

**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

Legal Submissions for **Hokonui Rūnanga Incorporated**

Dated: 3 December 2024

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INTRODUCTION

1. These legal submissions are presented on behalf of Hokonui Rūnanga Incorporated (**Hokonui Rūnanga**) in relation to Hearing Stream 8 – Sites and Areas of Significance to Māori (**SASM**) chapter of the Proposed Gore District Plan (**PDP**). Hokonui Rūnanga made submissions and further submissions on the PDP.
2. Evidence in support of the Hokonui Rūnanga submissions on the SASM chapter has been filed by Terry Nicholas (Cultural) and Amy Beran (Planning). The appendix attached to Ms Beran's evidence sets out the amended relief sought by Hokonui Rūnanga following informal conferencing with the Gore District Council's (**Council**) planner, Ms Bennett. Most of the amended provisions are agreed between Ms Bennett and Ms Beran.
3. Fundamentally, the relief sought by Hokonui Rūnanga seeks to provide for Ngāi Tahu cultural values in resource consent decision-making across the district, rather than protecting individual sites of significance.
4. The amended relief sought by Hokonui Rūnanga provides greater clarity on the position put forward at the Mana Whenua chapter hearing. Hokonui Rūnanga is no longer seeking a future variation policy and does not propose to introduce additional consenting triggers requiring consideration of Ngāi Tahu cultural values other than what is already required under the notified PDP.
5. Since the mana whenua hearing, Hokonui Rūnanga has had meaningful and constructive engagement with both Council and submitters to these provisions including Federated Farmers. Hokonui Rūnanga do not want to stifle economic growth in the district or interfere with landowner rights. Hokonui Rūnanga is supportive of growth, especially in the agricultural sector given its importance to the Gore economy.
6. Rather, Hokonui Rūnanga is seeking to ensure that growth and development occurs in a manner that respects and restore the health of the whenua.¹
7. The Panel must recognise and provide for the relationship of Ngāi Tahu Whānui with their culture, traditions, and values within the Hokonui takiwā. In our submission, the amended relief sought by Hokonui Rūnanga will most appropriately do that, ensuring the PDP gives effect to Part 2 of the Resource Management Act 1991 (**RMA**) while not placing additional or unnecessary burden on landowners of the district.

¹ Statement of Evidence of Terry Nicholas dated 18 November 2024, at para [10].

Procedural Matters

8. In response to a letter filed on behalf of Southland Federated Farmers of (**Federated Farmers**) seeking to defer the SASM hearing to the new year, the Panel issued a Minute granting this request and extending the option to defer to all submitters. However, the Panel directed Hokonui Rūnanga to present legal submissions and evidence at the SASM hearing as scheduled on 5 December 2024.
9. The splitting up of these submissions means that not all evidence on the SASM chapter is available to us. Counsel supports the approach directed by the Panel in Minute 28 and to ensure procedural fairness is achieved, Hokonui Rūnanga reserves its position in relation to any further evidence filed on the SASM chapter and intends to respond to the matters raised in supplementary legal submissions and rebuttal evidence.

AMENDED RELIEF SOUGHT

10. Following early-stage consultation with Hokonui Rūnanga, the Council's notified PDP did not identify or delineate specific sites of significance to Māori. Instead, the PDP sought to manage the impact of "high risk activities" on Ngāi Tahu cultural values² as opposed to restricting a wide range of activities at specific locations.
11. This approach was addressed at the Mana Whenua hearing, where it was submitted that the identification of specific sites of significance is only one tool available to local authorities to enable them to discharge their obligations under Part 2 of the RMA, in particular section 6(e) RMA. Additionally, a policy seeking a future plan variation was sought at the Mana Whenua hearing to enable Hokonui Rūnanga to undertake a district wide cultural assessment of the landscape in accordance with the Āpiti Hono Tātai Hono approach, and to incorporate the findings of this assessment in the PDP at later date.
12. Following the Mana Whenua hearing, the Panel issued Minute 15, noting their view that the Mana Whenua chapter as notified does not currently contain adequate guidance or direction to plan users as to how the matters set out in that chapter are to be applied.³ The Panel also proposed alternative wording for the future variation policy and directed the Council and Hokonui Rūnanga to confer on this proposed wording.
13. In response to Minute 15, Ms Beran for Hokonui Rūnanga and Ms Bennett for the Council undertook informal expert conferencing and produced a joint memorandum

² Proposed Gore District Plan as notified, SASM – Overview.

³ Minute of the Panel dated 6 August 2024, at [2.1].

(Joint Memo) setting out an agreed set of provisions for the Mana Whenua chapter.⁴ This Joint Memo also sets out additional provisions proposed by Ms Beran that are not agreed between the planners, as well as confirms that Hokonui Rūnanga is no longer pursuing the future variation policy.

14. The approach to not map or identify sites or areas of significance to Māori was subject to significant criticism across the district, largely due to the misunderstanding that Hokonui Rūnanga was seeking to identify the entire district as an 'area' or 'site' of significance to Māori. Hokonui Rūnanga recognises this uncertainty and is now seeking a more refined relief package to provide greater clarity on the approach to SASM sought by Hokonui Rūnanga.
15. In summary, Hokonui Rūnanga seeks the following amended relief in relation to the SASM and Mana Whenua Chapters of the PDP:
 - (a) deletion of the SASM chapter entirely and replacement with a Ngāi Tahu Cultural Values chapter (**NTCV Chapter**), and consequential amendments; and
 - (b) inclusion of context and process-related objectives, policies, and methods in the Mana Whenua chapter in accordance with the National Planning Standards.
16. The provisions of the proposed NTCV Chapter are set out in the evidence of Ms Beran at Annexure A. The proposed NTCV Chapter clarifies that Ngāi Tahu cultural values are to be assessed at the consenting stage, utilising existing rule triggers and matters of discretion that formed part of the notified PDP. These rule triggers are largely for controlled and restricted discretionary activities which contain Ngāi Tahu cultural values as a matter of discretion. This means that Ngāi Tahu cultural values are not a trigger for resource consent,⁵ but is a matter of discretion (among other matters) when determining whether to grant consent.
17. Hokonui Rūnanga is no longer seeking to include policy support for a future variation and considers that the amended relief would provide greater certainty for everyone in terms of how the cultural values of Ngāi Tahu are to be considered and provided for within the PDP.

⁴ Joint memorandum of Amy Beran and Courtney Bennett dated 29 October 2024.

⁵ Statement of Evidence of Amy Beran dated 18 November 2024, at para [49].

KEY ISSUES

18. Overall, the key issues in relation to the submission of Hokonui Rūnanga are as follows:
- (a) whether the amended relief is compliant with the National Planning Standards 2019;
 - (b) appropriateness of the amended relief in achieving the objectives and policies of the PDP and Part 2;
 - (c) response to submissions; and
 - (d) scope to make amended relief sought.

STATUTORY CONSIDERATIONS

Southland Regional Policy Statement 2017

19. In accordance with section 73(4) of the RMA, the PDP must give effect to the Southland Regional Policy Statement 2017 (**RPS**).
20. The objectives and policies of the RPS generally seek to ensure that mana whenua are appropriately consulted with in resource management decision making, sites of cultural significance are appropriately managed and protected, and that cultural values are appropriately considered.⁶
21. As set out in the evidence of Ms Beran, the amended relief is generally consistent with the objectives and policies of the RPS.⁷

Part 2 RMA

22. A district planning document must be made in accordance with the provisions of Part 2 of the RMA. This includes:
- (a) Recognising and providing for the relationship of Māori and their culture and traditions with ancestral lands, water, sites, wāhi tapu and other taonga in accordance with section 6(e) of the RMA. This involves:
 - (i) The recognition of the relationship between mana whenua and the relevant taonga/cultural site/wāhi tapu; and

⁶ Objective TW.1, Objective TW.4, Policy TW.1, Policy TW.4.

⁷ Statement of Evidence of Amy Beran dated 18 November 2024, at paras [8]-[9].

- (ii) Once that relationship is understood, the decision maker must then determine how to provide for that relationship appropriately under the RMA and within the PDP. This process must necessarily involve input from affected iwi about how that relationship, as understood and expressed in tikanga Māori, is affected by resource management decision-making;⁸
 - (b) Having particular regard to matters in section 7 of the RMA, specifically kaitiakitanga, which is described in the evidence of Ms Brand;⁹ and
 - (c) Taking into account the principles of Te Tiriti o Waitangi, including the principles of tino rangatiratanga, active protection and partnership.¹⁰
23. It is well recognised that the trinity of s 6(e), 7(a) and 8 are “strong directions to be borne in mind at every stage of the planning process”.¹¹ While no individual Part 2 provision equates to a right of veto, nevertheless in achieving the Act’s single broad purpose “*all the authorities concerned are bound by certain requirements and these include particular sensitivities to Māori issues.*”¹² Further, cultural wellbeing is itself central to the Act’s sustainable management purpose.
24. In addition, I submit that the principles of Te Tiriti o Waitangi (**Principles**) are central to your decision-making in light of sections 6, 7 and 8 of the RMA. We have summarised the Principles in our legal submissions for Hearing Stream 3 (Mana Whenua) dated 18 July 2024, and adopt those submissions for Hearing Stream 8.

Section 32

25. Section 32 of the RMA is also of particular relevance to the PDP. This section sets out the relevant statutory tests that must be carried out to determine the most appropriate way to achieve the purpose of the RMA. Ms Beran has completed a thorough section 32AA analysis on the amended relief sought, which is contained in her statement of evidence.¹³ In our submission, and on reliance on the evidence of Ms Beran, the relief sought by Hokonui Rūnanga can be preferred in a section 32 sense as it better achieves the objectives of the PDP and purpose of the RMA.

⁸ *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Limited* [2020] NZHC 2768 at [73].

⁹ Statement of Evidence of Jo Brand dated 8 July 2024, at paras [75]-[77].

¹⁰ Section 8 Resource Management Act 1991.

¹¹ *McGuire v Hastings District Council* [2002] 2 NZLR 577 at [21]-[22].

¹² *McGuire v Hastings District Council* [2002] 2 NZLR 577 at [21]-[22].

¹³ Statement of Evidence of Amy Beran dated 18 November 2024 at annexure A.

National Planning Standards 2019

Mana Whenua Chapter

26. The National Planning Standards 2019 came into effect in November 2019. The Council is required to implement the provisions of the National Planning Standards in its review of the Gore District Plan.
27. The National Planning Standards create a standardised structure that District Plans are required to follow. A Mana Whenua chapter is mandatory in a District Plan. The National Planning Standards direct that Mana Whenua chapters must only include “context and process-related provisions.”
28. In our submission, the introduction of the additional objectives, policies and methods to the Mana Whenua chapter meet the definition of “context and process related provisions”. ‘Provisions’ is defined in the National Planning Standards as “*all content in a policy statement or plan, including but not limited to background content, issues, objectives, policies, methods, rules and anticipated environmental results*”.¹⁴ Accordingly, we submit that there is no statutory barrier to the inclusion of the proposed objectives, policies and methods to the Mana Whenua chapter if they are context and process related.
29. In our submission, the additional objectives, policies, and methods proposed for the Mana Whenua chapter are context and process-related as they set out a framework for the steps required to ensure Ngāi Tahu cultural values are adequately considered and provided for in decision-making. The additional provisions direct plan users and decision makers to consider specific matters, such as the Charter of Understanding and relevant iwi and hapū planning documents, as well as provide an indication on when a Cultural Impact Assessment might be required. These documents are an important tool available to plan users to ascertain whether their proposal meets the objectives and policies of the PDP and therefore should form part of the resource consenting process.
30. Accordingly, we submit that the objectives and policies proposed for the Mana Whenua chapter fit within the meaning of “context and process related provisions” and are therefore consistent with the requirements of the National Planning Standards.

¹⁴ National Planning Standards 2019 at page 5.

Ngāi Tahu Cultural Values Chapter

31. The National Planning Standards requires a District Plan to include a SASM chapter if it is relevant to the district.¹⁵ As no sites are being identified, Hokonui Rūnanga is seeking to remove the SASM chapter and replace it with a bespoke NTCV chapter.
32. Ms Beran has set out the relevant provisions in the National Planning Standards that in her view allow for the NTCV chapter to be included.¹⁶ In particular, Direction 18 of the National Planning Standards allows for the inclusion of additional chapters to address other historical and cultural values on a district basis. We agree with Ms Beran's assessment and submit that the introduction of the NTCV chapter is consistent with the requirements of the National Planning Standards.

SECTION 32AA - APPROPRIATENESS OF AMENDED RELIEF

Ngāi Tahu Cultural Values Chapter

33. Hokonui Rūnanga acknowledges that its approach to the identification of sites and areas of significance to Māori, or lack thereof, has generated some confusion and uncertainty within the Gore District. This is because in its notified form the SASM chapter (including in its name) anticipates that there will be some form of geographical identification of specific sites. However, mana whenua have no interest at this point in time in pursuing a sites of significance approach as this does not align with mana whenua relationships with te taiao.¹⁷
34. This is the driver of the replacement of the SASM chapter with a Ngāi Tahu Cultural Values chapter (**NTCV**). It provides clarity that Hokonui Rūnanga is not seeking to identify the entire district as a site or area of significance, but rather is seeking to ensure that the PDP appropriately recognises and provides for Ngāi Tahu cultural values in resource consenting, no matter where you are in the district. The proposed approach relies on the consideration of Ngāi Tahu cultural values as a matter of discretion for existing controlled and restricted discretionary activities.
35. This approach will also remove the complexities that come with trying to apply a SASM approach across the entire district, when fundamentally the SASM approach involves the identification and management of particular sites or areas.¹⁸
36. The wording of the NTCV chapter is proposed to be extracted from the notified SASM chapter, with some changes arising as consequential amendments. Given

¹⁵ National Planning Standards 2019, Direction 4(3).

¹⁶ Joint Memorandum of Ms Beran and Ms Bennett dated 29 October 2024, at para [22].

¹⁷ Joint Memorandum of Ms Bennett and Ms Beran dated 29 October 2024, at para [21].

¹⁸ National Planning Standards Guidance for District Plan Structure and Chapter Standards, page 43.

the provisions of the notified SASM chapter are generally broad (as they do not directly relate to the protection or management of specific sites in the district), we agree with Ms Beran that it is appropriate to transfer the notified SASM provisions into the proposed NTCV chapter.¹⁹

37. Further, Ms Beran proposes consequential amendments to Objective 1 and Policy 4 to remove reference to tangata whenua. This is to provide clarity and certainty to plan users that the NTCV chapter is focused on enabling mana whenua values across the district and no other group. This issue arose in the Māori Purpose Zone hearing where it was agreed between Ms Bennett and Ms Beran that a clear distinction between the two groups is needed in the PDP.

Mātāwaka Māori

38. The Section 42A Report raises concerns about the proposed NTCV chapter excluding mātāwaka Māori within the district, whose connections to place and culture were intentionally woven through the SASM chapter.²⁰ We cannot find any reference to mātāwaka Māori in the notified version of the SASM chapter.
39. Mātāwaka Māori have connections with discrete sites in the Gore district but are not mana whenua.²¹ Mātāwaka Māori are affiliated with Mataura Marae and Hokonui Marae, which are both pan tribal marae in the Gore district. The PDP recognises this connection to place and enables mātāwaka Māori to undertake a range of uses and development within their discrete areas of interest to express their cultural traditions and norms. However, the PDP does not provide for mana whenua rights more generally to mātāwaka Māori as they are not mana whenua.
40. Ms Beran has addressed this aspect in her statement of evidence. She considers that the exclusion of mātāwaka Māori is appropriate given the intent of the NTCV chapter to provide a policy framework for Ngāi Tahu cultural values as mana whenua.²² Further, Ms Beran notes that mātāwaka Māori connections with specific sites in the district have already been recognised and provided for in the Māori Purpose Zone chapter.²³ Accordingly, relying on the evidence of Ms Beran, we submit that mātāwaka Māori sites are already provided for and do not need to be included in the NTCV chapter.

¹⁹ Joint Memorandum of Ms Bennett and Ms Beran dated 29 October 2024, at para [25].

²⁰ Section 42A Report – Sites and Areas of Significance to Māori at para [90].

²¹ Statement of Evidence of Amy Beran dated 18 November 2024, at para [44].

²² Statement of Evidence of Amy Beran dated 18 November 2024, at para [44].

²³ Statement of Evidence of Amy Beran dated 18 November 2024, at para [44].

Conclusion on Appropriateness of Ngāi Tahu Cultural Values Chapter

41. In our submission, and on reliance of the section 32AA evaluation contained in the evidence of Ms Beran,²⁴ the amended relief sought by Hokonui Rūnanga is the most appropriate way to achieve the purpose of the RMA. In particular, the amended relief clarifies the outcomes sought by Hokonui Rūnanga in terms of section 6(e) and 7(a) of the RMA and providing for the relationship of Māori with their cultural and traditions with their ancestral lands, water, sites, wahi tapu and other taonga.
42. Hokonui Rūnanga are best placed to determine how to exercise kaitiakitanga in the Gore district.²⁵ 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, resource management decision makers must meaningfully respond to that claim.²⁶ Hokonui Rūnanga has engaged meaningfully with the Council and key submitters, and listened to their concerns. With that knowledge to hand Hokonui Rūnanga consider the removal of the SASM chapter and replacement with a NTCV chapter is the most appropriate way to achieve the purpose of the RMA.

Introduction of Objectives and Policies in the Mana Whenua Chapter

43. Ms Beran for Hokonui Rūnanga and Ms Bennett for the Council have jointly agreed on a set of provisions to be included within the Mana Whenua chapter. These provisions are set out in the Joint Memorandum and replicated in the evidence of Ms Beran.
44. These provisions essentially clarify the approach to sites and areas of significance to Māori in the Mana Whenua chapter of the PDP. Specifically, references to “sites and areas of significance to Māori” have been removed and the focus has been redirected to ensuring that Ngāi Tahu cultural values are considered during the resource consenting process.
45. Proposed Policy MW-P1 sets out a list of the types of activities for when impacts on Ngāi Tahu cultural values are generally considered to be required under the resource consenting process. This provides a greater degree of certainty to plan users as to the types of activities that might trigger the need to consider Ngāi Tahu cultural values. These triggers already formed part of the notified PDP and therefore do not introduce an additional consenting burden on future applicants.

²⁴ Statement of Evidence of Amy Beran dated 18 November 2024, at appendix A, page 5.

²⁵ *Ngāti Maru Trust v Ngāti Whātua Ōrakei Whaia Maia Limited* [2020] NZHC 2768 at [58].

²⁶ *Ngāti Maru Trust v Ngāti Whātua Ōrakei Whaia Maia Limited* [2020] NZHC 2768 at [102].

46. Both Council and Hokonui Rūnanga planners have provided a joint section 32AA analysis on the proposed objectives and policies to the Mana Whenua chapter. They consider that the proposed new provisions provide certainty for plan users and enables more efficient and effective decision-making processes.²⁷ Overall, Ms Bennett and Ms Beran consider the proposed provisions are the most appropriate way to achieve the purpose of the RMA.

Introduction of Methods in the Mana Whenua Chapter

47. Ms Beran has proposed to include a set of methods in the Mana Whenua chapter to assist with the practical implementation of the additional policies proposed for that chapter.
48. MW-M1, relating to cultural impact assessments, seeks to provide practical guidance to plan users and decision makers on the potential circumstances that might require a cultural impact assessment to be undertaken. While there is no statutory requirement for applicants or Council to prepare or commission a cultural impact assessment, it is a useful tool to available to both Council and applicants to meet statutory obligations, including:
- (a) Preparing an Assessment of Environmental Effects in accordance with s 88(2)(b) RMA; and
 - (b) Providing information to enable appropriate consideration of the relevant Part 2 matters when making a decision on an application for consent under s 104 RMA; and
 - (c) Providing information to assist Council in determining notification status under s 95 RMA.
49. MW-M2, relating to information resources, is intended to signal to plan users that information resources on consultation with Hokonui Rūnanga will be available to assist with the implementation of the PDP provisions.
50. MW-M3 encourages training opportunities for Council staff to build on their cultural competency.
51. Ms Bennett for the Council considers the methods proposed by Ms Beran are not required and could create confusion for plan users. Ms Bennett considers that these provisions could sit outside the PDP in a different document.

²⁷ Joint memo dated 29 October at [33].

52. In our submission, the methods proposed will provide certainty to plan users as to how the policies proposed in the Mana Whenua chapter will be implemented. Ms Beran has provided a section 32AA analysis for the methods proposed to be included in the Mana Whenua chapter. In her view, the methods proposed will assist Council to administer the objectives and policies of the Mana Whenua chapter in a consistent manner, as well as provide certainty to resource consent applicants on when more robust consultation may be required. Overall, Ms Beran considers that the inclusion of the proposed methods will give rise to a more efficient consent process and is a more appropriate way to achieve the purpose of the Act.²⁸
53. Further, we submit that the methods are appropriate in light of the directions for the Mana Whenua chapter contained in the National Planning Standards.²⁹ The methods provide useful context and process related information regarding mana whenua relationship with the Council, the relevant iwi and hapū planning documents, and a description of best practice involvement of mana whenua in decision making.

Policy SASM-PXX – Future Variation

54. As the Panel are aware, Hokonui Rūnanga previously sought the inclusion of an additional policy in the SASM chapter to provide policy support for a future pathway for a variation to the PDP. The proposed policy notes that a variation to the PDP will arise as a result of further work being undertaken by Hokonui Rūnanga to identify how best to implement an Āpiti Hono Tātai Hono approach.
55. In light of the substantive work being progressed in relation to the Mana Whenua and Ngāi Tahu Cultural Values chapters, Hokonui Rūnanga has agreed to not pursue this relief on the basis that the amended relief now being recommended by Ms Beran will better achieve the outcomes sought by Hokonui Rūnanga and provide more clarity and certainty to landowners.

RESPONSE TO SUBMISSIONS

56. Various submitters have made submissions on the notified SASM chapter of PDP, specifically on the lack of delineated sites and areas of significance to Māori in the planning maps. Many of these submissions are concerned that the lack of identified sites signals that the entire district is to be considered an area of significance to Māori. Much of the relief sought by submitters seeks to identify and delineate sites and areas of significance to Māori to provide greater certainty to landowners on when restrictions will apply to their land.

²⁸ Statement of Evidence of Amy Beran dated 18 November 2024, appendix A page 3.

²⁹ Section 6, Direction 28, National Planning Standards 2019.

57. As discussed above, Hokonui Rūnanga considers that the mana whenua approach to cultural values has been misunderstood – it is not the case that Hokonui Rūnanga are trying to identify the entire district as a site or area of significance. As addressed in Ms Beran’s evidence and in the Joint Memorandum, the concept of sites and areas of significance to Māori anticipates a particular process of identification, and this is a large source of the confusion. As the identification of specific sites is not proposed by Hokonui Rūnanga, we submit that a SASM chapter is not required in the PDP. The National Planning Standards 2019 only require a SASM chapter to be included in a District Plan if it is relevant to the district.
58. The amended relief to remove the SASM chapter and replace it with a bespoke NTCV chapter will clarify the above uncertainty and provide greater certainty to plan users on the approach pursued by Hokonui Rūnanga. The amended relief proposes to utilise existing rule triggers and does not place additional consenting burden on landowners, but ensures that cultural values are appropriately considered, assessed, and managed as required by Part 2 of the RMA.
59. Accordingly, we submit that the amended relief addresses the concerns raised by submitters and clarifies that sites and areas of significance to Māori is not being pursued by mana whenua.

Existing Use Rights

60. Federated Farmers have sought to limit SASM-P1 to ‘new’ activities to protect existing use rights under s 10 of the RMA.³⁰
61. Hokonui Rūnanga made a further submission opposing this relief on the basis that section 10 of the RMA already protects existing use rights.
62. In our submission, this concern could never eventuate as the case law is clear that District Plans cannot deprive anyone of existing use rights under section 10 of the RMA.³¹ The recognition of existing use rights under s 10 is intended to protect against the unfairness that would otherwise arise if a lawfully established use were to be detrimentally affected by a plan change.³² If a landowner had existing use rights they would not need a resource consent.
63. Accordingly, we submit that existing use rights do not have to be provided for in plans as they are already protected under the RMA.

³⁰ S126.077.

³¹ *Leith v Auckland CC* [1995] NZRMA 400 (PT) at 9.

³² *Russell v Manukau CC* [1996] NZRMA 35 (HC) at 9.

Private Property Rights

64. Several submitters refer to the need to protect private property rights in the plan making process³³ and that the identification of the entire district as an area of significance to Māori would interfere with these rights. As outlined above, the amended relief sought by Hokonui Rūnanga does not seek to identify the entire Gore district as a site or area of significance, but rather seeks to provide for the consideration of Ngāi Tahu cultural values in the resource consenting process.
65. In any event, the case law is settled on the relevance of private property rights to the plan making process. Very recently, the Court in *Zant v Central Hawke's Bay District Council* [2024] NZEnvC held that Councils are obliged, in preparing its district plan, to provide for matters of national importance under section 6 of the RMA. In discharging this obligation, the Court found that the RMA expressly empowers the restriction of private property rights where this is necessary to achieve the purpose of the RMA.³⁴
66. What is being proposed in Gore is not controversial or out of step with the rest of New Zealand.
67. Accordingly, we submit that private property rights are not relevant to your decision making on the PDP.

SCOPE

68. In the Panel's minute dated 6 August 2024 (**Minute 15**), the Panel directed the planning experts to confer in relation to the issue of scope for introducing context and process-related provisions to the Mana Whenua chapter of the PDP. Issues as to scope also arise as a result of the amended relief to replace the SASM chapter with a NTCV chapter.
69. For reasons that follow, we submit that the Panel has the necessary scope to grant the amended relief sought by Hokonui Rūnanga and the Reporting Officer.

The Law

70. The case law is clear that any amendments to a planning instrument as notified must be within scope of a submission. The Courts have established that for an amendment to be considered within scope of a submission, the amendment must be fairly and reasonably within the general scope of:³⁵

³³ For example, S3.001.

³⁴ *Zant v Central Hawke's Bay District Council* [2024] NZEnvC at para [57].

³⁵ *Re Vivid Holdings Ltd* (1999) 5 ELRNZ 264 at [19].

- (a) an original submission;
- (b) the PDP as notified; or
- (c) somewhere in between.

71. The question of whether an amendment is within scope will usually be a question of degree, to be judged by the terms of the proposed change and the content of submissions. This should be approached in a realistic and workable fashion, rather than from the perspective of legal nicety.³⁶ For example, the High Court has held in relation to the Proposed Motiti District Plan that while the relief sought relating to a Hapu Management Plan had not appeared until late in the hearing, it was clearly related to issues that had been broadly raised in earlier submissions relating to tangata mana and tangata whenua such that it was within scope.³⁷
72. Another way to consider the issue is whether the amendment in question can be said to be a “foreseeable consequence” of the relief sought in a submission. It has been confirmed by the Court that scope to change a plan is not limited by the words of the submission.³⁸ Changes that are incidental to, consequential upon or directly connected to a submission are considered to be within scope.

Applying the Law to the Amended Relief

73. We submit that the PDP as notified, as well as the “whole of plan” submissions made by Hokonui Rūnanga, provide the Panel with scope to make the amended relief sought. The PDP as notified and the submission of Hokonui Rūnanga broadly raised the issue of the consideration of Ngāi Tahu cultural values in resource management decision making. The amended relief now sought by Hokonui Rūnanga seeks to include provisions that clarify how this is to be achieved.

Introduction of context and process related provisions to the Mana Whenua Chapter

74. In Minute 15, the Panel noted its view that the Mana Whenua chapter does not currently contain adequate guidance or direction to plan users and decision makers as to how the matters set out in the chapter are to be applied.³⁹ The Panel therefore directed Council and Hokonui Rūnanga planners to introduce additional context and process-related provisions to the Mana Whenua chapter.

³⁶ *Royal Forest and Bird Protection Society v Southland District Council* [1997] NZRMA 408 (HC) at 10. This position was endorsed by the High Court’s decision in *Gertrude’s Saddlery Ltd v Queenstown Lakes District Council* [2020] NZHC 3387 at [74].

³⁷ *Motiti Avocados Ltd v Minister of Local Government* [2013] NZHC 1268.

³⁸ *Westfield (NZ) Limited v Hamilton City Council* [2004] NZRMA 556 at [73].

³⁹ Minute 15 at para [2.1].

75. For an amendment to be within scope of a submission, the amendment must be fairly and reasonably within the general scope of an original submission, the PDP as notified or somewhere in between. We submit that this needs to be considered in the context of the PDP as a whole, rather than on a chapter basis.
76. Ms Beran for Hokonui Rūnanga and Ms Bennett for the Council have jointly recommended a suite of context and process related objectives and policies to the Mana Whenua chapter.⁴⁰ These context and process related provisions were drafted by the planners with a view to being in alignment with the notified provisions of the Mana Whenua chapter and the National Planning Standards.
77. As set out in the Joint Memo, two objectives are proposed for the Mana Whenua chapter. These relate to resource management decision-making being in collaboration with mana whenua, and therefore allowing mana whenua to exercise their kaitiakitanga and rangatiratanga responsibilities.⁴¹ The second objective relates to ensuring resource management decisions in the Gore district reflect the relationships that mana whenua hold with the land.⁴² We submit that there is scope to introduce these two objectives as the PDP as notified (particularly the SASM chapter) broadly raised the issue of providing for the relationships that mana whenua hold with the land and the appropriate ways to do this from the perspective of Hokonui Rūnanga.
78. The policies proposed for the Mana Whenua chapter provide direction on how the proposed objectives are to be achieved. We submit that Policy MW-P1 is entirely within scope as it simply sets out a list of the existing triggers for when Ngāi Tahu cultural values are to be considered in resource consent applications. Although not listed in the Mana Whenua chapter as notified, these triggers already exist throughout the various chapters of the notified PDP. We therefore submit that proposed Policy MW-P1 does not introduce additional directive content, but rather is a useful summary of when consideration of Ngāi Tahu cultural values is already required under the notified PDP.
79. On that basis, we submit that the intent of MW-P1 delivers the same intent as the notified version of the PDP, which sought to provide consideration of Ngāi Tahu cultural values as a matter of discretion for certain activities. Further, the notified SASM chapter identified the entire Gore district as being significant to mana whenua, which would have provided scope for consenting triggers to apply across

⁴⁰ MW-O1, MW-P, MW-P2, MW-P3 and MW-M1 as set out in the joint memorandum of the planners dated 29 October 2024.

⁴¹ MW-O1.

⁴² MW-O2.

the entire district. What is being sought by Hokonui Rūnanga is much narrower than that.

80. In relation to the remaining proposed objectives and policies, we submit that these are also within scope as the matters that these policies address were sufficiently raised in the notified version such that submitters were on notice that these matters could form part of the PDP, albeit not as objectives and policies. In particular:
- (a) **MW-P2** – This proposed policy directs Council to maintain or establish processes that give effect to the Charter of Understanding held between Council and Hokonui Rūnanga. The Charter of Understanding was raised in the notified Mana Whenua chapter and noted that Hokonui Rūnanga will provide expert advice to Council on impacts of activities on their cultural values.
 - (b) **MW-P3**- This proposed policy directs decision makers to take into account relevant iwi and hapū planning documents and requiring an Accidental Discovery Protocol to be adopted as part of earthworks related consents. Both iwi/hapū planning documents and accidental discovery protocol were matters that were addressed in the notified Mana Whenua chapter as descriptive content.
81. Accordingly, we submit that the objectives and policies to the Mana Whenua chapter jointly proposed by Hokonui Rūnanga and the Council are within scope.

Introduction of Methods to the Mana Whenua Chapter

82. The methods proposed by Ms Beran are additional provisions intended to assist with the practical implementation of the policies proposed in the Mana Whenua chapter. The methods proposed clarifies when a cultural impact assessment may be required to be consistent with MW-P1 and MW-P3. Additionally, methods relating to education/resources provide guidance on how MW-P2 is to be achieved.
83. We submit that the proposed methods are within scope of the Hokonui Rūnanga submission. This is because the Hokonui Rūnanga submission raised 'whole of plan' submissions broadly relating to the consideration of mana whenua cultural values. For example, submission S139.039 sought the deletion of all references throughout the plan to "sites of cultural significance" and to replace that with "significant effects on the values mana whenua associate with the area". We therefore submit that the issue of providing for the consideration of Ngāi Tahu cultural values in the PDP was fairly raised in the submission of Hokonui Rūnanga and that the methods proposed will help to achieve this outcome by specifying what steps may be required to ensure mana whenua cultural values are appropriately considered.

Introduction of Ngāi Tahu Cultural Values Chapter

84. The provisions proposed for the NTCV chapter as set out in the evidence of Ms Beran are largely taken from the notified SASM chapter, with some consequential amendments. In particular, the proposed objectives and policies for 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.
85. The various chapters of the notified PDP included rules that trigger the requirement to consider impacts on Ngāi Tahu cultural values. The NTCV chapter does not introduce additional consenting requirements and relies on existing rule triggers and matters of discretion that formed part of the notified PDP. The consenting burden is therefore the same as it would have been under the notified PDP. Accordingly, we submit that the proposed NTCV chapter is within scope of the notified PDP and submitters would have had an opportunity to respond to the provisions directing plan users and decision makers to consider Ngāi Tahu cultural values for certain activities.
86. Very relevantly, in the Christchurch Replacement Plan (**Replacement Plan**) the Christchurch City Council did not notify the necessary provisions to ensure its obligations to mana whenua under Part 2 were met. This resulted in a gap in the Replacement Plan in terms of providing for Sites of Ngāi Tahu cultural significance, as the notified Replacement Plan did not contain any cultural mapping.
87. To address this gap, Ngāi Tahu, following a subsequent work programme with Christchurch City Council, sought to include additional cultural mapping which differed from those identified in Ngāi Tahu's submission.
88. The outcome in that proceeding was that the Panel of Sir John Hansen and Judge John Hassan accepted that the additional cultural mapping was appropriate and necessary despite not forming part of the notified PDP and found that there is no scope impediment to including these additional sites.⁴³
89. Helpfully here, unlike in the Replacement Plan, here we have scope for the whole district being notified as a site of significance, whereas in the Christchurch Replacement Plan nothing was notified as a site of significance. Additionally, unlike in the Replacement Plan, the matters of discretion in this case are existing as per

⁴³ Independent Hearing Panel for the Christchurch Replacement District Plan, decision number 51 on Chapter 9.5 (Ngāi Tahu Values) at para [154].

the notified version and are not being introduced through submission. Accordingly, we submit that the amended relief is entirely within scope.

90. Further, as the notified SASM chapter recognised “all lands, water and natural features within the Gore district” as being culturally significant to mana whenua,⁴⁴ we submit that this further supports our position on scope as the notified PDP would have provided scope for cultural related consent triggers over the whole district. However, the amended relief sought by Hokonui Rūnanga is more refined than that.
91. Further, given the relationship of Māori and their culture and traditions with their ancestral lands, water, sites waahi tapu and other taonga is specifically recognised as a matter of national importance to be recognised and provided for under section 6(e) of the RMA, we submit that this provides the Panel with sufficiently broad scope for the relief to be granted.

CONCLUSION

92. Given its role as mana whenua, it is necessary for Hokonui Rūnanga to be actively involved in this plan review process to be able to effectively exercise kaitiakitanga in the Gore district. Hokonui Rūnanga are best placed to determine how to achieve this.
93. Hokonui Rūnanga are not progressing in isolation and are listening to the feedback from landowners and the wider community of which they are part of.
94. The amended relief sought by Hokonui Rūnanga will provide greater certainty to plan users in terms of the outcomes sought by Hokonui Rūnanga to provide for consideration of Ngāi Tahu cultural values in the resource consenting process. It removes the confusion that inherently arises when a SASM chapter is proposed, but no sites or areas of significance are being identified.
95. The amended relief proposes to utilise existing rule triggers that include the consideration of Ngāi Tahu cultural values as a matter of discretion. Cultural values therefore do not act as triggers for consent, and consent cannot be declined solely on the basis of inconsistency with Ngāi Tahu cultural values. The relief sought does not place additional consenting burden on landowners, but ensures that cultural values are appropriately considered, assessed, and managed as required by Part 2 of the RMA.
96. We submit, relying on the evidence of Ms Beran and Mr Nicholas, that the amended relief sought by Hokonui Rūnanga will enable Council to meet its obligations under

⁴⁴ Notified Sites and Areas of Significance to Māori Chapter, Overview Section.

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 3 December 2024



J M G Leckie / L Rolph

Counsel for Hokonui Rūnanga Incorporated