

Before the Hearing Panel
Appointed by the Timaru District
Council

Under the Resource Management Act 1991 (**RMA**)
In the matter of submissions on the Proposed Timaru District Plan

Memorandum of Counsel on behalf of Timaru District Council

14 June 2024

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**anderson
lloyd.**

May it please the Hearing Panel:

Introduction

- 1 This memorandum is filed in response to Minute 7, which was issued by the Hearing Panel on 17 May 2024.
- 2 Minute 7 requests:
 - (a) Supplementary evidence from Ms Hollier and Mr Willis (by 14 June 2024), which:
 - (i) Classifies the outstanding issues identified in their section 42A report summaries as being either agreed with all relevant submitters, agreed with some submitters but not others, or still outstanding (alongside any reasons for disagreement) in accordance with paragraph [7](b) of Minute 7; and
 - (ii) Addresses the specific questions raised in paragraphs [13] and [14] of Minute 7; and
 - (b) Further information in relation to Sites and Areas of Significance to Māori (SASMs) identified in the plan, including:
 - (i) Evidence from the Council in relation to the process and methodology for mapping SASMs and landowner engagement (to be circulated alongside section 42A officer reports for Hearing B, ie., 20 June 2024);
 - (ii) Evidence on the cultural values being protected (to be filed alongside evidence for Hearing D, ie, 25 October 2024);
 - (iii) Advice on whether any of the above information is of a nature that should be received with the public excluded, or subject to other restrictions on publication or communication of that information (by 14 June 2024).
- 3 Against that background, this memorandum addresses:
 - (a) The supplementary evidence of Ms Hollier and Mr Willis; and
 - (b) Advice on the appropriate approach toward receiving SASM-related information.
- 4 This memorandum was prepared in consultation with Aoraki Environmental Consultancy Ltd (AEC) and Te Rūnanga o Ngāi Tahu

(TRoNT). AEC were consulted on the proposed approach to the memorandum, and confirmed that TRoNT preferred that the Council file this memorandum. AEC and TRoNT were provided with a draft of the memorandum on 12 June 2024 and have subsequently confirmed their agreement with its contents.

Supplementary evidence

- 5 The supplementary evidence of Ms Hollier and Mr Willis are filed concurrently with this memorandum.
- 6 The supplementary evidence addresses:
 - (a) The status of outstanding issues in a table format attached to the evidence (**issues table**);
 - (b) The specific questions raised by the Panel in respect of each witness.
- 7 The issues table used by Ms Hollier and Mr Willis to address paragraph [7](b) of Minute 7 has been prepared on the basis that it could also be used as a template for future section 42A report summaries, in accordance with paragraph [7](c) of Minute 7.
- 8 The issues table has been prepared on the following basis:
 - (a) It records issues that are either resolved or outstanding in accordance with evidence presented at the hearing (including evidence that was pre-circulated, or provided during or after the hearing). If the issue has not been raised in evidence, it is not addressed in the table and the section 42A report stands.
 - (b) It records, as best the section 42A officer can, the status of the issue as between the section 42A officer and the parties who have filed evidence. It does not attempt to ascertain whether submitters who did not provide evidence would agree or disagree with the recommendation of the section 42A officer. Therefore, where an issue is recorded as 'resolved with all', there may be submitters who have not filed evidence who may disagree with the section 42A officer's recommendation.
 - (c) In some instances, the section 42A officer may make a recommendation that they consider addresses or partly addresses the issue raised, but it is not clear whether the submitter would agree or disagree with the proposed wording. In those cases, the section 42A officer has made an assumption as to the resolution

or otherwise of the issue – that is recorded by way of an asterisk (*) and explanation in the 'reasons' column.

- 9 The Council sees the value in collating this information prior to the hearing to assist the Panel and submitters by identifying the key issues that will be addressed at the hearing. The Council also sees benefit in updating the s42A officers' position after hearing the evidence, particularly in the absence of an opportunity to present a reply after each hearing.
- 10 However, the experience of s42A officers is that the preparation of this information has been a reasonably significant task. While the outstanding matters for Hearing A are relatively narrow, the Council is concerned that the extent of outstanding issues in future hearings may be significantly greater. The requirement to prepare this information may result in additional pressure on the Council's resources, especially given the nature of the hearing schedule and the preparation required both before and after each hearing. It is noted in that regard that section 42A officers will need to prepare their replies at the conclusion of each hearing in order to address issues while they are fresh, and to ensure that the Council's response is prepared by the officer who attended the hearing and is still available to respond.
- 11 The Council respectfully submits that a more efficient approach might be to:
 - (a) prepare a list of issues raised in evidence prior to the hearing – we anticipate that this list would:
 - (i) identify issues that are resolved (on the basis of the evidence); and
 - (ii) identify those issues that are outstanding pending hearing of evidence; but
 - (iii) not identify reasons or further recommendations at this stage.
 - (b) provide a reply at the conclusion of each hearing – this would enable s42A officers to update their recommendations in light of evidence and what has been heard, but avoid the need to duplicate efforts by preparing both a reply and an updated issues table.
- 12 The Council anticipates that (a) essentially reflects the Panel's direction in [7](c) of Minute 7, but seeks the Panel's confirmation in that regard.

- 13 In respect of (b), it is noted that paragraph [18] of Minute 6 anticipates the filing of a reply immediately following the conclusion of each hearing.
- 14 It is respectfully submitted that the process described above represents a more efficient approach, as it would enable the Council to better manage the pressure on its resources while also providing the Panel and submitters with updated s42A officer recommendations following each hearing. In the event that it is not appropriate to provide updated recommendations on particular issues immediately following a hearing, these matters could be dealt with in a final "sweep up" reply once all hearings have concluded.

Sites and Areas of significance to Māori

- 15 Minute 7 requests:¹
- (a) evidence from the Council's section 42A officer on methodology for identifying SASMs, and engagement with landowners prior to notification; and
 - (b) evidence from, or with the support of, Kāti Huirapa o Arowhenua (Arowhenua) or TRoNT, on the cultural values to be protected, particularly where there is opposition from a submitter.
- 16 Because Arowhenua identified the SASMs (which the Council agreed to include in the PDP), it is submitted that it is more appropriate for Arowhenua to address the methodology for identifying SASMs, with the Council's evidence focusing on its processes for incorporating that information into the PDP (including via mapping). The Council therefore proposes to file evidence as follows:
- (a) Evidence from Mr Aaron Hakkaart, Planning Manager – District Plan Review, in relation to Council processes regarding the preparation of the SASM chapter and planning maps, and landowner engagement. It is respectfully submitted that this evidence is more appropriately provided by a Council officer than the section 42A officer for Hearing D because it relates to internal Council processes.
 - (b) Evidence from Mr John Henry, kaitiaki - Kāti Huirapa o Arowhenua, in relation to the methodology adopted to identify SASMs and their cultural values. It is proposed that this evidence

¹ Minute 7, 17 May 2024, at [16].

address methodology and cultural values at a general level, alongside a specific focus on the cultural values associated with particular sites in respect of which there is submitter opposition.

- 17 Some information about the proposed SASMs is publicly available as part of the package of background information supporting the PDP. That information may assist the Panel in understanding the methodology adopted toward identifying SASMs and the range of cultural values associated with particular sites. This information is briefly addressed below, before turning to the appropriate approach to hearing evidence relating to particular sites and cultural values.

SASM Background Report

- 18 The Council, in 2020, commissioned AEC to prepare a report on SASMs for the purposes of providing information and analysis to support the development of provisions to fulfil the Council's obligations under section 6(e) of the RMA. That report is entitled "[Timaru District Plan Review: Report on Sites and Areas of Significance to Māori, Aoraki Environmental Consultancy Limited, March 2020](#)" (**SASM report**) and is available on the Council website² as a supporting document to the PDP.
- 19 The SASM report addresses the historical context of Arowhenua in the District,³ the methodology adopted for identification of sites and areas of significance to Arowhenua⁴ and Arowhenua's preferred approach to management of SASMs.⁵
- 20 Briefly, the SASM report:
- (a) Records the following in terms of the methodology adopted for identifying sites of significance (emphasis added):⁶

Significant areas were identified by the cultural consultants on a 1:20,000 aerial photograph map base, drawing on their in-depth knowledge and understanding of whakapapa and cultural tradition, and on reference to

² See link in main text, or copy and paste the following link into the browser:
https://www.timaru.govt.nz/__data/assets/pdf_file/0004/677263/AECL-2020-Report-on-sites-and-areas-of-significance-to-Maori.pdf

³ SASM report, pp 1 – 11.

⁴ SASM report, pp 17 – 25.

⁵ SASM report, pp 25 – 43.

⁶ SASM report, p 17.

existing documented or mapped information. Documented map layers referred to included:

- *Ka Huru Manu Ngāi Tahu Cultural Mapping Project.* This extensive project, undertaken in consultation with papatipu rūnanga, has mapped and documented Ngāi Tahu associations with areas across the Ngāi Tahu rohe. It includes information about the whakapapa and use of the various areas, as well as traditional place names. We have drawn on both the publicly available layer and from underlying layers with availability restricted to papatipu rūnanga;
 - Te Whakatau Kaupapa maps of recorded archaeological sites and silent files;
 - *The Ngāi Tahu Claims Settlement Act 1998 - areas and sites with statutory recognition in the NTCSA, including Statutory Acknowledgement Areas, nohoaka and place names;*
 - *Mātaimai declared under the Fisheries (South Island Customary Fishing) Regulations 1999;*
 - *Rock art management area map layer developed by Te Rūnanga o Ngāi Tahu and the Rock Art Trust and included in Proposed Plan Change 7 to the CLWRP;*
 - *Wai puna (springs) map layer developed by Kelly Ratana (NIWA) working with members of the Arowhenua Mātaimai Komiti;*
 - *Māori Reserves and fishing easements.*
- (b) Discusses the approach taken towards mapping sites, noting that areas of association (referred to as wāhi tūpuna) have been identified to reflect the depth and breadth of the relationship of Kāti Huirapa with the whenua, rather than discrete sites;⁷ and
- (c) The types of sites/ taoka found within wāhi tūpuna and the cultural values associated with those sites/taoka – see Table 2.⁸

Hearing of cultural evidence

- 21 The PDP contains information about the selected sites and broad information on their significance (found in SCHED6). This summary is informed by information that is discoverable by the public and some information which Arowhenua has not released to the public.

⁷ SASM report, page 18.

⁸ See Table 2, which commences at page 18.

- 22 AEC advises that:
- (a) the publicly discoverable information can be found on sites such as [Kā Huru Manu](#) (the Ngāi Tahu Atlas).⁹
 - (b) Kā Huru Manu mapping contains original Māori place names, kā ara tawhito (traditional travel routes), and the original Māori land allocations in the Ngāi Tahu takiwā.
 - (c) Sitting behind the Kā Huru Manu mapping is additional oral, mapped and recorded information which is not publicly available. This includes information which Arowhenua or Ngāi Tahu holds and includes the Arowhenua Heritage Viewer.
 - (d) For some sites, the Arowhenua Heritage Viewer expands on the information that is recorded on Kā Huru Manu. For example, this could include the identification of a specific location, or further information on the practices or events that took place in an area or could be found in an area for example mahika kai, pā sites, battle grounds and urupā.
- 23 Mr Henry's evidence is intended to assist the Panel by speaking to specific sites raised by submitters. He will provide information in accordance with his own knowledge and understanding of the site as conveyed to him. There may be some information that Mr Henry considers should not be publicly available.
- 24 The Council, AEC and TRoNT propose that if, either in preparing his evidence or in responding to questions asked by the Panel, Mr Henry considers that there is confidential information that would assist the Panel to know, he will advise the Panel. The Panel may then make an order that that information be provided with the public excluded. The Council suggests that any public excluded session occur after the hearing of submissions in Hearing D to provide the Panel with the opportunity to consider matters being raised in submissions, and identify the specific sites and issues in respect of which it requires further information.
- 25 Te Rūnanga o Arowhenua is aware that some of the SASM information is derived from information contained within its Heritage Viewer and is not publicly available. Te Rūnanga o Arowhenua has agreed to allow the Panel to view the Arowhenua Heritage Viewer if it considers that

⁹ See link in main text, or copy and paste the following link into the browser: <https://kahurumanu.co.nz/>

necessary, but it requests the Panel view this information subject to the following conditions:

- (a) the korero around the Arowhenua Heritage Viewer is public excluded with just the Hearing Panel present;
- (b) no information provided to the Hearings Panel on specific information contained on the Arowhenua viewer is made public;
- (c) Tewera King as Ūpoko for Arowhenua and Takerei Norton or another person from his team at Te Rūnanga o Ngāi Tahu provide the narrative alongside the maps;
- (a) the Panel understand that they will not have access to the Arowhenua Heritage View or to printed copies of what is provided on the maps.

26 As noted in Minute 7,¹⁰ the Panel is authorised to, on its own motion or on the application of any party to proceedings, make an order:¹¹

(a) that the whole or part of any hearing...at which the information is likely to be referred to, shall be held with the public excluded...;

(b) prohibiting or restricting the publication or communication of any information supplied to it, or obtained by it, in the course of any proceedings, whether or not the information may be material to any proposal, application, or requirement.

27 Such an order may be made where the Panel is satisfied that the order:¹²

...is necessary –

(a) to avoid serious offence to tikanga Māori or to avoid the disclosure of the location of waahi tapu...

28 It is respectfully submitted that, if the Panel wish to view the Arowhenua Heritage Viewer, it is necessary to make an order to the effect that:

- (a) The part of the hearing in which the Panel views the Arowhenua Heritage Viewer is conducted public excluded;
- (b) Te Rūnanga o Arowhenua and Te Rūnanga o Ngāi Tahu may appoint representatives to give oral evidence to the Panel in relation to

¹⁰ Minute 7, at [17].

¹¹ Section 42(2), Resource Management Act 1991.

¹² Section 42(1), Resource Management Act 1991.

information relating to SASMs contained in the Arowhenua Heritage Viewer;

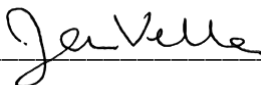
- (c) No information contained on the Arowhenua Heritage Viewer obtained by the Panel during that hearing is to be published or communicated to any person not present at the hearing;
- (d) The Panel does not seek access to the Arowhenua Heritage Viewer or to print information from the Arowhenua Heritage Viewer.

29 It is submitted that such an order:

- (a) Is necessary to avoid disclosing the location of waahi tapu, and to avoid the potential for damage to those sites;
- (b) Requiring this information to be publicly available would be of serious offence to tikanga because it would override processes and procedures that Arowhenua has deliberately established, and consider necessary, to protect their sites and areas of significance.

30 The Council is grateful to the Panel's consideration of these matters.

Dated this 14th of June 2024



Jen Vella
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