



Te Tai o Poutini PLAN

A combined district plan for the West Coast

Prepared for: Hearing Commissioners - Te Tai o Poutini Plan

Prepared by: Lois Easton, Principal Planner

Date: 25 October 2024

Subject: s42A Author Right of Reply Sites and Areas of Significance to Māori

Purpose of Report

1. The purpose of this report is to respond to the questions raised by the Hearings Commissioners during Hearing 11: Sites and Areas of Significance to Māori, and for the Officer to propose any further amendments to the notified version of the Proposed District Plan above those recommended in the Officers s42a evidence reports.

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

2. The following questions were received from the Hearing Commissioners for the Sites and Areas of Significance to Māori topic which sat on 30 April – 2 May 2024.

[1] Can I provide examples of rules from other Councils re SASM

3. The following table outlines the approach taken by other Councils in recent (post national planning standards) district plans.

Plan	Example Approach
Porirua	Very limited Permitted Activities (maintenance and restoration), few Restricted Discretionary Activities (earthworks, new buildings), all other activities Discretionary or Non-complying. A total of 22 sites of significance to Māori scheduled in this plan.
New Plymouth	Permitted Activities only in relation to maintenance and repair of network utility infrastructure Restricted Discretionary Activity to upgrade network utility infrastructure All other activities Discretionary A total of 1500 sites of significance to Māori are scheduled in this plan.
Timaru	Categorises SASM into a range of different overlay types with different rules applying depending on the category. Some types of SASM have a wide range of Permitted Activities Other types of SASM require a resource consent for most activities – some RDA, some Discretionary, some Non-complying A total of 24 sites of significance to Māori scheduled in this plan.
Selwyn	Categorises SASM into a range of different overlay types with different rules applying depending on the category. Some types of SASM have a wide range of Permitted Activities Other types of SASM require a resource consent for most activities – all Restricted Discretionary Activities. A total of 62 sites of significance to Māori scheduled in this plan

Waimakiriri	<p>Categorises SASM into a range of different overlay types with different rules applying depending on the category. Some types of SASM have a wide range of Permitted Activities Other types of SASM require a resource consent for most activities – all Restricted Discretionary Activities.</p> <p>A total of 31 sites of significance to Māori scheduled in this plan</p>
Central Hawkes Bay	<p>Very limited Permitted Activities (maintenance and repair) Other activities Restricted Discretionary.</p> <p>A total of 65 sites of significance to Māori scheduled in this plan</p>
Northland	<p>Permitted Activity rules provide for activities undertaken by specified parties (specific iwi, Māori landowners) Otherwise activities are Discretionary or Non-complying</p> <p>A total of 430 sites of significance to Māori scheduled in this plan.</p>

[2] Can I include analysis of how many land titles/landowners are affected by rules for SASM.

4. There are 534 privately owned land titles that have one of the SASM rules on them.

[3] Some of the policies are “avoid” policies – but the rule is Discretionary not Non-complying – what is my view

5. Generally I consider that an “avoid” policy should link to a non-complying activity. The two policies that use this term exclusively link to non-complying activities.
6. Specific policies that refer to “avoiding” activities in some circumstances link to the following rules:

Policy	Relevant Rule/s
SASM - P6 – Avoid pounamu/aotea extraction by non-hapu members	SASM – R19 Non-complying activity
SASM – P12 – demolition or destruction of a SASM	SASM – R18 Non-complying activity
SASM – P8 – avoid adverse effects on values unless demonstrated functional needs of activity preclude this	SASM – R12 – SASM – R14 Discretionary Activity
SASM – P15 – avoid or reduce impact on values.	SASM – R12 – SASM – R14 Discretionary Activity

7. The issue does arise however that Ngāi Tahu have sought a discretionary activity status in relation to removal of pounamu by other than hapū members. In order to address this (and in response to a submission from Minerals West Coast) I recommended in the s42A report an amendment to Policy SASM – P6 as follows:

SASM – P6 Within the Pounamu and Aotea Management overlay, enable tino rangatiratanga and kaitiakitanga of the pounamu and aotea resource by Poutini Ngāi Tahu and avoid the unauthorised deliberate disturbance or removal of this resource by non-hapū members.

[4] What is the appropriate definition of Landfill?

8. We are required to use the National Planning Standard definition of landfill. This however includes reference to a further definition Cleanfill Area, the definition of which refers to a further definition of Cleanfill Materials. I consider therefore that the inclusion of a definition of landfill brings a consequential amendment of including those further two definitions. The three definitions are as follow:

Landfill means an area used for, or previously used for, the disposal of solid waste. It excludes cleanfill areas.

Cleanfill areas means an area used exclusively for the disposal of cleanfill material.

Cleanfull material means virgin excavated natural materials including clay, gravel, sand, soil and rock that are free of:

- a) combustible, putrescible, degradable or leachable components;
- b) hazardous substances and materials;
- c) products and materials derived from hazardous waste treatment, stabilisation or disposal practices;
- d) medical and veterinary wastes, asbestos, and radioactive substances;
- e) contaminated soil and other contaminated materials; and
- f) liquid wastes

[5] Why would we not use the definition of cultural landscape in the RPS?

9. While this matter was raised by Ms Pull in her written evidence, the Ngāi Tahu written submission supports the proposed Plan definition and does not seek amendment. I therefore do not consider there is scope to change the definition.
10. As experts of their own culture I also respect the Ngāi Tahu submission that supports the notified definition and regardless would recommend that the notified version be retained.
11. I also note from Mr Madgwick's evidence that the cultural landscapes recognised by the Plan have been identified in the SASM schedule. My understanding is that 'cultural landscapes' was a term used prior to the recognition of SASM in TTPP. Because of the age of the drafting of the RPS, I consider the notified TTPP version is the most appropriate definition.

[6] Is there scope to pull through maintain into the policies around access?

12. Herenga ā Nuku Aotearoa Outdoor Access Commission (S274.006) seeks that the Plan be amended so that there are cross references and notes that clarify that management of cultural sites and landscapes will not result in any loss of public access where this is legally available. This is the only submission point which provides for scope to address the matter of maintaining public access.

[6] What is the legal situation around minerals –and the definition of cultural materials – if we define minerals as a cultural material (rather than pounamu and aotea) is this going to conflict with the Crown Minerals Act.

13. The Crown Minerals Act regulates the prospecting, exploration and mining of Crown owned minerals. As all pounamu owned by the Crown was vested in Poutini Ngāi Tahu this is not subject to regulation under the Crown Minerals Act and this is specifically stated in that Act.
14. In addition minerals within "Victorian title" land are not owned or regulated by the Crown Minerals Act.
15. Under Section 8 1 (b) restrictions under the Crown Minerals Act in relation to prospecting, exploring for or mining of Crown owned minerals do not apply where these are used for any reasonable agricultural, pastoral, domestic, roadmaking, or building purpose on land of which the person is an owner or occupier; or for any sand, shingle, or other natural material in the bed of a river or a lake or in the coastal marine area unless otherwise specified in a minerals programme.
16. It is my view that the cultural materials (other than Aotea) addressed within the Sites of Significance to Māori Chapter are likely to fall under this exclusion. For example I consider that the collection of hangi stones or pigments and dyes for weaving would be considered a domestic purpose.
17. In terms of Aotea, Te Rūnanga o Makaawhio hold a mining permit under the Crown Minerals Act for Aotea across the area where it is located. Therefore there should be no conflict with the Crown Minerals Act provisions in terms of applying the proposed restrictions on Aotea collection in Te Tai o Poutini Plan.

[7] Can I update my recommendation in relation to the submission of Mary Stewart in light of the evidence of Mr Madgwick.

18. The s42A report incorrectly identifies that Mary Stewart's property remains within the SASM and I had not supported her submission point S222.001 in relation to SASM 6. In light of Mr Madgwick's evidence I would like to amend my recommendation to supporting submission point S222.001 and remove the SASM from her property in line with the updated mapping provided in the submission of Ngāi Tahu.

[8] Network Utility structures – should it be network utility infrastructure more widely in this chapter?

19. The rules in this chapter principally regulate structures and earthworks, with provisions around Network Utility structures (and other types of structures) focussed on above ground structures, whereas the term "Network Utility Infrastructure" would include below ground infrastructure. If the term was expanded to "Network Utility Infrastructure" then this would mean that some activities, not currently regulated, would fall under the provisions. I therefore do not consider it appropriate to amend this term in a more widespread basis

[9] Please confirm the Recommended amendment to wording of Rule 6

20. There is an error in my recommended amendment which refers to Table 6B within the rule rather than Table 7. The correct recommended amendment is shown below, change highlighted in yellow.

SASM – R6 Earthworks Buildings and Structures not Provided for in SASM – R2 in within Schedule Three– Sites and Areas of Significance to Māori listed in Tables SASM – T6 and SASM – T7 and not provided for in Rule SASM – R2
Activity Status Permitted

Where:

1. The activity does not occur within the ~~on the following~~ Sites and Areas of Significance to Māori listed identified in ~~Table SASM – T6A~~ Schedule Three, ~~except where it has been certified by with written approval from the relevant Poutini Ngāi Tahu that the activity will not have adverse effects on cultural values of the site and that evidence of this certification which is provided to the relevant District Council at least 10 working days prior to the activity commencing; and~~
 - i. ~~All sites identified in Category Tahī (1), Category Rua (2), Category Toru (3) and Category Whā (4) in Schedule Three; and~~
 - ii. ~~SASM 3 Whakapoai Native Reserve 7B and SASM 170 Porangirangi to Mahitahi;~~
 - iii. ~~provided that~~
2. ~~No earthworks, buildings or structures are located on the upper slopes, ridgelines or peaks of ancestral maunga identified in Table SASM 6B-7 Category Toru (3) in Schedule Three.~~

[10] Can I confirm my recommended amendment to the "Other Relevant Te Tai o Poutini Plan Provisions"

21. The amendment recommended did not include reference to the Ecosystems and Biodiversity Chapter. This is an error and my updated amendment is shown below:

Other relevant Te Tai o Poutini Plan provisions

It is important to note that in addition to this chapter, a number of chapters also contain provisions that may be relevant for sites and areas of significance to Māori, including:

- Historic Heritage - the Historic Heritage Chapter contains the provisions in relation to the sites and areas identified in Schedule One. It also contains Objectives and Policies that are also relevant to Sites and Areas of Significance to Māori.
- Notable Trees - the Notable Trees Chapter contains the provisions in relation to the trees identified in Schedule Two. Some trees are listed in this schedule due to their Poutini Ngāi Tahu values.
- Natural Features and Landscapes – the Natural Features and Landscapes Chapter contains provisions in relation to the landscapes and natural features in Schedules Five and Six. Poutini Ngāi Tahu values are part of what makes these areas significant.

- Subdivision - the Subdivision Chapter contains provisions which relate to the subdivision of land with sites and areas of significance to Māori- in particular Rules SUB - R10 and SUB - R17;
- Financial Contributions - the Financial Contributions Chapter provides the framework and provisions that allow for waivers for financial contributions in circumstances where heritage items, including sites and areas of significance to Māori are protected.
- Activities on the Surface of Water – the Activities on the Surface of Water chapter contains provisions for the surface of waterbodies. In some instances, activities are restricted on some waterbodies due to the potential impacts on Poutini Ngāi Tahu values.
- Ecosystems and Biodiversity – The Ecosystems and Biodiversity Chapter contains provisions for the management of indigenous vegetation and biodiversity. This includes provisions relating to indigenous vegetation clearance in the coastal environment.
- Appendix Ten - This appendix contains NZAA listed archaeological sites of Māori origin. The exact spatial location and extent of these sites has not yet been clearly identified but they are included in this appendix for information purposes. Like all archaeological sites, these are protected under the Heritage New Zealand Pouhere Taonga Act 2014.

[11] Is there anything in the Pounamu Management Plans that the Commissioners need to be aware of when considering the Pounamu Management Areas.

22. The Pounamu Management Plans set out key principles for sustainable management of the pounamu resource in their respective takiwa.
23. These management plans have objectives:
 - a) to uphold and protect pounamu as a taonga of the respective Rūnanga and provide a legal framework for the Rūnanga to exercise kaitiakitanga in the control, use, protection, extraction and management of pounamu within their takiwā for the best possible advocacy, protection, service and performance to their respective hapū;
 - b) for the sustainable management of pounamu to be guided by the tribal tikanga and
 - c) to provide a policy framework for the sustainable management of fossicking, customary collection and commercial extraction of pounamu to the current and future benefit of the hapū and Ngāi Tahu Whānui.
24. From my review of these Pounamu Management Plans I do not consider there is anything that specifically needs to be pulled into TTPP.

[12] In light of the evidence of Ms Pull do I retain my view on the approach for Victorian Title lands and the need of a definition?

25. I have reflected on the evidence of Ms Pull and also the advice from Lucy De Latour and Kate Dickson of Wynn Williams in relation to the matter of Victorian Title which is attached to this Right of Reply.
26. I agree with Ms Pull's points about the cultural value of the stone and that this is what the provisions in TTPP are seeking to manage – not the mineral rights in terms of economic value which is the concern of the submitters seeking recognition of Victorian title. I agree that the cultural values are inherent, regardless of the ownership of the economic/mineral extraction rights. In light of those considerations I agree that there is not a need for a definition of Victorian Title or the Advice Note referring to this under SASM – R7.

[13] Re Policy 1 are there linkages back to the RPS and RMA in relation to public access which would allow a reference to "no more than minor" effects in the policy.

27. I do not consider that this issue raised by the commissioners falls within the scope of submissions. The only submission points on this matter seek that the reference to access be deleted, which I did not support in the s42A report. I have not changed my view on this.

[14]. SASM – P8 is "or operational needs" appropriate. – Could "more than minor" adverse effects be used rather than "all".

28. In relation to "or operational needs" I retain my view as expressed in the s42A report.
29. I have considered the use of the term "no more than minor" within this and other policies and consider that this is generally not an appropriate phrase/term for use in Plan policies.

30. This phrase is almost exclusively used in relation to resource consents where it forms the s104D Gateway Test for non-complying activities, in relation to s95A and 95D and notification decisions.
31. I have reviewed the recent (prepared under the national planning standards) plans across New Zealand and this phrase (or similar) is not used within either objectives or policies of any of these plans. I found one instance where it was used in an assessment criterion.
32. I do not recommend the use of the term "more than minor" in relation to SASM – P8 or any other policy in the Plan.

[15] Re Policy SASM P13 and Rule SASM R9 – should this be infrastructure not structures?

33. This policy and rule specifically relate to allowing for maintenance, repair and upgrading of existing network utility structures within SASMs that are located primarily in areas of substantial built development.
34. I agree that in this context the use of the phrase "network utility infrastructure" is more appropriate than "network utility structures". This would have consequential amendments to both Rule SASM – R10 and SASM – R13.
35. I also note an error in the Appendix that I have corrected. I therefore recommend the following amendment to the Plan. Differences from the s42A report are highlighted in yellow.

SASM – P13 Enable activities in sites and areas of significance to Poutini Ngāi Tahu included in Schedule Three where the cultural and spiritual values of the site or area are protected. This includes:

- a. Alterations to, demolitions and removal of existing buildings and structures;
- b. Maintenance, operation, repair and upgrading of existing network utility ~~structures~~ **infrastructure** and ~~critical regionally significant~~ infrastructure;
- c. Customary harvest and other cultural practices in accordance with tikanga;
- d. Indigenous vegetation clearance;
- e. Temporary events;
- f. Small-scale earthworks for burials within an urupā, fencing, archaeological survey and
- g. maintenance of overhead network utilities, roads and tracks;
- h. Animal grazing where identified values are maintained.

SASM – R9 Maintenance, Repair and Upgrading of Network Utility ~~Structures~~ **Infrastructure on or within Sites and Areas of Significance to Māori ~~identified~~ **listed** in Schedule Three **Table SASM – T8**
Activity Status Permitted**

Where:

1. The activity occurs in one of the following ~~Sites and Areas of Significance to Māori~~ as identified in Schedule Three:

- i. SASM 10 Kawatiri Pā
- ii. SASM 12 Kawatiri Town Reserve
- iii. SASM 15 No. 42 Kawatiri (Township) Native Reserve
- iv. SASM 31 Punakaiki Area
- v. SASM 56 Māwhera Pā 1
- vi. SASM 57 Māwhera Gardens
- vii. SASM 58 Greymouth Railway Land
- viii. SASM 59 Māwhera Pā 2
- ix. SASM 60 Māwhera Kāinga
- x. SASM 61 Victoria Park
- xi. SASM 63 No. 32 Nga Moana e Rua Native Reserve
- xii. SASM 94 No. 30 Arahura Native Reserve
- xiii. SASM 96 Taramakau River
- xiv. SASM 104 Kawhaka Creek Catchment
- xv. SASM 112 Arahura River at Tūhua
- xvi. SASM 117 Waitaiki Catchment

- xvii. SASM 121 Waitaiki Historic Reserve
- xviii. SASM 197 Ōkuru

SASM – R10 Maintenance, Repair and Upgrading of Network Utility Infrastructure Structures on or within Sites and Areas in Schedule Three - Sites and Areas of Significance to Māori where Permitted Activity standards are not met Activity Status Controlled

Where:

1. Notice of works is provided to the relevant Poutini Ngāi Tahu Rūnanga - Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio, 10 working days prior to any earthworks commencing; and
2. The work is in an area that has previously been disturbed by the network utility; and
 - a. For the maintenance, repair and upgrading of above ground structures any earthworks involves no more than 0.3m² to a maximum depth of 450mm at the base of the above ground structure; and
 - b. For underground structures, a maximum area of 10m² or a maximum volume of 5m³ of land; or
3. The work is installing customer connections to an existing network, provided that any associated earthworks are limited to the extent that is necessary to install the connection; or
4. The work is the trimming or removal of trees or vegetation for the purpose of protecting the integrity of a structure or is otherwise undertaken in accordance with the Electricity (Hazards from Trees) Regulations 2003.

Matters of control are:

- a. Area and depth of earthworks for above ground structures;
- b. Area and volume of earthworks for underground structures;
- c. Extent of earthworks for new customer connections;
- d. Extent of any vegetation trimming or removal;
- e. Impacts of the activity on the cultural values on any site or area of significance to Māori;
- f. Implementation of any advice received from the relevant Poutini Ngāi Tahu rūnanga on ways to manage the effects on cultural values of the proposed maintenance works.

Advice Note: This rule applies to all Sites and Areas of Significance to Māori other than those within Table SASM – T8

[16] Ahi Kā roa – can I confirm this is going into the glossary

36. The term ahikāroa is included already within the glossary – but as one word rather than three words. I recommend the Glossary is amended to show the term as ahi kā roa.

[17] Can I confirm which rules I recommend include provisions for Regionally Significant Infrastructure.

37. I support the inclusion of Regionally Significant Infrastructure in Rule SASM – R9 and SASM – R10. These two rules currently relate to Network Utilities and I consider that it is appropriate to extend this to include Regionally Significant Infrastructure. I recommend that the following amendments are made to Rules SASM – R9, SASM – R10 and SASM – R13. Differences from the s42A report are highlighted in yellow.

SASM – R9 Maintenance, Repair and Upgrading of Network Utility Infrastructure and Regionally Significant Infrastructure Structures on or within Sites and Areas of Significance to Māori identified-listed in Schedule Three Table SASM –T8

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SASM – R10 Maintenance, Repair and Upgrading of Network Utility Infrastructure and Regionally Significant Infrastructure Structures on or within Sites and Areas in Schedule Three - Sites and Areas of Significance to Māori where Permitted Activity standards are not met

....

SASM - R13 Maintenance, Repair, Upgrade and New Network Utility Infrastructure and Regionally Significant Infrastructure Structures on or within Sites and Areas of Significance to Māori in Schedule Three not meeting Controlled Activity Standards

...

[18] In relation to Rule SASM R4 and the submission of Grey District Council – are there types of indigenous vegetation that could be included in the permitted activity.

38. I have reviewed the location and sites that Rule SASM R4 applies to. While most of these sites are covered in indigenous vegetation and from aerial photography appear to be undisturbed, the following SASM sites have extensive developed areas that could include planted garden, indigenous vegetation or be farmed properties.

- SASM 33 (Pakiroa Beach – these are the Barrytown Flats including land farmed by Mr Coates)
- SASM 52 (Cobden Native Reserve – a Grey District Council Park)
- SASM 102 (No 24. Hokitika Native Reserve – land owned by Māwhera Incorporation)
- SASM 135 (Ōkārito No. 18 Koamaru Native Reserve – private land, including several residential sites)
- SASM 197 (Ōkuru – most of the settlement)

39. While it is only a small number of SASM sites that create a concern with this performance standard, I do agree that there could be some exceptions made to this rule in relation to planted garden vegetation, and indigenous vegetation clearance for the maintenance of existing fencelines where this is within 1m of the fence. I therefore recommend the following amendment to Rule SASM – R4 (changes highlighted in yellow)

**SASM - R4 Indigenous vegetation clearance on Sites and Areas in Schedule Three – Sites and Areas of Significance to Māori listed in Table SASM – T4
Activity Status Permitted**

Where:

1. The activity does not occur on the following within the Sites and Areas of Significance to Māori identified in Schedule Three listed in Table SASM – T4, except with the written approval from the where:
 - i. it has been certified by the relevant Poutini Ngāi Tahu rūnanga that the activity will not have adverse effects on the cultural values of the site or area, with evidence of this certification which is provided to the relevant District Council at least 10 working days prior to the activity commencing; or
 - ii. this is hand clearance for: the maintenance of existing fencelines within 1m of the fenceline; or removal of planted garden vegetation.
- i. All sites identified in Category Tahī (1) and Category Rua (2) in Schedule Three;
- ii. SASM 52 Cobden Native Reserve;
- iii. SASM 109 Pyramid Hill/Tumuaki Hill;
- iv. SASM 117 Waitaiki Catchment;
- v. SASM 156 Te Puku o te Wairapa;
- vi. SASM 159 Tikitiki o Rehua;
- vii. SASM 162 Heretaniwha;
- viii. SASM 170 Porangirangi to Mahitahi;
- ix. SASM 192 Awarua;
- x. SASM 197 Ōkuru;
- xi. SASM 204 Waiototo Lagoon, South Bank Nohoanga; and
- xii. SASM 214 Huruwhiri Manu/Spoon River.

Advice Note: Indigenous vegetation clearance is also subject to the provisions in the ECO - Ecosystems and Biodiversity Chapter.

[19] Do I agree with the use of the phrase “buildings and structures” rather than just “structures” (consistency issue)

40. I have reviewed the use across the proposed Plan and show in the table below where “structures” is used and where “building and structures” is used within provisions. As can be seen from the table, there is no consistent approach currently used in the Plan, but it does appear that “buildings and structures” is more common, particularly in the District – Wide Chapters. Generally the term “structures” has been used in provisions that just relate to infrastructure.

Proposed Plan Provisions where “Structures” only is Used	Proposed Plan Provisions where “Building and Structures” is Used
ENG – P4, ENG – R4, ENG – R7, ENG – R12, ENG – R14	ENG – R6, ENG – R7
INF – P6	-
NH – P7, NH -R3, NH – R5, NH – R35, NH – R39	NH – R35, NH – R39
HH – R8	-
SASM – R9, SASM – R13	SASM – P10, SASM – P13, SASM - R6, SASM – R10, SASM - R12, SASM – R12, SASM – R18
-	NFL– P1, NFL – R1, NFL – P4, NFL – R5, NFL – R12, NFL – R14
-	NC – P3, NC – R2, NC – R4
CE – R1	CE – P5, CE – P6, CE – R4, CE – R5, CE – R8, CE – R14, CE – R15, CE – R16, CE – R21
TEMP – P1	TEMP – R2, TEMP – R8
-	OSRZ – P3, OSRZ – P8, OSRZ – P17, OSRZ – P20
-	CMUZ – PREC2 – P8
-	RURZ – P1, RURZ – P25
AIRPZ – R4, HOSZ – P2,	BCZ – P4, MINZ – P4, MPZ – P5, FUZ – P3

41. In light of this analysis I consider that where the term “structures” is used in the District Wide Chapters of the Plan, this should generally be replaced with “building and structures” providing a consistent approach across the Plan.

42. I do emphasise that I would not support replacing provisions which refer only to “buildings” with “buildings and structures” as this would have the consequence of substantially altering the meaning of the provision.

43. For completeness I note that there is a “Minor Structures” rule in each of the zone chapters. I do not recommend changing this to “Minor Buildings and Structures”. I do not consider there is scope for that change, and that given “buildings” are included in the definition of “structures” that such a change is unnecessary.

44. In relation to the SASM Chapter I have already recommended that in the instances where “structures” is used in relation to network utilities this should be replaced with “infrastructure” therefore there is no further amendment I recommend to this chapter.

[20]. Response of Ngāi Tahu to Minute 37 and consequent recommendations

45. I have reviewed the response of Ngāi Tahu to Minute 37. In light of this I make the following recommendations that differ from the Section 42A report.

46. That the submission point of Angela Sweetman and Patrick William Kennedy (S413.001) be accepted and that the submission point of G.E. and C.J. Coates (S415.011) is accepted in part.
47. I have asked Poutini Ngāi Tahu for updated maps of the relevant SASM to determine whether the changes to the mapping are within scope to be included in recommended amendments to the Plan. When I receive this information and have completed this analysis I will provide a supplementary response to the Commissioners.

[21] Correction of Table SASM – T1 in relation to SASM 55

48. I would like to correct an error in my recommendation of the content of Table SASM – T1. I recommend the amended table as follows:

SASM – T1 - Table for Rule SASM - R1 Grazing of Animals
SASM 22 Ōkari Lagoon
SASM 41 Kotorepi (Nine Mile)
SASM 55 (Māwhera Burial Cave Site)
SASM 81 Takataka Islands
SASM 84 Ōkarito (No. 18 Kaomaru Native Reserve)
SASM 168 No 4. Heretaniwha Native Reserve
SASM 207 Arawhata Reserve at River Mouth – Silent File

[22] In relation to SASM – R5 with regard to Lake Mahinapua and Advice Note 2 – is this single certification for one year or multiple years? What is the opportunity to review over time addressing the scale of the activity and types of activities to recognise cultural values?

49. I consider that the Advice Note provides for either annual or multiple year certification – this would be determined by the certifying party. I expect that the certification process proposed, as outlined in the Joint Witness Statement in relation to this matter, would provide for ongoing dialogue between the Lake Māhinapua Aquatic Club around how the scale and types of activities could be amended over time to recognise cultural values. I consider this is a matter best addressed between the two parties rather than through codifying in Plan provisions.

[23] How many of the NZ Archaeological Association sites with links to Māori values are outside of SASMs? Is there a way that this information could be included in the Plan so as not to lose the information provided currently in the Buller District Plan? How do other Plans deal with this?

50. The NZ Archaeological Association has mapped (to their best ability) all archaeological sites in their inventory and this map is available for free to view at:
<https://archsite.eaglegis.co.nz/NZAAPublic>.
51. This mapping does not differentiate between the sites that potentially have Māori origin from those of European origin.
52. I have previously identified that there are some 400 sites across the West Coast that are identified in the NZAA inventory that are of Māori Origin, however it would be a significant exercise to map these while excluding the other archaeological sites. There are over 1000 NZAA identified sites on the West Coast not included within any Schedule in the Plan.
53. I did consider this where this matter was raised in the Historic Heritage topic. My Right of Reply for that topic states: *"I can see if a benefit of including these as an "information only" appendix. Provided this did not include mapping the sites, there would be low costs in doing this. In the order of \$1000. If there was a need to map the sites, then the digital information from NZAA would need to be purchased, and a layer built in TTPP. It could then be shown as a non-statutory "indicative" layer. I estimate the cost to do this would be in the order of \$10-15,000. However I consider, this would be a lower priority piece of expenditure compared to many others facing TTPP and I do not recommend the mapping of these sites."*

54. In terms of how other Plans deal with this, of the Plans that I reviewed in response to the question under 1. above, only New Plymouth District Council appears to have addressed this. In this case by scheduling 1500 Sites and Areas of Significance to Māori and Archaeological Sites which I assume is all known sites on the Archaeological Inventory for that district. I have not directly compared the inventory to the New Plymouth Plan. These sites are shown on the ePlan maps. I can only assume that the New Plymouth District Council has undertaken the exercise of field verification of all these sites in order to include them in their Plan in this manner.
55. The other Plans I reviewed generally note in their Overviews to the chapter that they have not identified all Sites of Significance to Māori in their district – and refer the Plan reader to Heritage New Zealand Pouhere Taonga, New Zealand Archaeological Association or local iwi in terms of awareness of additional sites. They do not include the NZAA lists as a schedule or non-statutory layer in their plans.
56. I have not altered my view on this since the historic heritage hearing and recommend that these sites could be listed in an “information only” appendix.

[24] Submissions withdrawn by Te Tumu Paeroa.

57. Te Tumu Paeroa have advised that they have withdrawn the following submissions which relate to the Sites and Areas of Significance to Māori topic: S440.017, S440.018, S440.019, S440.020, S440.021, S440.053.
58. I had made a recommendation to amend Policy SASM – P15 in response to submission S440.020 in my s42A report, where there is now no scope to make these changes. These are as follow and I have highlighted my amended recommended text in **yellow**.

SASM – P15 Allow any other use and development on sites and areas of significance to Māori in Schedule Three where it can be demonstrated that the identified values of the site or area are protected and maintained, having regard to:

- a. Whether there are alternative methods, locations or designs that would avoid or reduce the impact on the values associated with the site or area of significance;
- b. The functional or operational need for the activity to be undertaken in the location;
- c. Outcomes articulated by Poutini Ngāi Tahu through an assessment of environmental effects, cultural impact assessment or iwi planning documents;
- d. The potential to enhance the values of the site of significance and the relationship of Poutini Ngāi Tahu with their taonga, commensurate with the scale and nature of the proposal;
- e. How values of significance to Poutini Ngāi Tahu, including tikanga, kaitiakitanga and mātauranga Māori may be incorporated; and
- f. Any practical mechanisms to maintain or enhance the ability of Poutini Ngāi Tahu to access and use the site or area of significance for karakia, monitoring, cultural activities and ahi kā roa **are made in agreement with affected landowners.**

[25] SASM Caucusing planner concerns about the terms in relation to infrastructure used within the Plan

59. During the planner caucusing for this topic, the issue of the multiple terms used for infrastructure in the Plan was raised by Ms Pull. While this was outside of the matters that were the focus of the caucusing, it was agreed that it would be useful to alert the Commissioners to some joint concerns about this.
60. Overall the planners recognised that there is a multiplicity of terms used in the Plan around infrastructure - critical infrastructure, infrastructure (using the RMA definition), network utility operator (using the RMA definition). There are also some terms used in various places but not defined e.g. lifeline utilities, network utility, network utilities, network infrastructure, public network utilities, network utility structures, reticulated network utility systems, temporary network utilities. And then the changes and additions to definitions that have come from evidence and s42A reporting such as regionally significant infrastructure and network utility infrastructure.

61. Some of these are used interchangeably, and some are used deliberately in certain locations, and certainly all these different terms are confusing and overlapping.
62. It is acknowledged that the planner caucusing for the Energy Infrastructure and Transport topic (which I did not participate in) came to some views about the use of terms, which now the hearings and evidence on the full District Wide Matters have occurred, may have some inappropriate implications for the rest of the Plan. In particular the District Wide provisions outside of the Energy Infrastructure and Transport Chapter are quite strongly focussed on network utilities rather than using the wider definition of infrastructure for reasons discussed in some detail in the respective s42A reports.
63. I consider that the best approach would be to look holistically across the Plan to work through and refine an agreed set of definitions appropriate to be used for the range of circumstances required.

Recommendations

1. Amend the glossary in the Plan as follows

Ahi_kā_roa continuous occupation

2. Add the following new definitions to the Plan

Cleanfill areas means an area used exclusively for the disposal of cleanfill material.

Cleanfull material means virgin excavated natural materials including clay, gravel, sand, soil and rock that are free of:

- g) combustible, putrescible, degradable or leachable components;
- h) hazardous substances and materials;
- i) products and materials derived from hazardous waste treatment, stabilisation or disposal practices;
- j) medical and veterinary wastes, asbestos, and radioactive substances;
- k) contaminated soil and other contaminated materials; and
- l) liquid wastes

Landfill means an area used for, or previously used for, the disposal of solid waste. It excludes cleanfill areas.

3. That the following amendments are made to the Overview of the SASM Chapter

Other relevant Te Tai o Poutini Plan provisions

It is important to note that in addition to this chapter, a number of chapters also contain provisions that may be relevant for sites and areas of significance to Māori, including:

- Historic Heritage - the Historic Heritage Chapter contains the provisions in relation to the sites and areas identified in Schedule One. It also contains Objectives and Policies that are also relevant to Sites and Areas of Significance to Māori.
- Notable Trees - the Notable Trees Chapter contains the provisions in relation to the trees identified in Schedule Two. Some trees are listed in this schedule due to their Poutini Ngāi Tahu values.
- Natural Features and Landscapes – the Natural Features and Landscapes Chapter contains provisions in relation to the landscapes and natural features in Schedules Five and Six. Poutini Ngāi Tahu values are part of what makes these areas significant.
- Subdivision - the Subdivision Chapter contains provisions which relate to the subdivision of land with sites and areas of significance to Māori- in particular Rules SUB - R10 and SUB - R17;
- Financial Contributions - the Financial Contributions Chapter provides the framework and provisions that allow for waivers for financial contributions in circumstances where heritage items, including sites and areas of significance to Māori are protected.

- Activities on the Surface of Water – the Activities on the Surface of Water chapter contains provisions for the surface of waterbodies. In some instances activities are restricted on some waterbodies due to the potential impacts on Poutini Ngāi Tahu values.
- Ecosystems and Biodiversity – The Ecosystems and Biodiversity Chapter contains provisions for the management of indigenous vegetation and biodiversity. This includes provisions relating to indigenous vegetation clearance in the coastal environment.
- Appendix Ten - This appendix contains NZAA listed archaeological sites of Māori origin. The exact spatial location and extent of these sites has not yet been clearly identified but they are included in this appendix for information purposes. Like all archaeological sites, these are protected under the Heritage New Zealand Pouhere Taonga Act 2014.

4. That the following amendments are made to the SASM Policies:

SASM – P13 Enable activities in sites and areas of significance to Poutini Ngāi Tahu included in Schedule Three where the cultural and spiritual values of the site or area are protected. This includes:

- Alterations to, demolitions and removal of existing buildings and structures;
- Maintenance, operation, repair and upgrading of existing network utility structures infrastructure and ~~critical~~ regionally significant infrastructure;
- Customary harvest and other cultural practices in accordance with tikanga;
- Indigenous vegetation clearance;
- Temporary events;
- Small-scale earthworks for burials within an urupā, fencing, archaeological survey and-maintenance of overhead network utilities, roads and tracks;
- Animal grazing where identified values are maintained.

SASM – P15 Allow any other use and development on sites and areas of significance to Māori in Schedule Three where it can be demonstrated that the identified values of the site or area are protected and maintained, having regard to:

- Whether there are alternative methods, locations or designs that would avoid or reduce the impact on the values associated with the site or area of significance;
- The functional or operational need for the activity to be undertaken in the location;
- Outcomes articulated by Poutini Ngāi Tahu through an assessment of environmental effects, cultural impact assessment or iwi planning documents;
- The potential to enhance the values of the site of significance and the relationship of Poutini Ngāi Tahu with their taonga, commensurate with the scale and nature of the proposal;
- How values of significance to Poutini Ngāi Tahu, including tikanga, kaitiakitanga and mātauranga Māori may be incorporated; and
- Any practical mechanisms to maintain or enhance the ability of Poutini Ngāi Tahu to access and use the site or area of significance for karakia, monitoring, cultural activities and ahi kā roa are made in agreement with affected landowners.

5. That the following amendments are made to the SASM Rules

SASM - R4 Indigenous vegetation clearance on Sites and Areas in Schedule Three – Sites and Areas of Significance to Māori listed in Table SASM – T4 Activity Status Permitted

Where:

- The activity does not occur ~~on the following~~ within the Sites and Areas of Significance to Māori identified in Schedule Three listed in Table SASM – T4, except with the written approval from the where:
 - it has been certified by the relevant Poutini Ngāi Tahu rūnanga that the activity will not have adverse effects on the cultural values of the site or area, with evidence of this certification which is provided to the relevant District Council at least 10 working days prior to the activity commencing;
or

- ii. this is hand clearance for: the maintenance of existing fencelines within 1m of the fenceline; or removal of planted garden vegetation.
- xiii. All sites identified in Category Tahī (1) and Category Rua (2) in Schedule Three;
- xiv. SASM 52 Cobden Native Reserve;
- xv. SASM 109 Pyramid Hill/Tumuaki Hill;
- xvi. SASM 117 Waitaiki Catchment;
- xvii. SASM 156 Te Puku o te Wairapa;
- xviii. SASM 159 Tikitiki o Rehua;
- xix. SASM 162 Heretaniwha;
- xx. SASM 170 Porangirangi to Mahitahi;
- xxi. SASM 192 Awarua;
- xxii. SASM 197 Ōkuru;
- xxiii. SASM 204 Waiototo Lagoon, South Bank Nohoanga; and
- xxiv. SASM 214 Huruheru Manu/Spoon River.

Advice Note: Indigenous vegetation clearance is also subject to the provisions in the ECO - Ecosystems and Biodiversity Chapter.

SASM – R6 Earthworks Buildings and Structures ~~not Provided for in SASM – R2 in within Schedule Three~~ – Sites and Areas of Significance to Māori listed in Tables SASM – T6 and SASM – T7 and not provided for in Rule SASM – R2

Activity Status Permitted

Where:

1. The activity does not occur within the ~~on the following~~ Sites and Areas of Significance to Māori ~~listed identified in Table SASM – T6A Schedule Three, except where it has been certified by with written approval from the relevant Poutini Ngāi Tahu that the activity will not have adverse effects on cultural values of the site and that evidence of this certification which is provided to the relevant District Council at least 10 working days prior to the activity commencing; and~~
 - iv. ~~All sites identified in Category Tahī (1), Category Rua (2), Category Toru (3) and Category Wha (4) in Schedule Three; and~~
 - v. ~~SASM 3 Whakapoai Native Reserve 7B and SASM 170 Porangirangi to Mahitahi;~~
 - vi. ~~provided that~~
2. ~~No earthworks, buildings or structures are located on the upper slopes, ridgelines or peaks of ancestral maunga identified in Table SASM ~~6B-7~~ Category Toru (3) in Schedule Three.~~

SASM – R9 Maintenance, Repair and Upgrading of Network Utility Infrastructure and Regionally Significant Infrastructure on or within Sites and Areas of Significance to Māori identified listed in Schedule Three Table SASM – T8

Activity Status Permitted

Where:

1. The activity occurs in one of the following Sites and Areas of Significance to Māori as identified in Schedule Three:
 - i. SASM 10 Kawatiri Pā
 - ii. SASM 12 Kawatiri Town Reserve
 - iii. SASM 15 No. 42 Kawatiri (Township) Native Reserve
 - iv. SASM 31 Punakaiki Area
 - v. SASM 56 Māwhera Pā 1
 - vi. SASM 57 Māwhera Gardens
 - vii. SASM 58 Greymouth Railway Land
 - viii. SASM 59 Māwhera Pā 2
 - ix. SASM 60 Māwhera Kāinga
 - x. SASM 61 Victoria Park

- xi. ~~SASM 63 No. 32 Nga Moana e Rua Native Reserve~~
- xii. ~~SASM 94 No. 30 Arahura Native Reserve~~
- xiii. ~~SASM 96 Taramakau River~~
- xiv. ~~SASM 104 Kawhaka Creek Catchment~~
- xv. ~~SASM 112 Arahura River at Tūhua~~
- xvi. ~~SASM 117 Waitaiki Catchment~~
- xvii. ~~SASM 121 Waitaiki Historic Reserve~~
- xviii. ~~SASM 197 Ōkuru~~

**SASM – R10 Maintenance, Repair and Upgrading of Network Utility Infrastructure and Regionally Significant Infrastructure Structures on or within Sites and Areas in Schedule Three - Sites and Areas of Significance to Māori where Permitted Activity standards are not met
Activity Status Controlled**

Where:

1. Notice of works is provided to the relevant Poutini Ngāi Tahu Rūnanga - Te Rūnanga o Ngāti Waewae or Te Rūnanga o Makaawhio, 10 working days prior to any earthworks commencing; and
2. The work is in an area that has previously been disturbed by the network utility; and
 - c. For the maintenance, repair and upgrading of above ground structures any earthworks involves no more than 0.3m² to a maximum depth of 450mm at the base of the above ground structure; and
 - d. For underground structures, a maximum area of 10m² or a maximum volume of 5m³ of land; or
3. The work is installing customer connections to an existing network, provided that any associated earthworks are limited to the extent that is necessary to install the connection; or
4. The work is the trimming or removal of trees or vegetation for the purpose of protecting the integrity of a structure or is otherwise undertaken in accordance with the Electricity (Hazards from Trees) Regulations 2003.

Matters of control are:

- a. Area and depth of earthworks for above ground structures;
- b. Area and volume of earthworks for underground structures;
- c. Extent of earthworks for new customer connections;
- d. Extent of any vegetation trimming or removal;
- e. Impacts of the activity on the cultural values on any site or area of significance to Māori;
- f. Implementation of any advice received from the relevant Poutini Ngāi Tahu rūnanga on ways to manage the effects on cultural values of the proposed maintenance works.

Advice Note: This rule applies to all Sites and Areas of Significance to Māori other than those within Table SASM – T8

**SASM - R13 Maintenance, Repair, Upgrade and New Network Utility Infrastructure and Regionally Significant Infrastructure Structures on or within Sites and Areas of Significance to Māori in Schedule Three not meeting Controlled Activity Standards
Activity Status Discretionary**

Where:

There are no new structures on the upper slopes, ridgelines or peaks of ancestral maunga identified in ~~Category Toru (3) in Schedule Three~~ Table SASM – T7

Notification: Applications for earthworks on sites and areas of significance to Māori will always be limited notified to the relevant Poutini Ngāi Tahu Rūnanga When making notification decisions in relation to this rule, the Council will be informed by advice from Poutini Ngāi Tahu.

SASM – T1 - Table for Rule SASM - R1 Grazing of Animals

SASM 22 Ōkari Lagoon

SASM 41 Kotorepi (Nine Mile)

~~SASM 55 (Māwhera Burial Cave Site)~~

SASM 81 Takataka Islands

SASM 84 Ōkarito (No. 18 Kaomaru Native Reserve)

SASM 168 No 4. Heretaniwha Native Reserve

SASM 207 Arawhata Reserve at River Mouth – Silent File