

## Appendix 4: Mahaanui Kurataiao Limited - Response to Questions from the Panel Report



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REPORT TO: Selwyn District Council

SUBJECT: Proposed Selwyn District Plan

Response to Questions from the Hearings Panel

DATE: 11 May 2022

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## Introduction

Mahaanui Kurataiao Limited provides the following advice in response to questions from the Hearings Panel.

- 1. Please provide a Summary Table of SASM provisions (i.e. activity status/overlays/rules (including earthworks and subdivision) /notification requirements) for Christchurch City District Plan and the (proposed) Waimakariri District Plan, and then respond to the evidence presented by ESAI and Jane West that the PSDP will be inconsistent with those provisions;**

The report prepared by Mahaanui Kurataiao to inform the s42A report advised that the approach to categorisation of cultural landscapes as Wāhi Tapu, Wāhi Taonga, Ngā Tūranga Tūpuna and Ngā Wai for the Christchurch District Plan, the proposed Waimakariri District Plan and the proposed Selwyn District Plan has been consistent. The report did not advise that the detailed provisions that each Council has developed under these categories are consistent. It is to be expected that each Council will have variation in the respective rule packages reflecting the differing environmental and land development scenarios within each of the Council's territorial boundaries e.g., earthworks in the Ngā Tūranga Tūpuna overlay in Christchurch City affects hill environments which are not found in Waimakariri.

Additionally, it is noted that the extent and method of engagement between Papatipu Rūnanga and each of the Councils has significantly differed in the development of each district plan.

- 2. Can Regional Council functions (embodied in their regional plans) be relied upon when it comes to District Council's own functions in terms of section 6(e) responsibilities regarding Māori values, or is it necessary for district plans to implement those functions as standalone documents? Specifically, are there gaps in the regional plan provisions which mean they cannot fully be relied upon to deliver SDC's functions?**

This question is being addressed by the Council's reporting officer.

- 3. Please respond to the evidence which suggests that within the PSDP there is an overlap in overlays and rule provisions, the apparent hardship this causes applicants in making (multiple) resource consent applications, and whether you would support any rationalisation of overlays/provisions;**

Mahaanui Kurataiao observes that the specific geographic location of a particular site will determine the number of overlays that apply to a property in the Christchurch District or Waimakariri District Plans. We are not aware of any optimum, minimum or maximum number of overlays that may apply, noting that the number of overlays is dependent on the sensitivity of the location of the property.

As an example, we refer to the Tūhaitara Coastal Reserve located in Waimakariri District between the Waimakariri River and Waikuku township and adjacent to the coast. That reserve has 11 overlays applying within its property boundaries. These overlays are in addition to the district wide rules for earthworks. We note that the earthworks rules are inconsistent between the general standards and the overlays.

- 4. Having heard the evidence, would you, or Council's cultural advisor, now support in particular, deletion or reduction of the NTTO?;**

Mahaanui Kurataiao would not support the deletion or any reduction in the NTTO.

The NTTO is an important part of a package of landscape categories that has been robustly developed and applied to the landscapes across Waimakariri, Christchurch City and Selwyn Districts.

We refer to the proposal (submission) made by Ngāi Tahu to the Replacement Christchurch District Plan that established the methodology and development of these categories. The sites of cultural significance as identified in the proposal were developed through a robust process of assessment of existing documented information and engagement with Papatipu Rūnanga. Expert evidence presented on behalf of Ngāi Tahu whānui describes how the Ngā Tūranga Tūpuna category was originally applied to the whole district but narrowed through a Rūnanga Focus Working Group to areas of particular sensitivity.

That process of research and engagement was undertaken in 2014 and the early part of 2015.

It is relevant to note that this process was prior to, and independent of Plan Change 1 to the Canterbury Land and Water Regional Plan which became operative in 2016 and established the Cultural Values/Landscape Management Area.

Mahaanui Kurataiao has gone back and reviewed the expert evidence presented to the Independent Hearings Panel by Te Rūnanga o Ngāi Tahu and the Christchurch City Council, along with the decision of the Independent Hearings Panel. There is no documented evidence to suggest that the cultural landscapes identified on the City side of Te Waihora were deliberately reduced in area in response to, or because of the Cultural Values/Landscape Management Area in the Canterbury Regional Land and Water Plan. In fact, there is no evidence to suggest that the landscape areas on the City side of Te Waihora, as sought in the original proposal of Te Rūnanga o Ngāi Tahu, were altered at all through the hearing process.

In addition, we note that one of the experts involved in the identification of the cultural landscapes for the Christchurch District Plan has also been involved in the identification of the cultural landscapes for Selwyn District. He has no recollection of any such process of reduction or adjustment in response to Environment Canterbury's Cultural Values/Landscape Management Area. Accordingly, Mahaanui considers that the suggestion of ESAI in its submissions to the Hearings Panel that there was such a link or consequential reduction is incorrect.

It is also relevant to note that advice provided to both Waimakariri and Selwyn District Councils to inform the proposed District Plans (i.e. a review of the Operative Plan provisions) advised that reliance on district plan chapters such as indigenous biodiversity and ecosystems, landscapes or water are inappropriate and ineffective 'de facto' substitutes to recognise and provide for sites and areas of cultural significance. For example, with respect to Selwyn, the June 2018 report advises "The protection of cultural values associated with water and water bodies are only achieved by default... The Plan does not identify any cultural basis or contribution as a reason for .. setbacks"<sup>1</sup>.

If the NTTO is not retained there would be no other mechanism within the PSDP which would recognise the significance of this specific landscape - it would be invisible within the context of the district. In our view it is unlikely that in either preparing or processing a land use consent under the district plan that parties would refer to and apply the policy considerations of a regional plan.

We also refer to Tauranga Environment Protection Society v Tauranga City Council (2021) NZHC1201. In that decision the High Court found that although the Environment Court is entitled to, and must,

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<sup>1</sup> Page 19, Selwyn District Council District Plan Review, Sites and Areas of Significance, June 2018 prepared by Mahaanui Kurataiao, [https://www.selwyn.govt.nz/\\_data/assets/pdf\\_file/0003/281982/PO-Sites-and-Areas-of-Cultural-Significance.pdf](https://www.selwyn.govt.nz/_data/assets/pdf_file/0003/281982/PO-Sites-and-Areas-of-Cultural-Significance.pdf)

assess the credibility and reliability of cultural evidence, it could not substitute that evidence for its own view. The key observation of the Court being that where there is considered, consistent and genuine evidence on behalf of a hapū or rūnanga then it is not open to the Environment Court to conclude otherwise. In this context Mahaanui submits that although the High Court decision is referring to a resource consent the principles of robust and consistent evidence can also be applied to the application of landscape categories in the PSDP. Mahaanui considers that the NTTO has been robustly identified through a methodology that has been previously accepted by a highly qualified Independent Hearings Panel; and has been consistently applied. The landscapes have been mandated by manawhenua and accordingly, should be adopted by the Council for the PSDP as contributing to achievement of s6(e) of the RMA.

In addition, we refer to Te Tangi a te Maru: Aotearoa NZ Landscape Assessment Guidelines<sup>2</sup> which have just been released and represent a best practice approach to landscape identification and assessment in Aotearoa/New Zealand. The guidelines are clear that in identifying important landscapes, it is the prerogative of tangata whenua to interpret their relationship to particular landscapes, including their values, perspectives and associations.

In summary, we consider any reduction or deletion of the NTTO would be inconsistent with Council's statutory duties and a best practice approach.

**5. If the NTTO was to be retained in full or in part would you, or Council's cultural advisor, support some relaxation of further rule provisions in that overlay?**

The report prepared by Mahaanui Kurataiao to inform the s42A report sets out in Section 6.0 where further relaxation of rules could be made. Further to the evidence of submitters we would support a change to the rules to allow earthworks for planting of trees, ecological restoration or riparian protection in a Wāhi Tapu or Wāhi Taonga Overlay, which we would agree should not require a resource consent. We do not support any further relaxation of rules beyond this additional matter.

Mahaanui would observe that it is difficult to predict all of the future activities and forms of land development that people may wish to undertake in the future. The absence of an activity today does not mean that it will never occur. We also observe that the effects of climate change may require more adaptation as well as changes in land use that have not previously been contemplated.

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<sup>2</sup> Sections 5.37 to 5.43 Te Tangi a te Manu, pages 53 to 55

[https://nzila.co.nz/media/uploads/2021\\_07/210505\\_Te\\_Tangi\\_a\\_te\\_Manu\\_Revised\\_Final\\_Draft\\_as\\_approved\\_5\\_May\\_2021.pdf](https://nzila.co.nz/media/uploads/2021_07/210505_Te_Tangi_a_te_Manu_Revised_Final_Draft_as_approved_5_May_2021.pdf)

Mahaanui does not have an opinion on where the rules sit within the district plan, so long as the cultural landscape categories are retained on the planning maps, and the objectives and policies are retained along with comprehensive assessment matters that are hyper-linked to the relevant rules.

- 6. It has become apparent that the NPS definition of ‘earthworks’ excludes cultivation, and yet the earthworks rules (e.g. SASM-R2(6) (g) and (j)) refer to cultivation limits. Is this something that can/needs to be addressed in the provisions in your view?;**

This question is being addressed by the Council’s reporting officer.

- 7. Please respond to the suggestion that the engagement procedures should be brought into the Chapter to provide more certainty; and**

Mahaanui Kurataiao supports an engagement policy in the PSDP. Mahaanui Kurataiao does not support any detailed operating procedures or protocols being specified in the PSDP. We consider these can be developed and managed by the Council outside of a rules regime.

- 8. Please respond to Jill Thomson’s assertions regarding the CMA and scope issues.**

Mahaanui Kurataiao agrees that district plan provisions can only apply within the district council’s territorial boundary and it is understood that the Council’s territory does not extend into the CMA.

It is relevant to note that Te Tai o Mahaanui (the Selwyn-Banks Peninsula coastal marine area) has been identified as a Statutory Acknowledgement Area in the Ngāi Tahu Claims Settlement Act 1998<sup>3</sup>. Section 208 of that Act imposes a duty on a consent authority to have regard to the statutory area and form an opinion as to whether Te Rūnanga o Ngāi Tahu is adversely affected by any proposal, within, adjacent to, or impacting directly on, the statutory area. Accordingly, although Te Tai o Mahaanui may not fall within the territorial boundary of Selwyn District, the Council has a statutory duty to consider whether the environmental effects of any proposals within its territory may extend over the boundary and adversely affect the statutory area. In this context it is helpful to retain the Statutory Acknowledgement on the planning map to ensure it is not overlooked in the processing of any applications for resource consent adjacent to the coastal boundary.

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<sup>3</sup> See Schedule 101 of the NCTSA 1998

**RESPONSE PREPARED BY:**

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