met by a multitude of ways as considered appropriate by mana whenua.
34. In *Port of Tauranga Ltd v Bay of Plenty Regional Council*, the Environment Court found that the matter of national importance identified under section 6(e) of the RMA must be considered as having a wide scope that encompasses all aspects of the environment that affect the relationship of Māori with their ancestral lands, including effects on land, water and air.¹⁹ Once the relationship of Māori with their ancestral lands is recognised, the decision maker must consider how to provide for that relationship. Generally, consultation with mana whenua will be imperative to achieve this.²⁰

¹⁶ Statement of Evidence of Ainsley McLeod dated 31 January 2025, at para [8.54].

¹⁷ Statement of Evidence of Ainsley McLeod dated 31 January 2025, at para [8.57].

¹⁸ Statement of Evidence of Ainsley McLeod dated 31 January 2025, at para [8.8].

¹⁹ *Port of Tauranga Ltd v Bay of Plenty Regional Council* [2023] NZEnvC 270.

²⁰ *Haddon v Auckland Regional Council A077/93* (Planning Tribunal).

35. As set out in our opening legal submissions, Hokonui Rūnanga are best placed to determine how to exercise kaitiakitanga in the Gore District. The High Court has previously held that where an iwi claims that a particular resource management outcome is required to meet section 6(e), 7(a) and 8 of the RMA, decision makers must meaningfully respond to that claim.²¹
36. Ms Beran has provided evidence on behalf of Hokonui Rūnanga that the introduction of the NTCV chapter in place of the SASM chapter will best achieve the purpose of the RMA. As mana whenua are best placed to determine the appropriate RMA outcomes to achieve section 6(e) of the RMA, it is our submission that Council is required to meaningfully consider the relief sought by Hokonui Rūnanga. While we acknowledge that this does not mean a power of veto,²² we submit that it does mean this is to be recognised as an important consideration and given “genuine attention and thought”.²³
37. Accordingly, relying on the evidence of Ms Beran, it is our submission that the proposal to replace the notified SASM chapter with the NTCV chapter, and not identify particular sites of significance, will best achieve section 6(e) of the RMA and the purpose of the RMA as a whole.

GAP ANALYSIS

38. At the initial hearing, the Panel identified a gap in the PDP provisions relating to the recognition of Ngāi Tahu cultural values. While Ms Beran and Ms Bennett have undertaken a gap analysis in their joint memorandum dated 19 December 2024, this did not provide the full analysis that the Panel is seeking.
39. Ms Beran, in consultation with Hokonui Rūnanga, has taken on the task of identifying the various gaps in the PDP to assist the Panel and has prepared a table summarising the various gaps identified. This table will be attached to the evidence of Ms Beran to be filed on 12 February 2025. The gap analysis work has considered how the NTCV related provisions have been integrated into each chapter of the PDP, including linkages between objectives, policies, rules and standards, and potential gaps that may limit the implementation of the NTCV approach.
40. While still being finalised by Ms Beran, the key findings made by Ms Beran following on from the gap analysis work can be summarised as follows:
 - (a) There is an inconsistent approach to including NTCV related provisions throughout the notified version of the PDP; and

²¹ *Ngāti Maru Trust v Ngāti Whātua Ōrakei Whaia Maia Limited* [2020] NZHC 2768 at [102].

²² *Takamore Trustees v Kāpiti Coast District Council* [2003] NZRMA 433 (HC).

²³ *Marlborough Ridge Ltd v Marlborough District Council* (1997) 3 ELRNZ 483; [1998] NZRMA 73 (EnvC).

- (b) Relying entirely on the overarching provisions in the proposed NTCV chapter to address potential gaps in specific chapters of the PDP could result in consent applications being processed without considering applicable Ngāi Tahu cultural values.
41. Ms Beran is proposing her recommended solutions and workstream in her evidence to be filed on 12 February to address the linkage gaps identified in the gap analysis.

REFINEMENT OF RULES AND STANDARDS

42. In response to concerns regarding ambiguity of Ngāi Tahu cultural values from submitters and the Panel, Ms Beran, in consultation with Hokonui Rūnanga, has undertaken a detailed review of all the relevant rules and standards that include Ngāi Tahu cultural values as a matter of discretion or control. In light of this work, Ms Beran has produced a refined set of proposed PDP rules and standards, which will be attached to Ms Beran's supplementary statement of evidence to be filed on 12 February.
43. This exercise consisted of mana whenua broadly assessing each rule and identifying concerns and/or values that might need to be considered in a consent application for different activities. In some instances, mana whenua felt the activity was low risk in terms of potential cultural effects, resulting in Ngāi Tahu cultural values being removed as a matter of discretion. In other instances, mana whenua confirmed their support for the inclusion of a Ngāi Tahu cultural value as a matter of discretion.
44. The key refinements can be summarised as follows:
- (a) **Waterway setbacks** – retained NTCV matter of discretion. Mana whenua consistently raised concerns about buildings and/or structures breaching prescribed waterway setbacks;
 - (b) **Height** – mana whenua refined rules that pertain to building or structure height exceedances as follows:
 - (i) Retained the NTCV matters of discretion for height exceedances in zones where low built form and large areas of open space is anticipated and/or zones located in proximity to natural features or landscapes of importance to mana whenua; and
 - (ii) Removed the NTCV matters of discretion for height exceedance in zones where higher density/ increased built form is anticipated and/or that offer no clear views or connections to natural features or landscapes of importance to mana whenua.

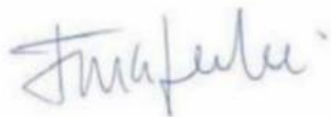
- (c) **Building size** - removed all NTCV matters of discretion for buildings that exceed permitted size in relation to a zone and activity.
 - (d) **Servicing of development**- mana whenua sought additional NTCV matters of discretion in several zone chapters to allow for their values to be considered in relation to servicing of new development (e.g. wastewater and stormwater design).
 - (e) Retirement village, community facility, comprehensive residential development, healthcare activity in prescribed residential zones (GRZ and/or MRZ) - removed all NTCV matters of discretion. Mana whenua clarified that their concerns relate to ensuring there is sufficient capacity to service new development in these zones. If alternative servicing is needed for new development, impacts on NTCV should be considered in relation to alternative servicing options.
 - (f) **Earthworks**- refinement and removal of some NTCV matters of discretion, as follows:
 - (i) EW-R1- removed NTCV matter of discretion from rule.
 - (A) Instead, mana whenua supports the requirement to comply with EW-S3 (setbacks from waterways), EW-S5 (erosion, sediment and dust control), and EW-S7 (accidental discovery protocol). If these standards aren't met, then mana whenua values could be considered in relation to these non-compliances.
 - (ii) R2, R5, R6- removed NTCV matters of discretions from rules.
 - (A) Mana whenua confirmed their support for the inclusion of standards EW-S3, S4, S5 and S7 and do not consider it necessary to attach a NTCV matter of discretion to each of the above rules. If these standards aren't met, then mana whenua values could be considered in relation to these non-compliances.
 - (iii) R13- removed NTCV matter of discretion and add to rule requirement to comply with EW-S7 (ADP).
45. In our submission, the above refinements will provide greater clarity to plan users in terms of the Ngāi Tahu cultural values to be considered in resource consent applications. The above refinements also respond to submitter feedback regarding the number of activities that were triggering the consideration of Ngāi Tahu cultural

values in the notified version, and reduces these to key activities that pose a risk to Ngāi Tahu cultural values as identified by mana whenua.

CONCLUSION

46. Hokonui Rūnanga maintains its position that the amended relief will provide greater certainty to plan users in terms of the outcomes sought by Hokonui Rūnanga to provide for the consideration of Ngāi Tahu cultural values across the district. The relief sought ensures that cultural values are appropriately considered, assessed and managed as required by Part 2 of the RMA.
47. The refinements to the provisions which trigger the need to consider Ngāi Tahu cultural values, as will be detailed in the evidence of Ms Beran on 12 February, have been further refined in response to feedback from submitters. This limits the consideration of Ngāi Tahu cultural values to the key activities which mana whenua have identified require an assessment of Ngāi Tahu cultural values when processing the resource consent.
48. Upon reviewing the evidence filed by Federated Farmers and Transpower, our submission remains that the relief sought by Hokonui Rūnanga will be the most appropriate way to enable Council to meet its obligations under section 6(e), 7(a) and 8 of the RMA and is therefore the most appropriate way to give effect to Part 2 of the RMA.

DATED 11 February 2024



J M G Leckie
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