

Proposed Selwyn District Plan



Right of Reply Report

Sites and Areas of Significance to Māori

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1. Purpose of Report

- 1.1 The purpose of this report is to respond to the questions raised by the Hearings Panel during Hearing 11: Sites and Areas of Significance to Māori ('SASM'), and for the Officer to address other matters raised in evidence and to propose any further amendments to the notified version of the Proposed Selwyn District Plan ('PSDP') above those recommended in the Officer's Section 42a evidence report.

2. Hearing Panel's Questions to the s42a Reporting Officer and Response

[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.

- 2.1 A table summarising the SASM provisions for the Christchurch District Plan ('CDP') and proposed Waimakariri District Plan (PWDP) is attached as **Appendix 3** to this report.
- 2.2 The hearing statement of Jane and Steve West that was supported by ESAI identifies that they consider the approach for developing the provisions relating to the Ngā Tūranga Tūpuna overlay (NTTO) in the PSDP is inconsistent with the approach taken in the CDP and PWDP.

SASM overlays

- 2.3 SDC evaluated the approach taken in the Operative Selwyn District Plan ('ODP') to identify the spatial extent of the SASM overlays and includes a comparison analysis with the CDP.¹ The Section 32 evaluation also contains advice from MKT that it is inappropriate in all instances to "pinpoint" or apply generic approaches when identifying cultural sites and values within district plans.
- 2.4 In reviewing the CDP and PWDP provisions against the PSDP SASM provisions, I consider that the approach to the categorisation of cultural landscapes as Wāhi Tapu, Wāhi Taonga, NTTO and Ngā Wai are consistent. This includes the use of overlays and schedules to record SASM and similar rules and methods to achieve the outcomes sought in the Strategic Directions and objectives and policies. All three district plans include unique identifiers, descriptions and references to the materials used to record the SASM, as identified by Papatipu Rūnanga. The consistency in approaches for categorising the overlays is also confirmed in the MKT report contained in **Appendix 4** of this report, where further context is provided on why the spatial extent of some of the overlays differ across territorial authority boundaries.
- 2.5 Consequently, I consider that the PSDP SASM schedules and overlays appropriately identify and recognise the relationship that manawhenua have with the identified SASM and note that this relationship is to be recognised and provided for under section 6(e) of the RMA.

Scope of the NTTO

- 2.6 Having reviewed the NTTO overlays I consider that the scale, scope, and process for identifying the NTTO overlay is consistent across each of the three district plans. This is supported by the MKT response contained in **Appendix 4** of this report, where confirmation is provided that the

¹ Section 32 Report - Sites and Areas of Significance to Māori, Section 3.4 Pg.21&22 - <https://www.selwyn.govt.nz/-Sites-and-Areas-of-Significance-to-Maori.pdf>.

approach for categorising cultural landscapes has been consistent for all three District Plan Review processes. The CDP² includes a policy that is specific to the NTTO and, although there are no specific rules relating to this overlay, any resource consent applications for activities located within the overlay need to include an assessment against the relevant matters of discretion.

- 2.7 I maintain that the primary purpose of the NTTO overlay is to recognise the centuries of shared knowledge and occupation manawhenua have with Te Waihora and its immediately surrounding area, which includes several culturally significant places and features, as well as interconnecting sites.
- 2.8 There are examples of the NTTO in both the PWDP³ and CDP⁴ that cover relatively large extents of land not always containing a specific physical feature or site, and that apply to both water bodies and adjacent land. The PSDP SASM Overview also clearly describes the basis of the NTTO overlay, consistent with the manawhenua knowledge and advice that is recorded in the MKT June 2018 report.

Earthworks

- 2.9 As identified in the previous sub-section, the CDP does not contain any specific earthworks rules that require a standalone resource consent for activities within the NTTO. However, any application that is otherwise required needs to include an assessment against the relevant matters of discretion.⁵
- 2.10 The PWDP provides for structures that are ancillary to mahinga kai activity or other customary harvesting and earthworks associated with urupa as permitted activities⁶. A restricted discretionary activity consent is required within all four overlays where proposed activities fail to meet the permitted activity rules as they relate to the maintenance of existing fences,⁷ earthworks and land disturbance relating to other activities,⁸ and in relation to natural hazard mitigation works⁹.
- 2.11 I consider that the PWDP applies a similar approach to the PSDP, including provision made for day-to-day farming activities, the allocation of a restricted discretionary activity status and matters of discretion that apply to all four SASM overlays. I acknowledge that there are variances in the specific drafting and focus of the rules and matters of discretion, but attribute this to geographical differences and specific values that Papatipu Rūnanga hold in respect of different places, variance in the way in which the respective councils and Papatipu Rūnanga may have engaged in the Plan development process, and the different drafting styles and approaches that have been applied.

Subdivision

- 2.12 In respect to the subdivision provisions, the PWDP allocates a restricted discretionary activity

² CDP Policy 9.5.2.2.2 Policy - Ngā Tūranga Tūpuna and 9.5.5.2 Ngā Tūranga Tūpuna matters of discretion.

³ PWDP SASM- -SCHED1 - Sites and areas of significance to Māori SASM013 Waimakariri ki Rakahuri and SASM014 Ngahere Manuka.

⁴ CDP Appendix 9.5.6.3 Schedule of Ngā Tūranga Tūpuna - Examples include Akaroa Harbour (73), Lake Forsyth (74), Port Hills and Lyttleton Harbour (46, 70 & 71), and New Brighton Spit, Mt Pleasant, Redcliff's, Taylors Mistake & Avon-Heathcote Estuary (44 & 63).

⁵ CDP, Rule 8.9.4.9.

⁶ PWDP SASM, rules SASM-R2 and SASM-R3.

⁷ PWDP SASM Chapter, Rule SASM-R1.

⁸ PWDP SASM Chapter, Rule SASM-R4.

⁹ PWDP SASM Chapter, Rule SASM-R5.

status to the subdivision of land with the four SASM overlays¹⁰ (Rule SUB-R5). Discretion is limited to matters that protect the identified SASM from the effects of subdivision, ensure provision of access to a specific waterbody and mitigate the effects of subdivision on Wāhi Taonga identified by Te Ngāi Tuahuriri Rūnanga¹¹. Therefore, the PWDP allocates a similar activity status to the PSDP, but some variation in the matters of discretion is apparent, once again reflecting potential differences in the values attributed to those places, the nature of development in the district, different engagement processes and drafting styles.

- 2.13 The CDP classifies subdivision within a Site of Ngāi Tahu Cultural Significance identified in Schedule 9.5.6.1 (i.e. wāhi tapu and wāhi taonga) as a restricted discretionary activity.¹² The CDP does not contain any specific rules that require a standalone resource consent for subdivision within the NTTO. However, as with the earthworks chapter, where a resource consent application is required for subdivision, any application will need to include an assessment of the effects on the NTTO.¹³ The plans also reflect the different context of the land identified as Ngā Tūrangā Tupuna. In Christchurch several areas that fall within the NTTO have been subject to significant urban development.¹⁴ The nature of controls for subdivision in that context is therefore different from the context of Selwyn.
- 2.14 The purpose and activity status of Rule SUB-R20 in the PSDP are to ensure a process is in place that is inclusive of the relevant Papatipu Rūnanga and Heritage NZ, and that the effects on SASM can be assessed. The Rule SUB-R20 matters of discretion emphasise the importance of manawhenua being able to assess the effects of any proposed subdivision on them, which is consistent with Strategic Objective SD-MWV-O1.
- 2.15 The Jane and Steve West hearing statement raises a concern that SASM-MAT2 imposes a mandatory consultation requirement and suggests that this requirement could be avoided through the inclusion of “...if necessary...” in the notification clause¹⁵. I do not support this suggested amendment as I consider that it is appropriate for some form of consultation to take place with Papatipu Rūnanga, as they are best placed to assess any effects of an application on them. The extent of consultation that is appropriate will depend on the context of the application, and the recommended notification clause confirms that it can be undertaken by the applicant or SDC.
- 2.16 Overall, I consider that there is general consistency across the SASM provisions contained in the three district plans, and where differences exist that the approach applied in the PSDP is more effective in achieving the outcomes sought by Papatipu Rūnanga.

¹⁰ PWDP Subdivision, rule SUB-R5 Subdivision containing a site or area of significance to Māori.

¹¹ PWDP Subdivision, matters of discretion SUB-MCD7 - Manawhenua.

¹² CDP Chapter 8, 8.5.1.3 Restricted discretionary activities.

¹³ CDP, Chapter 8 Rule 8.7.5.6 Natural and Cultural Values (controlled); Rule 8.8.12 Natural and Cultural Values (restricted discretionary).

¹⁴ See, for example, Site ID44 Raekura ki Matuku Taotako (which covers much of modern-day Mount Pleasant, Redcliffs and Sumner); Site ID65 Ōhinehou (which covers much of modern-day Lyttleton), Site ID73 Whakaroa (which covers much of the catchment of Akaroa Harbour).

¹⁵ Paragraph 35.

[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?

Regional and territorial authority functions and duties under the RMA

- 2.17 SDC is required, when preparing its district plan, to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga, to have particular regard to kaitiakitanga and the ethic of stewardship, and to take into account the principles of the Te Tiriti o Waitangi¹⁶. I do not consider that SDC can rely on Environment Canterbury (‘ECan’) and regional planning instruments to discharge its responsibilities under the RMA and Te Tiriti in respect to the purpose and principles of the RMA when preparing the PSDP.¹⁷ Case law has also established the extent to which a district plan must ‘give effect’ to a regional planning instrument.¹⁸
- 2.18 The Section 32 report contains a full summary of the Canterbury Regional Policy Statement (‘CRPS’) provisions that are relevant to the SASM Chapter, where the potential for overlap is identified¹⁹. The CRPS also requires local authorities to work together and with the New Zealand Historic Places Trust and Te Rūnanga o Ngāi Tahu and Papatipu Rūnanga to identify and manage significant or important historic heritage items, places, or areas²⁰.
- 2.19 In my opinion, the duty to recognise and provide for SASM forms part of SDC’s statutory functions for integrated management (section 31) and reflects the section 75(3) requirement to ‘give effect’ to the CRPS. In contrast, regional councils have functions under the RMA to control the use of land for soil conservation²¹, to maintain and enhance the quality and quantity of fresh and coastal water²², to maintain and enhance water-based ecosystems²³ and to control the introduction of planting in riverbeds²⁴.
- 2.20 The Canterbury Land and Water Regional Plan (‘LWRP’) contains the Te Waihora Cultural Landscape/Values Management Area (CLVMA), with provisions relating to the management of this area contained within Chapter 11 of the LWRP. I agree that the area covered by the CLVMA aligns closely with the NTTO. However, I consider that, although there may be some areas of overlap between the matters managed under the CLVMA and NTTO respectively, the two overlays complement rather than duplicate each other and are reflective of the differing statutory functions of ECan and SDC.
- 2.21 I consider that the CLVMA is fundamentally limited to addressing matters within ECan’s jurisdiction. It recognises and provides for Ngāi Tahu’s relationship with Te Waihora²⁵ rather than the adjacent land that is encompassed in the wider NTTO. Another key purpose of the

¹⁶ RMA Sections 6, 7, and 8.

¹⁷ RMA, section 72.

¹⁸ The Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [77] stated: “Give effect to” means “implement. On the face of it, it is a strong directive, creating a firm obligation on the part of those subject to it.”

¹⁹ Section 32 Report - Sites and Areas of Significance to Māori, Pg.8-11.

²⁰ Canterbury Regional Policy Statement 2013 (July 2021). Policies 13.3.2 & 13.3.3.

²¹ Section 30(1)(c)(i).

²² Section 30(1)(c)(ii) and (iii).

²³ Section 30(1)(c)(iii).

²⁴ Section 30(1)(g).

²⁵ Canterbury Land and Water Regional Plan, December 2018. Policy 11.4.3.

CMLVA is to protect the health of Te Waihora by managing the discharge of contaminants and taking and using freshwater²⁶, which differs from SDC's duties to manage the effects of land use and subdivision activities on the SASM. Similarly, Farm Environment Plans that are required to be prepared under the LWRP have a primary focus on addressing nutrient discharges and water quality, rather than managing the effects of land use and subdivision activities on the SASM identified by Papatipu Rūnanga²⁷.

- 2.22 The focus of the SASM is to recognise and control the effects of land use and subdivision on Ngāi Tahu values. This contrasts with the CLVMA, which is focused on mahinga kai and the more discrete wāhi tapu and wāhi taonga sites. As addressed in the MKT report and Section 32 report, a more holistic consideration of SASM better recognises Te Ao Māori and sites and areas that are significant to Papatipu Rūnanga. The SASM provisions ensure that effects of a proposal on Ngāi Tahu values, including both physical and spiritual dimensions, can be considered alongside the biophysical effects that are required to be considered under the relevant CLWRP and CLVMA provisions.
- 2.23 I note that ECan has filed a submission in support of the SASM provisions as notified²⁸ and they were consulted during the preparation of the PSDP²⁹. I also note regional planning instruments are subject to review and change so there is no certainty on the timing, scope, or process for reviewing provisions that would need to be relied upon to meet SDC statutory duties.
- 2.24 It is recognised that there is some duplication in the functions of regional and territorial authorities under the RMA. However, I consider that this unavoidable and that the SASM provisions, including those relating to earthworks, are necessary and that it would be inappropriate to rely solely on the LWRP.

[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.

- 2.25 The ESAI and Jane and Steve West hearing statements record their concerns with an overlap between the SASM provisions, notably the NTTTO, and other provisions in the PSDP including in respect to:
- The NTTTO with wāhi tapu, wāhi taonga and Ngā wai;
 - The NTTTO with the Te Waihora Outstanding Natural Landscape (ONL) overlay; and
 - The SASM rule provisions with specific provisions in the PSDP regarding earthworks, plantation forestry and mineral extraction.

SASM Overlays

- 2.26 In considering the appropriateness of the SASM Overlays, I agree with MKT that the number of overlays applicable to a property is dependent on the sensitivity to the location of the property. The number of overlays which apply to a property has no bearing on the historical

²⁶ Canterbury Land and Water Regional Plan, December 2018. Policy 11.4.4.

²⁷ Canterbury Land and Water Regional Plan, December 2018. <https://www.ecan.govt.nz/canterbury-land-and-water-regional-plan/>.

²⁸ DPR-0260 ECan.

²⁹ Section 32 Report - Sites and Areas of Significance to Māori, Pg.14.

and contemporary relationship that manawhenua has to a particular site or area of significance and seek to be managed through RMA processes.

- 2.27 Each overlay in the PSDP is created within the context of the Chapter it sits in, and the matters which it seeks to protect. For example, the values which contribute to Te Waihora's classification as an ONL in the Natural Features and Landscapes Chapter are similar and complementary to, but not the same as, the cultural significance this waterbody and the surrounding land has for Ngāi Tahu in the context of the SASM provisions (as well as in the context of Statutory Acknowledgements, section 6(e) matters of national importance and Strategic Direction SD-MWV-O1, and objective SASM-O1 and policy SASM-P1 more specifically).
- 2.28 The provisions connected to the SASM overlays are a method through which Ngāi Tahu can exercise kaitiakitanga over an area which has significant cultural importance to them. The position taken by submitters does not address the advice provided by MKT 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.

SASM Overlays and Te Waihora ONL

- 2.29 The Te Waihora ONL overlay has been proposed as a method to give effect to section 6(a) of the RMA, which is achieved by objective NFL-O1 and policy NFL-P1 to recognise this environment as an outstanding natural landscape. While these values are complimentary to the SASM Chapter they are not necessarily the same as those which make Te Waihora significant to Ngāi Tahu.
- 2.30 I do not consider there is unnecessary overlap between Te Waihora ONL and the SASM 56 Ngā Wai overlay or the NTTO for the following reasons:
- The NTTO refers to larger extents of land where there is a concentration and broader range of culturally significant sites and, importantly, all the spaces inter-connecting these places and features. As a result, the areas that fall within the proposed Te Waihora ONL and Ngā Tūranga Tūpuna overlay are different.
 - The NFL Chapter provides sufficient direction to consent applicants and decision-makers that it is persons who hold manawhenua status that are best placed to identify impacts of any proposal on the physical and cultural environment valued by them. This is consistent with section 6(e), which has a relationship component.
- 2.31 Similarly, I do not agree with the ESAI submission regarding an inadvertent overlap between the NTTO and the SASM 56 Ngā Wai overlay. As addressed in the Preferred Approach Report to the District Plan Committee, Ngāi Tahu have determined that it is necessary for Ngā Wai and NTTO Overlays to apply to specific geographic areas and subject to varying methods to ensure they are recognised and provided for under the PSDP.³⁰

Earthworks

- 2.32 The earthworks rules for each SASM are to achieve the SASM objectives and policies that seek to recognise and protect the values attributed to them by Ngāi Tahu manawhenua based on

³⁰ MKT, Preferred Approach Report for Sites and Areas of Cultural Significance, June 2018, Section 8.0.

their cultural and traditional connections to ancestral lands, water, sites, wāhi tapu, and wāhi taonga within the Selwyn District. The priority placed on recognising and protecting cultural values is illustrated further in the matters of discretion in the SASM Chapter that are focused on ensuring that Ngāi Tahu values are fully considered as part of the resource consent process.

- 2.33 In contrast, the earthworks provisions in the EW-Earthworks Chapter of the PSDP are focused on managing adverse effects on the environment. The focus of the policies in the EW Chapter is on adverse visual effects,³¹ nuisance from dust and sediment,³² landscape character,³³ the functioning of natural and biological processes,³⁴ and amenity values/ environmental quality.³⁵ The EW-Earthworks Chapter objectives and policies make no direct mention of cultural values. Similarly, the matters of discretion for restricted discretionary activities in the EW Chapter do not explicitly incorporate consideration of Ngāi Tahu values, which the SASM Section 32³⁶ evaluation identifies as an issue with the Operative Plan.
- 2.34 In reviewing the suggested amendments to rules SASM-R2.1 and consequently to SASM-R2.6 contained in the ESAI hearing statement, I support the inclusion of the references to “ecological restoration” and “riparian protection”. This suggested change is also supported by MKT (refer to **Appendix 4**). I do not support the increased earthworks depths proposed, which I consider risks compromising the integrity of Wāhi Tapu and Wāhi Taonga. The balance of the proposed amendments to rule SASM-R2 are also not supported by MKT, and I agree that they are appropriate (refer to **Appendix 4**).

Earthworks in the Coastal Environment overlay and Te Waihora/Lake Ellesmere High Natural Character

- 2.35 The Coastal Environment Chapter (CE) of the PSDP does contain an objective seeking to recognise and maintain the relationship of Ngāi Tahu with their cultural values, traditions and ancestral lands in the coastal environment (CE-O2), and policy direction enabling consideration of Ngāi Tahu’s relationship with the coastal environment (CE-P6). With one specific exception regarding the opening and closing of Te Waihora/Lake Ellesmere to maintain lake levels, all earthworks within the Te Waihora/Lake Ellesmere High Natural Character area are allocated either a non-complying or prohibited activity status.³⁷
- 2.36 However, I do not consider that the Coastal Environment overlay negates the requirement for provision of the NTTO and Ngā Wai overlays to be included in the PSDP. Although there may be some overlap, each overlay covers a different geographic area and manages fundamentally different effects on the environment where the reliance on the CE Chapter may fail to appropriately recognise and protect the SASM that have been identified by Papatipu Runanga.
- 2.37 This position is similar for mineral extraction activities. As notified, the matters of discretion in GRUZ-R21 (which regulates mineral extraction in the GRUZ – General Rural Zone) do not allow for the consideration of Ngāi Tahu values when considering the establishment of a new, or expansion of an existing, mine, quarry or farm quarry larger than 1,500m². The relevant mineral extraction policies in the GRUZ – General Rural Zone are also silent on cultural

³¹ PSDP, EW-P1.

³² PSDP, EW-P1.

³³ PSDP, EW-P2.

³⁴ PSDP, EW-P3.

³⁵ PSDP, EW-P4.

³⁶ Section 32 Report - Sites and Areas of Significance to Māori, Section 3.3, Pg.17&18.

³⁷ PSDP, CE-R5.7-8.

matters.³⁸

Plantation forestry

- 2.38 The hearing statements of ESAI and Jane and Steve West identify that the PSDP adequately covers the effects of plantation forestry in the General Rural Zone provisions to the extent that rule SASM-R6 is unnecessary. The submitters also raise a potential jurisdictional issue regarding Rule SASM-R6, where they consider that a district plan rule regulating plantation forestry activities cannot be more stringent than the Resource Management (National Environmental Standards for Plantation Forestry) 2017 ('NES-PF') unless provided for in the NES-PF.³⁹
- 2.39 Section 43B of the RMA provides for the relationship between national environmental standards ('NES') and rules. Subsection 43B(1) provides that a more stringent rule prevails over a standard in an NES if the standard expressly says that a rule may be more stringent than it. Regulation 9 of the NES-PF provides for afforestation as a permitted activity, provided certain permitted activity conditions to address biophysical matters (wilding tree management, plantation setbacks and afforestation in sensitive environments.⁴⁰ Regulation 6 sets out the situations where plan rules may be more stringent than its regulations. The matters include rules addressing certain national instruments, providing for the protection of significant natural areas or outstanding features or landscapes identified in the relevant plan, or certain "unique and sensitive environments".
- 2.40 SASM-R6 does not fall into any of the categories contained in Regulation 6. However, I do not consider that s43B RMA and Regulation 6 NES-PF are applicable because the NES-PF does not contain any standards that address matters of cultural or historic heritage. The jurisdiction for SASM-R6 is provided for by section 43A(5) of the RMA, which sets out the relationship between plan rules and standards when a NES states that an activity is a permitted activity⁴¹. This provision sets out that plans can specify terms or conditions that deal with effects of the activity permitted under the NES that are different from those effects dealt with in the NES. Consequently, I consider that the PSDP has jurisdiction to regulate the effects of plantation forestry on cultural values, as these effects are not dealt with in the NES-PF.⁴² This is confirmed through the matters of discretion for Rule SASM-R6, which are limited to the effects of plantation forestry on Ngāi Tahu values.
- 2.41 In terms of the merits of Rule SASM-R6, I note that General Rural Zone rule GRUZ-R24 provides for new, or the expansion of an existing, plantation forest as a permitted activity. I consider that the scope of this rule and the related requirements are relatively targeted,⁴³ and that they do not sufficiently address the effects of plantation forestry on the SASM. The SASM Section 32 evaluation⁴⁴, and MKT Reports dated June 2018⁴⁵ establish that commercial

³⁸ PSDP, GRUZ-P8; GRUZ-P9.

³⁹ Hearing Statement of Jane and Steve West at [25]-[28]. See RMA, sections 43B(1) and (2).

⁴⁰ NES-PF, Regulations 9 to 14.

⁴¹ Refer to Section 7 of the SASM Section 32 Report.

⁴² For completeness, I note that this is consistent with the Ministry for Primary Industries Plan Alignment Guidance for the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 at [5.3]. I note that this document is guidance only and does not have any legal weight.

⁴³ The rule requirements relate to compliance with the GRUZ-REQ16 Springfield Airfield Height Restriction and EI-REQ23 West Melton Aerodrome Height Restriction.

⁴⁴ Section 32 Report - Sites and Areas of Significance to Māori, Pg.7&30.

⁴⁵ MKT, Preferred Approach Report for Sites and Areas of Cultural Significance, June 2018, Pg.30,47,51&60.

forestry can have significant effects on sites and areas of cultural significance. As a consequence, I do not consider that it is appropriate to rely on rule GRUZ-R24 as it does not recognise or provide for the SASM identified by Papatipu Rūnanga.

Conclusion on overlap of overlays

2.42 In my opinion, the SASM provisions and overlays complement, rather than overlap, the other chapters and overlays contained within the PSDP. I consider that the SASM overlays, such as the NTTO, are required to ensure that the tikanga and belief systems of Ngāi Tahu are recognised and provided for and the cultural effects on SASM can be fully considered as part of the resource consent process. I do not consider that the remaining provisions of the PSDP would enable this to be achieved.

Proposed amendments sought through the submitter hearing statements

2.43 I do not support the ESAI and Jane and Steve West hearing statements that propose a range of amendments and additional matters of discretion to provisions sitting outside the SASM chapter, such as GRUZ-R21 and SUB-R2, to allow for consideration of the impact of the relevant activity (such as mineral extraction or subdivision) on cultural and heritage values. Although this remains an option for the Panel to consider, my concerns with this approach are that:

- Rules are required to implement policies,⁴⁶ which in turn implement objectives,⁴⁷ so it is more appropriate to nest the rules relating to the identified SASM with the related objectives and policies that provide guidance for the undertaking of activities within sites and areas of significance to Ngāi Tahu.
- The current structure of the PDSP is consistent with the NPS, which require provisions to manage SASM within a SASM chapter. From a plan drafting perspective, I consider that it is more appropriate to have all provisions relating to SASM within the SASM Chapter.
- The SASM provisions are focused on recognising and protecting SASMs and ensuring that any effects on Ngāi Tahu values are considered, as opposed to the broader district wide effects of a particular activity.⁴⁸ In this sense, provisions such as SASM-R2 are intended to be complementary to the provisions in the PSDP, as opposed to a 'one-stop-shop' rule for an activity.
- The matters of discretion have been drafted to give effect to both the substantive and procedural obligations imposed by Te Tiriti by directing both that consultation occur, and the outcome of that consultation be responded to. Adding a singular matter of discretion rules such as GRUZ-R21 would not, in my view, provide a sufficient framework for applicants to properly understand the potential adverse effects of a proposed activity on Ngāi Tahu values.
- The removal of rules for managing the effects of earthworks, mineral extraction, subdivision, and plantation forestry on the NTTO would fail to address the issues identified in the SASM Section 32 evaluation regarding the Operative District Plan failing to recognise and provide for Ngāi Tahu values.

⁴⁶ RMA, section 75(1)(c).

⁴⁷ RMA, section 75(1)(d).

⁴⁸ See SASM-Matters for Control or Discretion.

The costs and hardship of maintaining the NTTO

- 2.44 The ESAI and Jane and Steve West hearing statements identify that the overlays proposed under the SASM Chapter, and in particular the NTTO, will impose a significant regulatory burden on consent applicants.
- 2.45 In my experience it is commonplace for a single resource consent application to seek approval to undertake land use and subdivision activities that result in multiple breaches of district plan rules. The Section 32 evaluation includes an assessment of the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the SASM provisions and found that⁴⁹:
- The effects on matters of national importance (in particular section 6(e)) would be high;
 - The effects on tāngata whenua would be moderate-high;
 - The effect on landowners and the public would be moderate; and
 - The likelihood of increased costs or restrictions on individuals, businesses or communities would be moderate.
- 2.46 I support the conclusions reached in this evaluation based on the higher-level direction contained in the RMA, the CRPS and the PSDP strategic directions and SASM objectives and policies. These directions provide the basis for rules and methods to manage activities that have the potential to adversely impact on the relationship of Māori with their ancestral lands, water, sites, wāhi tapu and other taonga. As identified in the Section 32 evaluation and MKT technical advice, the cost to the environment and to Ngāi Tahu from not appropriately managing effects on sites and areas of significance to Māori has the potential to be very high.
- 2.47 I acknowledge that the issues of time, cost and hardship raised by submitters are real, particularly where there are multiple district and regional planning instruments in place at a single point in time. However, I consider that the SASM compliance requirements are not overly burdensome and are necessary to ensure the PSDP gives effects to Part 2.
- 2.48 The hearing statement of Jill Thomson outlined her families' experiences living within the general area where the NTTO is proposed to apply and highlighted that cultural artefact had been discovered during their time of occupancy⁵⁰. In my view this is a practical demonstration of why the NTTO overlay and related consenting requirements are necessary and appropriate.
- 2.49 The hearing statements from ESAI and Jane and Steve West also identify that they consider there is a low chance that applications for mineral extraction and production forestry will be required based on the nature of the land and farming practices within the eastern extent of the District. In my view this reduces the risk that the mineral extraction and plantation forestry provisions will place a significant hardship on landowners.
- 2.50 I acknowledge the concerns raised by the ESAI and Jane and Steve West hearing statements that the NTTO provisions may require additional consents to be sought over and above the requirements under the Regional Plan, including Farm Environment Plan. However, as described in the response to items [1] and [2] above, the NTTO has cultural significance to Papatipu Rūnanga, and the regional planning regime serves a distinctly separate function

⁴⁹ Section 32 Report - Sites and Areas of Significance to Māori, Section 6.3, Pg.31-33.

⁵⁰ Hearing 11: SASM, 12 April 2022 - Statement of Jill Thomson (DPR-0379).

under the RMA to the SASM Chapter of the PSDP. I also support the advice in the MKT report contained in **Appendix 4**, which outlines that the number of overlays that apply to any given property is relative to how sensitive the location is in the context of the district plan provisions that apply.

- 2.51 For the above reasons, I continue to support the SASM provisions and overlays as addressed in the Section 42A report and otherwise addressed in this right of reply. Consequently, I do not support any rationalisation of the SASM Overlays or provisions is necessary or appropriate on the basis of the advice received from MKT, except as otherwise recommended in the Section 42A Report.

[4] Having heard the evidence, would you, or Council’s cultural advisor, now support in particular, deletion or reduction of the NTTO?

- 2.52 The evaluation provided to address item [3] confirms that there are overlaps between the provisions and overlays in the PSDP, but that these are necessary and that the NTTO Overlay is required to meet SDC’s duties under the RMA.
- 2.53 I agree with the assessment provided in MKT’s evaluation of the appropriateness and necessity of the retaining the NTTO overlay and related provisions (refer to **Appendix 4** of this report). Section 6(e) requires that district plans recognise and provide for the relationship of Māori and their culture with wāhi tapu and other taonga, which is for Māori to establish and assert. This is confirmed in PSDP Strategic Direction SD-MWV-O1(2), which directs “...that only those who hold manawhenua status can identify their relationship with their culture, traditions, ancestral lands, waterbodies, wāhi tapu and other taonga”.
- 2.54 As MKT still supports the incorporation of the NTTO in the District Plan, I maintain that the submissions seeking the NTTO’s deletion or reduction should be rejected.

[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?

- 2.55 The report prepared by MKT to inform the Section 42A report sets out in Section 6.0 where further relaxation of rules are recommended⁵¹ and which I support. The MKT report contained in **Appendix 4** states that they do not support any further relaxation of the rules beyond those amendments.
- 2.56 As addressed above, manawhenua remain the primary source of understanding the extent of cultural effects and sites and areas of significance based on their shared knowledge and relationship with the district. Increasing permitted activities without providing a consenting process to identify and address potentially adverse effects on the identified SASM would in my view fail to meet statutory direction. I note that effects on SASM are not limited to physical effects but in many instances relate to pre-European occupation and Te Ao Māori values.
- 2.57 I do not consider the provisions recommended in the Section 42A report to be unreasonable or onerous for resource consent applicants. The restricted discretionary activity status and matters of discretion have been designed to ensure that any cultural effects are identified and appropriately assessed, with opportunities provided for engagement to occur with Papatipu Runanga and Heritage New Zealand.

⁵¹ Officer Section 42A Report, Appendix 3: MKT Supporting Technical Report, Section 6.0.

- 2.58 In the absence of confirmation from MKT that a relaxation in rule standards would not result in any significant effects, I consider any relaxation of the of the NTTO rule provisions would be inappropriate.

[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?

- 2.59 The National Planning Standards defines ‘earthworks’ as meaning (emphasis underlined):

“...the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but excludes gardening, cultivation, and disturbance of land for the installation of fence posts.”

- 2.60 As such, I agree with the evidence statement of Jill Thomson⁵² that that the NPS definition of ‘earthworks’ does exclude ‘cultivation’, which is also defined separately in the NPS.

- 2.61 The purpose of the recommended addition of proposed Rule SASM-R2(6) is to provide for the continued operation of farming activities that would not have significant effects on cultural values. The MKT report appended to the Section 42A Report supports an amendment to rule SASM-R2 to include both cultivation within land previously disturbed and in previously undisturbed areas to a maximum depth of 200mm. The reference to ‘earthworks’ in the MKT report and proposed Rule SASM-R2(6) was intended to refer to the use of the term generally as the alteration or disturbance of land and was not intended to exclude activities that did not fall within the NPS definition of ‘earthworks’. However, I agree that as currently drafted, the rule is inconsistent with the NPS and is potentially confusing to users.

- 2.62 I support the addition of the specific exclusions listed in the NPS definition of ‘earthworks’ into rule SASM-R2(6) to provide scope of the permitted activity standards that avoid consent for ‘everyday’ farming activities (proposed addition in underline):

“Where:

The earthworks, gardening, cultivation or installation of fence posts are:”

- 2.63 Such a change would provide consistency with the NPS and clarity for plan users and would not impact the intention behind and functioning of proposed Rule SASM-R2(6). I consider there would be scope to make such a change, given it is primarily for clarity and refinement of detail.

[7] Please respond to the suggestion that the engagement procedures should be brought into the Chapter to provide more certainty.

- 2.64 As identified in the Officer Response to Questions⁵³, I consider that operating procedures or protocols for engagement with MKT are more appropriately developed and managed by SDC outside of the PSDP. This is consistent with the approach taken by Christchurch City Council and Waimakariri District Council and applying similar approaches across councils is likely to result in efficiencies. This approach also recognises that consultation is, by its nature, a fluid requirement that does not sit well within a rule framework and that the nature, extent and timing of consultation will depend on the context of each application and its context.

⁵² DPR-0379 Jill Thomson, Hearing statement, 12 April 2022.

⁵³ Officer Section 42A Report, Appendix 3: MKT Supporting Technical Report, Section 5.0.

- 2.65 I note that MKT support the inclusion of an engagement policy in the PSDP but do not support any detailed operating procedures or protocols being specified in the PSDP⁵⁴ (refer also to **Appendix 4**). I support the position advanced by ESAI in their hearing statement that they consider the broad scope provided by their submission provides scope to include the recommended engagement policy⁵⁵.

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

- 2.66 I agree with Jill Thomson that district plan provisions can only apply within that district’s territorial boundary, and that the district’s territory does not extend into the Coastal Marine Area (CMA), as defined in the RMA.⁵⁶ The CMA is administered by ECan,⁵⁷ with the landward side of the line of the mean high-water springs being managed by SDC. The ‘coastal environment’ is managed by both the SDC and ECan, which is described in Section 8 of the CRPS⁵⁸ and illustrated in the CE-Coastal Environment Chapter of the PDP. The CRPS also identifies that *“Te Rūnanga o Ngāi Tahu and papatipu rūnanga may have interests across regional and district council boundaries.”*⁵⁹
- 2.67 I agree with the MKT advice contained in **Appendix 4** of this report that SDC has a duty under section 208 of the Ngāi Tahu Claims Settlement Act 1998 to have regard to Statutory Acknowledgements when deciding whether Ngāi Tahu is a person who may be adversely affected by the granting of a resource consent for activities within, adjacent to, or impacting directly on, the statutory area.
- 2.68 For the above reasons, I consider that it is appropriate to retain the Statutory Acknowledgement (SASM-60) and CMA (SASM-1 and SASM-57) on the planning maps and in the SASM Schedules. This ensures that these areas are not overlooked in the processing of any applications for resource consent adjacent to the coastal boundary. Retaining mapped SASM in the CMA would also recognise the fact that the jurisdiction of local authorities has no context in the values that are held by Ngāi Tahu in relation to a particular site or area.
- 2.69 However, the rules in the SASM Chapter only apply to the landward boundary of the CMA. To make matters clear for plan users, a note could be included in the description of relevant SASM in the Schedule as a Clause 16(2) amendment stating that the rules in the SASM only apply to the landward extent of the SASM.

3. Clarification regarding matters raised in evidence

[1] Dual naming of the SASM overlay labels

- 3.1 The ESAI hearing statement clarifies that they support the dual naming of overlay labels⁶⁰. I agree and support the reasoning for the dual naming of the SASM overlays, which I consider can be undertaken as Clause 16(2) amendment.

⁵⁴ Officer Response to the Panels Questions, 8 April 2022.

⁵⁵ ESAI Hearing Statement, paragraph 4.8, 28 March 2022 - Submissions DPR-2012.026 ESAI and DPR-0254.001 Sue Dillon.

⁵⁶ RMA, section 2 definition of “district”.

⁵⁷ RMA, section 30(1)(d).

⁵⁸ Canterbury Regional Policy Statement 2013 (July 2021). Chapter 8 The Coastal Environment, Introduction.

⁵⁹ Canterbury Regional Policy Statement 2013 (July 2021). Chapter 3 Resource Management Processes for Local Authorities, 3.1(6).

⁶⁰ ESAI Hearing Statement, paragraphs 4.58 to 4.60, 28 March 2022.

4. Reporting Officer's Proposed Provision Amendments

- 4.1 On review of the submitter's evidence and the matters raised within the Hearing the following amendments to the proposed provisions are recommended. Note that the amendments as recommended in the Section 42a evidence are included but are not shown as underlined text or strikethrough. For a full summary of all the proposed amendments to provisions see **Appendix 2**.

Proposed amendment:

- 4.2 Insert a new policy SASM-P4 as follows:

"SASM-P4

Taumutu and Te Ngāi Tūāhuriri Rūnanga and Council to encourage and facilitate the engagement of landowners and resource consent applicants with the relevant rūnanga prior to undertaking activities and/or applying for resource consent, within or adjacent to identified sites of Ngāi Tahu cultural significance (including the Sites and Areas of Significance to Māori). Where prior applicant engagement has not been undertaken Council will consult with the relevant rūnanga."

Submission scope:

- 4.3 Scope is provided for this proposed amendment through the EASI submission point DPR-0212.026 and Sue Dillon submission point DPR-0254.001.

Reasoning:

- 4.4 The inclusion of an engagement policy will encourage engagement, provide more certainty to plan users and administrators, better achieve Strategic Direction SD-MWV-01, and will achieve stronger alignment between the PSDP and the district plans of adjoining territorial authorities. No additional Section 32AA evaluation is deemed necessary.

Proposed amendment:

- 4.5 Amend rule SASM-R2.1.a as follows:

"Activity Status: PER

1. Earthworks

Where:

The earthworks are:

- a. within land previously disturbed by previous earthworks, cultivation, plantings (trees, pasture, ecological restoration, riparian protection, or crops), or buildings; and ..."

Submission scope:

- 4.6 Scope is provided for this proposed amendment through the EASI submission point, DPR-0212.032.

Reasoning:

- 4.7 The inclusion of the references to "ecological restoration" and "riparian protection" in the list of permitted activities is appropriate as they are activities that present a low risk, and in some

cases will protect and enhance Wāhi Tapu and Wāhi Taonga sites and the values attributed to them. No additional Section 32AA evaluation is deemed necessary.

Proposed amendment:

- 4.8 Amend rules SASM-R2.1.a and SASM-R2.6 as follows:

“Where:

The earthworks, gardening, cultivation or installation of fence posts are: ...”

Submission scope:

- 4.9 Scope is provided for this proposed amendment through the Jill Thomson submission point, DPR-0379.062, 063 and 065.

Reasoning:

- 4.10 The amendment to the rules will reduce any conflict with the NPS definition of earthworks, while ensuring there is scope in the permitted activity standards to avoid resource consent for ‘everyday’ farming activities taking place in the NTTO. No additional Section 32AA evaluation is deemed necessary.