

Before the Hearing Panel
Appointed by the Gore District Council

Under The Resource Management Act 1991 (**RMA**)

In the matter of Submissions and hearings on the Proposed Gore District Plan

**Legal submissions on behalf of Gore District Council for the Ngāi Tahu
Cultural Values topic**

Date: 4 December 2024

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May it please the Panel

- 1 These submissions on behalf of Council relate to the Ngāi Tahu Cultural Values topic (NCTV). As the Panel is aware this topic concerns the provisions that were originally notified as a Sites of Significance to Māori chapter (SASM), and are now proposed to be included in a similar form as a Ngāi Tahu Cultural Values chapter. For ease of reference in these submissions these provisions are referred to as the NTCV chapter, or as a group as the NTCV provisions.
- 2 The matters addressed in these submissions are:
 - (a) Availability of the Council's section 42A officer and directions for a resumed hearing;
 - (b) Involvement of mana whenua in the proposed plan process;
 - (c) Case law on scope;
 - (d) Appropriate time for consideration of scope issues on this topic;
 - (e) Section 10 RMA and existing use rights; and
 - (f) The Council presentation at the hearing on 5-6 December 2024.

Availability issues and the Panel's directions for resumed hearing

- 3 As the Panel is aware scheduling for this topic has been somewhat complex, and at this time a resumed hearing has been planned for February 2025 in order to provide for a number of submitters' limited availability.
- 4 Regretfully, the Council needs to raise a further issue with the proposed timing of the resumed hearing, for the reason that Council's reporting officer is unavailable after 20 February 2025. This means that she would not be able to attend any of the days in the week of 24 February as contemplated in paragraph 16 of Minute 28. This unavailability is due to commitments and overseas travel which was carefully scheduled quite some time ago around the plan hearing dates originally set in mid-2024.
- 5 Several options may be available for the Panel to consider in response:
 - (a) To confirm the directions set out in paragraph 15 of the Minute, so that the resumed NTCV/SASM topic hearing will proceed on 10 February 2025.
 - (b) To slightly alter the directions set out in paragraph 15 of the Minute by 2 or so days, so that the hearing of this NTCV topic can proceed

on 13/14 February 2025. It is noted that it may be useful to have a fixed start time and date for this resumed topic.

- (c) To alter the directions set out in paragraph 15 of the Minute by approximately a week, so that the hearing of this NTCV topic could begin at 12pm on 18 February 2025 and continue into 19 February as required.

- 6 The Council respectfully seeks further procedural directions to assist with this matter.

Involvement of mana whenua in the proposed plan process

- 7 To date the Council has reflected the fact that only mana whenua are able to identify what is culturally significant in their takiwā,¹ by providing for mana whenua to be actively involved in decision making on the Mana Whenua and SASM/NTCV topics in the proposed plan. The intention has been that mana whenua can identify their cultural values and interests as best as is possible in a District Plan format, and that mana whenua will have significant input on the best planning responses to manage the effects of activities that may adversely affect cultural values.
- 8 The Panel has received evidence from Hokonui Rūnanga about its relationship with te taiao² and cultural values. The Panel may take a flexible approach to evaluating this evidence, including considering:
 - (a) Whether the evidence provided regarding cultural values correlate with physical features;
 - (b) Peoples' evidence about their values and their traditions;
 - (c) Other sources of information that might be provided about cultural values;
 - (d) The internal consistency of peoples' evidence and coherence of values with others; and
 - (e) How widely the cultural values are expressed and held.³
- 9 Having noted the above, it is also submitted that when considering any challenges raised in submissions that may be made against the values and

¹ District, region, area (source <https://maoridictionary.co.nz/>)

² The natural world, environment, nature (source <https://maoridictionary.co.nz/>)

³ *Port Tauranga v Bay of Plenty Regional Council* [2023] NZEnvC 270, para 87, accepted at para 598

interests of mana whenua, full weight should be given to the views of mana whenua. As acknowledged by the Environment Court in the recent case *Port Tauranga v Bay of Plenty Regional Council*, it is mana whenua that is best placed to identify the values of importance to mana whenua.⁴ It is therefore submitted that for this Panel, the evidence from Hokonui Rūnanga should be heard and carefully applied in determining the inclusion of sufficient and appropriate provisions to reflect and respond to the cultural values of mana whenua, as required by section 6(e) and related provisions of the Act and supporting regional policies.

Case law on scope

- 10 The Panel has already received legal submissions on case law relating to the scope of submissions and the corresponding scope of relief and/or decisions that may be made on submissions and plan provisions, provided by:
 - (a) Counsel for Gore District Council in its submissions on Hearing Stream 1 at paragraphs 16-17, and again in its submissions for the McNab topic at paragraphs 7-16;
 - (b) Counsel for Hokonui Rūnanga Incorporated in its submissions on Hearing Stream 1 at paragraphs 19-28, and again in its submissions for this hearing at paragraphs 70-72;
- 11 There are no significant differences in the principles that have been put forward for the Panel to take into account by the various parties. For ease of reference, the Council's preferred detailed formulation is set out again below with some supplementary comments relevant to the present topic.
- 12 It is submitted that the summary by the High Court in *Albany North Landowners v Auckland Council*⁵ is useful, including because:
 - (a) It is concise and includes all of the relevant principles in one place;
 - (b) The High Court in this recent case had received full legal submissions on scope issues, which are recorded in the judgment as having taken into account all of the case law referred to in the submissions of counsel for McNab;

⁴ *Port Tauranga v Bay of Plenty Regional Council* [2023] NZEnvC 270, including at paras 583-585

⁵

- (c) The High Court was also considering scope issues in the context of a full plan review process, rather than scope issues in the context of a variation or plan change.

13 The key principles from the *Albany North* case are:

- (a) A Council must consider whether any amendment made to a proposed plan or plan change as notified goes beyond what is reasonably and fairly raised in submissions on the proposed plan or plan change.⁶
- (b) To this end, the Council must be satisfied that the proposed changes are appropriate in response to the public's contribution.⁷
- (c) The assessment of whether any amendment was reasonably and fairly raised in the course of submissions should be approached in a realistic and workable fashion rather than from the perspective of legal nicety.⁸
- (d) The 'workable' approach requires the local authority to take into account the whole relief package detailed in each submission when considering whether the relief sought had been reasonably and fairly raised in the submissions.⁹
- (e) It is sufficient if the change to be made can fairly be said to be a foreseeable consequence of any changes directly proposed in the submission.¹⁰

14 In applying the principles from *Albany North*, it is submitted that the Panel should look closely at:

- (a) The provisions/chapters/topics that the submission states it relates to/supports;
- (b) The explanations and reasons given for making the submission and wanting the changes sought;

⁶ *Albany North*, at [115], referring to *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145.

⁷ *Albany North*, at [115].

⁸ *Albany North*, at [115], referring to *Royal Forest and Bird Protection Society of New Zealand v Buller Coal Ltd* [2012] NZRMA 552.

⁹ *Albany North*, at [115], referring to *Shaw v Selwyn District Council* [2001] 2 NZLR 277.

¹⁰ *Albany North*, at [115], referring to *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556.

- (c) The decisions being sought in the submission; and
 - (d) The summary of submissions.
- 15 If a plan provision or group of plan provisions have been specifically referred to in a submission, then there is likely to be a clear link and good notice given that the submission is seeking changes to that provision. Equally a clear statement of a decision being sought in respect of a provision or group of provisions or chapter (i.e. the 'relief' sought) is a key part of a submission, so is another direct route to identifying what a submitter wants to be changed in the proposed plan.
- 16 The parts of a submission that give explanations and reasons why a particular decision is sought add further context to guide the understanding of what a party's interest is in a provision or group of provisions, and the outcomes they are seeking in making a submission. This part of the submission might also be of assistance to better understand submissions in support of a plan provision, including where the final form of that provision is then amended in the course of the hearings process.

Scope of submissions on this topic

- 17 In relation to legal issues of scope, the difficulty for the parties and the Panel at this point of this process, is that these issues are best to be analysed and determined when the final form of the provisions being put forward for the Panel's consideration are clear. A key reason for this is that scope issues may take into account all submissions on a particular provision or matter. So in this case the submission of Hokonui Rūnanga may be a key point of reference for considering a scope issue, but also any other submissions or further submissions from other parties may equally also provide scope for the final form of any one NTCV provision, or the wider NTCV chapter.
- 18 It is therefore submitted that, until the other parties with interest in this topic have provided evidence and proposed any further amendments to any provisions and that evidence has been considered and responded to, it may be more prudent to reserve this issue for further consideration at the resumed hearing. For the Council, it would prefer to carry out this exercise once any final proposals are put forward for the SASM/NTCV chapter by the section 42A reporting officer.

Section 10 RMA: Existing use rights

- 19 As noted by Counsel for Hokonui Rūnanga, the submitter Federated Farmers has proposed that additional reference to section 10 RMA existing use rights might be made in the plan provision SASM-P1. While this

submitter has not yet provided evidence to confirm whether this relief is still sought, the Council's initial position is that it concurs with the submission of Hokonui Rūnanga (at paragraphs 62-63).

- 20 It is submitted that it is the role of section 10 of the RMA to create and manage existing use rights, and that this provision of the act should be the sole point of reference for understanding the application of these rights. Any repetition of the legislation or its intentions in a district plan runs a significant risk of creating duplication and/or confusion with the Act. The wording of any policy would also potentially create an inconsistency and/or conflict with the way that section 10 is currently applied, the way it might be applied in the future under evolving case law, or might be amended in future legislation.

Presentation by Council at the hearing

- 21 Ms Bennett is available to assist the Panel on any questions it has at this time, and Mr Heale may also be able to assist in terms of the wider framework of the plan if required. Subject to the Panel's preferences the proposed speaking order is counsel for the Council, followed by Ms Bennett. It is also noted that the Council team is available to attend in person on Friday if hearing time runs short on Thursday the 5th.

Dated this 4th day of December 2024



Shelley Chadwick
Counsel for the Gore District Council