

Before the Independent Hearings Commissioners

Mai I Kā Kaikōmihana Motuhake

Under the	Resource Management Act 1991
In the matter	hearing of the submissions and further submissions on the proposed Timaru District Council: Hearing A – Overarching matters, Part 1 and Strategic Directions

May it please the Panel:

1. INTRODUCTION

1.1 This memorandum is provided on behalf of Te Rūnanga o Ngāi Tahu in response to Minute 7 from the Hearing Panel dated 17 May 2024 in response to questions raised as part of Hearing A of the proposed Timaru District Plan (**TDP**).

1.2 Paragraph 13 of the minute directs s42A report writer Ms Hollier to reconsider the terminology and use of “Māori”, “Mātauraka Māori” and Tikaka” are used and explained. On 28 May 2024, I meet with Ms Hollier and provided the information attached as **Appendix One** to assist with her response.

1.3 Paragraph 15 of the minute notes the memorandum dated 10 May 2024 addressing the Ōrakipaoa Wetland submission point but seeks additional clarification from myself regarding the precise wording for ‘sensitive activities’ requested (further submission on KiwiRail submission 187.6 and 187.14). This is detailed below along with the analysis of how I come to that recommendation.

**MEMORANDUM ON BEHALF OF TE RŪNANGA O NGĀI TAHU
(Submitter185)**

31 May 2024

2. SENSITIVE ACTIVITIES

2.1 “Sensitive Activities” is a term used for activities that have the potential to be adversely impacted by effects from adjoining activities (creating reverse sensitivity issues). Common examples tend to include residential activities (particularly sleeping quarters) affected by rural or infrastructure activities.

2.2 As detailed in my evidence (paragraphs 47-51), “Sensitive Activities” is defined in the National Policy Statement on Electricity Transmission (NPS-ET) 2008 as: “*include[ing] schools, residential buildings and hospitals*”. This is the only national direction for this term, although it is not exclusive to these activities.

Benefits and Costs

2.3 There is a large number of submissions that seek to add activities both to the list of what “sensitive activities” are, and also to have additional activities protected by these rules. My concern with the expansion of the definition and its application is the following potential outcomes:

- i. That it creates pressure to create ‘no complaint covenants’¹ in order to get new “sensitive activities” established,
- ii. That it reduces the requirement for activities to comply with section 17 of the Act (Duty to avoid, remedy or mitigate adverse effects),
- iii. That it creates undue costs or restrictions on “sensitive activities”/private property instead of the activity generating the effects,
- iv. It reduces the potential for mixed use activity areas, which impacts passive surveillance and traffic,
- v. The potential effects identified to be managed by this definition and application are often addressed at the regional level (odour, discharges) or by permitted activity rules (privacy is addressed by setback rules, maximum noise limits protect human health) and could therefore not achieve additional benefits, and

¹ Quality Planning Information Document if the Hearing Panel wants additional clarity on no complaint covenants. [Doc 1 Information on no complaints covenants 19-8-08 \(qualityplanning.org.nz\)](#)

- vi. The evidence basis for adverse effects on “sensitive activities” is lacking for many of the proposed activities and there is not a clear evaluation of alternative options.

2.4 The arguments for sensitive activity provisions are about providing for health and safety of communities and providing certainty to established activities where sensitive activities (usually residential) move in over time and then are affected by the established activity, causing friction in the community and business uncertainty. It is also identified in the Environment Canterbury Regional Policy Statement.

Regional Policy Statement

2.5 The Environment Canterbury Regional Policy Statement 2021 (RPS) provides direction to the Timaru District Plan in regard to reserve sensitivity. It contains a definition of “noise sensitive activities” for the greater Christchurch area (but not Timaru) which reads:

means

- *Residential activities other than those in conjunction with rural activities that comply with the rules in the relevant district plan as at 23 August 2008;*
- *Education activities including pre-school places or premises, but not including flight training, trade training or other industry related training facilities located within the Special Purpose (Airport) Zone in the Christchurch District Plan;*
- *Travellers’ accommodation except that which is designed, constructed and operated to a standard that mitigates the effects of noise on occupants;*
- *Hospitals, healthcare facilities and any elderly persons housing or complex.*

But does not include:

- *Commercial film or video production activity.*

2.6 It does not define reserve sensitivity in the definition, but in the Air Quality Chapter it states:

“The concept of reverse sensitivity describes the situation where an existing activity has deliberately located away from land uses that may be

sensitive to the discharge, but is subsequently encroached on, resulting in pressure for that activity to cease or change the way it operates. Examples include residential areas encroaching on activities that produce odour, for example airports or certain industries.

Sensitive land uses, receiving environments or developments which are vulnerable to adverse effects from the discharge of contaminants into air include residential dwellings, sites or places of cultural significance, educational and cultural facilities, hospitals, shops, other similar public buildings, and vulnerable flora and fauna.

Many adverse effects can be avoided if new activities discharging contaminants are not located near existing sensitive land uses and receiving environments, or conversely, if sensitive activities (such as dwellings, health facilities and schools) are not placed near existing areas or activities where contaminants are likely to be discharged (such as industrial zones). However, it may be possible for adverse effects to be avoided or mitigated by other means²”.

2.7 The RPS requires Timaru District Council to set out objectives, policies and may include methods to address the following reserve sensitivity effects on:

- *integrated management of urban and zoned rural residential development*
- *transport infrastructure*
- *telecommunication infrastructure*
- *electricity Transmission network*
- *electricity general infrastructure*
- *rural productive activities*
- *strategic infrastructure*
- *Industrial areas*
- *regionally significant infrastructure in the coastal environment*
- *established activities discharging to air (and operating according to best practice)*

² Page 203 [CanterburyRegionalPolicyStatement2013July2021 \(14\).PDF](#)

- 2.8** The RPS also identifies Timaru Airport and maritime facilities as potentially impacted by reserve sensitivity although they are not specifically mentioned in methods the territorial authority is responsible for implementing.
- 2.9** Overall, the requirement for the TDP can be summarised as protecting infrastructure and commercial interests from primarily residential/human occupancy over time areas (although in the case of protecting the Industrial areas, commercial was also identified as creating reserve sensitivity issues).
- 2.10** The method to achieve this varies across the RPS, except for the transmission network which requires a buffer.
- 2.11** The RPS also identifies Papakāinga housing and ancillary activities on ancestral land and requires the TDP to set out objectives and policies to provide for it. It notes these are fixed locations. It recognises that Papakāinga should not adversely affect the health and safety of people, but also that not all adverse effects on amenity need to be avoided where this would result in aspirations for Papakāinga and marae being unduly compromised³.

Discussion

- 2.12** There is national and regional direction that the TDP must consider reserve sensitivity effects for the stated activities. The TDP is required to have objectives, policies and methods to address the issue, however the exact provisions and methods are not prescribed (apart from the transmission network). The use of 'avoid, remedy or mitigate' gives flexibility to consider if setbacks from boundaries, zoning, noise limits or other methods achieve the outcome or if specific provisions are required.
- 2.13** Where there is clear evidence of potential adverse effects that are not able to be addressed by other means (including best practice and other plan provisions), then consideration of 'sensitive activity' provisions is a reasonable method to consider. The RPS identifies types of regionally and nationally significant infrastructure and

³ Section 5.3.4 (page 53) [CanterburyRegionalPolicyStatement2013July2021 \(14\).PDF](#)

some activities that 'sensitive activities' need to be separated or better protected from.

- 2.14** The RPS definition of 'noise sensitive activities' is similar to the NPS-ET definition of 'sensitive activities.' I do support the RPS definition exempting residential activities that are in conjunction with a rural activity. This is consistent with the social expectations of rural activities and acceptable effects.
- 2.15** It is significant that despite the amount of direction to the Timaru District Council about reserve sensitivity effects to consider, there is no direct definition of 'sensitivity activities' or 'reverse sensitivity'. The closest definition is 'noise sensitivity activities' which only applies to the Greater Christchurch Area.
- 2.16** From this, I conclude that a single definition of 'sensitive activities' may not be appropriate. Based on the RPS, the reserve sensitivity effects vary depending on the location, scale and activity (and if the activity is complying with best practice).
- 2.17** Excluding the Transmission Network (as the NPS-ET contains a clear definition and method), potential solutions to this issue if a single definition is not reasonable include:
- i. Activity specific definitions – creating definitions that state “Sensitive Activities for Regionally Significant Infrastructure”
 - ii. Adding a consideration of reserve sensitivity effects on proposed activity as part of subdivision criteria – at the same time as identification of a building platform in order to provide consideration for new activities. This would likely result in 'no complaint covenants', the declining of subdivisions where reserve sensitivity is not addressed, or additional conditions such as buffers, setbacks or increased insulation requirements.
 - iii. Creating a schedule of the activities identified in the RPS and having a buffer around them (or zoning) and associated rule that new activities require written approval as part of a resource consent.
 - iv. Reviewing the permitted activity rules to consider if they address potential reserve sensitivity effects due to sensitive activities permitted in the zone.

2.18 Should the Panel still require a definition as part of the other methods identified above, a starting point to consider would be the following:

Reserve Sensitivity means:

means the potential for the operation of an existing lawfully established activity operating according to best practice to be compromised, constrained, or curtailed by ~~the more recent establishment or alteration of~~ another activity that may be sensitive to the actual, potential or ~~perceived-cumulative~~ adverse environmental effects generated by the existing activity.

Sensitive Activity means:

For Industrial Activities and Regionally Significant Infrastructure:

- *New or expanded residential activities other than those ancillary to an existing activity that comply with the rules in the Timaru District Plan as at (date of decision);*
- *Education activities including pre-school places or premises, but not including those connected to industry related training facilities;*
- *Guest and Visitor accommodation except that which is designed, constructed and operated to a standard that mitigates the effects of noise on occupants;*
- *Hospitals, healthcare facilities except that which is designed, constructed and operated to a standard that mitigates the effects of noise on occupants;*

But does not include:

- *Papakāinga on Māori land.*
- *Nohoanga Entitlements.*

For Rural Activities:

- *Residential activities other than those ancillary to a rural activity;*
- *Education activities including pre-school places or premises, ancillary to a residential unit;*
- *Seasonal workers, Guest & Visitor accommodation except that which is designed, constructed and operated to a standard that mitigates the effects of noise on occupants;*
- *Supported residential care except that which is designed, constructed and operated to a standard that mitigates the effects of noise on occupants.*

But does not include:

- Papakāinga on Māori land.
- Nohoanga Entitlements.

2.19 Both these definitions are used together in the RPS and TDP and therefore should be read together. I've recommended amendments to 'Reserve Sensitivity' to recognise:

- i. That the effects should be considered if the activity is not operating according to best practice (as identified in the RPS);
- ii. That it does not matter which activity was established first; and
- iii. That s3 of the RMA does not recognise 'perceived effects' as an effect. It does recognise 'cumulative effects' such as long-term health issues.

2.20 The definition for 'sensitive activity' tries to build off the existing definitions while narrowing it down to specific activities and effects that the TDP can address. It is not a complete solution, as it will need to be tested and refined as evidence for the other hearings (particularly noise) are heard.

2.21 The current definition refers to 'Marae (building only)' as a sensitive activity. KiwiRail sought to extend this, and the Te Rūnanga o Ngāi Tahu opposed this submission. A 'marae' is the courtyard in front of a meeting house and likely is not the intended area requiring protection. The TDP contains a definition of 'Marae Complexes' which reads:

means land and buildings generally associated with hapū or iwi, which are used for whanau, community, cultural, social and educational gatherings; including marae, wharenui, wharekai, manuhiri noho (guest accommodation, whether for a tariff or not) and associated facilities.

2.22 Therefore, the current wording is unable to be enforced or achieve any improvements in adverse effect mitigation.

- 2.23** As noted in my evidence, the Māori Purpose Zone is surrounded by Rural land and has the State Highway Network and Railway Network running through one of the two locations. Therefore, the Panel needs to balance the enablement of these sites with the reserve sensitivity issue.
- 2.24** It is highly unlikely that the Marae Complex or nohoanga entitlements are going to relocate within the lifetime of this Plan (unless due to a natural hazard). It is also unlikely that the Railway line or State Highway network will relocate (although a reduction in speed in the area could occur which would reduce noise and safety issues).
- 2.25** Both activities have co-existed for many decades. While the potential effects have likely grown exponentially over the last 20 years, there is no quantifiable evidence of actual effects to consider on this activity in this location. As stated in submission point 185.53 the noise report is not specific to Timaru traffic volumes and is not a sufficient evidence base to impose additional costs on private property owners and Māori land. Therefore, I have recommended an exemption for Papakāinga activities on Māori Land from the definition of sensitive activity. This provides a clear limit to the exemption (only applying to Māori Land) and more clarity than just saying 'marae' or marae complex. I have also included Nohoanga Entitlements for clarity as to prevent it being interpreted as being part of a guest or visitor accommodation. It also addresses the requirements of the RPS in relation to Papakāinga. However, as stated above, this is only a preliminary view until the noise hearing is heard.
- 2.26** In regard to the Rural Activities subset of the definition, I have focused on activities that are permitted in the Rural Zones. Other activities seeking to operate would require consent and could then consider if the issue is relevant. Alternatively, the Panel can consider if these activities are appropriate for the Rural zones given their potential sensitivity.

Conclusion

- 2.27** The TDP is directed by the RPS to address reserve sensitivity. One method to achieve this is by identifying sensitive activities, although this is not the only

method and should be considered in balance with other methods such as subdivision requirements, zoning rules and district wide rules like noise limits.

2.28 As directed by the Panel, I have suggested potential definitions for reserve sensitivity and sensitive activities, although if agreeable to the Panel, these definitions will need to be re-considered as part of other hearings, in particular noise, where these terms are used.

2.29 Due to the lack of clear evidence of reverse sensitivity on Papakāinga and because the RPS directs the TDP to provide for Papakāinga on ancestral land, I recommend that Papakāinga and Nohoanga Entitlements are exempt from the definition of sensitive activities (and therefore the provisions).



Rachael Pull

31 May 2024

Senior Environmental Advisor – Planner

Te Rūnanga o Ngāi Tahu

Appendix One: Meeting notes – Mana Whenua Chapter. Response to Minute 7

Date: 28 May 2024

Location: Online

Attendees:

Alanna Hollier (TDC)

Rachael Pull (TRoNT)

Kylie Hall (AECL)

Key discussion points:

- MW1, Paragraph 6:

It was the natural resources that attracted Kāi Tahu ~~Māori~~ people to Te Wai Pounamu, and the enjoyment of these is what kept them there.

Reason: The chapter is about Kāi Tahu and it is more respectful to use the correct term.

- MW2, Paragraphs 1 and 3:

Māori Reserve land

Reason: This is not a defined term, while “Māori Land” is a defined term in the plan. The removal of ‘reserve’ will provide more clarity and consistency. However, this must be reviewed by other s42A reporting officers before adopting.

- Sites and Areas of Significance to Māori (SASM)

Retain (no changes)

Reason: This chapter is directed by the National Planning Standards. It directs that the process of identification has mana whenua agreement and engagement. The types of sites and areas identified in the standard relate to information that only mana whenua hold. Therefore, although the SASM refers to Māori values generally, only mana whenua holds this information.

A review of other second-generation plans prepared under this standard (Selwyn, West Coast combined plan and MacKenzie) have also used the SASM terminology.

- MW2.1.6 Paragraph 3:

This would include enabling development of papakāika and practices related to māra kai (food gardens), rokoa (medicinal plants) and toi Māori (crafts and creative arts).

Reason: Minor corrections to improve readability.

- Mātauraka Māori

Retain (no changes)

Reason: The Climate Change Response Act 2002 defines matauranga māori “*means traditional Māori knowledge⁴*”. The RMA also references matauranga māori in relation to s59 and s65 regarding freshwater expertise. The NPS-FM also states in relation to matauranga māori:

“enable the application of a diversity of systems of values and knowledge, such as mātauranga Māori, to the management of freshwater⁵”

Therefore, it is a well-recognised term in relation to implementation of the TDP and should be retained.

- Tikanga Māori (various)

Tikanga Māori

These rules form part of kawa and tikaka (~~Māori protocol~~ means Māori customary values and practices)

Reason: Like ‘matauranga māori’, tikanga māori is referenced in the Climate Change Response Act 2002 and RMA. It is defined within the RMA as:

“tikanga Māori means Māori customary values and practices⁶”.

Despite the notified plan being legally right in using the terminology ‘tikanga Māori’, common usage is to just say ‘tikanga’. Therefore, for Plan readability it is recommended that ‘tikanga’ is used. The 2023 Law Review on Tikanga also provides more insight into the concept within New Zealand law.

- Te Reo Māori

te reo Māori

Reason: The TDP recognises that ‘Te Reo’ on its own means ‘the language’, so to add ‘Māori’ to the term as in the notified plan was not incorrect as New Zealand has three official languages. However, the common usage is to just say ‘te reo’ as

⁴ Section 5H(2) Matters Minister must have regard to before recommending appointment of member of Commission. Climate Change Response Act 2002.

⁵ 3.2(2)(d) Te Mana o te Wai. National Policy Statement on Freshwater Management 2020.

⁶ S2 Interpretation. Resource Management Act 1991.

the language of the terminology is te reo Māori. Both are correct, however for readability purposes, the panel could consider 'te reo'.

Additional resources mentioned:

Making Good Decisions Module 3 – considerations relating to Māori

Law Commission review on Tikanga [The Study Paper He Poutama \(NZLC SP24\)](#)
lawcom.govt.nz