



OFFICER'S REPORT ON SUBMISSIONS

PROPOSED TIMARU DISTRICT PLAN

PLAN CHANGE NO. 21

BROUGHS GULLY OUTLINE DEVELOPMENT PLAN

12 JUNE 2017

Report prepared by:

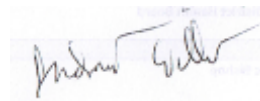


.....
Marcus Langman Planning Consultant

MLPC

Date: 12 June 2017

Reviewed by:



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Andrew Willis Planning Consultant

Planning Matters Limited

Date: 12 June 2017

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1.0 INTRODUCTION

REPORT PURPOSE

1. The purpose of this report is to analyse the submissions made in respect of Timaru District Plan Change No. 21 ('PC21') and to recommend decisions on the submissions and subsequently the provisions of PC21.
2. This report has been prepared to assist the Hearings Panel and Commissioner who have been delegated authority by Timaru District Council to hear and make recommendations on PC21. The report has been prepared under section 42A of the Resource Management Act 1991 ('RMA').

QUALIFICATIONS AND EXPERIENCE

3. My name is Marcus Hayden Langman and I am an independent planning consultant, engaged by Timaru District Council for the purpose of preparing the section 42A planning report for this plan change. My relevant experience is set out in **Appendix 1**.
4. My role in preparing this report is that of an expert policy planner. Although this is a Council hearing, I note that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note dated 1 October 2014. I have complied with that Code when preparing my written statement of evidence and I agree to comply with it when I give any oral evidence. Where I have relied on the expert opinion of another party, I have indicated this in my evidence. I have not omitted consideration of any material facts that might alter or detract from the opinions expressed.
5. As part of consideration of the proposed plan change, I have relied on the technical material supplied as part of the plan change by Timaru District Council. At present, I

have no reason to consider that the information supplied is not accurate, and rely on it, for the purpose of my recommendation. Should other information become available through the exchange of evidence, I will consider that in relation to my overall recommendation.

SCOPE OF THE PLAN CHANGE AND PRELIMINARY MATTERS

6. While preparing this hearings report, I have considered the scope of the proposed plan change and submissions on it. The area is already zoned for Residential use in the Timaru District Plan. However, given the large size of the catchment, its undeveloped nature, and multiple land ownership, an outline development plan has been developed to assist with the co-ordinated development of the sites. An outline development plan typically identifies land necessary for roading and infrastructure, as well as any necessary staging. Although not directly relevant to this proposal¹, the Canterbury Regional Policy Statement sets out typical matters addressed through an outline development plan.
7. The scope includes the proposed plan change, and anything fairly and reasonably raised in original submissions on it, and anything in between². Some of the submissions seek that the whole of the plan change is declined. Anything on the “line” between the existing provisions, the plan change, and the original submissions on it, is therefore within scope.
8. I have identified, from my review of the submissions, the potential for natural justice issues to arise regarding the possible location of stormwater ponds within the structure plan area. These are identified in the notified material in Appendix 3. I note that there are limited submissions on the proposal from landowners within the outline development plan area. Port Bryson Limited and Hilton Trust Limited, located at the bottom of the catchment, have sought that stormwater ponding be distributed more

¹ Refer Policy 6.3.3(3). Note that this only applies to the Greater Christchurch Area but is useful as a guide for the contents of an outline development plan.

² Re Vivid Holdings Limited (1999) 5 ELRNZ at [19]

equitably within the structure plan area. However, it is my view that the submission lacks specificity, given that no specific alternative locations have been proposed. The hearings panel will need to consider whether landowners, who chose not to submit or further submit, would be prejudiced in this matter. If an alternative design included their land as a stormwater treatment area through the process of the hearing, they may not be aware that this was a possible outcome of the plan change.

9. If it is considered appropriate, and the panel was to consider alternative locations for stormwater, the hearings panel may wish to consider whether a process might be available or desirable to ensure potentially interested and affected parties could take part in the hearing process. Views of existing participating parties on this matter may assist the Panel.

DOCUMENTS RELIED ON FOR THE PURPOSE OF THIS REPORT

10. I have relied on all of the technical reports accompanying the plan change for the purpose of this section 42A report. Those technical reports include:
 - a. Assessment of Environmental Effects, S32 Evaluation and Statutory Considerations Assessment prepared by Planz Consultants Limited, November 2016.
 - b. Appendix 4 to that report, being the Financial Contributions Assessment prepared by Timaru District Council, April 2016
 - c. Appendix 5 to that report, being the Infrastructure Assessment prepared by Timaru District Council, June 2016
 - d. Appendix 6 to that report, being the Broughs Gully Stormwater Assessment Report prepared by Davis Ogilvie, October 2016
11. In particular, I adopt the section 32 evaluation, except where amendments are made, for the reasons set out in this report. Where I have disagreed with a matter that is within my expertise, I have set out the reasons in my assessment.

DOCUMENTS PROVIDED TO THE HEARINGS PANEL

12. As well as this report and associated appendices, the following documents have been provided to the hearings panel to assist with its deliberations:
- a. A copy of the proposed plan change package dated November 2016
 - b. A copy of the Canterbury Regional Policy Statement 2013 ('CRPS')
 - c. A copy of the Timaru District Plan 2005 ('district plan')
 - d. A copy of submissions and further submissions
 - e. National Policy Statement on Electricity Transmission 2008 ('NPSET')
 - f. National Policy Statement on Urban Development Capacity 2016 ('NPSUDC')
 - g. National Policy Statement for Freshwater Management 2014 ('NPSFWM')
 - h. New Zealand Coastal Policy Statement 2010 ('NZCPS')

REPORT FORMAT

13. The remainder of this report has been set out as follows:
- Background
 - Relevant statutory provisions
 - Key issues in contention
 - Recommended drafting changes
 - Analysis of submissions
 - Conclusion
 - Appendices
 - Statement of experience
 - Recommended tracked change version of plan change
 - Table of submissions
 - ENV-2016-CHC-88 Re: An application under s86D of the Act by Timaru District Council

- Iwi Management Plan of Kati Huirapa for the Area Rakaia to Waitaki – Part One – Land, Water and Air Policies, Arowhenua, July 1992

2.0 BACKGROUND

14. The plan change was notified on 15 December 2016 and provides for an outline development plan for existing Residential 1 and Residential 4 zoned land at Broughs Gully, and associated provisions to enable the development of the sites covered by the structure plan area in a co-ordinated fashion. A public notice calling for further submissions was notified on 6 March 2017. Five primary submissions were received, and one further submission.
15. The outline development plan area is somewhat unique in that although it is zoned for residential development, there has been little uptake in the area. There are multiple land owners in the area, requiring a co-ordinated approach.
16. A thorough description of the area impacted by the plan change and the background leading up to notification is contained in the Plan Change proposal in Section 2.³ I have reviewed that document and consider that it provides a comprehensive description of the location of the plan change area, and have not duplicated it in this report. However, I note the following key elements of the plan change proposal:
 - a. The outline development plan covers approximately 27ha.
 - b. It includes electricity transmission lines that form part of the National Grid
 - c. The plan change area includes rolling hillside which then focuses on a central basin at the bottom of Broughs Gully.
 - d. The plan change includes changes to the subdivision provisions that seek to provide for an equitable distribution of cost for infrastructure.

³ Proposed Plan Change to the Timaru District Plan – Broughs Gully Outline Development Plan, prepared by Planz Consultants, dated November 2016, Section 2, pages 9-12.

- e. The outline development plan includes a number of infrastructure features across a number of sections that will need to be vested upon development.
17. It is relevant to note that a subdivision and resource consent has been lodged in relation to the land owned by Port Bryson Property Limited and Hilton Trust Limited at the eastern end of the plan change area at the bottom of the catchment, in the location where stormwater ponds are proposed. I understand the subdivision consent was lodged prior to the plan change being notified, and a land use consent was lodged after the plan change was notified to enable a commercial storage facility to be established on residentially zoned land. At the time of writing, both applications are on hold pending requests for further information. As neither of the consents have been issued, they do not form part of the environment. It is noted that even if the subdivision is granted, this does not preclude the future use of land identified within the outline development plan being used for stormwater treatment.
18. In the course of preparing my report, I have corresponded with both Timaru District Council and counsel for Port Bryson Property Limited and Hilton Trust Limited, in order to see whether outstanding issues between the two parties might be resolved on an informal basis. I understand that the parties have continued to work together on stormwater modelling matters, but have been unable to reach agreement. It is recommended that the parties work towards narrowing those matters as part of the evidence exchange process.
19. It is also somewhat relevant to note Timaru District Council sought an Order from the Environment Court to make certain provisions in the plan change have legal effect from the date of notification. A copy of that decision⁴ from the Court is attached as **Appendix 4**.

⁴ ENV-2016-CHC-88 Re: An application under s86D of the Act by Timaru District Council

3.0 SUMMARY OF STATUTORY REQUIREMENTS

CONSIDERATION OF PLAN CHANGES

20. Section 74 RMA provides that a territorial authority can change its district plan in accordance with its functions under section 31, the provisions of Part 2 and any regulations, and in having regard to the evaluation under section 32. It also states that when changing a district plan, a territorial authority shall have regard to any proposed regional policy statement, or proposed regional plan, and any other management plans or strategies prepared under other Acts. It must also take into account any iwi management plan lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district.
21. The plan change material sets out the statutory considerations.⁵ Those considerations are adopted, with the following additions.
22. The Iwi Management Plan of Kati Huirapa for the Area Rakaia to Waitaki – Part One – Land, Water and Air Policies, Arowhenua, July 1992, is, I understand, a relevant consideration. The plan is provided as **Appendix 5**. No relevant entries were found in either document in relation to the site, that are not otherwise covered under general policies under the district plan, or covered under any future stormwater discharge consent. In addition, I note Arowhenua rūnanga and Te Rūnanga o Ngāi Tahu were consulted prior to notification, and no responses or concerns were received prior to notification, or submissions received following notification.
23. The plan change material states that the site is not in the coastal environment and therefore the NZCPS is not relevant. No parties have submitted on this matter, or

⁵ Proposed Plan Change to the Timaru District Plan – Broughs Gully Outline Development Plan, prepared by Planz Consultants, dated November 2016, Section 8, pages 34-38.

contended that the site is within the coastal environment. It is my opinion that this is not necessarily such a clear cut matter.

24. I note that at present, there is no definition of the coastal environment for Timaru District, however the stormwater ponds are proposed to discharge into Washdyke Lagoon, a coastal barrier lagoon. In addition, the NZCPS contains provisions that relate to activities that can have impacts on features in the coastal environment (not just activities located *in* the coastal environment). The only matter that I consider relevant in the NZCPS in this respect is Policy 23 – Discharge of contaminants. Having reviewed this policy, I am satisfied that any matters can be appropriately dealt with as part of a stormwater discharge consent.
25. Although the policy statement does require at 5.3.1 Method (2) and 5.3.2 (3) that comprehensive approaches to the management of rural residential development need to be set out in district plans, this is not considered to be a bar to this proposal proceeding on its merits. It is expected that the comprehensive approach will be undertaken as part of the district council giving effect to the Canterbury Regional Policy Statement in the district plan review. Subject to recommended changes to address the matter of reverse sensitivity, I also consider that the proposal gives effect to Policy 5.3.12.
26. In addition to the strategies prepared under other Acts identified in the plan change material, the following are also relevant to the site:
 - a. The Timaru District Active Transport Strategy 2011
 - b. Off-road Walking and Biking Strategy 2011
27. The proposed development includes walking opportunities and access through the network, including access from Pacific Heights to Jellicoe Street, Burnett Street and Tasman Street and includes minimal use of dead-end cul-de-sac development. It is my opinion that the proposal is consistent with those relevant strategies.

28. In making decisions on the proposed plan change, the hearings panel attention is drawn to section 32AA which sets out the requirement for a further evaluation to be undertaken as either a separate evaluation report, or be referred to in the decision in sufficient detail that demonstrates an evaluation has been undertaken.
29. Part 2 of the RMA sets out the Act's purpose and principles. The RMA's purpose is to promote the sustainable management of natural and physical resources. 'Sustainable management' means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—
- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.
30. Section 6 states matters of national importance that shall be recognised and provided by anyone exercising powers and functions under the RMA. There are considered to be no section 6 matters affected by the proposed plan change, and none have been raised in the course of submissions.
31. Section 7 stipulates other matters that all persons exercising functions and powers under the RMA are to have particular regard to in achieving the purpose of this Act. The most relevant matters to this proposal include:
- Section 7(b) - The efficient use and development of natural and physical resources.
 - Section 7(ba) - The efficiency of the end use of energy.
 - Section 7(c) - The maintenance and enhancement of amenity values.
 - Section 7(d) – Intrinsic values of ecosystems.

- Section 7(f) - Maintenance and enhancement of the quality of the environment.
32. Section 8 requires all persons exercising functions and powers under the RMA, to take into account the principles of the Treaty of Waitangi.
33. Section 75 addresses the content of district plans and specifies that a district plan must state the objectives for the district, the policies to implement the objectives and the rules (if any) to implement the policies. Amongst other things, section 75 states that a district plan may state the principal reasons for adopting the policies and methods and the environmental results expected from the policies and methods. Section 75 requires that a district plan must give effect to any national policy statement and regional policy statement, and must not be inconsistent with a regional plan or water conservation order.
34. When making a rule in a district plan, section 76 requires territorial authorities to have regard to the actual or potential effects on the environment of activities including, any adverse effect. A rule may apply throughout a district or a part of a district, make different provision for different parts of the district, or different classes of effects arising from an activity. A rule may apply all the time, or for stated periods or seasons. It also may be specific or general in its application and require a resource consent to be obtained for an activity causing, or likely to cause, adverse effects not covered by the plan.

4.0 KEY ISSUES IN CONTENTION

35. My analysis of the submissions has shown that there are 7 key issues in contention in relation to the plan change proposal. These are:
- a. General drafting
 - b. The electricity network
 - c. Infrastructure (general)

- d. Roothing
 - e. Stormwater
 - f. Wastewater
 - g. Water services
36. The submission points have been grouped in this manner for the purpose of reporting on them. Recommended tracked changes to the proponents' proposed plan change are provided as **Appendix 3**. The analysis of each submission is provided in **Appendix 4**, with discussion of the key issues in the body of the report.

5.0 RECOMMENDED DRAFTING CHANGES

GENERAL DRAFTING CHANGES

37. One submitter has sought rejection of the entire plan change. As such, the provisions of the plan change can be closely scrutinised as to whether all of the changes should be made, as this can be seen as being "in the line" of the existing plan, and what is proposed. The Council is also able to amend provisions under Clause 16(2) if they are of minor effect or to correct minor errors.
38. Where Clause 16(2) changes have been undertaken, these are annotated in the tracked change version of the plan change.

6.0 ANALYSIS OF SUBMISSIONS

39. The submissions on the Plan Change are relatively confined. As such, the analysis remains relatively brief. Where appropriate, I have indicated where I consider that there are matters relevant to section 32 that will assist with decision making on the matter.

GENERAL DRAFTING

40. Timaru District Council has requested a number of minor editing changes to the provisions, as set out in its submission. It is my recommendation that these changes are generally accepted as set out in Appendix 3, with minor amendments for drafting clarity.

ELECTRICITY NETWORK

41. Transpower New Zealand Limited has sought a number of changes to the plan change in order to give effect to the NPSET. The changes reflect similar provisions that have recently been included in the Christchurch District Plan, and have been adjusted slightly to recognise the nature of the Broughs Gully ODP area, including setbacks from pi poles (poles that look visually like the greek alphabet symbol π).
42. I generally agree with the proposed changes, however it is my view that a restricted discretionary activity would be more appropriate in relation to effects on electricity transmission infrastructure. That is because the matter is reasonably confined, the affected parties are easily identified, and the plan seeks to avoid effects, rather than activities altogether, within proximity to the National Grid. Because of this, it is my view that a restricted discretionary activity status would be just as effective, but more efficient, than the non-complying status in the notified plan.
43. However, there are no submissions seeking a lesser activity status, and such a change may be limited as to scope.

INFRASTRUCTURE

44. Port Bryson Property Limited and Hilton Trust Limited have sought in their submission that Rule 6.3.8(19) and 6.6.5(2) in relation to vesting of infrastructure and cost sharing

agreements be deleted. No alternative, or amended wording, is proposed by the submitter.

45. It is my opinion that both provisions provide for the equitable distribution of costs associated with their respective benefits within the plan change area. Further information is needed from the submitter before any change is made to the provisions, and it would be beneficial if the submitter is able to articulate their particular concern with the provisions.

ROADING

46. Port Bryson Property Limited and Hilton Trust Limited have submitted seeking an alternative 'hammerhead' roading design in place of the cul-de-sac at the end of Road 3 accessing their sites. Timaru District Council has sought various minor corrections to the maps and descriptions. One submitter has sought to move the road that crosses his site to the bottom of the property.
47. In relation to Port Bryson Limited and Hilton Trust Limited's submission, I rely on the information supplied with the plan change in the Infrastructure Assessment provided as Appendix 5 to the plan change material. Included in that, the assessment seeks an appropriately designed turning head for Road 3. I acknowledge that the plan change material does not include an author, and so is not strong as an evidential basis for decision-making. Further technical evidence from the Council on this matter would assist the panel, as well as from the submitter as to the reason they seek such a design. From a pragmatic point of view, it would appear that the cul-de-sac would provide for better turning and avoid the need for a vehicle to have to undertake a three-point turn at the end of the road.
48. It is recommended accepting Timaru District Council's submission as more accurately reflecting the purpose and descriptions of roading in the ODP.

49. In relation to the last remaining submission on roading, I note that the proposal provides a linking road to Lancewood Terrace. Developable land appears to remain on both sides of the road on the submitter's land. The route of Lancewood Terrace appears to follow a logical flowing route that runs with the contours. It is my recommendation that the submission not be accepted, as it is not clear whether such a realignment is desirable or feasible.

STORMWATER

50. A number of submissions were made in relation to stormwater management issues. They relate to the construction of stormwater ponds at the bottom of the ODP area and management of effects in relation to Waitarakao/Washdyke Lagoon. A further submission was also lodged by the New Zealand Transport Agency regarding the volume of water passing under State Highway 1.
51. The ODP includes provision for stormwater management ponds at the bottom of the catchment, located on land that is currently privately owned. The proposal does not at this stage indicate how or when that land will be acquired.
52. As mentioned in para 17, in relation to the land, a resource consent has been lodged seeking to establish a commercial storage facility in the area of the proposed stormwater detention ponds, and a subdivision application was also lodged prior to notification that seeks subdivision of a number of sites in that vicinity. Given that neither consent has been granted at the stage of preparing this report, they do not form part of the environment against which the plan change is to be assessed. The loss of development potential on the sites, however, is a relevant matter in terms of the overall costs and benefits of the proposed plan change, and is a recognised opportunity cost. Regardless, a cost will be involved wherever stormwater detention ponds are required.

53. As indicated in the analysis in **Appendix 3**, it is noted that there is insufficient information on alternative locations for stormwater management. Further evidence on this matter is required, with consideration of natural justice issues should alternative locations be explored.
54. One submitter sought that rules around impervious surfaces be deleted. It is recommended that this submission be rejected, as such provisions will assist with the control of stormwater discharge in the ODP area, as well as with amenity. Such limits are typical for residentially zoned land.
55. In relation to submissions from the Canterbury Regional Council, relating to recognition of Waitarakao/Washdyke Lagoon, it is recommended those submissions be accepted. Such changes are appropriate in the context of that waterbody, and the National Policy Statement for Freshwater Management.
56. It is recommended that the further submission from the New Zealand Transport Agency is rejected. The outline development plan does not permit or allow a certain volume of discharge; that is the function of a discharge consent from the Regional Council. The reason for developing up modelling is to show that there is sufficient land available to develop appropriate stormwater attenuation, rather than to control volumes or rates of discharge.

WASTEWATER

57. Port Bryson Property Limited and Hilton Trust Limited sought that the proposed sewer connections on the ODP be deleted or re-routed, so as to avoid future development on their site. This submission is not supported, as no alternative has been proposed or shown that might work. The subdivision provisions provide that subdivision activities be in general accordance with the ODP, and provide a consenting pathway if that cannot be met.

58. It is recommended that the submission be rejected.

WATER SERVICES

59. Timaru District Council has sought a minor amendment removing water service from the location of services description, as these are not shown in Appendix C. It is recommended that this submission be accepted.

SUBMISSIONS AFFECTING THE WHOLE OF THE PLAN CHANGE

60. A number of submission points sought rejection or acceptance of the plan change, and consequential amendments. Those matters are addressed in this report in Appendix 2 and Appendix 3.

7.0 CONCLUSION

61. Overall, it is recommended that, subject to a number of drafting and rule changes, the proposed plan change application is recommended to the Council for approval.

62. In particular, it is noted that the proposal gives effect to the relevant objectives and policies of the higher order planning documents in the relevant National Policy Statements and the Canterbury Regional Policy Statement.

63. This report addresses costs and benefits in relation to alternatives under s32 where those costs or benefits are able to be identified. In relation to stormwater matters, more information is required on alternative design and locations before any comparative evaluation can be undertaken.

64. The recommended key changes to the proposal in response to submissions include:

- a. Minor drafting changes to address clarity
 - b. Inclusion of a more comprehensive set of provisions to give effect to the NPSET
65. Subject to these changes being made, and pending consideration of further evidence to be filed, it is my opinion that the proposed plan change accords with the Council's functions under s 31 RMA, the provisions of Part 2 RMA, and that proper regard has been had to the obligations under s 32 RMA, and can be recommended for approval.

Marcus Langman

Independent Planning Consultant

12 June 2017

APPENDIX 1 – STATEMENT OF EXPERTISE FOR MARCUS LANGMAN

66. I hold a Bachelor of Resource Studies from Lincoln University (1998). I have 17 years' experience in planning, of which 16 has been in New Zealand.
67. I own my own planning practice based in Christchurch. My clients include a range of private developers, local government and non-governmental organisations across New Zealand. As part of this, I have been involved in providing planning advice for resource consents, plan changes, and regional policy statements (including Plan Change 20 for Timaru District). From December 2014 to December 2016 I provided advice as the principal planning advisor to the Independent Hearings Panel appointed to hear the Christchurch District Plan Review.
68. I was previously a Principal Planner and Team Leader – Policy at Environment Canterbury. In this role, I was the lead author and project manager for the Canterbury Regional Policy Statement 2013 (CRPS) from 2008 to 2013, and lead section 42A reporting officer as well as reporting officer for the Landscape and Heritage chapters. I prepared Chapter 6 of the Canterbury Regional Policy Statement, which provides for the recovery of Greater Christchurch, as part of the Land Use Recovery Plan for Greater Christchurch. I also managed the team responsible for making submissions on behalf of the regional council to Canterbury's district and city councils, and implementing the Canterbury Regional Policy Statement.
69. I have prepared a number of district plan changes for both the Auckland City District Plan – Hauraki Gulf Islands District Plan and the Auckland City District Plan – Isthmus Section, and presented evidence as a planning witness at numerous plan change and resource consent hearings on greenfield, urban and rural residential expansion in Auckland on behalf of the former Auckland Regional Council.

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70. I have appeared in the Environment Court as an expert planning witness, and completed the Making Good Decisions commissioner course (currently lapsed).

APPENDIX 2 – RECOMMENDED TRACKED CHANGE VERSION OF THE PLAN CHANGE

Refer to separate document

APPENDIX 3 – TABLE OF SUBMISSIONS

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Sub No	Name	Topic	Aspect of plan / plan change that submission relates	Support / Oppose / Amend	Decision sought	Recommendation
General drafting						
3.10	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Performance Standard 6.3.8(5)	Support with amendments	Amend Section 6.3 Subdivision, Performance Standard 6.3.8(5) as follows: <i>In the Residential 4 Zone all subdivisions shall comply with a comprehensive development plan for the contiguous land in the same zone, unless the sites have:</i> <u>(a) access to Doncaster or Martin Streets, or</u> <u>(b) are on the south or east 9b side of Old North Road, Blair Street or Mahoneys Hill Road, or</u> <u>(c) and are not within the Broughs Gully Outline Development Plan shown (as set out in Appendix C, Part D2),</u> in which case where <u>Where (a), (b) or (c) above does not apply, the development plan need relate only to the existing allotment being subdivided. For the area subject to Appendix C, Part D2, all subdivisions are to be in accordance with the Broughs Gully Outline Development Plan.</u>	Accept in part. Amendments provide clarity. Clause 16 minor change recommended for clarity (in bold). <i>In the Residential 4 Zone all subdivisions shall comply with a comprehensive development plan for the contiguous land in the same zone, unless the sites have:</i> <u>(a) have access to Doncaster or Martin Streets, or</u> <u>(b) are on the south or east 9b side of Old North Road, Blair Street or Mahoneys Hill Road, or</u> <u>(c) and are not within the Broughs Gully Outline Development Plan shown (as set out in Appendix C, Part D2),</u> in which case where <u>Where (a), (b) or (c) above does not apply, the development plan need relate only to the existing allotment being subdivided. For the area subject to Appendix C, Part D2, all subdivisions are to be in accordance with the Broughs Gully Outline Development Plan.</u>
3.11	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Rule 6.6.5(2)(c)	Support with amendments	Amend Section 6.6 Rooding Hierarchy, Rule 6.6.5(2)(c) as follows: <i>The sum of the all the benefit costs determined in 6.6.5(2)(b) is subtracted from the total cost of all future and indicative roads determined in 6.6.5(2)(a). This residual cost represents the catchment wide benefit that</i>	Accept to improve clarity.

					<i>each property receives from adjoining and surrounding properties developing.</i>	
3.2	<p>Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940</p>	Drafting	Policy 2.1.2.2	Support with amendments	<p>Amend Policy 2.1.2.2 as follows:</p> <p><i>Residential 1 Zone (Broughs Gully)</i></p> <p><i>Explanation and Principle Reason</i> The Broughs Gully Outline Development Plan (ODP) area is shown in Appendix C of Part D2 Residential Zones and comprises 27ha of land situated in the Washdyke area and generally bordered by Jellicoe Street, Old North Road, Mahoneys Hill Road and existing suburban development. It is predominantly zoned Residential 1, but also includes an area of Residential 4 zone to the north.</p> <p>The Outline Development Plan includes the configuration of land use zoning, roads, services, walkways, stormwater basins and linkages throughout the site. The Rules and Performance Standards of the Residential 1 Zone (and Residential 4 zone for the northern portion of the ODP Outline Development Plan area) shall apply to this zone.</p> <p>Development of this area in general accordance with the ODP Outline Development Plan will ensure:</p> <ul style="list-style-type: none"> • efficient development of urban zoned land to provide housing choice; • provision of sewer and stormwater infrastructure on a coordinated basis; 	Accept to improve clarity??.

					<ul style="list-style-type: none"> • provision of a connected, safe, and efficient roading network; • the avoidance of new roading and access connections to major roads; • the avoidance of adverse effects (including reverse sensitivity effects) on the National Grid; <p>...</p> <p><i>Residential 4 Zone (Low Density Residential; Timaru only)</i></p> <p><i>Explanation and Principal Reason</i> This is a lowdensity zone provided for at several locations in Washdyke. Amenity values are intended to be of as high a standard as is compatible with its location near an industrial area. An integrated building location and planting regime is to be provided to detail means of achieving maximum visual amenity. A portion of the Residential 4 Zone is included within the Broughs Gully Outline Development Plan area shown in Appendix C of Part D2, with which seeks to achieve the outcomes described above in the Residential 1 Zone (Broughs Gully).</p>	
3.3	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Policy 2.4.2.4	Support with amendments	Amend 2.4.2.4 as follows: <i>Ensure that development in the Residential 1 and 4 zones atwithin the Broughs Gully Outline Development Plan (as set out in Appendix C of Part D2) is efficient, coordinated and supported by adequate services and is in general accordance with the roading and servicing layout shown in Appendix C of Part D2.</i>	Accept in part – Clause 16 minor change recommended for clarity (in bold). <i>Ensure that development in the Residential 1 and 4 zones atwithin the Broughs Gully Outline Development Plan area (as set out in Appendix C of Part D2) is efficient, coordinated and supported by adequate services and is in general accordance with the roading and servicing layout shown in Appendix C of Part D2.</i>

3.4	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Rule 3A.2	Support with amendments	Amend Section 2.6.1 Residential 1 Zone, Rule 3A.2 as follows: <i>Any proposed activity that does not comply with the location(s) of infrastructure shown on the Broughs Gully Outline Development Plan (as set out in Appendix C of Part D2). Discretion shall be limited to the matter(s) not complied with.</i>	Accept.
3.5	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Rule 4.2	Support with amendments	Amend Section 2.6.1 Residential 1 Zone, Rule 4.2 as follows: <i>In the Residential 1 Zone at Within the Broughs Gully Outline Development Plan (as set out in Appendix C of Part D2), any building, fence or activity that does not meet the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001) is non-complying.</i>	Reject, replaced with wording from the Transpower submission.
3.6	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Rule 2.1	Support with amendments	Amend Section 2.6.4 Residential 4 Zone, Rule 2.1 as follows: <i><u>Except within the Broughs Gully Outline Development Plan area (as set out in Appendix C, Part D2) One household unit per allotment provided for as part of a comprehensive development plan in that part of the zone west of Old North Road, or one unit per proposed allotment south or east of Old North Road (unless otherwise restricted by the Outline Development Plan shown in Appendix C, Part D2) , Blair Street, or</u></i>	Accept in part – Clause 16 and 20A minor change recommended for clarity (in bold). <i><u>Except within the Broughs Gully Outline Development Plan area (as set out in Appendix C, Part D2), One household unit per allotment provided for as part of a comprehensive development plan in that part of the zone west of Old North Road, or one household unit per proposed allotment south or east of Old North Road (unless otherwise restricted by the Outline Development</u></i>

					<i>Mahoneys Hill Road. Council shall restrict its discretion to the environmental effects associated with the matters in Policy 2.1.2.2</i>	<i>Plan shown in Appendix C, Part D2), Blair Street, or Mahoneys Hill Road. Council shall restrict its discretion to the environmental effects associated with the matters in Policy 2.1.2.2</i>
3.7	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Drafting	Performance Standard 5.A.1	Support with amendments	Amend Section 2.6.4, Residential 4 Zone, Performance Standard 5.A.1 as follows: <i>No more than 60% of the area of an allotment can shall comprise of impervious or hardstand surfacing.</i>	Accept.
Electricity network						
5.1	Transpower Mail ID: 1051170 Address: c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch	Electricity network	Whole of the plan change	Oppose	The proposed plan change requires substantial amendment as set out in its submission. Amend the Proposed Plan Change to give effect to the NPSET and CRPS and to meet other statutory obligations including by making specific amendments set out in Transpower's submission; and such further, alternative or consequential relief as may be necessary to fully give effect to the submission.	Accept as set out in the reasons below.
5.2	Transpower Mail ID: 1051170 Address: c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch	Electricity network	Policy 2.4.2.4	Amend	Amend Policy 2.4.2.4 as follows: <i>Ensure that development in the Residential 1 and 4 zones at Broughs Gully (as set out in Appendix C of Part D2):</i> <ul style="list-style-type: none"> <i>efficient, coordinated and supported by adequate services;</i> <i>and is in general accordance with the roading and servicing layout shown in Appendix C; and</i> <i>avoids adverse effects (including reverse sensitivity effects) on the safe, effective and efficient operation, maintenance, upgrading and development of the National Grid transmission lines.</i> 	Accept. The operative plan does not include any policy level guidance that otherwise gives effect to the NPS for Electricity Transmission. A plan change to do this was put on hold pending the district plan review. However as it has been decided to proceed with this plan change, in order to give effect to the NPS for Electricity Transmission, in my opinion it is appropriate that such amendments are made.

5.3	<p>Transpower Mail ID: 1051170 Address:c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch</p>	Electricity network	Rule 5	Amend	<p>Amend the proposed Performance Standards in D2, Residential 1 Zone, Rule 5 and Performance Standards as follows:</p> <p><u>5.B.4 No building or activity sensitive to the National Grid shall be located within:</u></p> <ul style="list-style-type: none"> • <u>10 metres of the centre line of a National Grid transmission line on single poles;</u> • <u>12 metres of the centre line of a National Grid transmission line on pi poles; and</u> • <u>12 metres of the foundation of a National Grid transmission line support structure. All buildings, fences, earthworks, vegetation and structures shall comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001)</u> <p><u>5.B.x Fences shall be located greater than 6 metres from a National Grid transmission line support structure.</u></p> <p><u>5.B.x Earthworks:</u></p> <p><u>(a) shall not destabilise a National Grid transmission line support structures;</u></p> <p><u>(b) shall not result in a reduction in the ground to conductor clearance distances below what is required by table 4 of NZECP34:2001; and</u></p> <p><u>(c) shall be no deeper than:</u></p> <ul style="list-style-type: none"> • <u>300mm within 2.2m of a National Grid transmission line support structure or stay wire; and</u> • <u>750mm within 2.2m to 5m of a National Grid transmission line support structure;</u> <p><u>except where the earthworks are vertical holes not exceeding 500mm in diameter beyond 1.5m of a National Grid transmission line support structure or undertaken by a network utility operator.</u></p>	<p>Accept.</p> <p>The provisions are specific to the Broughs Gully ODP area and provide for protection of the National Grid. It is my opinion that such changes are appropriate for giving effect to the NPS for Electricity Transmission, having regard to the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001).</p>
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					<p><u>Advice Note:</u></p> <p><u>(a) Vegetation to be planted around the National Grid should be selected and managed to ensure that it will not breach the Electricity (Hazards for Trees) Regulations 2003.</u></p> <p><u>(b) Buildings and structures in the vicinity of the National Grid must also comply with the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP34:2001).</u></p>	
5.4	<p>Transpower</p> <p>Mail ID: 1051170</p> <p>Address:c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch</p>	Electricity network	Rule 4	Amend	<p>Amend D2, Residential 1 Zone, Rule 4, Non-Complying Activities as follows:</p> <p><i>4.2 In the Residential 1 Zone at Broughs Gully (as set out in Appendix C of Part D2), any building, fence, earthworks or activity that does not meet <u>Performance Standards 5.B.4, 5.B.x and 5.B.x the New Zealand Electrical Code of Practice for electrical Safe Distances (NZECP34:2001)</u> is non-complying.</i></p>	<p>Accept.</p> <p>It is my opinion that such an activity could be more efficiently provided for as a restricted discretionary activity, with limited notification only to Transpower NZ Limited where it has not provided its written approval. Such provision would be just as effective as, and more efficient than, a non-complying status. However, there are no submissions or further submissions to that effect so such a change may be limited as to scope.</p>
5.5	<p>Transpower</p> <p>Mail ID: 1051170</p> <p>Address:c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch</p>	Electricity network	Definitions	Amend	<p>Amend the definition of 'Activity Sensitive to Aircraft Noise' in Part D8 as follows:</p> <p><i>Activity Sensitive to Aircraft Noise and Activity Sensitive to the National Grid - Means Boarding or Lodging House or Hostel, Camping Grounds/Caravan Parks, Community Care Facility, Community Facilities, Day Care Centres, Educational Establishments, Home Stay, Hospital, Household Unit, Kohanga Reo, Marae, Papakainga, and Place of Assembly as defined this District Plan.</i></p>	<p>Accept in part.</p> <p>In the Residential chapter, this definition is not used, however it is used in the text proposed by Transpower. It is my opinion that the definition needs to stand on its own, for the purpose of plan integrity and interpretation, even if the subject matter is the same. Insert new definition of 'Activity Sensitive to Aircraft Noise' in Part D8 as follows:</p>

						<u>Activity Sensitive to the National Grid - Means Boarding or Lodging House or Hostel, Camping Grounds/Caravan Parks, Community Care Facility, Community Facilities, Day Care Centres, Educational Establishments, Home Stay, Hospital, Household Unit, Kohanga Reo, Marae, Papakainga, and Place of Assembly as defined in this District Plan.</u>
5.6	Transpower Mail ID: 1051170 Address:c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch	Electricity network	Rule 6.3.8	Amend	Amend the proposed Performance Standards in D6.3, Subdivision, Rule 6.3.8 as follows: <u>(x) In the Broughs Gully Outline Development Plan area (as set out in Appendix C of Part D2) any lots created must maintain access to the National Grid and must show a building platform that is greater than:</u> <ul style="list-style-type: none"> • <u>10 metres from the centre line of a National Grid transmission line on single poles;</u> • <u>12 metres from the centre line of a National Grid transmission line on pi poles; and</u> • <u>12 metres from the foundation of a National Grid transmission line support structure.</u> Amend or duplication the 'Note' that follows the Performance Standards in D6.3, Subdivisions to ensure that it clear that this Note also applies to the Broughs Gully Outline Development Plan and subdivision as follows: <i>NOTE: Consultation with Transpower New Zealand Limited is necessary when considering construction subdivision within 20 metres of a high voltage electricity transmission line. The New Zealand Electrical Code of Practice (NZECP: 34 2001) contains restrictions on the location of structures and activities in relation to the</i>	Accept. It is my opinion that this is appropriate in terms of the NPS for Electricity Transmission.

					<i>lines.</i>	
5.7	Transpower Mail ID: 1051170 Address:c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch	Electricity network	Rule 6.3.6	Amend	Amend D6.3, Rule 6.3.6 Non-Complying Activities in All Zones to include the following: <u>(x) Any subdivision in the Brouchs Gully Outline Development Plan area (as set out in Appendix C of Part D2) that does not meet the Performance Standard in Rule 6.3.8(x).</u>	Accept. It is my opinion that such an activity could be more efficiently provided for as a restricted discretionary activity, with limited notification only to Transpower NZ Limited where it has not provided its written approval. Such provision would be just as effective as, and more efficient than, a non-complying status. However, there are no submissions or further submissions to that effect so such a change may be limited as to scope.
5.8	Transpower Mail ID: 1051170 Address:c/- Ainsley McLeod, Beca Limited, P O Box 13960, Christchurch	Electricity network	Appendix C, Part D2	Amend	Amend the Proposed Outline Development Plan – Brouchs Gully to accurately show the National Grid transmission lines (centre line) and to distinguish these lines from electricity distribution lines.	Accept. Provides clarity.
Infrastructure						
2.6	Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch	Infrastructu re	Rule 6.3.8(19)	Oppose	That Rule 6.3.8(19) (vesting of infrastructure) be deleted.	Reject. It is my opinion that the infrastructure planned for the site needs to be in place before the subdivision can be adequately serviced and developed. The location of the infrastructure has been determined as the most efficient means of achieving access and management of stormwater and wastewater. At present, there are no other alternatives to consider.
2.7	Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591	Infrastructu re	Rule 6.6.5(2)	Oppose	That Rule 6.6.5(2) (cost share agreement) be deleted.	Reject. It is my opinion that the proposal provides a means of apportioning the benefit received from roading, with the costs involved in developing roading, in order to define an appropriate development contribution.

	Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch					At present, there are no other alternatives to consider.
Roading						
2.4	Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch	Roading	Appendix C, Part D2	Oppose	That the "rounded" cul-de-sac design be replaced with the Submitters' proposed "hammerhead" design (as illustrated on the preliminary subdivision plans attached as Appendix A)	Reject. It is my opinion that the structure plan provides for a roading layout where there is a dead end street, whereby a cul-de-sac provides a logical design to enable traffic to manoeuvre safely. The submitter and the Council are requested to provide further evidence as to why such a design is, or isn't more appropriate.
3.8	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Roading	Appendix C, Part D2	Support with amendments	Update Appendix C by: <ul style="list-style-type: none"> • Indicating visually on the map the lots mentioned in relation to Road 1 description • Including description for Road 3 • Correcting 'accesses' to 'access' for new vehicle access onto Old North Road • Making symbol within map clearer for the cycle and pedestrian path 	Accept, provides corrections.
4.1	Peter Michael Olsen Mail ID: 1039386 Address: With-held	Roading	Appendix C, Part D2	Oppose	Change road to bottom of our property would be good, as it is now, I have to say no to any agreement put by the Council.	Reject. It is my opinion that the location of existing Lancewood Terrace and the contour of the hillside as part of the Pacific Heights subdivision necessitates the road design shown on the ODP. It is noted that the development of the submitter's site would appear to enable one site to the south of Lancewood Terrace, with the remainder of the sites being to the north. Notwithstanding this, the final subdivision design and road location could be altered while being in general

						accordance with the structure plan design, if that provides some relief for the submitter, however such an approach would need to be co-ordinated with other adjacent landowners to ensure appropriate road construction and design.
Stormwater						
1.2	Canterbury Regional Council Mail ID: 1050775 Address: Environment Canterbury, PO Box 550, Timaru 7940	Stormwater	Controls relating to stormwater	Support	We support the inclusion of specific performance standards that control the area of hard surfacing, treatment of runoff by infiltration systems, and the roofing materials used on individual sites.	Accept. Such provisions provide appropriate mitigation of effects related to stormwater management.
1.3	Canterbury Regional Council Mail ID: 1050775 Address: Environment Canterbury, PO Box 550, Timaru 7940	Stormwater	Policy 2.1.2.2	Support with amendments	Amend Explanation to Existing Policy 2.1.2.2 <i>Development of this area in general accordance with the ODP will ensure:</i> <ul style="list-style-type: none"> • <i>efficient development of urban zoned land to provide housing choice;</i> • <i>provision of sewer and stormwater infrastructure on a coordinated basis;</i> • <i>provision of a connected, safe, and efficient roading network;</i> • <i>the avoidance of new roading and access connections to major roads;</i> • <i>the avoidance of adverse effects (including reverse sensitivity effects) on the National Grid;</i> • <i>the avoidance of adverse effects on the water quality and hydraulic functioning of Waitarakao</i> 	Accept. Effects are directly related to Washdyke Lagoon.

					<u>/ Washdyke lagoon.</u>	
1.4	<p>Canterbury Regional Council</p> <p>Mail ID: 1050775</p> <p>Address: Environment Canterbury, PO Box 550, Timaru 7940</p>	Stormwater	Policy 2.4.2.4	Amend	<p>Add New Policy 2.4.2.5</p> <p><u>Ensure that stormwater resulting from development in the Residential 1 and 4 Zones at Broughs Gully (as set out in Appendix C of Part D 2) does not contribute to further degradation of water quality, aquatic ecosystems and mahinga kai, and the hydraulic functioning of the Waitarakao / Washdyke lagoon.</u></p> <p>Or alternatively amend New Policy 2.4.2.4</p> <p><u>Ensure that development in the Residential 1 and 4 zones at Broughs Gully (as set out in Appendix C of Part D2 is efficient, coordinated and supported by adequate services, and is in general accordance with the roading and servicing layout shown in Appendix C, and that stormwater discharges do not contribute to further degradation of water quality, aquatic ecosystems and mahinga kai, and the hydraulic functioning of the Waitarakao / Washdyke lagoon.</u></p>	<p>Accept the option of adding new Policy 2.4.2.5.</p> <p>It is my opinion that the insertion of new policy 2.4.2.5 is appropriate and properly gives effect to the National Policy Statement for Freshwater Management.</p>
1.5	<p>Canterbury Regional Council</p> <p>Mail ID: 1050775</p> <p>Address: Environment Canterbury, PO Box 550, Timaru 7940</p>	Stormwater	Rule 5.A.2	Support with amendments	<p>Amend Rule 5.A.2</p> <p><i>The runoff from the first 15mm of rainfall in any storm event (regardless of duration) from any impervious or hardstand surfaces (excluding roofs) shall be treated before discharging to a reticulated network. The treatment shall be by infiltration systems, which may include but is not limited to:</i></p> <ul style="list-style-type: none"> • <i>Infiltration basins</i> • <i>Rain Gardens</i> • <i>Permeable Pavement</i> • <i>Constructed Wetlands</i> • <i>Catchpit Filter Insert</i> 	<p>Accept.</p> <p>The list is not exclusive.</p>

2.2	<p>Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch</p>	Stormwater	Appendix C, Part D2	Oppose	<p>That the Stormwater Retention Ponds and Swales areas identified in the Outline Development Plan insofar as they are located on the Submitters' land be deleted and be accommodated on other land affected by the Proposal.</p>	<p>Reject.</p> <p>It is my opinion that this submission lacks specificity as to where alternative locations might be located, along with the efficiency and effectiveness of such locations.</p> <p>The site of the stormwater ponds is in a logical location at the bottom of the catchment, in an area that is relatively flat. Council may need to consider how it is to reach agreement on the purchase or otherwise of the land associated with the stormwater ponds, however that is a matter that is outside of the scope of the plan change.</p> <p>The submitter is invited to provide further information on this matter.</p>
2.5	<p>Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch</p>	Stormwater	Rule 5.B.1	Oppose	<p>That Rule 5.B.1 (impervious/hardstand surfacing) be deleted.</p>	<p>Reject.</p> <p>It is my opinion that the requirements are typical for residential activity, and it is noted that the discharge will be to a sensitive lagoon. As such, it is considered that a limitation on impervious/hardstand areas is the most appropriate form implementing the objectives of the plan.</p>
FS1	<p>New Zealand Transport Agency PO Box 1479 Christchurch</p>	Stormwater	Var.	Neutral	<p>Seek that any changes as a result of Port Bryson Property Limited and Hilton Trust Limited's submission does not increase stormwater discharge below State Highway 1 compared to existing volumes.</p>	<p>Reject.</p> <p>It is my opinion that the ODP does not permit or allow a certain volume of discharge; that is the function of a discharge consent from the Regional Council. The reason for developing up modelling is to show that there is sufficient land available to develop appropriate stormwater attenuation, rather than to control volumes or rates of discharge.</p>
Wastewater						

2.3	Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch	Wastewater	Appendix C, Part D2	Oppose	That the location of the Sewer on the Outline Development Plan insofar as it is shown on land owned by the Submitters be deleted, or in the alternative, that the Sewer be re-routed so that it does not interfere with the proposed future development of the Submitters' property.	Reject. It is my opinion that the requirements for subdivision require activities to be in general accordance with the structure plan, and provide a consenting pathway if that cannot be met. The location shown in Appendix C shows the most efficient pathway for sewerage disposal. The submitter is requested to provide greater detail as to a more appropriate location.
Water services						
3.9	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Water services	Appendix C, Part D2	Support with amendments	Update Appendix C by: <ul style="list-style-type: none"> Removal of water services from the Location of Services description as it is not shown within the map 	Accept for the reasons given.?
Whole of the plan change						
1.1	Canterbury Regional Council Mail ID: 1050775 Address: Environment Canterbury, PO Box 550, Timaru 7940	Whole of the plan change	The plan change except as set out in submission.	Support with amendments	Environment Canterbury supports the introduction of an outline development plan (ODP) for Broughs Gully.	Accept.
2.1	Port Bryson Property Limited and Hilton Trust Limited	Whole of the plan change	Whole of the plan change	Oppose	That the Proposal is rejected in its entirety.	Reject. The objectives are considered the most appropriate for achieving the purpose of the act and the policies and methods the most appropriate for achieving the

	Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch					Objectives, having regard to s 32 RMA.
2.8	Port Bryson Property Limited and Hilton Trust Limited Mail ID: 1050591 Address: c/o Philip Maw, Wynn Williams, P O Box 4341, Christchurch	Whole of the plan change	Whole of the plan change	Amend	Any consequential amendments necessary to the objectives, policies, methods or other provisions in order to give full effect to the relief sought.	Reject. It is my opinion that at this stage, without further evidence, I do not consider that changing the outline development plan in accordance with the submitter's request is the most appropriate means of achieving efficient development of the land, in a way that achieves the objectives and policies of the plan. The submitter is invited to provide further detailed evidence on alternatives so that they might be considered.
3.1	Timaru District Council Mail ID: 1043340 Address: c/o Kylie Galbraith, Timaru District Council, P O Box 522, Timaru 7940	Whole of the plan change	The plan change except as set out in submission.	Support with amendments	Support proposed Plan Change 21 (Broughs Gully Outline Development Plan) subject to minor text changes being made as set out in the submission.	Accept.

**APPENDIX 4 – ENV-2016-CHC-88 RE: AN APPLICATION UNDER S86D
OF THE ACT BY TIMARU DISTRICT COUNCIL**

BEFORE THE ENVIRONMENT COURT

Decision No. [2016] NZEnvC 242

IN THE MATTER of the Resource Management Act 1991
AND of an application under section 86D of the Act
BETWEEN TIMARU DISTRICT COUNCIL
(ENV-2016-CHC-88)
Applicant

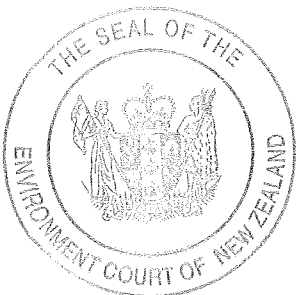
Court: Environment Judge J R Jackson
Hearing: In Chambers at Christchurch
Sitting alone under section 279 of the Act
Date of Decision: 8 December 2016
Date of Issue: 8 December 2016

DECISION

- A: Under section 279(1) of the Resource Management Act 1991 I direct that public notice of the application under section 86D of the Resource Management Act 1991 need not be given, nor affected persons notified of the application.
- B: Under section 86D of the Resource Management Act 1991, the application by the Timaru District Council is granted, so that the rules and definitions in the Timaru District Proposed Plan Change 21 will take immediate legal effect upon notification of the Proposed Plan.

REASONS

[1] The Timaru District Council applied *ex parte* to the Environment Court on 7 December 2016 seeking an order under section 86D of the Resource Management Act 1991 ("the RMA" or "the Act") that:



- (a) the Rules in the Council's Plan Change 21 ("PC 21") have legal effect from the date that Plan Change 21 is publicly notified; and
- (b) public notice of this application need not be given, nor notice be provided, to affected persons.

[2] The application is supported by affidavit dated 7 December 2016 of Mr M W Geddes, District Planning Manager for the Council, and a full and useful memorandum of counsel from Mr A Schulte.

[3] Section 86B of the RMA provides:

86B When rules in proposed plans and changes have legal effect

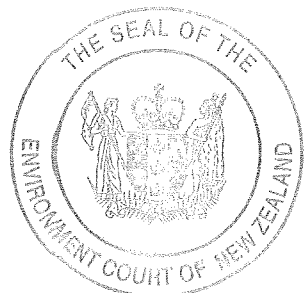
- (1) A rule in a proposed plan has legal effect only once a decision on submissions relating to the rule is made and publicly notified under clause 10(4) of Schedule 1, except if—
 - (a) subsection (3) applies; or
 - (b) the Environment Court, in accordance with section 86D, orders the rule to have legal effect from a different date (being the date specified in the court order); or
 - (c) the local authority concerned resolves that the rule has legal effect only once the proposed plan becomes operative in accordance with clause 20 of Schedule 1.

Section 86B(1)(b) empowers the court to grant an order under section 86D that a rule can have legal effect from a date specified in the Court's order.

[4] Section 86D states:

86D Environment Court may order rule to have legal effect from date other than standard date

- (1) In this section, **rule** means a rule—
 - (a) in a proposed plan or change; and
 - (b) that is not a rule of a type described in section 86B(3)(a) to (e) or (6).
- (2) A local authority may apply before or after the proposed plan is publicly notified under clause 5 of Schedule 1 to the Environment Court for a rule to have legal effect from a date other than the date on which the decision on submissions relating to the rule is made and publicly notified under clause 10(4) of Schedule 1.
- (3) If the court grants the application, the order must specify the date from which the rule is to have legal effect, being a date no earlier than the later of—
 - (a) the date that the proposed plan is publicly notified; and
 - (b) the date of the court order.



The facts

[5] Plan Change 21 establishes¹ an outline development plan for 27 hectares within the Brouchs Gully area at the northern edge of Timaru's urban area.

[6] Mr Geddes deposes² that the issues relating to PC 21 have been the subject of detailed consideration by the Council, and the plan change has been the subject of thorough consultation with affected landowners.

[7] The motivation for seeking an order that the rules in PC 21 take legal effect from the time of its public notification is to avoid the risk of the policy underpinning the proposed rules being undermined by subdivision consents having to be granted by the Council before a decision on submissions on PC 21 is made.

[8] The key constraint³ that is preventing the area's development is inadequate servicing.

[9] The basic ideas behind the plan change are:

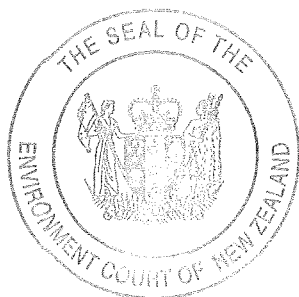
- to ensure co-ordinated development of the land for residential purposes;
- to roll-out infrastructure efficiently and sustainably;
- to amend financial contributions rules to address infrastructure funding at Brouchs Gully.

Background to Plan Change 21

[10] Brouchs Gully contains 28 different landholdings of varying sizes from 0.5 hectares to 2 hectares. Some lots contain residential dwellings, while other lots are used for low intensity rural grazing, pastoral farming, a nursery, church and a self-storage business and commercial premises.

[11] Part of Brouchs Gully is zoned Residential 1 which permits lots of a minimum size of 450 m² (and in some circumstances, down to 300 m²). Part is zoned Residential

¹ M W Geddes affidavit dated 7 December 2016 para 9.
² M W Geddes affidavit dated 7 December 2016 paras 11 and 12.
³ M W Geddes affidavit dated 7 December 2016 para 4.8.



4 permits lots of a minimum size of 1,500 m². In each case subdivision is a controlled activity.

Factors to be considered under section 86D

[12] Previous decisions of the court have referred to a number of factors that should be considered. First, when considering applications under section 86D in *Re Palmerston North City Council*⁴ [2015] NZEnvC 27 the court stated:

Section 86D(2) enables a local authority to make application to the Court for an order that rules takes legal effect on a different date than that provided in s86B. As the Court has observed in earlier decisions relating to these provisions, s86D does not specify the process to be followed by the Court in determining whether or not to allow rules to become operative nor the matters to be taken into account in determining such an application. The absence of specific matters to be considered indicates that the Court has a wide discretion in determining whether or not to grant or refuse an application pursuant to s86D(2) but that discretion ought be exercised on a principled basis and having regard to the purpose of RMA contained in s5. [underlining added]

In the decisions referred to above a series of factors were identified by the Court which it considered were relevant to determining those particular applications. While it is accepted that these factors might also be relevant to other applications, those decisions should not be seen as seeking to limit factors which might be relevant in any particular case. In his submissions for the Council in this instance Mr Jessen referred to a number of the factors applied by the Court in *Re New Plymouth District Council*⁵ decision, namely:

- The strategic importance of the plan change in question;
- The fact that the plan change was the outcome of detailed consideration by the Council under a wider process than just RMA considerations;
- Extensive consultation undertaken by the Council pursuant to Local Government Act provisions;
- Ongoing subdivision pressure in areas subject to the proposed plan change.

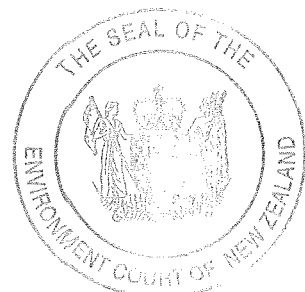
[13] The most recent decision on section 86D RMA that counsel could refer me to was *Re Queenstown Lakes District Council* where I wrote:⁶

[8] ... The general principle appears to be that if a proposed plan (or plan change) introduces restrictions (which can be justified under section 32 RMA) on current rights then,

⁴ *Re Palmerston North City Council* [2015] NZEnvC 27 at [22]-[23].

⁵ *Re New Plymouth District Council* [2010] NZEnvC 427 (2010) 16 ELRNZ 174.

⁶ *Re Queenstown Lakes District Council* [2016] NZEnvC 25 at [8]-[9].



to stop a flood of applications under the current rules in an operative district plan, the local authority can apply for one or more specified rules, which are more restrictive than the status quo, to have immediate legal effect – see *Re New Plymouth District Council*⁷ (minimum subdivision lot sizes), *Re Thames-Coromandel District Council*⁸ (natural hazards) and *Re Palmerston North City Council*⁹ (versatile soils).

[9] In *Re Thames-Coromandel District Council* the Court noted the following themes from previous case law include some of the procedural and substantive matters that ought to be considered in assessing a section 86D application:

- (a) the nature and effect of the proposed changes by reference to the status quo;
- (b) the basis upon which it can be said that immediate legal effect is necessary to achieve the sustainable management purpose of the Act;
- (c) the spatial extent of the area/s which are to become subject to the proposed changes and/or the approximate number of properties potentially affected;
- (d) consultation (if any) that has been undertaken in relation to the proposed changes;
- (e) whether the application should be limited or publicly notified, including consideration of potential prejudice.

I will respectfully follow that list, although in my view consideration of (b) should come after (c) and d).

[14] I will consider the relevant factors identified in those cases in turn. No other factors strike me as particularly relevant.

Consideration

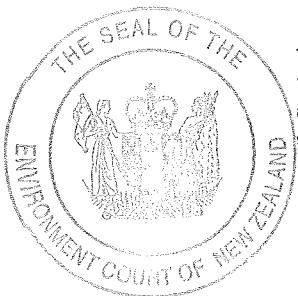
The strategic importance of the plan change in question

[15] Apparently there has been considerable public interest in making available urban land for housing especially at “affordable prices”. Mr Geddes advises the court that PC 21 will enable efficient development of land already zoned residential for housing.

Spatial extent of the area to be subject to the Plan Change

[16] The area covered by PC 21 is 27 hectares in northern Timaru is relatively small. There is a total of 28 landowners, so PC 21 does not have district wide implications except in relation to the important issue of assisting to increase the quantity of houses

⁷ *Re New Plymouth District Council* [2010] NZEnvC 427, (2010) 16 ELRNZ 174.
⁸ *Re Thames-Coromandel District Council* [2013] NZEnvC 292.
⁹ *Re Palmerston North City Council* [2015] NZEnvC 27.



supplied.

[17] Opportunity was given¹⁰ to the Brouchs Gully landowners to be involved in the background work by the Council leading up to PC 21. There have been two workshops for the landowners, and subsequently a hearing by the Council before its decision on 22 November 2016 to proceed with PC 21.

[18] There have also been five media articles between January and June 2016 reporting on the Brouchs Gully development proposal¹¹.

[19] It is unlikely that the 28 landowners will be surprised by the early effect of the Plan Change. The Council claims they will not be prejudiced but in a way some free-riders might be. It may be that some could get in early if the rules were not in effect and avoid making contributions to infrastructure costs. On the other hand that would be unfair to those who are slow off the mark and socially responsible.

Nature and effect of proposed changes by reference to the status

[20] At present subdivision is merely a controlled activity. Rules in PC 21 introduce an Outline Development Plan procedure, revised financial contribution rules and the extension of stormwater design standards to Brouchs Gully.

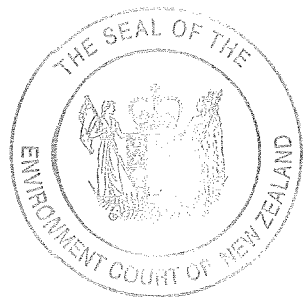
Ongoing subdivision pressure in areas subject to the proposed plan change

[21] In *Re Tasman District Council*¹² the court observed:

It is reasonable to anticipate that when a local authority proposes changes to a district plan which might be seen as potentially disadvantaging some parties (for example, by way of tightening of subdivision rules), those likely to be affected might seek resource consents under existing, less restrictive, rules. The likelihood of that happening would surely have been apparent to Parliament when it considered the changes to RMA now contained in ss 86A-86G RMA.

Notwithstanding that likelihood, Parliament brought down those amendments providing that, subject to limited exceptions, rules in a proposed plan would not have legal effect until parties who might be affected by those rules had the opportunity to make submissions on them and have their submissions heard and determined by the local authority.

¹⁰ M W Geddes affidavit dated 7 December 2016 at paras 66 to 74.
¹¹ M W Geddes affidavit dated 7 December at para 78.
¹² *Re Tasman District Council* [2011] NZEnvC 47 at [7]-[9].



Under those circumstances, I do not consider that the possibility that applications under existing rules might be made, of itself, will necessarily be the determinative factor in deciding an application pursuant to s86D. In my view, such an application requires a wider consideration of the purposes of any changes, their significance, the possible consequences of a *rush* of applications and the provisions of s5 RMA, rather than just consideration of the bare proposition that notification of changes is likely to generate applications for consent.

[22] In the 2015 *Re Palmerston North* case the court commented on the possibility of a “gold rush” of subdivision applications that might be generated once a Plan Change was notified. The court said¹³:

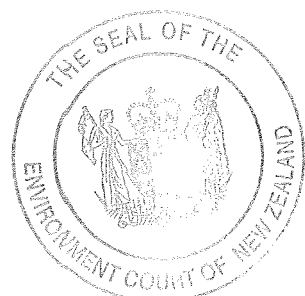
Considerations of this gold rush effect must inevitably be speculative to a certain extent and must be approached cautiously. In particular, such contentions must be assessed in the context that ss86A - 86G RMA show a clear intention on the part of Parliament that, as a matter of common practice, rules in a proposed plan are not to have legal effect until parties who might be affected by those rules have had the opportunity to make submissions on them and have their submissions heard and determined by the local authority.

I have had regard to the very helpful submission provided by Mr Jessen as to Parliament's intention in bringing down these provisions into RMA and particularly those relating to s86D. Mr Jessen provided a copy of the Ministry for the Environment's (MFE) Departmental Report to the Select Committee on the Resource Management Amendment Bill which specifically recognised the potential for the gold rush effect to take place. I consider that the key to considering this particular issue is the observation contained in the MFE Report that a gold rush on resources ... *could undermine the integrity of plans and lead to significant adverse effects on the environment and vulnerable resources ...*

[23] Mr Geddes expresses¹⁴ his concern at the potential for subdivision applications to be made in that period between public notification of the Plan Change and a decision on that Plan Change. He wrote¹⁵:

... This risk is that one or more future subdivision applications (as is potentially occurring with September 2016 application) will have a substantial effect on sustainably servicing the area. One application cutting across the Council's proposed road, or services network could result in fundamentally altering the proposed services layout, leading to a less sustainable outcome ...

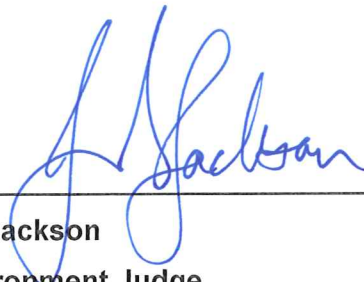
¹³ *Re Palmerston North City Council* [2015] NZEnvC 27 at paras [31]-[32].
¹⁴ M W Geddes affidavit dated 7 December 2016 at paras 49 to 60.
¹⁵ M W Geddes affidavit dated 7 December 2016 at 58.



Result

[24] In these circumstances I consider it is appropriate to make the orders sought.

[25] I observe that if the Council notifies PC 21 before Christmas it may well receive criticism for its timing. It may consider an appropriate way of ameliorating that issue is to extend the period in which submissions on PC 21 may be lodged.



J R Jackson
Environment Judge



**APPENDIX 5 – IWI MANAGEMENT PLAN OF KATI HUIRAPA FOR THE
AREA RAKAIA TO WAITAKI**

IWI MANAGEMENT PLAN
OF
KATI HUIRAPA

FOR THE AREA

RAKAIA TO WAITAKI

PART ONE - LAND, WATER AND AIR POLICIES

AROWHENUA

JULY 1992

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Sovereignty

- Our sovereignty extends over all things Maori, ratou taonga katoa
- The mahika kai is ours. We are the Treaty of Waitangi Takata Whenua*
- Governance of this land (Article One) by the Crown and other agents with authority delegated by the Crown is dependent on recognition and protection of Treaty rights (Article Two)
- It is the responsibility of the Crown and other agents with authority delegated by the Crown, to actively protect Treaty rights (Refer to Appendix D)
- The Takata whenua hereby called upon the government to observe, as a member of the United Nations, the principles adopted by United Nations Indigenous Peoples (Refer to Appendix II)

The Takata Whenua (people of the land) are Kai Tahu, Kati Mamoe, Rapuwai, Hawea Waitaha (Iwi). The hapu (sub tribe) is Kati Huirapa. The Tipuna Marae (ancestral marae) is located at Arowhenua. The District (Rohe) of Kati Huirapa extends over the area from the Rakaiia River to the Waitaki River.

The history of the land goes back to about 850 AD when, according to tradition, Rakaihautu came to Te Waipounamu (South Island) from Hawaiki in the canoe "Uruao". The canoe landed at the boulder bank Nelson. While his son Te Rakihouia took some of the party down the east coast, Rakaihautu led the remainder through the interior to Foveaux Strait. With his magic ko (digging stick) Rakaihautu dug the southern lakes (Te Kari Kari O Rakaihautu).

Te Rakihouia proceeded south in "Uruao" down the Canterbury Coast where he placed eel weirs at the mouths of the rivers. (The posts he left behind became known as Nga Pou Pou O Rakihouia.) The two parties met up at Waihao, then proceeded up the coast, making their headquarters at Akaroa.

Rakaihautu was buried at Wai Kakahi (near Lake Forsyth). Te Uruao lies as part of the Waitaki River bed near Wai Kakahi (near Glenavy).

Resource Management Act 1991

- The Crown and other agents with authority delegated by the Crown, consult with the Takata Whenua on all matters Maori as set out in the Resource Management Act (Refer to Appendix III) **Consultation**
- The Crown and other agents with authority delegated by the Crown, put into effect the provisions of the Resource Management Act which activity protect things Maori, ratou taonga katoa (Refer to Appendix IV) **Implementation**
- The Crown and other agents with authority delegated by the Crown, are called upon to consider and put into effect that which has been set out by the Planning Tribunal, the Law Courts, to actively protect things Maori, ratou taonga katoa (Refer to Appendix V) **Accountability**
- The Crown and other agents with authority delegated by the Crown are called upon to consider and put into effect that which ensures a fair and equitable partnership **Resources and Equity**
- The Takata Whenua call on all people, residents, visitors, to respect all living things in this land and act as guardians to ensure that future generations can also enjoy them. **Kaitiakitangi**

MAHIKA KAI

All land, forests, inland waters, coastal waters are wahi mahika kai, places where the Takata Whenua sought food, natural resources, Nga Hua o Te Whenua.

Nga Uri o Tangaroa

The children of Tangaroa

Nga Uri o Tane

The children of Tane

Who will speak out for our children, grandchildren, those yet to be born?
Who are the guardians of their inheritance?
Takata Whenua

The Takata whenua say clean up all rivers, lakes, all waterways, all coastal waters

- all sewage, all waste discharges out of the rivers, lakes, sea, all natural waters **discharge of contaminants**
- all waters be the highest classified standard of water quality, with no waste discharges
- no spraying of pesticides, any toxic chemicals in or near rivers, lakes, sea, all natural waters **Hazardous and toxic substances**
- no dumping of rubbish in or near rivers, lakes, sea, all natural waterways **Solid wastes**
- all rubbish, solid waste be removed from rivers, coastline, wetlands, all natural waterways
- all local authority waste disposal areas in wetlands, riverbeds and adjacent to rivers, lakes, coast, all natural waters, be phased out and relocated away from waterways, wetlands and coastal areas.
- No grazing animals in riverbeds, wetlands, or in the margins of coastal waters, creeks, streams, rivers, lakes, any natural waters **Grazing animals in and adjacent to natural waters**
- no dumping of wastes, dredgings, any contaminants, in coastal waters **Discharges from ships in coastal waters**
- all food taken from natural waters be fit for human consumption **Contamination of food**

The Takata whenua say restore the life supporting capacity of all natural waters and waterways

- all water be returned to the rivers **Abstractions, dams and diversion of water**
- water level of lakes, lagoons, wetlands, all natural waters be maintained at levels sufficiently high to sustain the life of these waters **Water levels**
- no more drainage of wetlands **Wetlands**
- passage for migrating fish be maintained in all rivers, coastal lagoons, all natural waterways **Fish passage**
- all river backwaters and outlets to drains, streams and springs be reinstated and maintained to ensure passage of fish
- no drains in mahika kai areas be cleaned without consulting the Takata Whenua first
- no outlets to rivers, lakes, streams, springs, lagoons, wetlands, any natural water be blocked or destroyed
- the natural rises and falls of flows in rivers be maintained **Storing and releasing water from dams**
- breeding areas for fish, birds, all species in waterways remain undisturbed **Breeding area**
- corridors of undisturbed vegetation be maintained along all rivers, and between rivers and forests, any areas of indigenous flora and habitats of indigenous fauna to maintain the seasonal migration and movement of birds, all creatures **Wildlife corridors**
- the restoration of existing wetlands and the construction of new wetlands be encouraged **Increasing area of wetlands**
- the protection and restoration of natural habitats be encouraged **Natural habitats**
- where plantings are required to protect the margins for farmland adjacent to rivers, local native species should be used to restore habitats and depleted natural areas **Planting native species**
- the planting of flax and other native species which are a source of traditional materials be encouraged
- people be encouraged to build and manage wetlands to treat wastes for irrigating land, providing the natural water quality in the ground and in springs and rivers downstream is not lowered

The Takata Whenua say that the hills and mountains, the sources of our life giving waters, remain protected by the natural native vegetation

- no burning of native vegetation **Burning**
and the effect that agri. burning can have on riparian and wetland area.
- no logging or clearance of native vegetation **Clearance of native vegetation**
- the higher slopes and peaks covered by snow in winter, be free of grazing animals **Grazing high altitude area**
- No scaring of the mountains with tracks and roads **Tracking**
- people be encouraged to enter into heritage covenants with suitable incentives and compensation where appropriate **Legal protection of heritage area**

The Takata Whenua say that all things which affect Maori land will be dealt with by Maori first and foremost

- the issue of rating ancestral lands for any reasons be resolved on the Marae **Rating Maori land**
- access to Mahika Kai adjacent to Maori reserves be maintained by the Crown, District Councils and the Regional Council, recognising the purpose of these reserves when land was taken by the Crown for European settlement **Fishing easements**
- access to Mahika Kai means access to water of sufficient quantity and quality to exercise traditional rights and customary uses

The Takata Whenua say that all discharges of harmful contaminants into air which threaten the life support capacity of air, land and water should cease

- all harmful contaminants removed from air discharges

The Takata Whenua say that the use, storage or transport of hazardous substances be controlled to ensure that they do not cause any damage to the natural environment or place the environment or people at risk from contamination

The Takata Whenua say that the use of any Maori place name in the local area be referred to the Takata whenua first

The Takata Whenua say that any proposal to disturb ground where there was or is traditional and customary use of ancestral lands, be referred to the Takata Whenua first

- if any bones or artefacts are disturbed, Tikanga Maori the runanga be contacted and Tikanga Maori observed

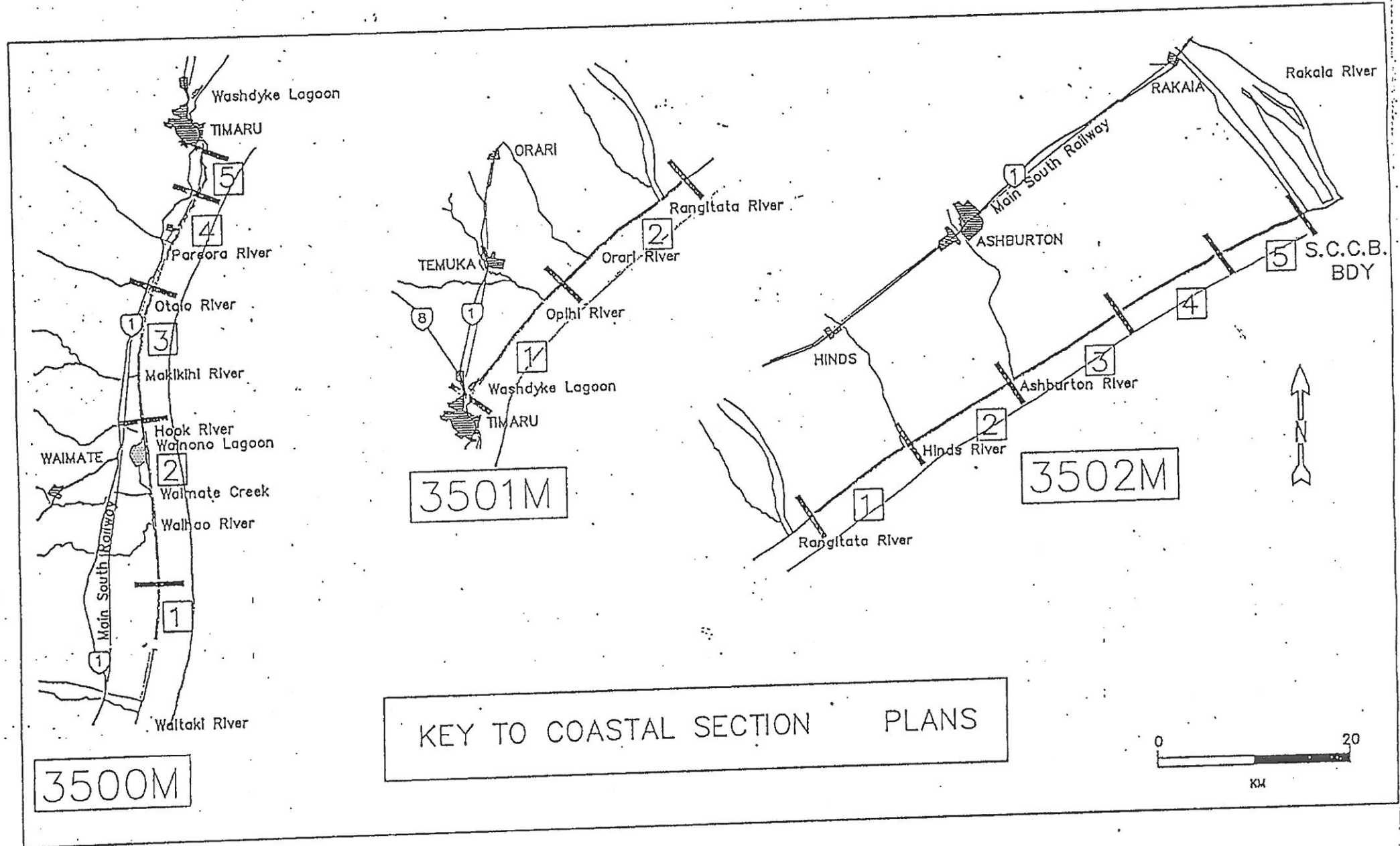
The Takata Whenua say that the management of Mahika Kai recognises and accounts for the traditional values and uses of resources by the Takata Whenua

- issues of use, control and ownership of mahika kai resources are resolved on the marae
- any management plans proposed be drafted in consultation with the Takata Whenua
- the taking of mahika kai ceases until it is proven that the quantity, type and size of resources taken is sustainable and does not prevent the exercise of traditional uses by the Takata Whenua
- traditional values include the recognition of rahui

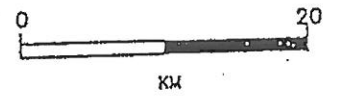
Maps

Record of sites for the protection and/or restoration of mahika kai in riverbeds, coastal areas, the margins of waterways, natural water, which is subject to Canterbury Regional Council Rules

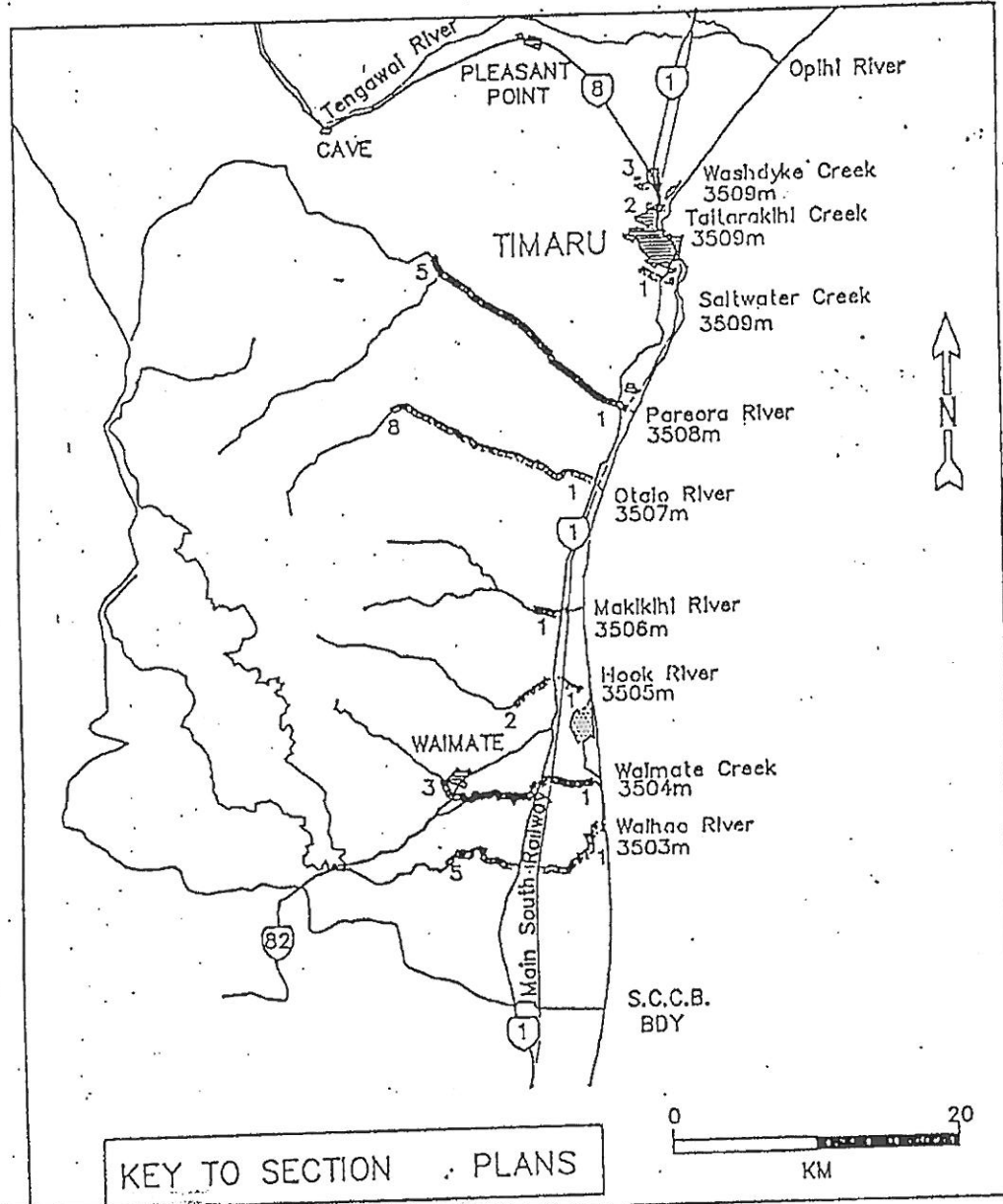
- traditional uses include the erection and use of eel weirs and other traditional means of taking mahika kai and the opening of river mouths
- seeding of shellfish (including freshwater shellfish), the protection of habitat and breeding areas
- restocking of coastal (kai moana) areas and the protection of habitat and breeding areas
- restocking of rivers, lakes, wetlands with indigenous fish and protection of habitat and breeding areas



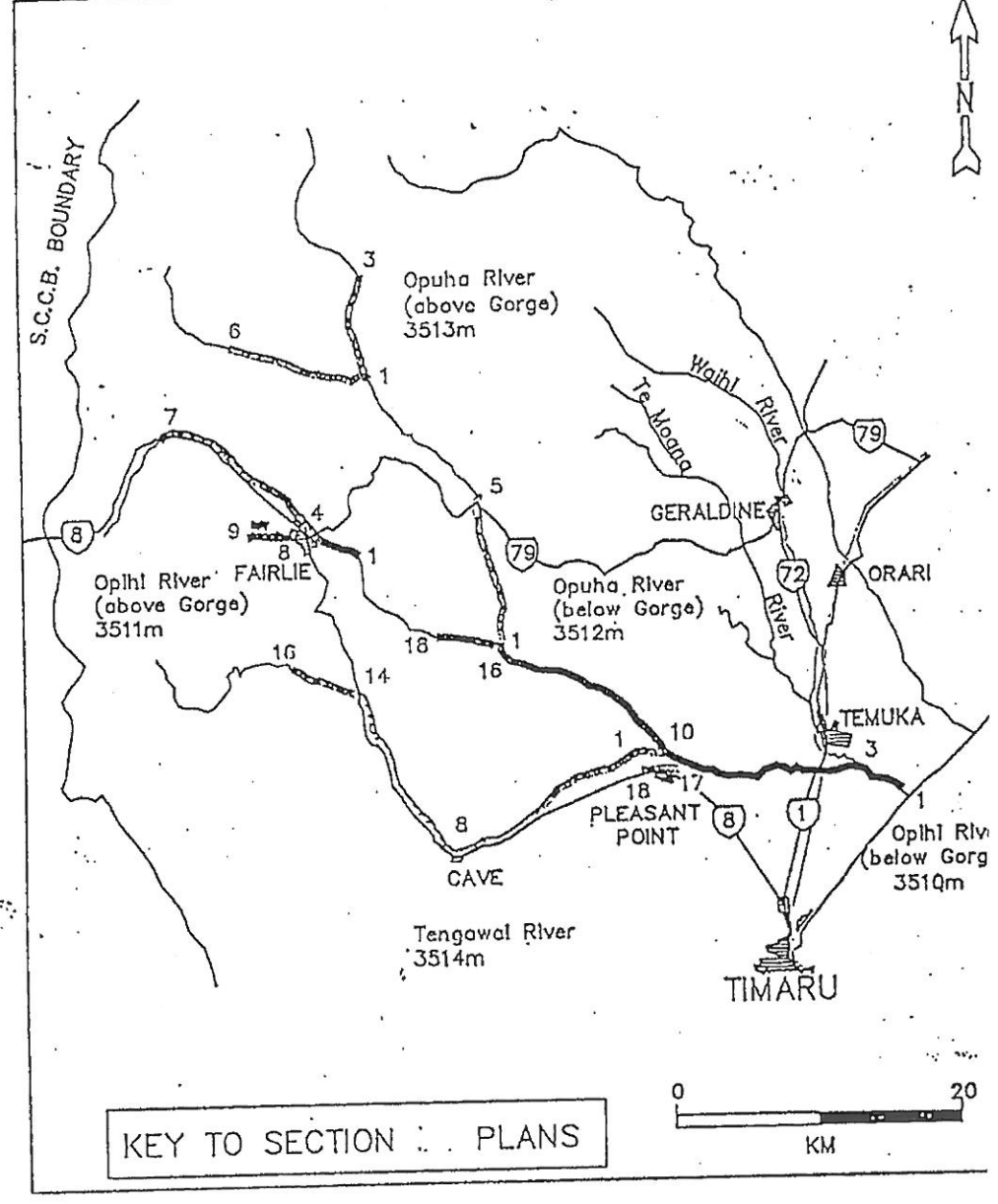
KEY TO COASTAL SECTION PLANS

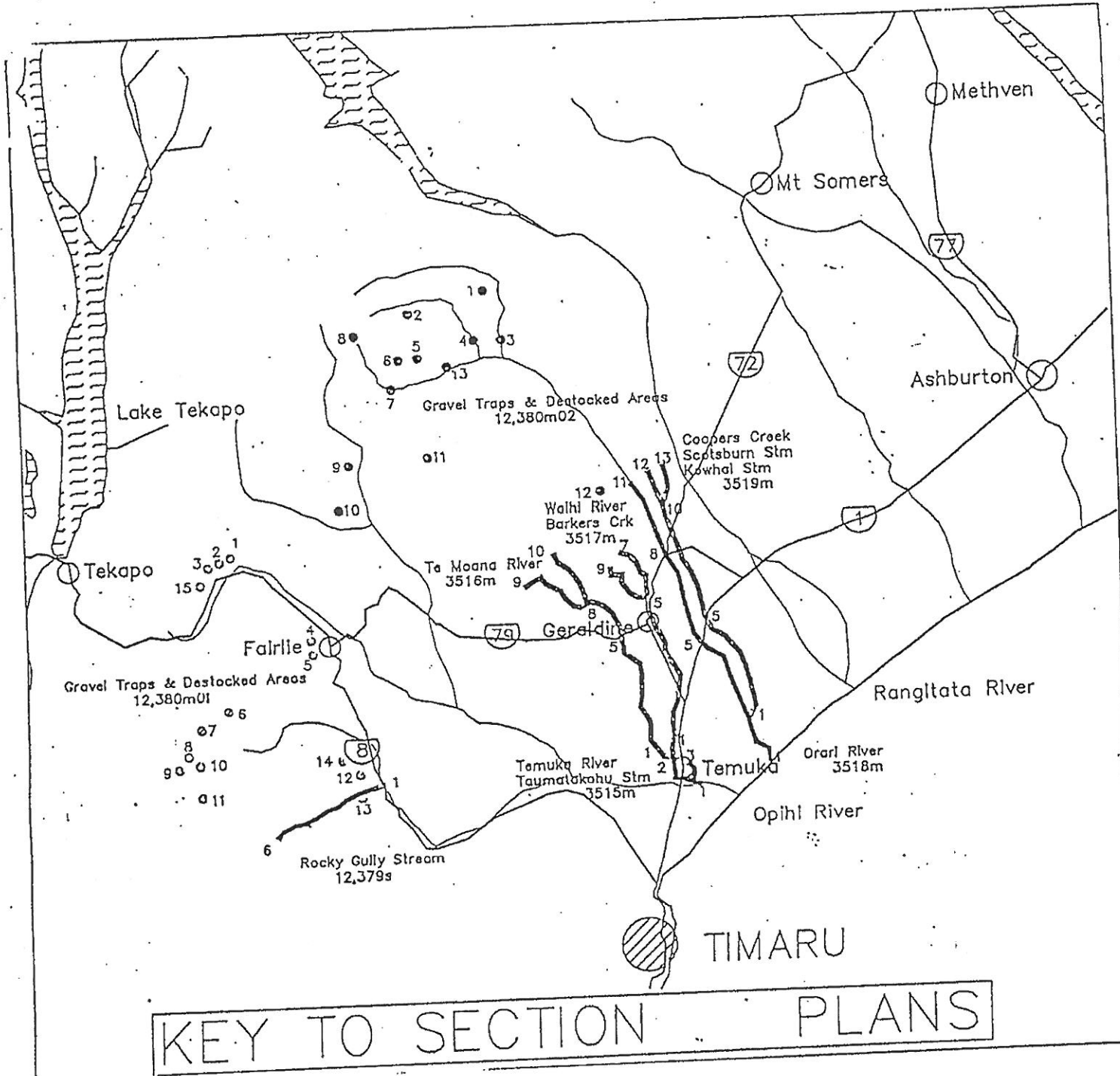


Part 1



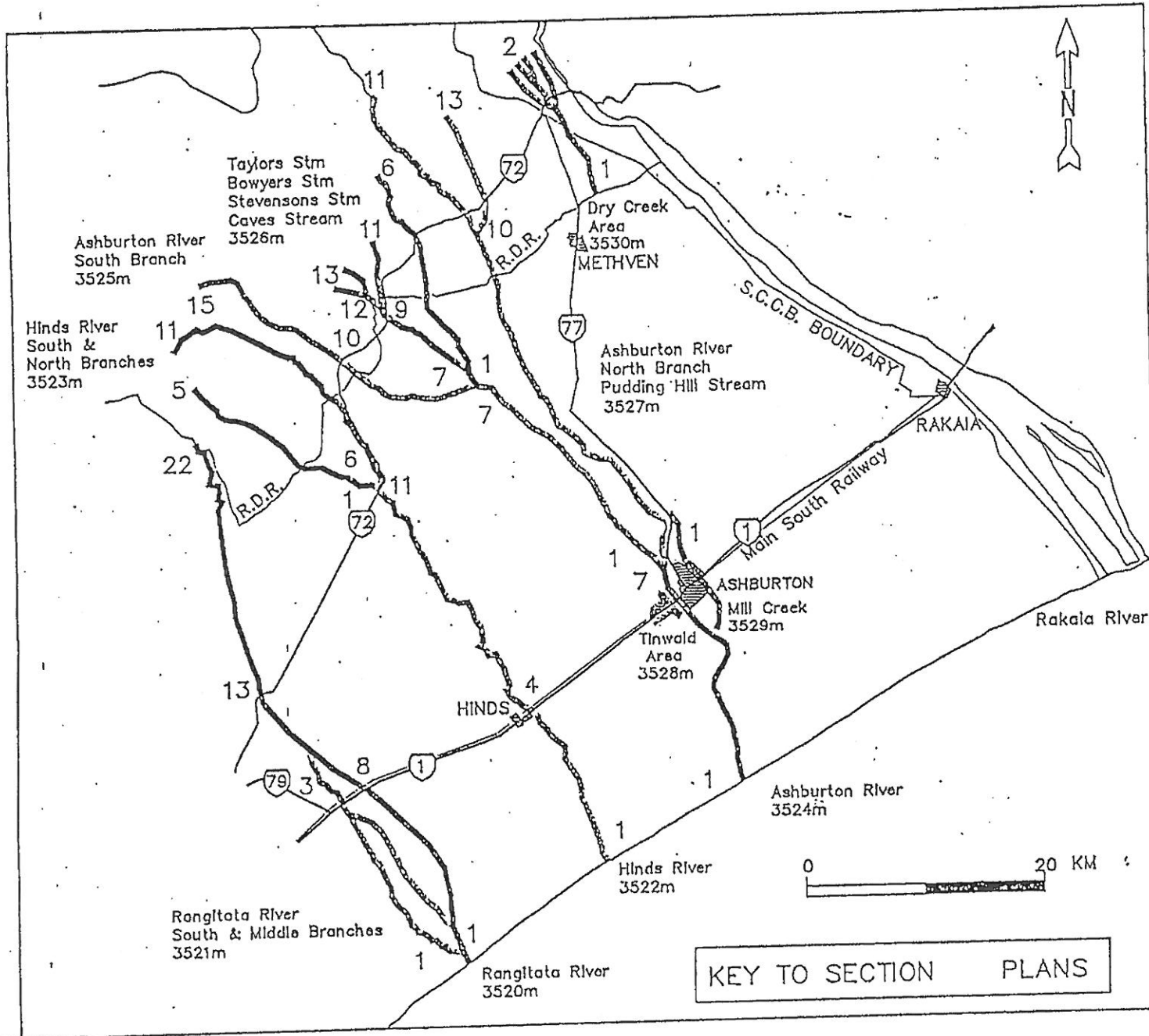
Part 1

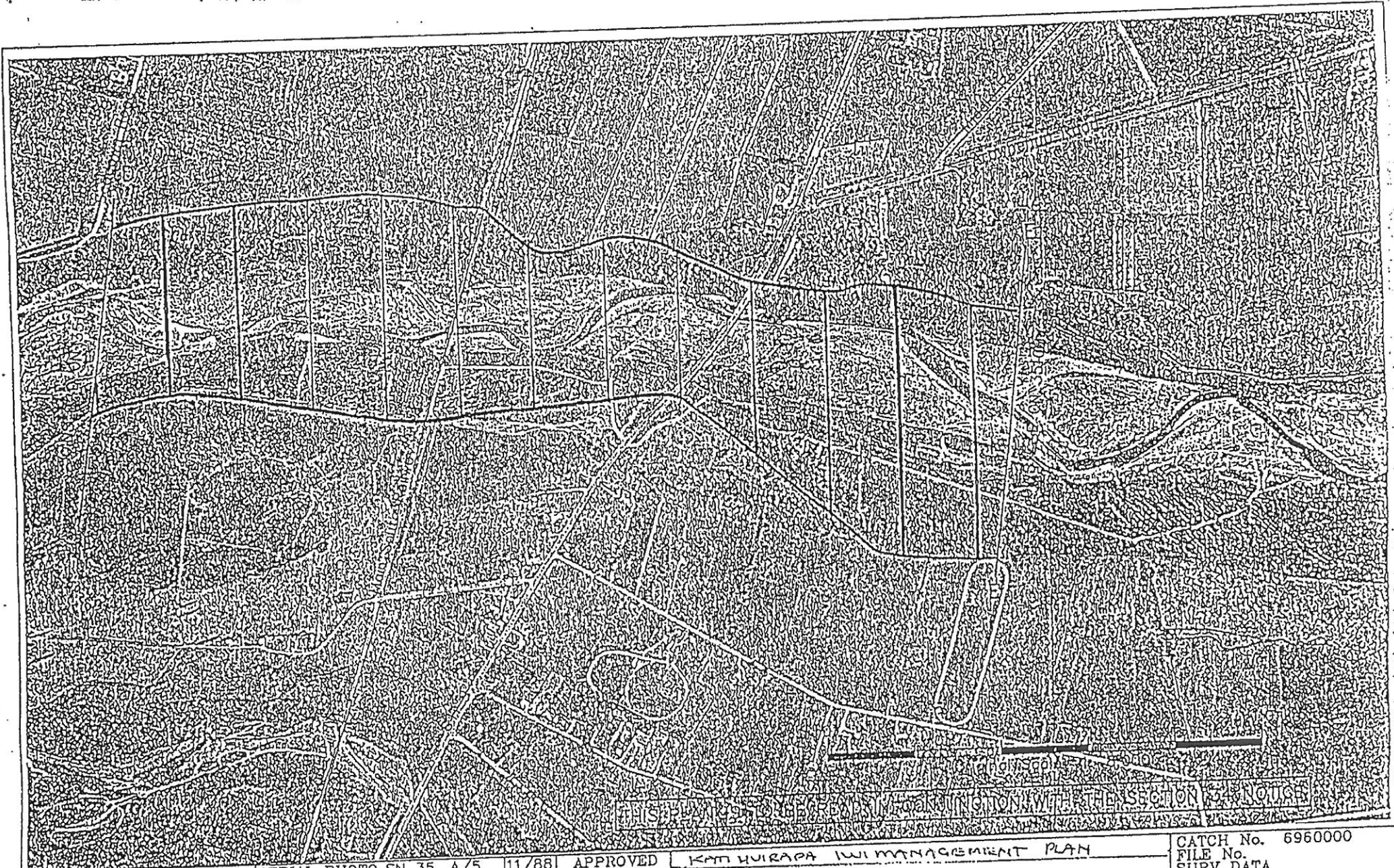




KEY TO SECTION PLANS

Part 3





THIS PLAN IS TO BE USED IN CONJUNCTION WITH THE SECTION 54 NOTICE

AMENDMENTS	AERIAL PHOTO SN 35, A/5	11/88	APPROVED	KAMUIRAPA IWI MANAGEMENT PLAN	CATCH No. 6960000
	BASE SHEET 10,202.004	11/88			
	SURVEYED			Ophi River	3510M/4
	DESIGNED	8/89		(below Gorge)	OF SHEETS
	COMPILED			ORIGINAL SCALE 1: 8,000	LEVEL DATUM
	CHECKED				
	RECOMMENDED				

PLAN ORIGIN COORDS
E
N

English Version of the Treaty's three articles

Article the first

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

Article the second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

Maori Version of the three articles

Ko te tuatahi

Ko nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarangi ake tonu atu te Kawanatanga katoa o o ratou wenua.

Ko te tuarua

Ko te Kuini o Ingarangi ka wakarite ka wakaae ki nga Rangatira ki nga hapu ki nga tangata katoa o Nu Tirani te tino Rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua - ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te tuatoru

Hei wakaritenga mai hoki teni mo te wakaatanga ki te Kawanatanga o te Kuini - Ka tiakina e te Kuini o Ingarangi nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikariga katoa rite tahi ki ana mea ki nga tangata o Ingarangi.

Translation of Maori Version (Professor Sir Hugh Kawharu)

The first

The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.

The second

The Queen of England agrees to protect the Chiefs, the Subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being appointed by the Queen as her purchase agent.

The third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand (i.e. the Maori) and will give them the same rights and duties of citizenship as the people of England.

Appendix II

Declaration of principles adopted by the United Nations Indigenous People's Preparatory Meeting held at Geneva, 27-31 July 1987

1. Indigenous nations and peoples have, in common with all humanity, the right to life, and to freedom from oppression, discrimination, and aggression.
2. All indigenous nations and peoples have the right to self-determination, by virtue of which they have the right to whatever degree of autonomy or self-government they choose. This includes the right to freely determine their political status, freely pursue their own economic, social, religious and cultural development, and determine their own membership, and/or citizenship, without external interference.
3. No State shall assert any jurisdiction over an indigenous nation and people, or its territory, except in accordance with the freely expressed wishes of the nation and people concerned.
4. Indigenous nations and peoples are entitled to the permanent control and enjoyment of their aboriginal ancestral-historical territories. This includes air space, surface and subsurface rights, inland and coastal waters, sea ice, renewable and non-renewable resources, and the economies based on these resources.
5. Rights to share and use land, subject to the underlying and inalienable title of the indigenous nation or people, may be granted by their free and informed consent, as evidenced in a valid treaty of agreement.
6. Discovery, conquest, settlement on a theory of *terra nullius* and unilateral legislation are never legitimate bases for States to claim or retain the territories of indigenous nations or peoples.
7. In cases where lands taken in violation of these principles have already been settled, the indigenous nation or people concerned is entitled to immediate restitution, including compensation for the loss of use, without extinction of original title. Indigenous peoples' right to regain possession and control of sacred sites must always be respected.
8. No State shall participate financially or militarily in the involuntary displacement of indigenous populations, or in the subsequent economic exploitation or military use of their territory.
9. The laws and customs of indigenous nations and peoples must be recognised by States' legislative, administrative and judicial institutions and, in cases of conflicts with State laws, shall take precedence.
10. No State shall deny an indigenous nation, community, or people residing within its borders the right to participate in the life of the State in whatever manner and to whatever degree they may choose. This includes the right to participate in other forms of collective action and expression.
11. Indigenous nations and peoples continue to own and control their material culture, including archaeological, historical and sacred sites, artefacts, designs, knowledge and works of art. They have the right to regain items of major cultural significance and, in all cases, to the return of the human remains of their ancestors for burial according with their traditions.
12. Indigenous nations and peoples have the right to education, and the control of education, and to conduct business with States in their own languages, and to establish their own educational institutions.
13. No technical, scientific or social investigations, including archaeological excavations, shall take place in relation to indigenous nations or people, or their lands, without prior authorisation, and their continuing ownership and control.
14. The religious practices of indigenous nations and peoples shall be fully respected and protected by the laws of States and by international law. Indigenous nations and peoples shall always enjoy unrestricted access to, and enjoyment of, sacred sites in accordance with their own laws and customs, including the right of privacy.
15. Indigenous nations and peoples are subjects of international law.
16. Treaties and other agreements freely made with indigenous nations or peoples shall be recognised and applied in the same manner and according to the same international laws and principles as treaties and agreements entered into with other States.
17. Disputes regarding the jurisdiction, territories and institutions of an indigenous nation or peoples are a proper concern of international law, and must be resolved by mutual agreement or valid treaty.
18. Indigenous nations and peoples may engage in self-defence against State actions in conflict with their right to self-determination.
19. Indigenous nations and peoples have the right freely to travel and to maintain economic, social, cultural and religious relations with each other across State borders.
20. In addition to these rights, indigenous nations and peoples are entitled to the enjoyment of all the human rights and fundamental freedoms enumerated in the International Bill of Human Rights and other United Nations instruments. In no circumstances shall they be subjected to adverse discrimination.
21. All indigenous nations and peoples have the right to their own traditional medicine, including the right to the protection of vital medicinal plants, animals and minerals. Indigenous nations and peoples also have the right to benefit from modern medical techniques and services on a basis equal to that of the general population of the States within which they are located. Furthermore, all indigenous nations and peoples have the right to determine, plan, implement and control the resources respecting health, housing, and other social services affecting them.
22. According to the right of self-determination, all indigenous nations and peoples shall not be obligated to participate in State military services, including armies, paramilitary or 'civil' organisations with military structures, within the country or in international conflicts.