

**BEFORE INDEPENDENT HEARING COMMISSIONERS
APPOINTED BY THE TIMARU DISTRICT COUNCIL**

UNDER THE

The Resource Management Act
1991

IN THE MATTER

Submissions and further
submissions in relation to the
Timaru Proposed District Plan

**SUPPLEMENTARY LEGAL SUBMISSIONS ON BEHALF OF
WESTGARTH, CHAPMAN, BLACKLER ET AL
(SUBMITTER NO. 200; FURTHER SUBMITTER NO. 269)**

HEARING STREAM E2: CULTURAL VALUES

Dated: 11 February 2025

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INTRODUCTION

Interests represented by the Submitters

- 1 The Submitters own, and/or operate farming businesses on, properties located variously at Levels, Waitohi, Kakahu, Raincliff, Pleasant Point, Cave, Hazelburn, Rangitata Gorge and Orari Gorge.¹ Most of those properties are subject to one or more of the Proposed Timaru District Plan's (**Proposed Plan's**) Sites and Areas of Significance to Māori (**SASM**) planning overlays. A schedule of the properties and related SASM notations is provided as **Annexure A**.
- 2 As detailed in the legal submissions filed on 30 January 2025, the Submitters:
 - (a) Acknowledge the cultural importance of sites and areas of cultural significance on their properties and the need for those sites and areas to be protected from the effects of land use activities; and
 - (b) Genuinely view themselves as custodians of those sites and areas.
- 3 In their role as custodians, the Submitters (and those that have owned their properties before them) have sought, in good faith, to gain knowledge and understanding of the historical and cultural context to the sites and areas, and to protect them. The approach they have adopted in the protection of those sites/areas and managing their farming operations near them has been acknowledged through recent consenting processes.²
- 4 The Submitters submission and further submissions on the Proposed Plan relate to the SASM Chapter in the Proposed Plan and associated SASM planning overlays.³ Specifically, the Submissions address the Submitters concerns with respect to:
 - (a) The process adopted by Timaru District Council (**TDC**) for:

¹ Schedules of the properties that the Submitters have an interest in are included as Annexure A to the Submitters' original submission (submission no. 200) and further submissions (further submission no. 269) (**Properties**).

² Evidence of James Hartley Fraser dated 23 January 2025, at [18] and [19]. Evidence of John Benjamin Evans dated 23 January 2025, at [30].

³ Submission no. 200; further submission no. 269 (**Submissions**).

- (i) Determining the boundaries of the SASM planning overlays; and
 - (ii) Developing the rule framework for land use and subdivision within those overlays; and
 - (b) The implications of the PDP's planning framework for SASM for their present farming activities and future land use options, and consequential impacts on their farming businesses, including future saleability of their properties.
- 5 The Panel's role in balancing the interests of all stakeholders whilst ensuring the Proposed Plan and its SASM provisions (including overlays) satisfy the minimum statutory requirements for district plan provisions is a complex exercise. The supplementary submissions that follow seek to address the key concerns of the Submitters in a comprehensive way, so as to assist the Panel in carrying out that exercise. The following matters are addressed:
- (a) Process concerns and the Submitters' preferred relief;
 - (b) Alternative relief: review of SASM overlays and revisions to the SASM Chapter; and
 - (c) Concluding comments.

Process concerns and the Submitters' preferred relief

- 6 On behalf of the Submitters, we wish to commend Mr Hakkaart on the approach he has taken since his appointment as Timaru District Council's Planning Manager – District Plan Review to better understand and identify options for addressing submitters concerns. The work he has undertaken alongside Ms White has resulted in the suite of revisions to the Proposed Plan's SASM provisions as notified set out in Ms White's Section 42A Report, which are generally supported by the Submitters (subject to the matters addressed shortly).
- 7 However, the revisions recommended by Ms White do not remedy the Submitters' fundamental concerns with the process adopted by TDC in developing the SASM planning overlays and SASM provisions. The Submitters genuinely feel let down by the TDC's sole reliance on the advice

from Aoraki Environmental Consultancy Limited (**AECL**) and its cultural consultants to inform the development of Proposed Plan's planning framework for SASM, and by implication:

- (a) Its disregard of the Submitters' knowledge and understanding of SASM, which has been built over many years and generations of ownership of their properties and through recent resource consent application processes; and
- (b) Its failure to recognise the benefits of early engagement with the owners of land on which SASM have been identified in the plan development process, particularly the identification of the values of individual SASM and potential threats to such values.

8 Their specific concerns include that:

- (a) The mapped boundaries of the SASM:
 - (i) For rock art sites: include "buffer areas" that extend well beyond the sites/areas that have been assessed through recent resource consenting processes as having cultural values requiring protection or ongoing management. For example, Mr Evan's regional land use consent for farming imposes a 1 to 1.5m fenced setback from rock art and a 50m setback for irrigation.⁴
 - (ii) For other sites: do not reflect the physical characteristics or limitations of the protected site/area. For example, SASM17, which is related to the Awarua Stream, extends a considerable distance inland beyond the springs and wetlands noted in the "site type and values" in Schedule 6E – Wai Tapu Areas of the Proposed Plan, where the Stream is ephemeral.
- (b) There is an absence of evidential justification for:
 - (i) The mapped boundaries of the proposed SASM, in terms of the values of each SASM that are to be protected and the

⁴ Evidence of John Benjamin Evidence, dated 23 January 2025, at [25].

“buffer areas” required to manage the effects of land use activities that pose a threat to those values; and

- (ii) Consequently, the rules in the Proposed Plan’s SASM Chapter.
- (c) Kati Huirapa (and/or its agency, Aoraki Environmental Consultancy Limited (**AECL**)) will benefit financially from the consultation and cultural assessments expected for applications for resource consent required by the rules of the SASM Chapter, when those rules were informed by Kati Huirapa’s advice to TDC.
- (d) The lack of consideration given to:
 - (i) The implications of the SASM overlays, including wider ranging restrictions within SASM that may be introduced by way of future plan changes that would affect existing farming businesses and the saleability of farm properties, by limiting options for future diversification of land use required due to increasing regulation for current and ongoing farming activities.
 - (ii) The need for district planning restrictions on land use activities within SASM, when various other regulatory mechanisms to protect cultural values from such activities already exist, including under the Canterbury Regional Land and Water Plan and Heritage New Zealand Pouhere Taonga Act 2014.

9 It is acknowledged that the RMA does not impose mandatory consultation obligations on territorial authorities to consult with land owners affected by proposed planning restrictions before the public notification of a district plan. However, early engagement with landowners as part of district plan development processes is not uncommon and in this case would have complemented the work carried out by the cultural advisors in relation to sites/area identified as potential significant and enabled mapping errors to be corrected prior to public notification.

- 10 It is also acknowledged that the Panel can only make a determination on the proposals before it; not hypothetical scenarios. That said, the Submitters' concerns emphasise the need for the SASM overlay to be based on evidence of:
- (a) The cultural values of each site and/or area;
 - (b) What land use activities could threaten those values; and
 - (a) What is reasonably needed in terms of planning restrictions to protect such values.
- 11 For all of these reasons, and those further addressed in the evidence filed on behalf of the Submitters, the Submitters' preference is that TDC start again i.e., withdraw the PDP's SASM provisions, including overlays, and commence a new statutory planning process that involves:
- (a) Engagement and consultation with all stakeholders, including landowners.
 - (b) Identifying and assessing:
 - (i) Each site/area of significance and their values that require protection through district plan provisions; and
 - (ii) The land area around those sites/areas required to manage the effects of land use activities those could pose a threat to those sites/areas;
 - (c) Development of:
 - (i) New SASM overlays; and
 - (ii) Plan provisions, including objectives, policies and rules;
- informed by (a) and (b), and the outcome of cultural assessments and recommendations in recent consenting processes.

- 12 The Submitters did not expressly seek this outcome in their Submissions. However, other submissions provide scope for this outcome.⁵
- 13 The Submitters acknowledge that this approach may not be favoured by the Panel, particularly in light of the TDC's obligations in terms of sections 6(e), 6(f), 6(g), 7(a) and 8 of the RMA and for the Proposed Plan to give effect of the National Planning Standards 2017 (**National Planning Standards**), which includes a mandatory requirement that district plans include a SASM chapter.

Alternative relief: review of SASM overlays and revisions to the SASM Chapter

- 14 If the Panel does not favour the "start again" option, the Submitters would support Ms White's revisions to the SASM Chapter, subject to:
- (a) **SASM Overlay:** the extent of mapped area of wāhi tapu sites that relate to rock art (SASM8 and SASM9) be reduced to include the extent of the specific rock art sites and a 10m "buffer area" around those sites; and
 - (b) **Rules in the SASM Chapter:** the inclusion of a permitted activity rule or advice note to give greater certainty about the continuation of existing use rights.
 - (c) **Schedule 6 – Schedule of Sites and Areas of Significance to Kāti Huirapa:**
 - (i) Further specificity of the values of each SASM to be protected, and potentially the activities within the TDC's jurisdiction that pose a threat to those values; and
 - (ii) Any adjustments required to:
 - (1) Reflect any changes to the classification of the proposed SASM, for example, where the mapped SASM related to rock art sites are not entirely wāhi tapu and parts of the SASM are more suited to a different SASM category.

⁵ For example, the submission by Louise Aubrey, submission point 59.2.

- (2) Redefine the SASM overlay boundaries to reflect the re-classification of SASM and/or any new evidence produced on the profile of effects of land use activities on SASM.

15 These matters are addressed briefly in the legal submissions that follow.

“Buffer areas” for rock art site SASM

16 The request for a 10m “buffer area” around SASM that are related to rock art sites (SASM 8 and SASM 9) is simply to reflect the advice from cultural consultants in recent resource consenting processes as to the spatial extent of areas around these sites that are necessary to protect cultural values. There is no evidence that a “buffer area” around these sites of either 250m (per Ms White’s recommendation) or 300m (per Ms White’s understanding of the approach adopted in mapping SASM in the Proposed Plan as notified) is necessary in order to protect these types of sites and their values.

Existing use rights

- 17 The legal submissions filed on behalf of Fenlea Farms Limited (Submitter No. 171) and A Rooney (Submitter No. 177) refer to the Environment Court’s decision of *Advance Properties Group Ltd v Taupo District Council*,⁶ which confirmed that from a district planning perspective it is not satisfactory to leave present activities dependant on section 10 existing use rights for future activities.⁷ In *Advance Properties*, the Court favoured the option of scheduling existing commercial activities for the zone under appeal and to provide that they be able to continue indefinitely.⁸
- 18 Counsel for TDC also cites this decision, but favours the use of a district-wide advice note or similar to reflect that nothing in the plan affects section 10 of the RMA.⁹

⁶ [2014] NZEnvC 126.

⁷ Legal submissions on behalf of Fenlea Farms Limited and Alister Joseph Rooney (Submitters 171 and 177), dated 17 January 2025.

⁸ *Advance Properties Group Ltd v Taupo District Council*, [2014] NZEnvC 126, at [67].

⁹ Legal submissions of Counsel on behalf of Timaru District Council – Hearing E, dated 30 January 2025, at [39].

- 19 The Submitters support either option, although it is submitted that a permitted activity rule and associated schedule would provide greater certainty for both plan users and those implementing and enforcing the plan, and by implication, result in a more efficient outcome in terms of section 32(1)(b)(ii) RMA. Should the Panel be minded to adopt this approach, the Submitters would welcome the opportunity to work with TDC to develop a schedule of existing uses and the associated rule.
- 20 If the Panel's preference is an advice note, it is submitted that the following suggestion proffered in the evidence of Rachel Thomas and Greg Anderson on behalf of Federated Farmers (Submitter No. 182) may suffice:

Note – the provisions in this chapter do not override the provisions of s10 of the Resource Management Act 1991. Under s10, existing use rights apply if the use was lawfully established before the plan was notified and the effects are the same or similar in character, intensity and scale.

Schedule 6 and SASM overlays

- 21 Unlike outstanding natural landscapes and outstanding natural features mapped in the Proposed Plan, there is no report detailing the values of the sites and areas of cultural significance listed in Schedule 6 (other than in a generic sense) and/or principal threats from land use activities and subdivision, and consequently the buffer areas required around each site to manage such threats.
- 22 In terms of the section 32 RMA tests of efficiency and effectiveness, the desirability of identifying the exact location of SASM as well as their extents where possible provides a higher degree of certainty for plan users has been acknowledged elsewhere.¹⁰ In other district plans, the spatial extent of SASM has been verified, and where verification has not been possible or where a site or area has a 'silent file' status, the mapped SASM includes the extent of the site/area and a buffer area informed by evidence as to what is required to protect the site/area and/or manage the adverse effects of land use activities on it. Rules then address what activities can be done on SASM or within their vicinity.

¹⁰ Section 32 Report for Proposed New Plymouth District Plan, Section 10.2 (page 37) Identification Table (Efficiency and Effectiveness).

- 23 We acknowledge the difficulty faced by the Panel in determining what is the most appropriate approach in terms of section 32 RMA in the absence of evidence justifying the spatial extent of the SASM listed in Schedule 6. However, in our submission, such evidence is required to enable the Panel to be satisfied that the spatial extent of the listed SASM is:
- (a) A suitable (not superior) and the least restrictive method for achieving the objectives of the SASM Chapter; and
 - (b) Required to implement the policies of the SASM Chapter.
- 24 It is respectfully submitted that for these reasons, and the shortcomings of the process adopted by TDC in the SASM mapping exercise already addressed, Schedule 6 and the SASM overlays require review. The Submitters consider such a review could occur either as part of the current statutory planning process or through a variation to the Proposed Plan as follows:
- (a) The Panel could recommend:
 - (i) That TDC initiates a separate statutory planning process (e.g., variation to the Proposed Plan) comprising a review of the boundaries of each SASM listed in Schedule 6 following pre-notification engagement/consultation with landowners and informed by evidence gathered (including from landowners) as to the values of each SASM and principal threats; and
 - (ii) The inclusion of a policy directive in the SASM Chapter that signals TDC's intention to undertake that review;or
 - (b) The Panel could request, as part of the current statutory planning process, that TDC:
 - (i) Produce evidence to substantiate the boundaries of each SASM listed in Schedule 6 (e.g., confirmation of the values of each SASM and the principal threats (land use activities) to those values); and

- (ii) On the basis of that evidence:
 - (1) Confirm each SASM has been categorised correctly (i.e., wāhi tapu, wai tapu etc);
 - (2) Redefine the boundaries of each SASM; and
 - (3) Provide more specificity in Schedule 6 regarding the values of each SASM requiring protection and the threats to such values.

25 If the review is to occur outside the present statutory planning process, our submission is that it would be appropriate for a policy to be included in the SASM Chapter signalling intention of TDC to promote a variation/plan change for that purpose. We submitted that this could be achieved through amendments to SASM-P1, as follows (or similar):

SASM-P1 Involvement of Kāti Huirapa in resource management decisions

Work with Kāti Huirapa, in consultation with landowners, to identify and list review the Sites and Areas of Significance to Kāti Huirapa in SCHED6 - Schedule of Sites and Areas of Significance to Kāti Huirapa and the spatial extent of the associated SASM overlays, and recognise and provide for the exercise of rangitirataka by Kāti Huirapa in decisions made in relation to these sites and areas.

Concluding comments

26 It is respectfully submitted that Ms White’s recommended revisions to the SASM Chapter, subject to the additional textual changes addressed in these legal submissions, are required to ensure the rules in the SASM Chapter:

- (a) Implement the objectives and consequently the policies of that Chapter, particularly Policy SASM-P5, as required by section 75(1)(c) RMA;
- (b) Are “appropriate” within the context of section 32 RMA, and in terms of efficiency and effectiveness:

- (i) Represent suitable (not superior) and the least restrictive regime for managing the effects of land use activities that potentially threaten the values of SASM;
- (ii) Provide greater certainty to plan users and those implementing and enforcing the plan's SASM provisions; and
- (iii) Do not unnecessarily duplicate other rules in the Proposed Plan and other existing regulatory processes for the protection of SASM.

Dated: 11 February 2025



G Hamilton / L O'Brien

Counsel for Westgarth, Chapman, Blackler et al

ANNEXURE A: SUMMARY OF SUBMITTERS PROPERTIES AND RELATED SASM

Submitter	Property	SASM affecting Property
Bruce and Rosa Westgarth	Rock Farm, 1353 - 1383 Pleasant Point-Cave Highway	Wai Taoka Unique Identifier: SASM-14 Name: Te Ana a Wai (Tengawai) River and tributaries Wai Taoka Lines Unique Identifier: SASM-14 Name: Te Ana a Wai (Tengawai) River and tributaries
Evan and Clare Chapman	Rockburn Farming Co, 19 Limestone Road, Kakahu RD 21, Geraldine 7991	Wahi Taoka Unique Identifier: SASM-7 Name: Kakahu basin and foothills
Graeme Blackler	188 Newton Road, Hazelburn	No SASM on property <i>Submission made based on concerns about implications of SASMs.</i>
Graham and Sharon Peck	Peck Farms – Glen Hays, 352 Sterndale Valley Road, RD 21 Pleasant Point. Peck Farms – Clifton, 373 Henriksen Road, RD 12, Pleasant Point	No SASM on properties <i>Submission made based on concerns about implications of SASMs.</i>
James Fraser	228 Raincliff Road, Opihi	Wahi Tapu Unique Identifier: SASM-9 Name: Opihi rock art sites
John Acland	Mt Peel Holdings Limited and Waikari Hills 1989 Limited, Rangitata Gorge, Peel Forest. 775 Rangitata Gorge Road	Wai Taoka Unique Identifier: SASM-23 Name: Rakitata (Rangitata) River (including south branch) Wahi Tupuna Unique Identifier: SASM-6 Name: Rakitata/ Orari/ Te Umu Kaha/ Mt Peel upper catchment Wai Taoka Lines Unique Identifier: SASM-23 Name: Rakitata (Rangitata) River (including south branch)
Mark and Amanda Robins	Raincliff Road, Opihi LOT 2 DP 407347 LOT 1 DP 6583 LOT 2 DP 4322 LOT 1 DP 1355 BLK XIV OPIHI SD BLK II PAREORA SD- PTS SUBJ TO EASEMENT ON DP 62953 & DP 62177 - TIMBER NOT ASSESSED LOTS 5-6 DP 52517 RS 18543 BLK XIV OPIHI SD	Lot 2 DP 407347 Wahi Tapu Unique Identifier: SASM-9 Name: Opihi rock art sites Lots 5-6 DP 52517 Wai Taoka, Wai Taoka Lines: Unique Identifier: SASM-16, Name: Opihi River and tributaries

Submitter	Property	SASM affecting Property
Mark and Jenny Chamberlain	85 Balfour Road, Hazelburn 7982	Wahi Tapu Unique Identifier: SASM-9 Name: Opihi rock art sites
Richard Giles	Glenelg, 29 Moa Pass Road, RD 12 Pleasant Point	Wahi Tapu Unique Identifier: SASM-9 Name: Opihi rock art sites
Robert Peacock	Orari Gorge Station, 991-1023 Tripp Settlement Road	Wai Taoka Unique Identifier: SASM-22 Name: Orari River Wahi Tupuna Unique Identifier: SASM-6 Name: Rakitata/ Orari/ Te Umu Kaha/ Mt Peel upper catchment Wai Taoka Lines Unique Identifier: SASM-22 Name: Orari River
Tom and Gerald Hargreaves	Kakahu Farm, 1422 Winchester Hanging Rock Road, Kakahu	Wahi Taoka Unique Identifier: SASM-7 Name: Kakahu basin and foothills Wai Taoka Lines Unique Identifier: SASM-15 Name: Te Kākaho (Kakahu) River
Reese Hart	Pidgeon Cliffs, 916 Main Waitohi Road, RD 25 Temuka	Wahi Taoka Unique Identifier: SASM-7 Name: Kakahu basin and foothills Wahi Tapu Unique Identifier: SASM-9 Name: Opihi rock art sites
James Hart	Palm Hills, 318 Matthew Road, RD 25 Temuka	Wahi Taoka Unique Identifier: SASM-7 Name: Kakahu basin and foothills Wahi Tapu Unique Identifier: SASM-9 Name: Opihi rock art sites
Jonathan Goslin	EJAPS Ltd, 55 McMaster Road, Kakahu	Wahi Taoka

Submitter	Property	SASM affecting Property
		<p>Unique Identifier: SASM-7 Name: Kakahu basin and foothills</p> <p>Wai Taoka Unique Identifier: SASM-16 Name: Opihi River and tributaries</p> <p>Wai Taoka Lines Unique Identifier: SASM-16 Name: Opihi River and tributaries</p>