**IN THE MATTER OF** Resource Management Act 1991

**AND**

**IN THE MATTER OF** Proposed Timaru District Plan

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# Decision Report – Part 1

## Background, Statutory Context, General Themes and General Submissions Across the Plan as a Whole

**DRAFT FOR TECHNICAL REVIEW**

**3 February 2026**

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# Part 1: Background, Statutory Context, General Themes and General Submissions Across the Plan as a Whole

**CONTENTS**

**Abbreviations used in the Decision Reports:**

| Abbreviation | Means |
|---|---|
| ABSD | Audible Bird Scaring Devices |
| ADP | Accidental Discovery Protocol |
| AEC | Te Rūnanga o Ngāi Tahu and Aoraki Environmental Consultancy |
| BPA | Long-Tailed Bat Habitat Protection Area |
| BP Oil et al | BP Oil NZ Ltd, Mobil Oil NZ Ltd, Z Energy Ltd [196] |
| CLWRP | Canterbury Land and Water Regional Plan |
| CRPS | Operative Canterbury Regional Policy Statement |
| DAP | Development Area Plan |
| DOC | Department of Conservation |
| ECan | Environment Canterbury/Canterbury Regional Council |
| ERP | Emissions Reduction Plan |
| FSA | Fish spawning area |
| GMS | Growth Management Strategy |
| GRUZ | General Rural Zone |
| HHA | Historic Heritage Area |
| HHI | Historic Heritage Item |
| HSNO | Hazardous Substances and New Organisms Act 1996 |
| HSWA | Health and Safety at Work Act 2015 |
| IMP | Iwi Management Plan |
| ITA | Integrated Transport Assessment |
| JWS | Joint Witness Statement |
| Kāti Huirapa | Kāti Huirapa o Arowhenua |
| LGOIMA | Local Government Official Information Act |
| LSA | Light Sensitive Area |
| LTP | Long Term Plan |
| MDP | Mackenzie District Plan |
| MFL | Milward Finlay Lobb |
| MHF | Major Hazardous Facilities |
| MoE | Ministry of Education |
| MPZ | Māori Purpose Zone |
| NAP | National Adaptation Plan |
| NES | National Environmental Standard |
| NES-AQ | National Environmental Standards for Air Quality |
| NES-CS | National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health |
| NES-DMRU | National Environmental Standards for Detached Minor Residential Units |
| NES-ETA | National Environmental Standards for Electricity Transmission Activities |
| NES-F | National Environmental Standards for Freshwater |
| NES-PF | National Environmental Standards for Plantation Forestry |
| NES-SDW | National Environmental Standards for Sources of Drinking Water |
| NES-TF | National Environmental Standards for Telecommunication Facilities |
| NPS | National Planning Standard |
| NPS-EN | National Policy Statement for Electricity Networks Amendment |
| NPS-ET | National Policy Statement on Electricity Transmission |

| Abbreviation | Means |
|---|---|
| NPS-FM | National Policy Statement for Freshwater Management |
| NPS-HPL | National Policy Statement for Highly Productive Land |
| NPS-I | National Policy Statement for Infrastructure |
| NPS-IB | National Policy Statement for Indigenous Biodiversity |
| NPS-NH | National Policy Statement for Natural Hazards |
| NPS-REG | National Policy Statement for Renewable Electricity Generation |
| NPS-UD | National Policy Statement on Urban Development |
| NTCSA | Ngāi Tahu Claims Settlement Act 1998 |
| NZAAA | New Zealand Agricultural Aviation Association |
| NZMCA | New Zealand Motor Caravan Association Inc |
| NZCPS | New Zealand Coastal Policy Statement |
| ONC | Outstanding Natural Character |
| ONF | Outstanding Natural Feature |
| ONL | Outstanding Natural Landscape |
| Operative Plan or ODP | Operative Timaru District Plan |
| OSRZ | Open Space and Recreation Zones |
| PCL | Public Conservation Land |
| Plan or Proposed Plan | Proposed Timaru District Plan |
| PORTZ | Port Zone |
| RLZ | Rural Lifestyle Zone |
| RMA | Resource Management Act 1991 |
| Rooney Group | Rooney Holdings [174], Rooney GJH [191], Rooney Group [249], Rooney Farms [250], Rooney Earthmoving [251], TDL [252]. |
| RPA | River Protection Area |
| RSI | Regionally Significant Infrastructure |
| SASM | Sites and Areas of Significance to Māori |
| SH1 | State Highway 1 |
| SCCC | South Canterbury Car Club Inc |
| SQEP | Suitably Qualified and Experienced Practitioner |
| TDC or the Council | Timaru District Council / territorial authority |
| The Telcos | Connexa, Spark, Chorus, and Vodafone |
| VKTs | Vehicle Kilometres Travelled |
| WCO | Water Conservation (Rangitata River) Order 2006 |

**Appendices referred to in the Decision Reports:**

**Appendix 1:** Coastal Environment and Natural Hazards Renumbering
**Appendix 2:** Amendments to Planning Maps as a result of Decisions
**Appendix 3:** Amendments to Provisions (Decision Version)
**Appendix 4**: Panel Site Visits Undertaken
**Appendix 5**: Legal Submissions of Counsel for the Timaru District Council, 30 April 2024, and Annexure 1

# 1 DECISION OVERVIEW - PURPOSE AND STRUCTURE OF REPORT

[1] This Decision Report (the Report) has been prepared by the Hearings Panel appointed by the Timaru District Council (TDC/the Council) to hear and make decisions on the provisions of the Proposed Plan and matters raised in submissions.[1] The Report, comprising 10 parts as described below, records our decisions following hearings that took place in Timaru and online, during the period from 8 May 2024 to 2 October 2025.

[2] The Report comprises the following parts:

(a) Part 1 – Background, Statutory Context, General Themes and General Submissions across the plan as a whole

(b) Part 2 – District Plan Introduction and General Provisions, General Definitions, Strategic Directions and Urban Form and Development

(c) Part 3 – Rural Zones, Urban Zones, Māori Purpose Zone, Open Space Zones

(d) Part 4 – Ecosystems and Indigenous Biodiversity, Natural Character and Natural Features and Landscapes, Coastal Environment

(e) Part 5 – Energy and Infrastructure, Stormwater Management, Transport, Subdivision, Development Areas, and Financial Contributions

(f) Part 6 – Sites of and Areas of Significance to Māori, Historic Heritage, Notable Trees

(g) Part 7 – Activities on the Surface of Water, Earthworks, Light, Noise, Signs, Temporary Activities, Relocated Buildings and Shipping Containers, Highly Productive Land and Public Access

(h) Part 8 – Natural Hazards, and Drinking Water Protection, Contaminated Land and Hazardous Substances

(i) Part 9 – Designations

(j) Part 10 – Future Development Areas and Requests for Rezoning for Growth

(k) Part 11 – Appendices, including Plan Provisions

[3] Definitions and Planning Map changes are addressed in each part as they relate to the relevant part of the Report.

[4] Part 1 is to be read with, and forms part of, the decisions made in Parts 2 to 10. Parts 2-10 of the Report contain decisions on submissions as they were grouped for hearing purposes and in s42A Reports.[2] We have structured each part of the Report to follow the s42A Reports as far as practical. To avoid duplication of decisions and reasoning we have used cross referencing wherever practical. Our 'decision' encompasses the whole of the Report.

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1 RMA, Schedule 1, clause 10

2 We have taken this approach so that our decisions follow the topics as they were addressed in the s42A Reports for each hearing schedule.

[5] There are numerous provisions throughout the Proposed Plan which were either not submitted on, or where the only submissions on them were in support. We have accepted those provisions in **Appendix 3**. We do not discuss them further in this Decision Report.

# 2 PART 1 - BACKGROUND, STATUTORY CONTEXT, GENERAL THEMES AND GENERAL SUBMISSIONS ACROSS THE PLAN AS A WHOLE

## 2.1 BACKGROUND

### 2.1.1 Notification of the Proposed Plan and Submissions

*Notification of the proposed plan*

[6] The proposed plan was publicly notified on 22 September 2022. The Council published reports and background materials on its website.[3]

*Summary of submissions*

[7] In response to public notification of the Proposed Plan, 255 primary submissions were received. The Council summarised the primary submissions and notified these, calling for further submissions. Ninety-five further submissions were received. Due to errors identified in the summary of submissions, the summary was renotified on 4 March 2024, and 15 additional further submissions were received in response. Prior to the hearing, other errors were identified, a number of omitted submission points were notified, and further submissions called for. A further 25 late submissions were accepted for processing prior to hearings taking place. During the hearings, another 2 late further submissions were accepted to address potential issues of fairness.[4]

[8] A full list of submitters and further submitters (hereafter referred to as 'submitters'/ 'submissions') is available on Council's website.[5] In each part of the Report, we have referred to some submissions and not others. This does not diminish the significance of all submissions; we have simply referred to submissions which are representative of issues raised or where the submitter attended the hearing and contested or supported the plan provisions. We have however considered all submissions. We have adopted the practice of the s42A Report authors by referring to relevant submission points inclusive of the related further submission.[6]

3 https://www.timaru.govt.nz/services/planning/district-plan/proposed-district-plan

4 For example, where submissions requested the listing of heritage buildings and the owner belatedly requested to join the hearings, or, in the case of a submission from Environment Canterbury seeking an extension of the flood area assessment overlay, without an accompanying map, the Panel directed further notification of the submission point to allow landowners to participate.

5 https://www.timaru.govt.nz/services/planning/district-plan/proposed-district-plan

6 See for example, as is referenced in the s42A Report Hearing A, Andrew Willis, 8 May 2024, paragraph 26.

*Out of scope submissions*

[9] We have taken a generous approach to the scope of submissions given the number of lay submissions and the fact this is a whole-of-plan review. The exception is where s42A authors recommended excluding submissions that were incomplete or raised matters that were not relevant to a District Plan review under the RMA. For example, a number of submissions were focussed on matters that related to the TDC's broader local government responsibilities under the Local Government Act 2004, or other legislation, rather than its functions under the RMA. We have accepted the s42A author recommendations to reject those submissions on grounds of being out of scope. We have however addressed in further detail the scope of some submissions where submitters changed their position during the hearing, where this raised issues of fairness.

### 2.1.2 Panel Members and Register of Interests

[10] By Council delegation[7] an Independent Hearing Panel (the Panel) comprising six members was established to hear and decide submissions on the Proposed Plan. The members were as follows:

(a) Cindy Robinson (Chair)

(b) Rosalind Day–Cleavin (Deputy Chair)

(c) Megen McKay

(d) Raewyn Solomon

(e) Jane Whyte

(f) Stacey Scott

[11] Panel profiles were published on the Council's Proposed Plan website.[8] The Panel members sat in groups of 3-6 members for each hearing. A quorum for each hearing was established subject to Panel availability and recusal where conflicts of interest arose. Panel members attended the hearings in person except that during Hearing H, Commissioner Solomon attended remotely. Hearing I was held online. Panel deliberations were conducted in person and online.

[12] Prior to our appointment we made disclosures of actual and potential conflicts of interest, and during the hearing process we made a number of disclosures of potential conflicts as Panel members became aware of them. A Register of Interests was maintained throughout the hearings, along with a record of the procedural outcomes for each matter disclosed. The Register is available on the Proposed Plan website.[9]

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7 Delegation reference Resolution 2024/51

8 https://www.timaru.govt.nz/services/planning/district-plan/proposed-district-plan/hearings-information/meet-the-panel

9 https://www.timaru.govt.nz/__data/assets/pdf_file/0010/1067158/Conflicts-Register-21.10.2025-final.pdf

### 2.1.3 Hearing Procedures

[13] Prior to the hearings commencing, the Panel[10] issued a Minute recording procedural directions for the hearing process. The initial directions were subsequently updated[11], and were adjusted throughout the hearing processes to best accommodate participant availability, and changes in the hearing schedule. Copies of all procedural directions are available on the website.[12]

[14] The Panel conducted a public excluded hearing session on 2 September 2025 with representatives of mana whenua, to hear about and view culturally sensitive information available on the Arowhenua Heritage Viewer that is not publicly available. We issued directions for that purpose in accordance with s42 of the RMA. Our reasons are recorded in Minutes.[13]

[15] Throughout the hearing the Panel made a number of directions for expert witness conferencing. This resulted in several joint witness statements (JWS) being filed. We have considered the JWSs in our deliberations.

[16] We made directions requiring the renotification of a submission from Environment Canterbury [183.28], that sought to extend a 'flooding assessment overlay' based on updated modelling data. There was no map included with the submitter's request, but the mapping was provided in evidence. The Panel issued directions requiring the renotification of the submission, with the accompanying mapping, and invited further submissions.[14] Those further submissions were considered at a hearing conducted online.[15]

### 2.1.4 Site Visits

[17] The Panel undertook a number of site visits across the district prior to and during the hearings. We observed individual properties from publicly accessible areas. In the case of SASM 8 and 9, the Panel conducted on-farm site visits. A list of all site visits undertaken is included in **Appendix 4**.

### 2.1.5 Appearances at the Hearings

*The Council Role and Approach*

[18] The Council, as proponent of the Proposed Plan, appeared throughout the hearing process. The Council was represented by legal counsel Ms Vella who presented legal submissions at the commencement of each scheduled hearing and assisted throughout the hearing process in clarifying matters of law and co-ordinating responses from Council witnesses.

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10 Minute 6
11 Minute 13 and in subsequent minutes issued in relation to scheduled hearing stages.
12 https://www.timaru.govt.nz/services/planning/district-plan/proposed-district-plan/hearings-information/hearings-procedures-and-minutes
13 Minute 7 and Minute 24, paragraph 13-14.
14 See Minute 38, and Andrew Willis s42A Report, Natural Hazards Chapter- Changes to the Flood Assessment Area Overlay, 2 September 2025.
15 Hearing I, 2 October 2025.

[19] Prior to each hearing the Council commissioned reports under RMA s42A, from various planning experts (s42A authors) who were either employed by Council or were consultants. Those reports summarised the issues arising from submissions and collated background materials and further technical reports from subject experts. Each s42A author set out the issues for each topic and made recommendations on changes to the Plan in response to matters raised in submissions.

[20] Each s42A Report also addressed any issues relating to the scope of submissions, and any minor or consequential changes to provisions to correct errors or inconsistencies that could be undertaken in reliance on RMA, Schedule 1, cl 10(2)(b) and 16(2). Each s42A Report included an appendix with a table of all submissions and a recommendation to accept or reject each submission point (accept/reject tables). The Panel is not required to issue a decision on individual submissions and has instead grouped our decisions based on provisions and issues as they had been grouped by s42A authors. We have not included an updated whole-of-plan 'accept/reject' table as part of our decision.

[21] S42A Reports were pre-circulated before each scheduled hearing, before submitters were required to provide their evidence. Immediately prior to each hearing the s42A authors circulated summary statements, which included any changes to their recommendations arising from submitter evidence.

[22] We then adopted a practice where following each scheduled hearing the Panel would issue a Minute with a collation of matters that had arisen during the hearing and invited s42A authors, and in some cases, legal counsel, to provide an Interim Reply to the issues for that hearing. Because all matters we heard are interrelated, we found this process of 'Interim Reply' to be invaluable in 'sieving out' the remaining issues and differences of opinion between s42A authors and submitters.

[23] S42A authors were also provided an opportunity for a Final Reply after the conclusion of hearings and provided the Panel with a revised 'Final Reply' version of plan provisions. This was later updated to address a number of consistency and drafting corrections.[16] In our decisions we have tracked changes onto the Final Reply Version as at 10 October 2025. The 'Decision Version' of provisions is attached in **Appendix 3**.

[24] A number of technical experts provided evidence for the Council. Their reports were appended to the s42A Report. A full list of Council witnesses is available on Council's website.[17]

[25] The Panel is not bound by the recommendations of s42A authors, and their evidence was subject to the same scrutiny as that of all experts in our deliberations.

[16] Final Reply Version dated 10 October 2025
[17] https://www.timaru.govt.nz/services/planning/district-plan/proposed-district-plan

*Submitter Presentations and Evidence*

[26] A number of submitters appeared in person at the hearings or were represented by legal counsel. Some submitters also called expert witnesses to support their submission points.

[27] The Council also made a submission on the Plan to address a number of corrections and changes for reasons arising after notification.

[28] A full list of submitters who attended hearings, and their witnesses, and evidence received is available on Council's website.[18]

# 3 STATUTORY FRAMEWORK

## 3.1 RMA SECTIONS 32, 74-76

[29] Ms Vella set out the statutory requirements for making decisions on a plan.[19] We received similar legal submissions from submitters' legal counsel. There was no real dispute as to the relevant provisions of the RMA that guide decision making for a whole-of-plan review. We adopt Ms Vella's summary of the legal requirements as being in accordance with our understanding of the law. For reference we have included Ms Vella's summary and annexure in **Appendix 5**.

[30] Key to our decision making is that our decisions on matters raised in submissions and the provisions must implement or give consideration to a number of higher order statutory documents, such as National Policy Statements, National Planning Standards, Regulations, the RPS, Regional and adjoining District Plans, Iwi Management Plans and other strategies identified in the RMA.[20]

[31] Since the Proposed Plan and the evaluation reports under RMA s32 were prepared by the Council, three NPSs came into force or were amended (as we have addressed below, ten further new and amended instruments came into effect prior to our decision being issued.) In terms of the changes that followed preparation of the Proposed Plan, the National Policy Statement on Indigenous Biodiversity 2023 (NPS-IB), the National Policy Statement on Highly Productive Land 2022 (NPS-HPL), and the National Policy Statement on Urban Development 2020 (amended 2022) (NPS-UD) were relevant to our considerations during the hearings.

[32] The Council's position is that because the Proposed Plan was prepared prior to publication of these instruments, the Proposed Plan has not attempted to fully give effect to them. Ms Vella submitted that how they are to be given effect to will depend on their specific provisions. Her view was that unless a direction is given to amend a plan without using a Schedule 1 process, a full Schedule 1 process will be required to fully give effect to the NPS. Each of those instruments set out timeframes for doing so. The Council position was that there

[18] https://www.timaru.govt.nz/services/planning/district-plan/proposed-district-plan
[19] Legal Submissions of Counsel for the Timaru District Council, 30 April 2024, paragraphs 19 – 23, and Annexure 1.
[20] RMA, s74 and, 75(3) and (4)

is no legal imperative to fully give effect to the NPSs through this plan review and accordingly a full s32 evaluation of the Proposed Plan in relation to the NPSs has not been undertaken.[21]

[33] There were different views expressed by some submitters as to the weight, or extent to which a particular newly updated or notified NPS should be given effect to. This was an issue for the NPS-IB, where some submitters, such as Forest and Bird [156], sought to implement the draft NPS-IB which was publicly available at the time submissions were made on the Proposed Plan, and therefore argued that because some of the draft provisions were carried over to the operative gazetted NPS-IB, there was scope for the Panel to implement the NPS-IB in this hearing process. Another issue arose in relation to the NPS-HPL, where that NPS was notified immediately prior to submissions closing, so that submitters could have, and some did, seek that the Proposed Plan give effect to its provisions. On the other hand, during the hearing process the Government announced proposals to change the NPS-HPL to remove class 3 soils from the definition of highly productive land. Some submitters requested that we give effect 'in anticipation' to the signalled change. We did not and instead we considered whether the gazetted changes affect the submissions made.

[34] During the hearing process the Government also passed the Resource Management (Consenting and Other System Changes) Amendment Act 2025. As a consequence of the amendment the obligations for Regional Councils to map Highly Productive Land in a Regional Policy Statement were suspended.[22]

[35] On 15 December 2025, prior to the Panel concluding deliberations, the Government released ten new or amendment national direction instruments which were relevant to our decision making and came into effect on 15 January 2026. These included:

(a) Resource Management (National Environmental Standards for Detached Minor Residential Units) Regulations 2025 (NES-DMRU) (new);

(b) National Policy Statement for Natural Hazards 2025 (NPS-NH) (new);

(c) National Policy Statement for Highly Productive Land Amendment 2025 (amended NPS-HPL);

(d) New Zealand Coastal Policy Statement Amendment 2025 (amended NZCPS);

(e) National Policy Statement for Indigenous Biodiversity Amendment 2025 (amended NPS-IB);

(f) National Policy Statement for Freshwater Management Amendment 2025 (amended NPS-FM);

(g) Resource Management (National Environmental Standards for Freshwater) Amendment Regulations 2025 (amended NES-F);

(h) National Policy Statement for Infrastructure 2025 (NPS-I) (new);

[21] Legal Submissions of Counsel for Timaru District Council, 30 April 2024, paragraph 24-27 Legal submissions of Counsel on behalf of Timaru District Council – Hearing D (4 November 2024), at [11] – [28].
[22] Resource Management (Consenting and Other System Changes) Amendment Act 2025 Subpart 5B

(i) National Policy Statement for Renewable Electricity Generation Amendment 2025 (amended NPS-REG); and

(j) National Policy Statement for Electricity Networks Amendment 2025 (amended NPS-EN).

[36] On 23 December 2025, the Panel issued Minute 50 requesting advice from Council as to consequences, if any, for this process, including recommendations from s42A authors and on our decision-making timeline.

[37] The Council responded on 20 January 2026. The Council maintained its position with regard to giving effect to National Policy Statements that were amended and came into effect after notification of the Proposed Plan.[23]

[38] We have considered the Council's initial legal submissions provided in Hearings A, D and G, in the context of the specific National Policy Statements, when they arise in each subsequent Part of the Decision Report.

[39] In the context of the most recent suite of national policy statement changes, the Council view is the same principles apply and that we should ask ourselves whether there is scope within the submissions before us (this is a fundamental fairness issue), whether the amendments or new provisions must be applied now (timing) and if there is no issue of timing, should we on merit of specific circumstances.

[40] In relation to the new and amended National Environmental Standards, which are regulations under the RMA, there are requirements in s44A to remove duplication or conflict with NESs. The RMA directs these steps of Council and is not dependent on a Schedule 1 process to implement. The Council considered this is a task it will undertake and may identify any inconsistencies or duplicative provisions as part of its review of our Draft Decision.

[41] The Panel issued further directions in Minute 51 to enable submitters the opportunity to comment if they held a different view.

[42] In response the Panel received two Memoranda, one from ECan, supporting the Council's approach[24], and a from PrimePort and TDHL[25], confirming that in the absence of any changes to s42A author recommendations they accepted the approach.

[43] Having considered the responses, the Panel determined that we should apply the same approach to the new national direction as indicated in Council legal submissions, as summarised in [40] and [41] above. We do so in the context within which they arise in each part of the Decision Report.

[23] Legal submissions of Counsel on behalf of Timaru District Council Hearing A (30 April 2024), at [24] – [27] and Legal submissions of Counsel on behalf of Timaru District Council – Hearing D (4 November 2024), at [11] – [28].

[24] Response by Rachel Tutty on behalf of Canterbury Regional Council to Minute 50 and 51, 28 January 2026.

[25] Memorandum of Counsel for PrimePort and TDHL in response to Minute 50, 28 January 2026.

### 3.2 SECTION 32AA FURTHER EVALUATIONS

[44] For any changes to the plan provisions that we have decided to make in response to submissions that differ from the notified Proposed Plan, we are required to undertake and record a further evaluation under s32AA. That further evaluation requires a proportionate re-evaluation in accordance with s32(1)-(4) to support each change.

[45] In each case where a s42A author (or a planning expert giving evidence for a submitter) has recommended a change to a provision, they provided a s32AA further evaluation to support the recommended change either in their evidence in chief or in supplementary statements in response to Panel directions. Our approach to the s32AA further evaluation is that where we have accepted the s42A author recommendations, or the request of a submitter which is supported by a s32AA evaluation, we have generally adopted their s32AA evaluations upon satisfying ourselves that their recommendations are the most appropriate option for achieving the purpose of the RMA, the relevant provisions of the District Plan and for giving effect to other relevant statutory instruments.

[46] Where we differ from a s42A author or expert planning witness s32AA recommendation or disagree with their s32AA conclusions, we have undertaken our own s32AA assessment at a level of detail that corresponds to the scale and significance of any changes. In that case we have undertaken the necessary evaluation and recorded the outcome in the relevant part of the Report.

### 3.3 AMENDMENTS TO PROVISIONS

[47] The Hearing Panel's amendments to the notified provisions are set out in **Appendix 3** (the Decision Version). Amendments recommended by s42A authors in the Final Reply version that have been adopted by the Hearing Panel are shown in ~~strike out~~ and underlining. Further or different amendments made by the Hearing Panel as a result of decisions are shown as ~~strike out~~ and underlining with green highlighting. Amendments to the Proposed Planning Maps are shown in **Appendix 2.**

[48] It is also our expectation that where the provisions show a hyperlink to another provision within the Plan, or an external document, the Council will action these as part of the updating of the EPlan format in due course relying on its powers in Schedule 1, cl16(2).

[49] Where notified provisions either attracted no submissions or only submissions in support, the Panel has accepted these as part of our decisions, as recommended by s42A authors, and we have not discussed these matters further.

## 4 GENERAL THEMES

[50] Throughout the hearings there were a number of themes that emerged that were relevant to a number of submission points and chapters in the Proposed Plan. To avoid undue repetition, we have recorded those general themes and our response to them in this part of the Report. The following general issues are addressed:

(a) Role of mana whenua;

(b) The effect of the Plan provisions on private property rights, property values and existing use rights;

(c) The structure of the Plan; and

(d) Across Plan submissions.

## 4.1 ROLE OF MANA WHENUA

[51] We received cultural evidence from Mr Henry, Kaitiaki, Kāti Huirapa o Arowhenua, a cultural advisor employed by Aoraki Environmental Consulting Limited (AEC).[26] We accept the evidence of Mr Henry that the hapū who hold mana whenua in Timaru District are Kāti Huirapa. The rohe of Kāti Huirapa extends over the area from the Rakaia River in the north to the Waitaki River in the south, and from the east coast to the main divide. Today, Kāti Huirapa is centred around the tipuna marae of Arowhenua.[27]

[52] Kāti Huirapa are one of eighteen Papatipu Rūnaka of Te Rūnanga o Ngāi Tahu. Te Rūnanga o Ngāi Tahu is the mandated iwi authority for Kāi Tahu whānui and was established by the Te Rūnanga o Ngāi Tahu Act 1996. Within Kai Tahu whānui, Papatipu Rūnaka are representative bodies of the whānau and hapū of traditional marae-based communities.[28]

[53] The identity of Kāti Huirapa within the Timaru District and their values and interests are set out in the Mana Whenua Chapter of the Proposed Plan, which we discuss in Part 2 of the Report. In this section we discuss the relationship and responsibilities between the Council and Kāti Huirapa during the process of the development of the Plan and the ongoing rights and responsibilities in the administration of the Plan.

[54] We have found it necessary to set out our understanding and findings in relation to the roles and responsibilities of mana whenua because a group of submitters known as the 'Limestone Group'[29], expressed concerns about perceptions of conflicts of interest with regard to the identification of the Sites and Areas of Significance to Māori (SASM) Overlays and the ongoing role of mana whenua cultural experts in resource consenting processes. Some submitters presented views that did not demonstrate a clear understanding of the role that Kāti Huirapa hold in the development of the Proposed Plan under the RMA,[30] nor did they understand the relevance of the cultural expertise held by mana whenua in the identification of cultural values in the District.

[55] Ms Vella responded to submitters who questioned why the Council had relied on the evidence of Kāti Huirapa cultural experts regarding cultural values on private land by reminding them that RMA s6(e) requires the Council to recognise and provide for the relationship of Kāti Huirapa with their ancestral lands, water, sites, wāhi tapu and other taonga

[26] Statement of Evidence of John Henry, Hearing A 22 April 2024 and Hearing E 9 December 2024
[27] Statement of Evidence of John Henry, 22 April 2024, paragraph 10
[28] Ibid, paragraph 9.
[29] Westgarth, Chapman, Blackler, Hart et al (submitter [200] and [269]
[30] Ss6(e), (f), (g), 7(a), 8 and the requirments of consultation in Schedule 1, cl 2 and 3.

- which only they can articulate.[31] Ms Vella also referred to Judge Thompson, in *Maungaharuru-Tangitū Trust v Hastings District Council*[32] who observed that what mana whenua regard as wāhi tapu and other taonga is for them to identify, because the law requires recognition and provision for their relationship with their taonga. Whata J in *Ngāti Maru* said that the obligation to recognise and provide for the relationship of Māori and their culture and traditions with their whenua and other taonga "*must necessarily involve seeking input from affected iwi about how their relationship, as defined by them in tikanga Māori, is affected by a resource management decision*".[33] In addition, Schedule 1 requires the Council to consult with tangata whenua who may be affected by the Proposed Plan during its development.[34]

[56] We accept the cultural evidence about Kāti Huirapa cultural values as explained by Mr Henry of AEC.[35] The Panel heard further evidence from representatives of Kāti Huirapa[36] in our closed hearing session to view the Arowhenua Heritage Viewer that is not publicly available.[37] We are satisfied as to the veracity of the evidential basis for identifying cultural values in the Plan. We received no contrary expert cultural evidence. The issue as to the appropriateness of the proposed regulatory framework, considering those cultural values, is a matter we address in Part 6 of this report.

[57] We acknowledge that the Limestone Group and other rural landowners hold knowledge regarding the existence of cultural values on their land and in some cases stewardship (or custodianship, as described by the Limestone Group members) of these cultural values. We heard evidence from members of the Limestone Group, including from John Evans[38], about the steps undertaken over many generations to protect the rock art sites. However as to the relationship of mana whenua with their taonga, mana whenua holds the specialist and unique cultural knowledge and expertise as cultural experts. OBJ We have considered the knowledge of submitters about their land and the evidence of their own role as stewards of cultural heritage values as part of our evaluation of the appropriateness of the regulatory framework in Part 6

[58] It was also apparent in the evidence of Mr Henry, and Mr Hakkaart (District Plan Manager) that the development of the Plan was not without its difficulties in terms of the relationship of Council with mana whenua and rural landowners.

[59] Ms Vella outlined in her opening statement that after some initial challenges the Council had developed a process to work constructively with mana whenua in refining the Plan provisions following notification.[39]

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31 Ibid
32 Maungaharuru-Tangitū Trust v Hastings District Council [2021] NZEnvC 98, at [76].
33 Ngāti Maru Trust v Ngāti Whātua Orākei Whaia Maia Ltd [2020] NZHC 2768, at [73]
34 RMA, Schedule 1, cl 3
35 Statement of Evidence of John Henry, Hearing A 22 April 2024 and Hearing E 9 December 2024
36 Takerei Norton, Cultural Historian, Te Rūnanga o Ngāi Tahu, Tewera King, Upoko for Arowhenua and Waihao, Cultural Consultant for AECL John Henry.
37 The Panel made orders of non disclosure of evidence in relation to the material viewed from the Arowheunua Heritage Viewer under RMA s42.
38 John Evans, Statement of Evidence, 23 January 2025,
39 Opening Legal Submissions on behalf of Timaru District Council, 30 April 2025, paragraph 11-14

[60] Mr Hakkaart, and Mr Henry, presented evidence in Hearing A about the journey that the Council and mana whenua have taken together in developing the Proposed Plan.[40] Recognising the need to reflect the place of Kāti Huirapa in the District, the Council experts working on the s42A reports consulted with AEC with a view to resolving outstanding issues of contention.

[61] Ms Vella submitted that the approach that the Council and mana whenua have taken toward development of the Proposed Plan reflects a modern Treaty partnership;[41]

> ...while not necessarily an easy road, both parties have approached the process collaboratively to come to an agreed approach where they can. Working through processes like these can strengthen that relationship, and has done so in this case…
>
> … working with Kāti Huirapa to identify sites of significance is appropriate in light of section 6(e), which requires the Council to recognise and provide for the relationship of Kāti Huirapa with their ancestral lands, water, sites, wahi tapu and other taonga - which only they can articulate…

[62] Mr Henry explained:[42]

> The relationship with TDC during the Plan review like any relationship, has had its ups and downs. Our work on this plan has been a learning experience for us all. We worked with the Council to identify our matters of importance and the sorts of measures to protect and provide for these. A key part of this was building relationships and understandings between Kāti Huirapa/Arowhenua rūnaka and the Council about the District and its importance to manawhenua. I do think that through working together in a collaborative manner, both TDC and Kāti Huirapa/Arowhenua rūnaka have been able to navigate the challenges of a District Plan review and I feel that I am now in a position to be able to stand here today and support the work that the Council has done. I am also more comfortable with where we have landed in terms of the Introduction and Mana Whenua Chapters. This is something, I am not sure I could have imagined doing alongside the Council a few years ago. Yes, there will be bits where you will hear from Te Rūnanga o Ngāi Tahu that have not landed quite right or need a bit more work, but overall, these are not substantive matters.

[63] Following the initial notification of the draft District Plan, a Takata Whenua Steering Group was established, whose role was to make recommendations in relation to the draft takata whenua[43] chapters. It was comprised of members of AEC, elected members, and Council staff and consultants. The Steering Group was required to recommend objectives, policies, and rules for SASMs and for a Māori Special Purpose Zone chapter (or similar).

[64] The National Planning Standards (NPS) were published in 2019 and rather than integrating provisions relating to SASMs throughout the Plan, the NPS require the inclusion of a SASM Chapter, if SASMs are relevant to the district. They also provide for the identification of SASMs via a schedule that lists the specific or general location of SASMs (although the

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40 Statement of Evidence Aaron Hakkaart, 20 June 2024 and Statement of Evidence of John Henry, 22 April 2024.
41 *Maungaharuru-Tangitū Trust v Hastings District Council* [2021] NZEnvC 98, at [76]
42 Statement of Evidence, John Henry, 22 April 2024, paragraph 25.
43 The earlier takata whenua chapters as notified now relate to the 'Mana whenua' and Māori Purpose Zone'

inclusion of a description of sites and areas is subject to the agreement of Māori to include this information, and SASMs are not required to be mapped).[44] The Council engaged AEC to prepare a research report on SASMs.[45] The purpose of that report was to support the development of the SASM provisions, in accordance with the NPS. AEC cultural advisors identified the location of SASMs on aerial photographs of the District.[46]

[65] Mr Hakkaart explained that Council engaged an independent policy planner to assist in developing the objectives, policies, and rules for SASMs, taking into account the SASMs report, and to prepare a GIS layer of SASMs based on the marked-up aerial photographs. AEC was consulted during that process. The Takata Whenua Steering Group reviewed the draft provisions and agreed the version to be recommended to Council's Environmental Services Committee. Before that recommendation was made, a Councillor workshop was held at Arowhenua Marae. This included a presentation by AEC explaining the process for identifying the SASMs and showing the mapped areas.[47]

[66] A contributing factor to the tension between some land owner submitters whose land was subject to the SASMs and the Council was a concern that they had not also been consulted adequately and the Council had placed undue reliance on the advice of AEC and its cultural consultants to inform the development of the Proposed Plan framework for SASMs.[48] Ms Vella submitted that the Council firmly rejected that the process had been defective. Mr Hakkaart outlined that specific consultation with landowners on the proposed SASM Chapter and maps was undertaken in the context of the draft District Plan, further targeted consultation efforts were made during the Proposed Plan submission period, and that the Council intended to continue to engage with landowners and mana whenua through the process of considering submissions and developing the s42A report.[49]

[67] Although there was disappointment in the way the Plan had been developed, the Limestone Group was subsequently complimentary of the way in which Council s42A author, Ms White, and Mr Hakkaart had engaged with landowners since the close of submissions.[50]

[68] Submitters, however, remained concerned about what they perceived to be an absence of evidential justification for the rules adopted in the SASM Chapter to manage the effects of land use activities that could threaten identified values of SASMs; and '*the apparent conflict of interest arising from fee expectations to complete consultation and engagement on resource consent applications required under the proposed with cultural consultants who had a significant role in informing the drafting of the PDP's SASM provisions*.'[51]

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44 National Planning Standards, District Plan Structure Standard 3 and Table 4, pp 14 – 15 and District-wide Matters Standard 17, p33

45 https://www.timaru.govt.nz/__data/assets/pdf_file/0004/677263/AECL-2020-Report-on-sites-and-areas-of-significance-to-Maori.pdf

46 Statement of Evidence, Aaron Hakkaart, 20 June 2024, paragraph 14-16

47 Ibid, paragraph 17.

48 Legal Submissions on behalf of Westgarth, Chapman, Blackler et al, Hearing Stream E2 – Cultural Values, 30 January 2025.

49 Statement of Evidence, Aaron Hakkaart, 20 June 2024, paragraphs 18-24

50 Ibid, paragraph 8

51 Ibid

[69] We address the evidential basis for regulating land uses within SASMs in Part 6 of the Report. In terms of the issue of 'apparent conflicts of interest' due to consultancy fees we reject the submission point entirely. Mana whenua are the holders of cultural expertise related to identifying the values of SASMs. Any fees for providing cultural advice to local authorities and consent applicants is no different from other areas of technical expertise which is required in the preparation of a district plan and in carrying out assessments of environmental effects to support resource consent applications. It was not suggested that any other expert is conflicted simply because they charge a fee. We sought clarification from Mr Hakkaart regarding the Council charging policy for resource consent processes. He explained that Timaru District Council's Fees and Charges 2024/25 under 'Resource Management Fees' Table 2 lists "Consultants/ Legal Advice (including Aoraki Environmental Consultancy)", as being charged at cost.'[52] Consent processing fees are set through the Local Government Annual Plan process. We do not accept that there is any conflict of interest arising due to cultural experts being involved in the development of the Plan and in providing expert advice on subsequent resource consent applications, for which a professional fee is charged.[53]

[70] Although the Limestone Group called for the Council to 'start again', we find no basis in law or on the evidence to suggest that the process has been fundamentally flawed. The consultation and engagement process in developing a district plan is in practice iterative, and the opportunity for submissions, further submissions and the hearing of evidence has enabled participation in the process and for the Plan to be refined during the process.

## 4.2 THE EFFECT OF PLAN PROVISIONS ON PRIVATE PROPERTY RIGHTS, PROPERTY VALUES AND EXISTING USE RIGHTS

[71] An issue that arose in the context of hearings on SASM, Rural Zones, Historic Heritage, Energy and Infrastructure and Public Access provisions was the relationship between a planning framework and private property rights. Related to that was the concept of 'existing use rights'. A number of submitters[54] requested that the Plan include statements to the effect that private property rights and existing use rights are retained or not overridden. Some submitters sought reference to be made to the Trespass Act 1980 to remind plan users of the primacy of private property rights.

[72] An example of this was in the SASM Chapter, where concerns were raised by submitters about the reference in provisions to 'access' resources and areas of cultural values within identified SASM[55] and in the Public Access Chapter where provisions expressly encourage public access to the CMA and margins of wetlands and rivers.[56]

[73] There is nothing in a District Plan that removes private property rights to manage access to private land and all persons seeking to access private land require landowner approval, that is the law. In terms of express reference to cultural access in SASM objectives

[52] https://www.timaru.govt.nz/council/publications/fees-and-charges/planning

[53] Resource consenting fees are set and charged under RMA, s36 and s36AA on the basis that they are actual and reasonable costs. An objection process is available under RMA s357A in the event of a dispute.

[54] For example, Statement of Evidence, Rachel Thomas and Greg Anderson on behalf of Federated Farmers, 23 January 2025, paragraph 13 and 21.

[55] SASMO2, SASM-P4.

[56] PA-O1, PA-P1-4

and policies, it was clear from Mr Henry's answers to questions from the Panel[57] that there is no expectation of access to privately owned land by mana whenua 'as of right' and landowner approval would be obtained, as it would anywhere else.

[74] We do not consider there is any need or utility in including redundant provisions in the District Plan to reiterate what is the law. We do not consider it necessary to include any provisions or notes to that effect anywhere in the Plan. We reject those submissions accordingly.

[75] Some submitters raised concerns about the effect of regulation in the District Plan on property values. Ms Vella addressed the Panel on this issue[58], and submitted that, in her view, the orthodox view that effects on property values serve as a proxy for effects on amenity, and should not be treated as an additional, separate effect. She argued that this approach is equally relevant both to the preparation of the District Plan and to resource consent decision making. We accept that view, and in any event note that we did not receive any expert property valuation evidence during the hearings to draw any conclusions with regard to quantification of environmental effects.

[76] In terms of the request to refer to existing use rights under s10 of the RMA, we do not consider that is necessary. Existing use rights are a legislative construct, and tests apply to determine whether an existing use right exists or has been discontinued.[59] We agree with Ms White's evidence in response to the Federated Farmers submission[60], that there is nothing in the District Plan that overrides existing use rights, and therefore references to existing use rights in the plan provisions are unnecessary in our view.

### 4.3 THE STRUCTURE OF THE PLAN

[77] The structure of the Proposed Plan follows the requirements of the NPS.[61] The purpose of the NPS is to improve the efficiency and effectiveness of the planning system by providing nationally consistent, structure, format, definitions, noise and vibration metrics, electronic functionality, and accessibility.[62]

[78] Section 4 of the NPS sets out mandatory directions for District Plans for the naming of parts, chapters and zones, the required chapters, and sections. Some of the requirements are dependent on whether they are relevant to the district.[63]

[79] Whilst the structure of the Proposed Plan follows the structure as set out in s4 of the NPS, issues arose regarding the interrelationship of chapters and provisions. The following structural matters were subject to drafting changes between the notified Proposed Plan and the Decision Version of the provisions.

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57 Transcript, Hearing E, Day 1
58 Memorandum of Counsel for Timaru District Council: Hearing E, 17 April 2025.
59 RMA, s10
60 Liz White, s42A Report Hearing E, 9 December 2024, paragraph 8.4.15
61 https://environment.govt.nz/assets/publications/national-planning-standards-november-2019-updated-2022.pdf
62 NPS, Section 4
63 NPS, Part 4, Table 4.

(a) Provisions that ‘take precedence’ or ‘prevail’ over other chapters.

(b) The use of explanatory and advice notes.

(c) Measures taken to avoid duplication of rules, including replacing rules with matters of discretion elsewhere in the Plan.

*Provisions that ‘take precedence’ or ‘prevail’*

[80] The Proposed Plan as notified signalled where specific provisions in the Plan applied instead of, or had more weight attributed to them over more general provisions. The Council had used the phrase ‘take precedence’ or the word ‘prevail’ to describe those circumstances. However, it became unclear during the hearing whether the terminology had been used accurately or consistently.

[81] The word ‘precedence’ or phrase ‘take precedence’ means priority in importance, rank, order or time.[64] The term ‘prevail’ means to be superior in strength or influence.[65] The different terms could suggest, a provision applies instead of or is more important, or simply has more weight or strength. This difference was important, because sometimes a full suite of rules in a chapter appeared to be intended to be applied instead of more general provisions, as in the case of the Rules in Sections A-F of the EI Chapter, whereas other provisions, such as objectives and policies were intended to have more weight, or otherwise modify how area-specific objectives and policies are to be weighted, for example in the EI Chapter as outlined by Mr Willis.

[82] We requested Ms Vella to work with the s42A authors to provide an analysis that sets out which chapters ‘prevail’ or ‘take precedence’ over others and why.[66]

[83] Ms Vella responded to our question by explaining that the reference to ‘prevail’ is intended to signal provisions that apply ‘instead of’ other rules and that this is made clear in the notes to each chapter which explains which rules ‘prevail’ (i.e. apply instead of) and those which are in addition to.[67] There are examples of this in the EI, TRAN, ASW, CE, and TEMP Chapters.

[84] In relation to objectives and policies, Ms Vella indicated that the only place where the objectives and policies of one chapter are stated to ‘take precedence’ over other chapters is the EI Chapter. Mr Willis explained in his Interim Reply that the intention was that the EI objectives and policies would direct how they apply with regard to other chapters – i.e., via EI-O2 and EI-P2. In response Mr Willis recommended that:

(a) EI-O2 provides for the adverse effects of regionally significant infrastructure to be avoided, remedied, or mitigated "having regard to" relevant objectives of the underlying zone. "Having regard to" is recommended by Mr Willis to replace "to achieve", reflecting a re-balancing of the EI and zone provisions;

64 Shorter Oxford Dictionary, Online App.
65 Ibid.
66 Minute 24, paragraph 17(c)
67 Memorandum of Counsel for Timaru District Council – Hearing E, 17 April 2025, paragraph 34

(b) EI-P2 provides for effects to be managed by requiring sensitive design "taking into account" the character and qualities of the surrounding area instead of "to maintain" the character and qualities; and

(c) A new Policy EI-P5 be included to specifically provide for the National Grid, which directs how adverse effects are to be managed in different areas (i.e., urban environments, coastal environment, or other areas).

[85] In short Mr Willis relies on the objectives and policies in the EI Chapter providing direction as to the working relationship between that chapter and others. We agree that they do that, therefore it appears unnecessary to use the phrase 'take precedence', as it could also be understood to mean 'applies instead of'. As addressed in our decision on the EI Chapter (addressed in Part 5 of our Decision) we have inserted a new policy to ensure that the relationship between the objectives and policies of the EI Chapter and the zone chapters as to the 'weight' to be given to provisions in the event of conflict is clear.

[86] Ms Pull, the planning witness for Te Rūnanga o Ngāi Tahu, also noted that Part 1 of the Proposed Plan in the General Approach Chapter refers to certain rules in the EI Chapter taking "precedence over the rules in the zones chapters." We note here that the phrase 'take precedence' is used in describing the relationship between the EI Chapter rules and area specific rules, and the example of the Note also repeats 'take precedence'. Ms Vella explained that the phrase 'prevails' (i.e. 'instead of') should be used. Ms Pull was also concerned that the Council s32 Reports did not signal any tension between or hierarchy between the EI Chapter and other chapters. Mr Willis disagreed noting that the rule framework did provide for the rules to 'take precedence' over area specific rules.

[87] We think in the case of the EI rules it would be clearer to use the phrase 'apply instead of' rather than 'prevail' to ensure there is a distinction between the approach indicated for the objectives and policies (which Mr Willis considers 'take precedence' but don't take place of other objectives and policies), and the rules. We consider this will ensure the rules appropriately signal the approach to Energy and Infrastructure which gives effect to the NPS-ET and NPS-REG and is consistent with the NES-ETA and NES-TF. We further note that there is no need to indicate in a general sense that the EI objectives and policies 'take precedence' over other parts of the plan because the relationship is already articulated within the objectives and policies themselves.

[88] Although Ms Vella submitted that the only place 'take precedence' was used in the context of objectives and policies, was in the EI Chapter, the Panel has identified two other instances where the terminology is used in a confusing way in the FDA and CE Chapters.

[89] In the first instance we note that in the FDA Chapter (addressed in Part 10 of the Decision Report) the Council uses 'take precedence' in relation to objectives, policies and rules in the FDA Chapter Introduction. In terms of the rules, we find that the term 'take precedence' should mean 'applies instead of'. We do not understand how a particular rule can have more weight than another as a matter of law. Either the rule applies or it does not. If an activity has multiple consent requirements, triggered by a range of rules then a 'bundling approach' may alter overall activity status, but it is not an issue of weight. To illustrate the point

here, in the FDA, 'intensive primary production' is a non-complying activity (FDA-R15) whereas under the GRUZ, it may be permitted (GRUZ-R1). In those circumstances, therefore, the FDA activity status applies instead of the GRUZ rule, we do not find that to be an issue of 'weight'.

[90] We have made amendments to the FDA Introduction to separate the 'weight' to be given to objectives and policies, and to specify that the rules 'apply instead of' the GRUZ rules. We have also amended the reference to 'take precedence' in the Note preceding the rules.

[91] In the CE Chapter (addressed in Part 4 of the Decision Report) the Council uses 'takes precedence' in a 'note' under the rule heading when addressing the relationship of the underlying zone rules and those in the CE Chapter. In this circumstance it is stated that 'the underlying zone rules also apply to activities within the coastal environment. In the instance of any conflict between the two chapters, the provisions of this chapter takes precedence'. As with the FDA chapter as both the zone rules and the CE Chapter rules apply we consider this relates to a 'bundling approach', not an issue of 'weight'. In this instance the rules in the underlying zone and the CE Chapter apply. The note relating to precedence is unnecessary and we have deleted it.

*The use of explanatory and advice notes*

[92] Throughout the Plan the Council has made use of explanatory advice notes to assist users navigating the Plan. In some cases, it was not clear if the advice note was intended to have a 'quasi regulatory' effect, and in those cases whether it was more appropriate that the advice note should simply be a rule. Advice notes do not have regulatory effect.[68]

[93] Port Blakely Ltd [94] requested that commercial forestry activities be regulated by the NES-CF rather than the Proposed Plan. Ms White agreed that this approach is appropriate and recommended an advisory note to that effect. We requested clarification from Ms Vella on the Council's approach.[69] The Panel queried whether an advisory note would have the legal effect of excluding commercial forestry activities from the Plan, or whether a permitted activity rule would be required. Ms Vella traversed related case law in her response.[70] In particular she referred to two Environment Court decisions[71] where although referring to resource consent conditions, the Court held that advice notes should not purport to create obligations or give directions, nor require a consent holder to carry out work – an advice note that goes that far effectively becomes a condition, advice notes should be explanatory only and used sparingly for information purposes only. We think the principle applies to rules and provisions in a plan.

[94] The challenge here was that if it is possible for district plans to also regulate forestry activity it needs to be clear that the rules are limited in their application, rather than simply a matter of information. Ms Vella submitted that while readers might be expected to interpret the

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68 *Marlborough District Council v Aitken* [2016] NZEnvC 226, at [81]
69 Minute 19
70 Memorandum of Counsel for Timaru District Council, Response to Minute 19, 18 December 2024.
71 *Hapu Kotare Ltd v Manukau City Council* [2005] ELHNZ 360, at [80] and *Te Maru o Ngati Rangiwewehi v Bay of Plenty Regional Council* [2009] ELHNZ 62, at [12] and [13].

Plan in light of a clear statement that the rule did not apply to certain activities, an advice note would not legally have the effect of excluding those activities from the application of the rule. She accepted that it would therefore be prudent to ensure that it is clear from the provisions of the Plan as to how the Proposed Plan rules apply to activities regulated by the NES-CF. Ms White recommended the statement in that case be included in the rule itself which sets out that the rule does not apply to the clearance of indigenous vegetation/earthworks regulated by the NES-CF. The inclusion of the statement in the rule itself gives it the force and effect of a regulation.

[95] Considering the comments and caselaw referred to by Ms Vella, the Panel has been careful to consider whether other advice notes might better be incorporated into the rule framework or are simply for information purposes only.

*Duplication of Regional Council functions*

[96] During the hearing of submissions, it was apparent that the Proposed Plan as notified contained a number of provisions which either duplicated matters that were within the jurisdiction of the Canterbury Regional Council (ECan) or provided duplicate rules for the same activity within some overlays and the underlying zone, or in a district wide provision.

[97] In relation to the duplication between regional and district functions, this arose in relation to provisions that purported to extend over the beds of rivers. For example, Rooney Group [249] and Rangitata Diversion Race Management Limited [234] raised concerns about the overlapping provisions for consenting purposes with s13 activities in the beds of rivers.

[98] Mr Hole, a senior advisor for Rooney Group acknowledged that the CRPS enabled district councils to control the use of land within lakes and riverbeds for the maintenance of indigenous biodiversity where the district council had in its plan identified an area of significant indigenous vegetation or a significant habitat of indigenous fauna, that includes a bed of a lake or river. He noted this was discretionary, not mandatory and he argued that the need for two resource consents has associated and significant increases in cost, for no additional environmental protection. The matters considered by ECan can and clearly do include s6 requirements, so the consideration of areas covered under s13 by the District Council as consent authority would not increase the scope of consideration of effects or add any value to their management. He gave examples of this.[72]

[99] Rangitata Diversion Race Management Limited went further and submitted that the District Council did not have jurisdiction to create planning provisions in respect of the bed of the Rangitata River and that it was a Regional Council function.[73] In addition to the jurisdictional argument, counsel for the submitter raised practical issues with regard to the duplication of functions, including the fact that the Rangitata River is not solely in the Timaru District, creating additional complexity and confusion. They sought that the ONL and VAL overlays be also removed from the bed of the river, or that any regulation as a consequence of the overlay be excluded for the reason of unnecessary duplication and complexity.

[72] Nathan Hole, Statement of Evidence, 25 October 2024.
[73] Legal Submissions on behalf of Rangitat Diversion Race Management Limited, 1 November 2024.

[100] In light of these issues the Panel requested the submitter representatives to meet the s42A author Ms White and identify the areas of duplication, in effect to produce a gap analysis to identify if there were any relevant resource management issues, within the jurisdiction of the District Council not addressed by the Regional Council. Ms White provided this analysis in her Interim Reply.[74]

[101] Ms White recommended changes to the provisions to exclude the application of the following provisions:

(a) quarrying and mining within ONLs and VALs (NFL-R10);

(b) earthworks within ONLs and VALs (NFL-R2);

(c) earthworks within SNAs - noting this includes quarrying and mining activities (ECO-R5);

(d) temporary buildings and structures within ONLs and VALs (NFL-R1); and

(e) underground network utilities within ONLs and VALs (NFL-R3.1 PER-2 and NFL-R3.1 PER-2).

[102] Ms White recommended that the vegetation clearance rules in the Proposed Plan pertaining to SNAs (ECO-R1.1) should continue to apply, as should the rule applying to above ground network utilities (NFL-R3.1 and NFL-R3.2). She also recommended that the mapping of ONLs, VALs and SNAs in riverbed areas should be retained.

[103] We discuss these provisions in more detail in Part 7 of the Report, however, we record we support and have applied an approach to the Plan which avoids undue duplication of consenting requirements between the Regional and District Council where the relevant resource management issues are addressed by the Regional Council already.

*Measures taken to avoid duplication of rules, including replacing rules with matters of discretion elsewhere in the plan*

[104] Related to this issue is the incidence of duplication of requirements within the Plan itself. This occurs where there are rules proposed that require resource consent where an activity is within an overlay, for example the SNA Overlay, and a similar rule requires resource consent in the EW Chapter, or in another overlay, for example in SASM Overlays.

[105] During the hearing issues arose as to whether it was necessary or appropriate to duplicate resource consents for the same activity, but for different purposes, or whether one overlay or zone or district wide provisions could do the ‘heavy lifting’ and the other relevant resource management issues could be addressed through a matter of discretion in the primary rule.

[106] For example, we consider in Part 6, whether earthworks within a SASM is more appropriately regulated through an SNA rule, or the EW rule.

[74] Liz White, Interim Reply to Minute 19, Appendix C, 18 December 2024.

[107] We found it was not easy to adopt a general approach across the Plan as our ability to change the Plan structure was constrained by the scope of submissions, and in some cases, there were clear resource management reasons for retaining some level of duplication. We were also mindful of the requirements of the NPS, which required, for example, provisions in the SASM Chapter (the Council having determined there are SASM in the District) to be contained in one chapter. We have also had to consider whether it is more efficient and effective to cross reference rules rather than leave it for a plan user to navigate all chapters to identify whether there was a relevant rule elsewhere.

[108] We appreciate the efforts that s42A authors went to coordinate responses and avoid undue duplication. Notably, in the case of the EW Chapter we found the approach resulted in fragmentation of key provisions, creating significant ambiguity as to which rules were triggered across the Plan. We discuss this in further detail in Part 6, but for the current purposes we note that we have approached our decisions on the drafting to improve the usability of the Plan, where we have had scope to do so in submissions. This has resulted in some restructuring of the SASM and Earthworks rules.

## 4.4 ACROSS PLAN SUBMISSIONS

[109] In Hearing H, Ms White produced a s42A Report[75] addressing submission points that were 'across the plan' and not addressed in the topic specific hearings. No submitters sought to be heard on them independently of their earlier presentations.

[110] We have considered Ms White's analysis in her s42A Report and agree with her recommendations. We note for the most part the general submission points are addressed elsewhere in the Report as they arose during the topic hearings.

### 4.4.1 Decision

[111] We adopt Ms White's recommendations on across plan submissions.

[112] To the extent there are minor drafting changes as a consequence of across plan submission points, we adopt the Council's s32 evaluation.

## 4.5 PARTS 2-10

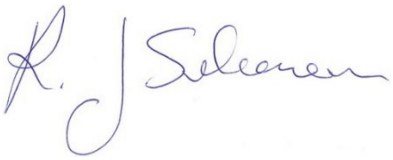
[113] Our decision on the topic specific provisions is addressed in the subsequent parts of the Report.

[75] Liz White, s42A Report, Cross Plan Submissions (Sweep Up), 4 August 2025

Cindy Robinson (Chair)

Rosalind Day–Cleavin (Deputy Chair)

Megen McKay



Raewyn Solomon

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