

**BEFORE THE HEARINGS PANEL
FOR THE PROPOSED GORE DISTRICT PLAN**

Under the Resource Management Act 1991

In the matter of submissions and hearings on the proposed Gore District Plan

**Statement of Evidence of Ainsley Jean McLeod on behalf of Transpower New
Zealand Limited (S101 and FS30)**

Hearing Stream 9A - Sites and Areas of Significance to Māori / Ngai Tahu Cultural
Values

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1. SUMMARY OF EVIDENCE

1.1 The submission made by Transpower New Zealand Limited (**Transpower**) is concerned with how the Proposed Gore District Plan (**Proposed District Plan**) recognises and provides for the nationally significant National Grid, and particularly the extent to which the provisions of the Proposed District Plan:

- (a) give effect to the National Policy Statement on Electricity Transmission 2008 (**NPSET**);
- (b) give effect to the operative Southland Regional Policy Statement 2017 (**SRPS**); and
- (c) appropriately reflect the relationship of the Proposed District Plan with the Resource Management (National Environmental Standards for Electricity Transmission Activities) Regulations 2009 (**NESETA**).

1.2 The NPSET provides policy direction in relation to:

- (a) recognising the benefits of the National Grid;
- (b) managing the adverse effects on the environment of the National Grid;
- (c) managing the adverse effects of land use and development on the National Grid; and
- (d) long-term strategic planning for transmission assets.

1.3 The SRPS includes the following provisions that are directly relevant to the National Grid, sites of significance to Māori, and the provisions of the Proposed District Plan:

- (a) Objective TW.4 – Sites of cultural significance;
- (b) Policy TW.4 – Decision making;
- (c) Objective INF.1 – Southland’s infrastructure;
- (d) Policy INF.1 – Regional, national and critical infrastructure;
- (e) Policy INF.2 – Infrastructure and the environment;
- (f) Policy INF.3 – Infrastructure protection;
- (g) Policy INF.4 – Natural hazards;
- (h) Policy INF.5 – Development, subdivision and land use;
- (i) Policy INF.6 – Promoting consistent and integrated management of infrastructure across the region; and
- (j) Method INF.2 – District plans.

- 1.4** In respect of the matters that are the subject of Hearing Stream 9A, Transpower's further submission supports (among other matters) a number of primary submissions that seek that sites and areas of significance to Māori (**SASM**) are identified and mapped in the Proposed District Plan.
- 1.5** My statement of evidence considers the relief sought by Transpower and addresses, as relevant to this relief, the recommendations made in the 'Section 42A Report – Sites and Areas of Significance to Māori Chapter' (**Section 42A Report**) including Appendix D that contains the Hokonui Rūnanga response to Minute 15 of the Hearing Panel.
- 1.6** My evidence considers the 'activity-based' approach to SASM and identifies some concerns and consequences of this approach including constraints on the ability to select sites and routes to avoid areas of significant cultural value, and issues as to the relationship with the NESETA and designation processes. It is my conclusion that the Proposed District Plan should identify SASM and impose appropriate rules on activities that may give rise to adverse cultural effects on those SASM. It is my conclusion that amending the approach to SASM is necessary and the most appropriate (in terms of the requirements of section 32 of the Resource Management Act 1991 (**RMA**)) to:
- (a) achieve consistency with, and give effect to the relevant higher order provisions;
 - (b) improve the efficiency, clarity and usability of the Proposed District Plan; and
 - (c) therefore, achieve the purpose of the RMA.

2. INTRODUCTION

- 2.1** My full name is Ainsley Jean McLeod. I am a self-employed planner, trading as Ainsley McLeod Consulting Limited.

- 2.2** I have been engaged by Transpower to provide expert planning evidence in relation to the submission (**S101**) and further submission (**FS30**) made by Transpower on the Proposed District Plan.
- 2.3** This is the ninth statement of evidence prepared by me in relation to Transpower's submission and further submission on the Proposed District Plan. My qualifications and relevant experience are set out in my earlier evidence that was filed for Hearing Stream 1. I will not repeat this information here, but for completeness, I confirm that I am familiar with Transpower's roles and responsibilities and am also generally familiar with the approaches taken in policy statements and plans, providing for infrastructure and utilities, including the National Grid, across New Zealand.
- 2.4** My evidence should be read in conjunction with my earlier evidence and, to avoid unnecessary repetition, I rely on that evidence where it is relevant to Hearing Stream 9A.
- 2.5** For the purpose of my evidence, I rely on the evidence of Mr John Sutherland that was filed by Transpower for Hearing Stream 1. It describes Transpower's assets in Gore and gives an overview of Transpower's roles and responsibilities, including in respect of the pivotal role the National Grid plays in achieving New Zealand's 'Paris Climate Accord' commitment and decarbonisation.

3. CODE OF CONDUCT

- 3.1** Although this matter is not before the Environment Court, I acknowledge the Hearings Panel direction in Minute 6 (paragraph 5.24) and confirm that I have read the Code of Conduct for expert witnesses as contained in section 9 of the Environment Court Practice Note 2023. I further confirm that I have complied with this Code of Conduct when preparing my written statement of evidence and will do so, when giving evidence or otherwise participating in the hearing process.

4. SCOPE OF EVIDENCE

4.1 My evidence:

- (a) acknowledges the statutory requirements for the Proposed District Plan relevant to Hearing Stream 9A;
- (b) describes Transpower's further submission on primary submissions made in respect of the SASM topic in the Proposed District Plan; and
- (c) addresses (as relevant to the relief sought in the primary submission and in Transpower's further submission):
 - (i) the recommendations made in the Hearing Stream 8 – Sites and Areas of Significance to Māori Section 42A ("Section 42A Report");
 - (ii) the Statement of Evidence of Amy Beran for Hokonui Rūnanga Incorporated dated 18 November 2024; and
 - (iii) the further recommendations made in the 'Statement of supplementary planning evidence of Courtney Bennett on behalf of Gore District Council for Hearing Stream 8 – Sites and Areas of Significance to Māori; dated 4 December 2024 in response to the evidence filed by Hokonui Rūnanga.

5. RELEVANT STATUTORY FRAMEWORK

5.1 The statutory and policy considerations and directions for the Proposed District Plan, are referenced in my earlier evidence and I rely on my earlier evidence and do not repeat the relevant provisions here except to emphasise that the Proposed District Plan must give effect to the NPSET and the SRPS and that "give effect to" is a strong statutory directive in the RMA that was interpreted in the *EDS v New Zealand King Salmon* Supreme Court case as meaning "to implement".¹

5.2 My analysis and consideration of the relief sought by the primary submitters and Transpower is informed by the statutory framework for decisions on the Proposed

¹ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited*, NZSC 38, 17 April 2014.

District Plan set out in the Section 32 Reports, the RMA, and the on-going guidance provided by the modified *Long Bay* test.²

- 5.3** Where my evidence addresses or emphasises a particular statutory requirement, such requirements are set out in the body of my evidence. This includes section 171(1)(b) that is relevant to Transpower (as a requiring authority) when it seeks a notice of requirement as opposed to a designation.
- 5.4** The remainder of my evidence describes Transpower's further submission and considers these submissions alongside the recommendations made in the Section 42A Report and supplementary evidence.
- 5.5** Amendments to the provisions of the Proposed District Plan are shown in my evidence as follows:
- (a) Section 42A Report recommendation text (including supplementary recommendations): black underline and ~~black strikethrough~~; and
 - (b) Submission and further submission text: red underline and ~~red strikethrough~~.

6. TRANSPOWER'S FURTHER SUBMISSION

- 6.1** Transpower's further submissions on the primary submissions relating to the SASM Chapter are set out in the table below. Transpower's further submission supports the relief sought in the primary submissions and similarly seeks that SASMs that are subject to provisions, including rules, in the Proposed District Plan are clearly identified on plan maps or in the plan, so that the locations where the relevant provisions apply is clear in order to provide certainty to plan users, including Transpower in its role as a requiring authority.
- 6.2** Transpower considers that an appropriate evaluation of such sites must be undertaken to confirm that the extent of regulation applied to the sites is tested in terms of necessity and appropriateness. Transpower's further submission

² *Long Bay – Okura Great Park Society v North Shore City Council* NZEnvC A078/2008, 16 July 2008, at [34], *High Country Rosehip Orchards Ltd v Mackenzie District Council* [2011] NZEnvC 387 and *Colonial Vineyard v Marlborough District Council* [2014] NZEnvC55.

highlights Rule INFR-R9 as an example to show that the identification of SASMs is a necessity. Rule INFR-R9 requires identifiable SASM so that the rule is confined to 'specified areas' as opposed to 'triggering' the Rule throughout the District.

Further submission	Primary submission	Relief sought in primary submission
SASM - General		
FS30.084	Stoney Creek [S3.001]	Identifying the whole district as SASM may unnecessarily require consent and consultation for day-to-day farm activities, increasing time, cost and workload. The SASM Chapter should instead provide further clarity to plan users by identifying and delineating those specific sites, areas and landscapes that are significant to Māori. Similar approaches have been undertaken in other recently reviewed district plans. Seeks that SASM are identified and mapped in the planning maps through a transparent, consistent process.
FS30.086	Trudy Bokser [S113.001]	
FS30.055	Nathan Bokser [S116.001]	
FS30.064	Reaby Downs Farm Ltd [S18.003]	
FS30.044	Karen Temple [S19.003]	
FS30.074	Sarah and Peter Barclay [S20.003]	
FS30.034	Helen McIntosh [S24.003]	
FS30.062	Peters Farm Ltd: Karen Peters [S127.037]	
FS30.009	AW+ JA Johnston Family Trust [S118.001]	Same as above, and further reasons that as objectives and policies regarding Ngāi Tahu values have been incorporated into the plan, there is no justification for the entire district to be a SASM.
FS30.039	John Baynes [S68.005]	
FS30.031	Greg Bokser [S117.001]	

Further submission	Primary submission	Relief sought in primary submission
FS30.002	Alistair & Bernadette Hunt [S148.003]	Does not support the entire district being SASM. This creates enormous uncertainty and bureaucracy. Landowners need to be able to make plans for development without the risk of being surprised at the consenting stage.
FS30.026	Farm Manager - Wantwood Station [S105.029]	Creates uncertainty for plan users by classifying the entire district as SASM, instead of identifying specific sites and areas. The s32 report mentions resource consent triggers for high-risk activities, but these are not specified. All activities regardless of their risk level will, therefore, require an assessment of cultural effects Remove uncertainty for plan users by clarifying why the entire district has been identified as a SASM.
FS30.049	McLeod-Wantwood Trust/ Wantwood Station [S104.029]	Same as above, and further asks for the removal of uncertainty for plan users by clarifying why the entire district has been identified as a SASM.
Objective SASM-O1		
FS30.057	Oakland Farming Limited [S153.001]	Concerned that a broad approach creates uncertainty as to what activities will require consultation with mana whenua. The need to consult iwi in everyday farm tasks will hinder farming operations. Amend SASM- 01 to read: <i><u>"All Those land, waterbodies, natural features, and marae within Gore District identified as Sites of Significance to Māori in the Planning Maps are recognised as sites and areas of cultural significance to mana whenua and/or</u></i>

Further submission	Primary submission	Relief sought in primary submission
		<i>tangata whenua, and are afforded appropriate considerations <u>with regard to the cultural values identified in MW-2.3</u> in relation to their management, development, and use"</i>
FS30.001	Alan Taylor [S142.001]	The submitter acknowledges the significance of land, waterbodies, natural features and marae within the Gore District to Mana Whenua/Tangata Whenua but is concerned that a broad approach creates uncertainty for plan users when identifying what activities require consultation with mana whenua. With the entire district classified as SASM this will result in day-to-day farming operations such as fencing that may require resource consent, consulting with rūnanga. Significantly increasing time, cost and workload associated with consenting. It will hinder the ability to undertake essential activities required to manage a farming operation. Amend SASM- 01 to read: <i>"~~All~~ <u>Those</u> land, waterbodies, natural features, and marae within Gore District <u>identified as Sites of Significance to Māori in the Planning Maps</u> are recognised as sites and areas of cultural significance to mana whenua and/or tangata whenua, and are afforded appropriate considerations <u>with regard to the cultural values identified in MW-2.3</u> in relation to their management, development, and use"</i> And seeks that SASM are identified and mapped in the planning maps through a transparent, consistent process.

Further submission	Primary submission	Relief sought in primary submission
FS30.033	Hamish Weir [S74.001]	The objective would effectively place an overlay over the entire district, leading to increased costs and uncertainty in the RMA process. Identifying sites will remove uncertainty and provide clarity. The objectives wording should be modified as follows: <i>"All <u>Identified</u> land, waterbodies, natural features, and marae within Gore District are recognised as sites and areas of cultural significance to mana whenua and/or tangata whenua, and are afforded appropriate considerations in relation to their management, development, and use."</i>
FS30.085	Stoney Creek Station Limited [S3.002]	Concerned that the broad-brush approach within the Proposed District Plan creates uncertainty for plan users as to what activities require consultation with mana whenua and could increase time, cost and workload of day-to-day farm activities. The approach creates disproportionate onus on applicants, and it is also unclear what "appropriate considerations" (as referred to in Objective SASM- O1) may be. The SASM Chapter should provide further clarity by identifying and delineating those specific sites. Amend SASM- 01 to read: <i>"~~All~~ <u>Those</u> land, waterbodies, natural features, and marae within Gore District <u>identified as Sites of Significance to Māori in the Planning Maps</u> are recognised as sites and areas of cultural significance to mana whenua and/or</i>
FS30.087	Trudy Bokser [S113.002]	
FS30.056	Nathan Bokser [S116.002]	
FS30.010	AW+ JA Johnston Family Trust [S118.002]	
FS30.065	Reaby Downs Farm Ltd [S18.004]	
FS30.045	Karen Temple [S19.004]	
FS30.075	Sarah and Peter Barclay [S20.004]	
FS30.035	Helen McIntosh [S24.004]	

Further submission	Primary submission	Relief sought in primary submission
FS30.040	John Baynes [S68.006]	<i>tangata whenua, and are afforded appropriate considerations <u>with regard to the cultural values identified in MW-2.3</u> in relation to their management, development, and use”</i>
FS30.063	Peters Farm Ltd: Karen Peters [S127.038]	
FS30.032	Greg Bokser [S117.002]	
FS30.079	Southland Federated Farmers of New Zealand [S126.076]	SFF does not agree with the approach to consider all 'land, waterbodies, natural features and marae within Gore District as site and areas of cultural significance. Farmers have a right to know what is on their land so they can plan for current and future land use. The approach proposed in the Proposed District Plan creates a high level of uncertainty for all landowners in the district. Amend SASM-O1: “ ~~All~~ <u>Those</u> land, waterbodies, natural features, and marae within Gore District <u>identified as Sites of Significance to Māori in the Planning Maps</u> are recognised as sites and areas of cultural significance to mana whenua and/or tangata whenua, and are afforded appropriate considerations <u>with regard to the cultural values identified in MW-2.3</u> in relation to their management, development, and use.”
FS30.048	Kevin Robertson [S115.077]	
FS30.068	Ronald Crispin [S60.079]	
FS30.073	Rural Ratepayers Group [S143.088]	
FS30.006	Alistair & Bernadette Hunt [S148.089]	
SASM – Additional provisions sought		
FS30.037	Heritage New Zealand Pouhere Taonga [S123.027]	HNZPT notes that, in consultation with Hokonui Rūnanga, Gore District Council have elected not to schedule specific SASM, but rather, where an activity (or approach to undertaking an activity) does not impact place-based Ngāi

Further submission	Primary submission	Relief sought in primary submission
		Tahu cultural values, then it will be enabled in the Proposed District Plan, regardless of the location. HNZPT advocates for the identification and scheduling of wāhi tupuna. Protection of taonga, including wāhi tapū, wāhi tūpuna and whakapapa, is a key principle of Te Tiriti o Waitangi. Cultural landscapes, maunga and awa, are the heart of iwi, hapū and hapori identity, mātauranga Māori, and wellbeing and must be protected as part of the fulfilment of the principles of Te Tiriti. The proposed approach involves control of activities that are likely to have adverse effects on the district's landscapes and natural environment in general, however, HNZPT recommends that additional layers of protection are afforded to areas of significant cultural value through their identification and targeted provisions. Should the current approach remain, an increased level of processing time and resources can be anticipated at the consenting stage. HNZPT recommends that the criteria and process for consultation with Hokonui Rūnanga is clearly stated and agreed to by both parties, to ensure all involved understand the circumstances under which they will be consulted with and how this will factor into any decision making. Add identification, scheduling and rules for SASM.

7. SECTION 42A REPORT AND SUPPLEMENTARY EVIDENCE RECOMMENDATIONS

7.1 Transpower's further submission, alongside the relevant primary submissions, is concerned with the approach taken to SASM in the Proposed District Plan.

7.2 The Section 42A Report describes this approach as follows:³

"30. This approach moves away from using SASM overlays (i.e. 'mapped sites'). Traditionally, these types of overlays would be placed over specific locations mana whenua consider 'culturally significant', and more restrictive planning provisions would apply in these areas by default. The approach adopted by the PDP does not use SASM overlays. Instead, it moves to a more permissive approach that focus less on the location of an activity and more on the impacts of the activity itself.

31. Under the PDP, individual activities have been identified as having the potential to impact Ngāi Tahu cultural values. These activities were identified through hui with technical planning and cultural heritage experts, and discussions with mana whenua cultural experts. When one of these identified activities requires a resource consent, its impacts on Ngāi Tahu cultural values will be considered as part of that consenting process. This ensures that Council is still meeting its Section 6(e) responsibilities under the RMA by considering these matters during the consenting stage, as opposed to using the blanket approach of restricting all activity at place through the district plan. It also means that there is less restriction for landowners because there are no restrictive SASM overlays adding additional development rules in some places over others.

7.3 The Section 42A Report supports the 'activity-based' approach to impacts on cultural values and makes the following recommendations in response to the submissions:⁴

- *SASM-O1 be deleted and replaced with a new objective MW-O2 (as proposed in the joint Hokonui Rūnanga and Council response to Minute 15);*
- *SASM-O3 be amended as per para. 91 and Appendix A;*
- *A new policy, MW-P1 be added to the MW chapter (as proposed in the joint Hokonui Rūnanga and Council response to Minute 15);*

³ Hearing Stream 8 – Sites and Areas of Significance to Māori section 42A report <[Microsoft Word - GDCDPR - Section 42A - SASM Chapter - FINAL](#)> at [30] & [31].

⁴ At [102].

- *Consequential renumbering of objectives; and*
- *That the Hokonui Rūnanga proposal to replace the SASM chapter with a more bespoke NTCV – Ngāi Tahu Cultural Values chapter be considered via supplementary evidence to allow submitters to comment on this proposal via their evidence.*

7.4 In making these recommendations, the Section 42A Report does not agree with submitters that the approach to SASM as provided in the Proposed District Plan equates to identifying the entire District as a SASM and comments as follows:⁵

80. *... This is inaccurate. Whilst the PDP does acknowledge that mana whenua hold a range of relationships across the entirety of the district, this does not mean that all of Gore District is therefore placed under the level of restriction mapped SASM locations typically have under other district plans. Instead, a different approach has been proposed where, instead of attaching blanket restrictions to specific locations, more flexible provisions are attached to carefully chosen activities throughout the PDP.*
81. *This means that there are no locations within the District where activity is automatically restricted in an attempt to preserve Ngāi Tahu cultural values (i.e., the approach traditionally taken to manage SASM in other plans).*
82. *Instead, the PDP requires impacts on Ngāi Tahu cultural values to be considered at the resource consent stage for a limited number of activities – not for all activities throughout the district. If an activity does not require a resource consent, then there is no need to consider its impacts on Ngāi Tahu cultural values, regardless of its location.*

7.5 Further, the Section 42A Report does not support an ‘overlay’ or ‘mapping’ approach to SASM and comments:⁶

I do not support this approach on the grounds that mana whenua (through FS20.030 and FS20.031) do not consider a map-based approach as culturally appropriate, hence why they recommended Council explore the approach ultimately proposed in the PDP. I agree with FS20.030 that mana whenua have a right to choose how their relationship with their ancestral lands and waters are reflected in a planning context.”

⁵ At [80] – [81].

⁶ At [88].

7.6 In addition, the Section 42A Report considers a proposal made by Hokonui Rūnanga to replace the SASM chapter with a bespoke Ngāi Tahu Cultural Values (**NTCV**) chapter. The proposed chapter is included in the Section 42A Report. The Section 42A Report concludes:⁷

“90. Hokonui Rūnanga have also proposed replacing the SASM chapter with a more bespoke NTCV – Ngāi Tahu Cultural Values chapter. I do see some merit in the proposal, as it clearly signals that there are no SASM overlays in the PDP. This may help combat the significant misunderstandings about the PDP SASM approach expressed by some submitters. Alongside this proposals merits though, I do have some concerns. My first concern relates to the way the proposed NTCV chapter excludes mātāwaka Māori within the district, whose connections to place and culture were intentionally woven through the SASM chapter. I note that Mataura Marae [S23.007] supports the SASM chapter as drafted specifically because of its recognition of mātāwaka Māori and their cultural needs. Secondly, I am wary of making a full assessment of this proposal without understanding the perspectives of other submitters. Therefore, my preference at this stage is to reserve my assessment of this proposal until other submitters have had the opportunity to comment on it through their HS8 evidence.

7.7 The amendments recommended in the Section 42A Report are as follows:

~~SASM-O1 — All land, waterbodies, natural features, and marae within Gore District are recognised as sites and areas of cultural significance to mana whenua and/or tangata whenua, and are afforded appropriate considerations in relation to their management, development, and use.”~~

...

~~SASM-O3~~ SASM-O2 Recognise and provide for the mātauranga and rangatiratanga ~~kaitiakitanga~~ of mana whenua in decision-making relating to impacts of activities on the following Ngāi Tahu cultural values:
(a) Kaitiakitanga;

⁷ At [90].

- (b) Whakapapa;
- (c) Mauri;
- (d) Manaakitanga;
- (e) Wairua;
- (f) Whanaungatanga;
- (g) Utu;
- (h) Mātauranga;
- (i) Te Reo Māori;
- (j) Ki uta ki tai; and
- (k) Mahinga kai.

~~the underlying relationship Ngāi Tahu hold with the natural environment.~~

7.8 The Section 42A Report also acknowledges and relies on the following Policy MW-P1 that is recommended in the Hokonui Rūnanga and Council Joint Response to Minute 15 of the Hearings Panel:

MW-P1 Impacts on relevant Ngāi Tahu cultural values are generally considered when resource consent is required for the following types of activities:

- (a) *Activities in close proximity to rivers or streams;*
- (b) *Land disturbance (earthworks) above permitted activity levels, or with heightened sedimentation risks;*
- (c) *Some activities breaching bulk, location, or height standards;*
- (d) *Some activities within a zone that do not hold a permitted activity status, including unanticipated activities within a prescribed zone;*
- (e) *Some activities within ONF/L overlays;*
- (f) *Some permanent structures in the NOSZ;*
- (g) *Temporary activities with extended durations, or potential to cause long-term environmental effects;*
- (h) *Some activities breaching maximum noise limits;*
- (i) *Significant expansion to existing infrastructure;*
- (j) *Some telecommunications infrastructure;*
- (k) *New roads that don't meet standard design requirements;*
- (l) *Large-scale quarrying activities;*
- (m) *Subdivision in Development Area 1 and 2, or impacting notable trees;*

- (n) *Tikanga-related activities, including some activities in the MPZ and the installation of cultural markers;*
- (o) *Major events that don't meet event standards requirements for FDZ.*

7.9 The Section 42A Report explains Policy MW-P1 as follows:

- 94. *The intent of MW-P1 is to provide transparency and certainty for landowners. It does this by clarifying two key points. Firstly, it clarifies that Ngāi Tahu cultural values are only considered when an activity requires a resource consent. This means that if an activity is Permitted within a Zone (and therefore does not require a resource consent), there is no requirement for any consideration of Ngāi Tahu cultural values to take place regardless of the location the activity is occurring.*
- 95. *Secondly, this proposed policy specifies the general types of activities that plan-users can expect to see Ngāi Tahu cultural values-related matters of discretion attached to. This list groups multiple activities together by theme, and therefore does not individually list every relevant activity in the PDP. This is partially for conciseness (for example, there are multiple provisions related to activities near waterways that may require consideration of Ngāi Tahu cultural values), and partially because there are many instances where individual activities still would not require any consideration of Ngāi Tahu cultural values (i.e. when they meet the threshold for a Permitted activity). Instead, it provides plan-users with an increased level of certainty for the types of Restricted-Discretionary or Discretionary activities that may require applicants to consider impacts on Ngāi Tahu cultural values.*
- 96. *I note, however, that this certainty is already present in the PDP as individual activity rules stipulate whether impacts on Ngāi Tahu cultural values are a matter of discretion or not. MW-P1 does not alter these provisions. Rather, it summarises them to further support plan-users to understand the new approach to SASM in the PDP, acknowledging that it may be confusing at first for those accustomed to a different approach.*
- 97. *When considering submitter concerns regarding their uncertainty as to where in the District Ngāi Tahu cultural values must be considered, I query if this uncertainty is a result of the SASM approach itself, or the fact that it is a change from what some submitters are used to. Under the PDP approach, certainty is provided by the activity that is being proposed – not*

by the location of the activity as some plan users may be more used to seeing. Whilst the approach is different, I do not consider it to be fundamentally less certain. For example, if you can undertake your activity as a Permitted activity, then, no matter where in the district you are, you will never need to consider Ngāi Tahu cultural values as part of your process. If you cannot meet the Permitted activity standards, but 'impacts on Ngāi Tahu cultural values' is not a matter of discretion, then you won't have to consider these as part of the application either irrespective of where you are located. If you require a resource consent to undertake your activity and 'impacts on Ngāi Tahu cultural values' is a matter of discretion (or, if your activity is Discretionary/Non-Complying) then, no matter where you are located, you may need to consider these as part of your resource consent application.

8. CONSIDERATION OF TRANSPOWER' FURTHER SUBMISSION AND THE SECTION 42A REPORT RECOMMENDATIONS

- 8.1** I have given consideration to the primary submissions; Transpower's further submission; the Section 42A Report recommendations and the supplementary evidence recommendations (with reference to the evidence filed by Hokonui Rūnanga). In my opinion, the 'activity-based' approach is problematic for a number of reasons. I set these out in turn below.

The extent of restriction and regulation

- 8.2** In response to submissions, the Section 42A Report expresses a view that the Proposed District Plan approach to SASM is less restrictive because there are no restrictive overlays adding additional development rules in specified places and instead certainty is provided by the activity that is being proposed in any location.
- 8.3** In this regard, I accept the conclusion in the Section 42A Report that the Proposed District Plan does not identify the whole of the District Plan as a SASM on the basis that there are values or attributes describing the District in this manner.

- 8.4** I consider that the Section 42A Report, in reaching this conclusion, has failed to appreciate that ‘overlay’ or ‘mapping’ approaches that are typically adopted in district plans are not so blunt or restrictive that they ‘trigger’ the need for a resource consent for all activities in identified locations. Rather, I am familiar with district plans that firstly identify the sites or areas of significance to Māori and then secondly include a limited number of rules or standards that regulate the types of activities that may have an adverse effect on the values that make the identified site significant to Māori.
- 8.5** In my view, the Proposed District Plan has failed to take the first step to identify sites and areas and instead relied on the second step to regulate activities. With the evaluation required by section 32 of the RMA in mind, I consider that it is entirely possible and most appropriate, efficient and effective for the Proposed District Plan to take both ‘steps’, rather than rely on a future resource consent process to determine whether an activity gives rise to adverse cultural effects in a particular location.
- 8.6** For this reason, I do not agree with the Section 42A Report conclusion that Council is “meeting its Section 6(e) responsibilities under the RMA by considering these matters during the consenting stage, as opposed to using the blanket approach of restricting all activity at place through the district plan”.
- 8.7** Further, I do not agree that the Proposed District Plan approach is more permissive. This is because, having regard to the proposed range of cultural values alongside the breadth of activities listed in Policy MW-P1, I consider that the approach to SASM ‘triggers’ at a different threshold. That is, what is being addressed in the Proposed District Plan is the possible effects on cultural values, as opposed to possible effects on significant values (SASM that are aligned to section 6(e) of the RMA). In my view, this results in the Proposed District Plan response (purported to SASM and section 6(e)) ‘triggering’ more frequently than under a normal mapping of SASM regime.
- 8.8** It is my view that, while the intention of the Proposed District Plan approach is to address SASM, what is achieved is something different, being a ‘practice direction’ for cultural effects generally as opposed to achieving the direction in sections 6(e)

and 6(f) of the RMA. In this regard, it is my view that an appropriate response to SASM (and section 6(e) and 6(f) of the RMA) is not achieved in the Proposed District Plan.

Giving effect to the SRPS

8.9 Ultimately, in considering the content of the SASM Chapter, it is my view that it is important to consider the statutory direction. In this regard, I am particularly guided by:

- (a) section 6(e) of the RMA that requires the recognition and provision of “the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga” as a matter of national importance;
- (b) section 7(a) of the RMA that requires regard to be had to kaitiakitanga;
- (c) SRPS Policy TW.4 – Decision making as follows:

When making resource management decisions, ensure that local authority functions and powers are exercised in a manner that:

- (a) recognises and provides for:*
 - (i) traditional Māori uses and practices relating to natural resources (e.g. mātaihai, kaitiakitanga, manaakitanga, matauranga, rāhui, wāhi tapu, taonga raranga);*
 - (ii) the ahi kā (manawhenua) relationship of tangata whenua with and their role as kaitiaki of natural resources;*
 - (iii) mahinga kai and access to areas of natural resources used for customary purposes;*
 - (iv) mauri and wairua of natural resources;*
 - (v) places, sites and areas with significant spiritual or cultural historic heritage value to tangata whenua;*
 - (vi) Māori environmental health and cultural wellbeing.*
- (b) recognises that only tangata whenua can identify their relationship and that of their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.*

- (d) SRPS Method TW.5 – District plans as follows:

Establish and maintain provisions in district plans that:

- (a) *safeguard identified tangata whenua environmental and cultural values and resources from inappropriate subdivision, use or development, including recognising and providing for ancestral lands, wāhi tapu, wāhi taonga and recognised customary sites, activities and statutory acknowledgements; ...*

8.10 It is my understanding that Objective SASM-O2, is intended to give effect to SRPS Policy TW.4. I have given consideration to the extent to which this is achieved in Objective SASM-O2 and comment as follows:

- (a) Objective SASM-O2 is expressed as if it were a policy, as opposed to an objective. That is, my understanding is that objectives should be stated as outcomes.
- (b) The Section 42A Report recommends the replacement of ‘kaitiakitanga’ with ‘rangatiratanga’. No consideration is given to the rationale for, or implications of, this amendment.
- (c) The Section 42A Report introduces into policy the ‘values’ that are described in the Manawhenua Chapter. Again, no consideration is given to the rationale for, or the necessity and appropriateness of these ‘values’ in a policy context with reference to section 6(e) of the RMA and SRPS Policy TW.4, along with section 32 of the RMA. I particularly note that ‘utu’ and ‘Te Reo Māori’ are not values identified in the SRPS Policy TW.4 and it is not clear how these values align with section 6(e) of the RMA and the role and content of the Proposed District Plan. In this regard, I acknowledge the Section 42A Report conclusion that mana whenua have a right to choose how their relationship with their ancestral lands and waters are reflected in a planning context. However, it is my view that this ‘choice’ does not occur in a vacuum, rather such ‘choices’ must be made in the context of the statutory framework and higher order planning instruments. In particular:
- (i) section 6(e) of the RMA that is confined to “ancestral lands, water, sites, waahi tapu, and other taonga”;
- (ii) section 7(a) of the RMA that requires regard to be had to kaitiakitanga;

- (iii) section 31 of the RMA that defines the functions of territorial authorities;
- (iv) section 75 of the RMA that sets out the content of district plans;
- (v) SRPS Policy TW.4 and the direction given in relation to the matters that must be recognised and provided for in that Policy.

8.11 For the reasons set out above, it is my view that the recommended amendments to Objective SASM-O2 require further consideration and drafting to respond to the matters I have raised, alongside a further evaluation required by section 32AA of the RMA to ensure that the Objective, and associated implementing policies, give effect to SRPS Policy TW.4 and achieve the purpose of the RMA.

Certainty in Policy MW-P1

8.12 The Section 42A Report explains that Policy MW-P1 is intended to provide certainty for landowners. The Policy is drafted as a summary of activities where rules may require a consideration of adverse effects on cultural values.

8.13 The Section 42A Report places weight on certainty being provided by individual activity rules that stipulate whether impacts on Ngāi Tahu cultural values are a matter of discretion or not, with Policy MW-P1 summarising those activities.

8.14 I note that, in evidence, Ms Beran has similarly given weight to the role of matters of discretion as follows:

52. *In practice, I consider it to be a ‘matters of discretion or control’ approach, which essentially requires Ngāi Tahu cultural values to be considered alongside other relevant matters where:*
- (a) *a proposed activity requires resource consent; **and***
 - (b) *there is a Ngāi Tahu cultural values matter of discretion or control attached to a relevant activity rule(s). [my emphasis]*

8.15 I am of the view that the Report has failed to consider the implications in respect of discretionary activities, and also non-complying activities (for instance, Rules INFR-R9 and INFR-R10).

8.16 In my view, Policy MW-P1 is drafted in a manner that is more akin to explanatory text, rather than reflecting section 75(1) of the RMA. That is, policies implement objectives and rules implement policies. In my opinion, when read as a policy that future decision-makers must have regard to under section 104(1) of the RMA, the content of Policy MW-P1, including the use of expression such as “some activities”, does not aid plan users or decision-makers. Rather plan users are invited to rely on matters of discretion applying to a range of rules that, in part, implement the Policy, with the ability to understand the intent of the Policy only being possible when a rule for an activity is for a restricted discretionary activity with the accompanying matter of discretion.

8.17 In this regard, I do not agree with the Section 42A Report conclusion that Policy MW-P1 provides certainty, in particular the following clauses are problematic:

- (a) *Clause b) Land disturbance (earthworks) above permitted activity levels, or with heightened sedimentation risks:* it could be argued that any land disturbance activity has a heightened sedimentation risk and therefore all land disturbance activities are ‘captured’;
- (b) *Clause c) Some activities breaching bulk, location, or height standards:* the use of ‘some’ is inherently uncertain and the clause does not identify actual activities that may have an impact on significant cultural values and there does not appear to be a clear connection between an activity that would otherwise be permitted and the potential to have an impact on significant cultural values;
- (c) *Clause d) Some activities within a zone that do not hold a permitted activity status, including unanticipated activities within a prescribed zone:* all activities that are not permitted require a resource consent and therefore this clause does not provide any certainty to the plan user, further the use of ‘some’ is inherently uncertain and it is unclear how the extent to which an activity is anticipated in a zone has a bearing on the impact of that activity on significant cultural values;
- (d) *Clause e) Some activities within ONF/L overlays:* the use of ‘some’ is inherently uncertain, it provides no certainty to the plan user about what the activities will ‘generally required a consideration of cultural values’;

- (e) *Clause f) Some permanent structures in the NOSZ:* the use of 'some' is inherently uncertain t provides no certainty to the plan user about what the activities will 'generally required a consideration of cultural values';
- (f) *Clause h) Some activities breaching maximum noise limits:* the use of 'some' is inherently uncertain, as above, it provides no certainty to the plan user about what the activities will 'generally required a consideration of cultural values';
- (g) *Clause i) Significant expansion to existing infrastructure:* it is unclear why the expansion of infrastructure is an issue, compared to the potential effects of the establishment of new infrastructure;
- (h) *Clause j) Some telecommunications infrastructure:* it is unclear what element of telecommunications distinguishes the potential effects of this type of infrastructure from the effects of other infrastructure, further, the use of 'some' does not make it as clear what types of telecommunication infrastructure will 'generally required a consideration of cultural values'; and
- (i) *Clause k) New roads that don't meet standard design requirements:* it is not clear which elements of a new road, where there is a departure from standard design would result in an adverse effect on cultural values. There is no explanation as to why a road that meets design requirement will not impact on cultural values, but a road that does meet design requirements, will not. Further, in terms of the reference to design requirements, it is not clear whether these are requirements in the Proposed District Plan, or other requirements that are used in the design of roads.

8.18 It is my observation that the range of activities listed in Policy MW-P1 is extensive and broad. Given this breadth, I am of the view that a significant proportion of activities that require resource consent have the potential to be captured by the list of activities in this Policy. For this reason, I consider that the actual effect, and effectiveness, of the Policy is limited. That is, if the Policy were deleted or truncated, it is my conclusion that there would be little impact on practice. That is, where activities require resource consent for a restricted discretionary activity, the matter of discretion exists to direct consideration of potential effects on cultural

values. Where activities require resource consent for a discretionary or non-complying activity that consideration would occur in any case.

The opportunity to avoid adverse effects on SASM

- 8.19** It is my opinion that failing to identify SASM restricts the extent to which adverse effects on cultural values may be avoided. That is, the ‘activity-based’ approach to managing effects on cultural values means that, where an activity that falls within one of the listed categories in Policy MW-P1 is undertaken, a plan user cannot attempt to avoid adverse effects on cultural values through the location of the activity because the Proposed District Plan does not identify locations where cultural values are present.
- 8.20** By way of explanation, where an application for resource consent is made for an activity listed in MW-P1 it is possible that the activity will result in significant adverse effects on cultural values. This being the case, the Fourth Schedule to the RMA requires an assessment of the activity’s effects to include “*a description of any possible alternative locations or methods for undertaking the activity*”. Failure to identify SASM in the Proposed District Plan means that the ability to describe alternative locations where adverse effects may be avoided or limited is constrained.
- 8.21** Similarly, in the case of designations, section 171(1)(b) requires, when considering the effects of a notice of requirement for a designation, regard to be had to whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work. While MW-P1 does not apply to notices of requirement for designations, where a proposed designation includes an activity listed in MW-P1, again, failure to identify sites or areas of significance to Māori means that the ability to give the required consideration to alternative sites is constrained.
- 8.22** Further, in the case of the National Grid, Policy 4 of the NPSET directs the following:
- When considering the environmental effects of new transmission infrastructure or major upgrades of existing transmission infrastructure, decision-makers must*

have regard to the extent to which any adverse effects have been avoided, remedied or mitigated by the route, site and method selection.

- 8.23** The requirements of section 171 of the RMA and Policy 4 of the NPSET are achieved for the development of the National Grid through the use of a generic methodology for identifying sites and routes for new or replacement transmission infrastructure through a staged process of constraints analysis, known as the ACRE model (Area-Corridor-Route-Easement/Designation investigations). The ACRE process involves a progressive filtering approach, where increasing and more specialised detail is used at each stage on the relevant technical, cultural, environmental (including landscape and visual impacts), and sometimes property constraints to ultimately enable the identification of a preferred route or site.
- 8.24** In my experience, a key element of the ACRE process is the mapping of district plan overlays or constraints so that the most appropriate route or site can be selected. Again, as set out above, the lack of mapped SASM in the Proposed District Plan presents challenges to the identification of a route or site that avoids effects SASM.
- 8.25** If a project within the Gore District was being considered, constraints mapping would be undertaken in the first instance at the 'Area' level of assessment. In my experience an 'Area' is large and in Gore could amount to a significant portion of the District. Under the proposed 'activity-based' approach, the mapping exercise will not be able to take into account SASM and therefore there is no ability to consider relative value, significance or importance in the weighing of constraints in order to identify possible 'Corridors'. In turn, this would mean that a corridor and then route may be preferred where one or more SASM is present because of the inability to identify the SASM at the outset. As a result, there are possible consequences in respect of the level of adverse effect on a matter of national importance under section 6(e) and also consequences in term of Transpower's ability to meet statutory obligations in terms of section 171(1)(b) of the RMA and Policy 4 of the NPSET.

Relationship with the NESETA

- 8.26** The Section 42A Report includes significant commentary and analysis in relation to the Proposed District Plan rules and associated matters of discretion that direct a consideration of impacts on Ngāi Tahu cultural values. However, no consideration has been given to how the SASM provisions work in respect of regulations in National Environmental Standards, including the NESETA.
- 8.27** The NESETA sets out a national regulatory framework for activities related to existing National Grid lines (operational as at January 2010), including the operation, maintenance and upgrading of such lines. With the exception of the Gore Hard Tee, that is subject to a designation, all transmission lines in Gore are subject to the NESETA. The NESETA specifies permitted electricity transmission activities (subject to standards) and sets out resource consent requirements where these activities do not meet the standards.
- 8.28** Under section 44A of the RMA, local authorities are required to ensure that there are no duplications or conflicts between the provisions of the NESETA and a proposed plan. That said, there are situations where the NESETA Regulations defer to a district plan. It is therefore important that the relevant district plan provisions are consistent with the intent and effect of the NESETA Regulations, and importantly, allow the NESETA Regulations to be applied by the Council.
- 8.29** The NESETA defines ‘historic heritage area’ as:
- (a) *means an area that is protected by a rule because of its historic heritage;*
 - and*
 - (b) *to avoid doubt, includes **an area that is protected by a rule because it is a site of significance to Māori*** [my emphasis]
- 8.30** Regulation 33(1) of the NESETA provides earthworks relating to an existing transmission line as a permitted activity if all of the conditions in subclauses (2) to (9) are complied with. Subclause (8) states that:
- “Earthworks must not be carried out in a historic heritage area unless they are carried out on an archaeological site in accordance with the Heritage New Zealand Pouhere Taonga Act 2014.”*

- 8.31** Where earthworks relating to an existing transmission line are in a historic heritage area, Regulation 35 of the NESETA provides for such earthworks as a restricted discretionary activity.
- 8.32** Taking the ‘activity-based’ approach and failing to identify “an area that is protected by a rule because it is a site of significance to Māori” in the Proposed District Plan results in unintended and inappropriate consequences in relation to the implementation of the NESETA Regulations. This is because, without an area being identified and protected by a rule, earthworks would be permitted in areas that may have significant cultural value (where compliance with the other conditions in subclauses (2) to (8) of Regulation 33 is achieved).
- 8.33** For completeness, I do not consider that the notified approach is dealing with SASM for the purposes of NESETA. The use of ‘cultural values’ generally, is in my view a wider matter than might be considered in respect of a SASM.
- 8.34** In my view, the NESETA (including Regulation 31) has been drafted with a clear expectation that areas that are sites of significance to Māori are identified. Failure to identify areas in the Proposed District Plan undermines the outcome sought be achieved by the NESETA.
- 8.35** I have given consideration to how this issue could be remedied in the Proposed District Plan and I am of the view that the only approach available is to identify, map and protect (with a rule) sites and areas of significance to Māori. For this reason, I support the relief sought in the various submissions and Transpower’s further submission.

Relationship with designations

- 8.36** Similarly, the Section 42A Report has not given consideration to how the SASM provisions work in respect of any notice of requirement for a designation that a requiring authority may give.

8.37 I understand that in the case of new National Grid infrastructure, or significant upgrades to existing National Grid infrastructure, Transpower may elect to seek a designation (and likely submit a subsequent outline plan) to authorise the works, as opposed to seeking a resource consent. This was the case for the Gore Tee designation TPR-02 that is included in the Proposed District Plan.

8.38 Where a designation is sought, a territorial authority makes a recommendation under the direction of section 171 of the RMA and the requiring authority is the ultimate decision-maker. Section 171 includes, amongst other matters, the following direction:

- (1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—*
 - (a) any relevant provisions of—*
 - (i) a national policy statement;*
 - (ii) a New Zealand coastal policy statement;*
 - (iii) a regional policy statement or proposed regional policy statement;*
 - (iv) a plan or proposed plan; and*
 - (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—*
 - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or*
 - (ii) it is likely that the work will have a significant adverse effect on the environment; and*
 - (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*
 - (d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.*

8.39 In addition to my comments in relation to Section 171(1)(b) earlier in my evidence, Section 171 enables a broad consideration of the effects of a designation on the environment. This would necessarily include a consideration of effects on SASM and also cultural values generally whether or not a district plan includes explicit direction to do so.

8.40 Section 171 also requires consideration of the relevant provisions of a district plan. This means that the provisions of the Mana Whenua and SASM Chapters of the Proposed District Plan would be relevant to the consideration of a proposed designation. In this regard, I consider that Policy MW-P1, as recommended for amendment in the Section 42A Report, is problematic because the Policy is confined to the consideration of applications for resource consent and therefore would not be a relevant provision.

8.41 Subject to my evidence in respect of the content of Policy MW-P1, I consider that the Policy could be amended to apply to decision-making more generally. However, I am not aware of any submission that sought this relief and the ability to make such an amendment is fettered.

Is the identification of sites or areas of significance to Māori required or anticipated?

8.42 I have given some thought to whether the identification of sites or areas of significance to Māori is anticipated or required and note the following:

- (a) the term 'sites' is included in section 6(e);
- (b) the RMA definition of 'historic heritage' includes reference to "*sites of significance to Māori, including wāhi tapu*";
- (c) the National Planning Standards include a mandatory direction to include a 'Sites and areas of significance to Māori' chapter in a district plan where relevant and goes on to direct the following:

If the following matters are addressed, they must be located in the Sites and areas of significance to Māori chapter:

- (a) *descriptions of the sites and areas (eg, wāhi tapu, wāhi tūpuna, statutory acknowledgement, customary rights, historic site, cultural landscapes, taonga and other culturally important sites and areas) when there is agreement by Māori to include this information*
- (b) *provisions to manage sites and areas of significance to Māori*
- (c) *a description of agreed process of identification of sites and areas including an explanation of how tangata whenua or mana whenua are engaged*

- (d) a schedule(s) that lists the specific or general location of sites and areas of significance to Māori when this information is provided. This may cross-reference an appendix*
- (e) a description of any regulatory processes for identification.*

(d) As set out above, the NESETA provides a regulatory framework that is aligned to SASM being identified.

8.43 In my view, the RMA and National Planning Standards do not include an absolute requirement for SASM to be identified. But I do consider that the direction given in the National Planning Standards indicates that, if there are acknowledged SASM in the district, then they should be addressed in the Sites and Areas of Significance to Māori Chapter.

8.44 As set out elsewhere, I also consider that the alternative proposal of a new chapter related to cultural values rather than sites of significance, means that the objectives and policies may well have a wider regulatory effect in that they apply to cultural values, rather than effects on SASM, which is explained in the Section 32 Report as the issue being addressed by the provisions considered as part of this hearing.

8.45 For the reasons set out above, and given the direction given by the National Planning Standards, it is my conclusion (consistent with Transpower's further submission) that it is more efficient and effective for SASM to be firstly identified in the Proposed District Plan alongside the inclusion of rules or standards to regulate the types of activities that may have an adverse effect on cultural values.

Practical implications

When consultation or a CIA Report is required

8.46 I have given consideration to the practicality of the 'activity-based' approach. I consider that this approach will necessitate consultation with mana whenua in respect of every application for resource consent for an activity listed in MW-P1 irrespective of whether the activity is located on or in a SASM. In my view, confining

the regulatory framework spatially reduces the potential for issues of practicality and enhances the efficiency and effectiveness of the Proposed District Plan.

8.47 In this regard, Ms Beran provides clarification in her evidence as follows:

58. *As stated at paragraph 28 of the joint response to Minute 15, Hokonui Rūnanga raised the matter of cultural impact assessment (CIA) requirements with me when I was drafting proposed provisions for the MW chapter. Based on those discussions, I understand Hokonui Rūnanga wish to provide guidance to plan users (specifically resource consent applicants), regarding when a CIA report may need to be obtained from Hokonui Rūnanga and to also signal the types of activities where early engagement with mana whenua could be particularly beneficial for a consent applicant. I note that during my discussions with Hokonui Rūnanga, it was clear that they did not expect to be drafting comprehensive CIA reports for every resource consent application where Ngāi Tahu values need to be considered and therefore wanted to find an appropriate way to communicate this to plan users."*
59. *In addition, I understand that Hokonui Rūnanga is developing information resources that will be available for the general public to access on the rūnanga website (including information on mana whenua relationship with the natural environment and associated values and the engagement process with Hokonui Rūnanga). As such, mana whenua expressed their interest in raising awareness of the forthcoming resources and working with Council to develop tailored resources to accompany the PDP (i.e. the approach taken in the PDP to provide for Ngāi Tahu cultural values and how to best engage with mana whenua).*

8.48 In her supplementary evidence, Ms Bennett summarised the consideration she, and Ms Beran, have given to the inclusion of further direction or guidance in the Proposed District Plan as follows:

35. *For example, MW-M1 as proposed by Ms Beran provides guidance on how Hokonui Rūnanga intends to decide if a formal assessment of Ngāi Tahu cultural values is necessary as part of a resource consent application. Whilst I agree that this is useful information for plan users, I consider it more appropriately included under Section 5 of the MW chapter: Involvement and Participation with Mana Whenua. Ms Beran states in her evidence at para 64 that, "this provision has been included for guidance*

only purposes” as opposed to having statutory weight. As the explanatory text in Section 5 also function as ‘explanatory text’ without statutory weight, I query why a new type of provision (i.e. methods) need to be added to the PDP structure if including this information in Section 5 will have the same effect.

36. *Ms Beran and I have further discussed the wording of MW-M1 and have reached agreement on this aspect. We continue, however, to diverge on whether this agreed text should be included as a method (the preference of Ms Beran) or as additional text under Section 5 (my preference). This agreed wording is included in Appendix 1 as an addition to Section 5, as is my preference.*

8.49 The recommended guidance in Section 5 is as follows:

Information for Plan Users and Resource Consent Applicants

- *Ngāi Tahu cultural values need to be considered when resource consent is required for any of the activities identified in the mana whenua chapter (refer to MW-P1).*
- *Where Ngāi Tahu cultural values need to be considered, this is indicated by a specific matter of discretion (e.g. that directly refers to Ngāi Tahu cultural values), that is linked to a relevant rule (s) in other chapters of the Plan.*
 - *Note 1 below sets out all applicable chapters of the Plan that the provisions in this chapter link into.*
- *Where applicable, if an activity (as per MW-P1) can comply with the relevant permitted activity rule requirements, then Ngāi Tahu cultural values do not need to be considered regardless of the location of the activity.*
- *In some instances, Ngāi Tahu cultural values will need to be considered if resource consent is required for a discretionary or non-complying activity, noting that there are no restrictions on the Council’s discretion for these activity types and a full assessment is required to determine whether these activities would be appropriate (in terms of the provisions of the Plan, the effects of the activity on the environment and suitability of the proposed location).*
 - *Refer to ‘How the Plan Works’ Chapter for further information on the activity classifications that apply in the District Plan.*

8.50 In my view the text set out above does nothing to clarify where a formal assessment would be required. Rather, the 'guidance' reiterates the regulatory approach and as such is useful, if not further enlightening, for plan users. In terms of whether any such text should be included in as a method, it is my view that including a method may not be appropriate to the extent that (depending on the final wording) a method would directly or indirectly impose an obligation on a party other than the Gore District Council.

Implications for public and limited notification

8.51 I acknowledge that for any application for resource consent a decision must be made whether to publicly notify or limited notify the application. In the absence of identified SASM, and with Policy MW-P1 listing a broad range of activities that may have cultural impacts, it is possible that the proposed 'activity-based' approach could have implications for notification decisions and particularly to possible need-to-notify applications for resource consent for any of the broad range of activities listed in Policy MW-P1. No consideration has been given to the efficiency and effectiveness in this regard in the Section 42A Report or 'Section 32 Report – Manawhenua'.

Does the proposed approach codify existing practice?

8.52 In terms of the necessity of the provisions, as proposed, I have given consideration as to how an application for resource consent may be assessed in the absence of the 'activity-based' approach that is proposed. In this regard, I am of the view that the assessment/matters of discretion based regulation, combined with the broad range of activities captured by Policy MW-P1, generally has the effect of codifying practice that occurs, or should occur, in any case.

8.53 That is, where a resource consent is required for an activity, and that activity may have an impact on cultural values, the effects of the activity on those values should (and would) be assessed as set out in Part 7 to Schedule 4 of the RMA with as follows:

An assessment of the activity's effects on the environment must address the following matters:

...

(e) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations:

8.54 In this way, and as addressed earlier in my evidence, the practice embedded in the Proposed District Plan is directed towards the RMA requirements to consider effects on cultural values, as opposed to the section 6(e) matter of national importance to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga such that SASM fail to be appropriately addressed.

Replacement Chapter

8.55 As a final matter, I acknowledge the proposal made by Hokonui Rūnanga to replace the SASM chapter with a bespoke NTCV: Ngāi Tahu Cultural Values chapter. In my opinion, replacing the SASM Chapter is problematic because, the SASM Chapter is a mandatory requirement of the National Planning Standards if relevant to the district plan. In addition, I note that the NTCV Chapter has been developed late in the process, and was not included in the Proposed District Plan at notification. Further, I am not aware of any submission that sought the replacement of the chapter in its entirety. This potentially raises a matter of scope if no party sought the replacement chapter and because there has not been an opportunity to make a submission on the proposed replacement chapter.

8.56 That said, I recognise that many provisions between the two chapters are the same or similar. In this regard, it is possibly semantics and the extent to which the outcome can be achieved in the context of the National Planning Standards.

8.57 However, with reference to my earlier evidence, I am of the view that it is possible that locating provisions in a NTCV Chapter, when compared to a SASM Chapter, may alter the regulatory effect of the provision because one chapter clearly

responds to SASM and matters related to section 6(e) of the RMA, whereas the NTCV Chapter addresses cultural values more generally.

A handwritten signature in blue ink, appearing to read 'Ainsley Jean McLeod', with a stylized, cursive script.

Ainsley Jean McLeod

30 January 2025