

22 October 2024

Timaru District Plan Hearing Panel
c/- Lynda Berkahn
Hearing Administrator
Timaru District Council

Email to: pdp@timdc.govt.nz

**For the Attention of the Hearing Panel – Proposed Timaru District Plan Hearing
Statement prepared by Rachael Elizabeth Pull on behalf of Te Rūnanga o Ngāi Tahu
(Submitter 185) – Natural Environment**

Te Rūnanga o Ngāi Tahu (Ngāi Tahu) are providing the following Hearing Statement in response to the Proposed Timaru District Plan (TDP) for the hearing topic – Natural Environment, commencing 12 November 2024.

Ngāi Tahu have previously lodged hearing evidence for Hearing A (Overarching Matters) requesting that consideration be given to the impact of overlays on activities envisioned to be enabled in the zones. This same theme continues in this Hearing Statement. Ngāi Tahu respectfully requests that this Hearing Statement be tabled for the Panel's consideration, to confirm its position in relation to its submission points and the Section 42A Report recommendations.

Appendix A provides a high-level summary of the position of Ngāi Tahu in relation to the s42A Report recommendations. Ngāi Tahu accepts the s42A Report recommendations where it improves the usability of the Plan and meets Part 2 of the Resource Management Act 1991.

Many of the submissions discussed in Appendix A refer to the Sites and Areas of Significance to Māori Chapter (SASM) as noted by the s42A report. Ngāi Tahu respects the recommendation in the s42A Report suggesting that the submissions could be discussed during that hearing. Ngāi Tahu are also available for any pre-hearing meetings for SASM with the reporting officers or meeting with the reporting officers to support the right of reply for this hearing.

Should the Panel require clarification on any matter, someone will be made available to answer any questions either in writing or via videoconference.

Ngā mihi



Rachael Pull
Senior Environmental Advisor – Planning

APPENDIX A: Summary of s42A report on Ngāi Tahu submission, further submissions for Hearing Topic: Natural Environment

Abbreviations used: Outstanding Natural Landscapes (ONL), Outstanding Natural Features (ONF), Sites and Areas of Significance to Māori (SASM), Iwi Management Plan (IMP), Regional Policy Statement (RPS)

Sub No.	Specific provision / matter	Position	Decisions requested / relief sought	S42A position
185.38-41	Landscape values and characteristics Schedules 7, 8,10, 14	Support	That the attributes/ values of these areas cross reference the SASM references to ensure that the cultural values are fully recognised and protected as required by case law for landscape assessments.	<p>Reject</p> <p><i>7.2.20 With respect to Te Rūnanga o Ngāi Tahu's request [185.38] to cross reference the schedule to SASM references, to ensure that the cultural values are fully recognised and protected, I note that the Planning Maps also show where an area is located in both an SASM and an SNA. Therefore, I do not see the benefit in cross-referencing to the SASM Chapter within SCHED7 and note that this is not done in other instances (e.g. where an SNA is also located in an ONL).</i></p> <p><i>9.2.25 With respect to Te Rūnanga o Ngāi Tahu's request [185.39, 185.40] to cross reference SCHED-8 and SCHED-10 to SASM references, to ensure that the cultural values are fully recognised and protected, I note that the planning maps already show where an area is located in both an SASM and an ONL/ONF. Therefore, I do not see the benefit in cross-referencing to the SASM Chapter within SCHED8 or SCHED10.</i></p>

Ngāi Tahu position at hearing:

Disagree.

The National Planning Standards state that Mana Whenua content must be integrated throughout the plan where appropriate¹. It is not enough to solely rely on the SASM chapter to recognise and provide for the Mana Whenua relationship with the land, water sites, wāhi tapu and other taonga (s6(e) RMA). The Boffa Miskell Landscape Report that was the evidence for this chapter states that the study approach for their report did not include the engagement of cultural specialist advice or Mana Whenua liaison (pg7), despite the RPS stating Tangata Whenua values being a mandatory assessment requirement (pg5).

¹ National Planning Standards: Foundation Standard- Mandatory Direction 5

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<p>The purpose of this submission was to ensure that Mana Whenua values that are recognised as part of the values of these schedules are protected the same manner as in the SASM. The SASM and chapters that protect the areas identified in the schedules have different objectives and therefore it is not reasonable to state that the SASM will protect all associative values for the landscape overlays. Given the lack of Mana Whenua involvement in the identification and protection of landscape values, I recommend that the schedules are reviewed by Kāti Huirapa cultural experts for completeness in the associative values and the rating of them and that better cross referencing is considered.</p>				
185.8	NFL-O1 Outstanding Natural Features and Outstanding Natural Landscapes	Support	The <u>landscape</u> values of the Outstanding Natural Features and Outstanding Natural Landscapes of the Timaru District are protected from inappropriate subdivision, use and development.	Reject 9.3.6 I do not agree with Te Rūnanga o Ngāi Tahu [185.80] that reference to “landscape” values in NFL-O1 or “visual” amenity values in NFL-O2 should be removed. These objectives relate to areas which have been identified because of their landscape values or visual amenity values, and having identified them for this reason, I do not consider it appropriate that they are then managed to protect/maintain/enhance other values that these areas may have.
<p>Ngāi Tahu position at hearing: Agree.</p> <p>I note that the schedules use the term ‘landscape values’ for all attributes and the Boffa Miskell Landscape Report states that: <i>“Landscape values reflect the relative value to different landscapes or natural features held by society. A landscape may be valued by different people for a wide variety of reasons... Landscape values can be described as the environmental or cultural benefits that are derived from various landscape attributes. These attributes will, in many instances, be the components and image of the landscape as established in the assessment of landscape character.”</i> (Pg35)</p>				
185.81	NFL-O2 Visual Amenity Landscapes	Support	The landscape character and <u>visual</u> amenity values of the visual amenity landscapes of the Timaru District are maintained or enhanced.	Reject 9.3.6 I do not agree with Te Rūnanga o Ngāi Tahu [185.80] that reference to “landscape” values in NFL-O1 or “visual” amenity values in NFL-O2 should be removed. These objectives relate to areas which have been identified because of their landscape values or visual amenity values, and having identified them for this reason, I do not consider it appropriate that they are then managed to protect/maintain/enhance other values that these areas may have.
<p>Ngāi Tahu position at hearing: Support in Part.</p> <p>I respect the position of the s42A report but note that visual amenity landscapes are not required to be limited to visual values. The RMA defines ‘amenity values’ as (which the maintenance and enhancement shall be particularly regarded- s7(c)): <i>“amenity values means those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”</i></p>				

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<p>As noted above, these landscapes were assessed without expert assessment of the cultural associations. The schedule refers to 'Landscape values and characteristics' and the same terminology should be used in the objective. I consider that all amenity values should be considered. An example of this is the view shafts in the district that have both visual and cultural associations. By using the RMA term of 'amenity values' the objective is more consistent with Part 2 and will protect the visual amenity values as well as the reasons people appreciate them.</p>				
185.82	NFL-P1 Identification of Outstanding Natural Features, Outstanding Natural Landscapes and Visual Amenity Landscapes	Support	Retain as notified	Accept
<p>Ngāi Tahu position at hearing: Support.</p>				
185.83	NFL-P2 Enabling appropriate use and development	Support	Enable certain activities in Visual Amenity Landscapes, Outstanding Natural Features and Outstanding Natural Landscapes, including <u>existing non-intensive primary production</u> , small scale earthworks, maintenance of existing tracks and fences, and underground utilities, that are consistent with:	Accept in Part 9.4.8 - <i>With respect to "non-intensive primary production", I note that the term is defined, so I do not agree with Te Rūnanga o Ngāi Tahu [185.83] that the use of this term in NFL-P2 is confusing or open to interpretation. I do think it is unusual that the policy refers to "existing" non-intensive primary production, because such activities have existing use rights. Having considered how the policies and rules fit together, I note that what is enabled in the rules is new farming buildings and structures associated with an existing non-intensive primary production activity (NFL-R1.1 PER-1). This does not align with the wording of the policy which relates to the activity. For the reasons set out below, I am recommending that NFL-R1.1 PER-1 is amended so that it does not relate only to "non-intensive" primary production. To better align the policy and rule framework and taking into account the concern above about the policy referring to "existing" activities, I recommend that the policy is amended to refer to new buildings and structures associated with existing primary production activities.</i>

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<p>Ngāi Tahu position at hearing: Support in Part: I agree with the s42A officer that 'non-intensive primary production' is a defined term and support the removal of 'existing' from the policy. However, there are many rural activity-based definitions in this Plan and that is what causes this confusion as to which activities are appropriate or not and how that was assessed. Appendix B contains a venn diagram showing the relationship between the main rural activity definitions and how they overlap/need to be read together. The policy only considers 'non-intensive primary production', however rule NFL-R6 provides for all primary production as a permitted activity, meaning it should be a part of this policy also. There are also other appropriate activities that could be considered here (like conservation) that should not be considered under NFL-P4 (which includes activities not covered under this policy).</p>				
185.84	NFL-P5 New Policy requested	Support	<p><u>Consider the incorporation of mātauranga Māori principles into the design, development and/or operation of activities in outstanding natural features and landscapes with cultural, spiritual and/or historic values, interests or associations of importance to Kāi Tahu and opportunities for Kāi Tahu to exercise their customary responsibilities as mana whenua and kaitiaki in respect of the feature or landscape.</u></p>	<p>Reject 9.7.3 - <i>It is my view that this policy is not required in order to achieve the outcomes sought with respect to NFL-O1 and NFL-O2. I note that in some cases, ONLs and ONFs overlap with Sites and Areas of Significance to Māori (SASM). In such areas, the provisions in the SASM Chapter apply and include direction relating to the exercise of rakitiratāka by Kāti Huirapa in decisions made in relation to these sites and areas (SASM-P1). I do not consider it appropriate, or necessary to achieve the objectives in either the NFL or SASM Chapter to include a policy in the NFL Chapter that would have a broader application over all identified ONFs and ONLs. 9.7.4 However, I note that the approach to SASMs topic will be considered in the Hearing E and the interrelationship between the SASM and other chapters, such as the NFL Chapter may be considered further.</i></p>
<p>Ngāi Tahu position at hearing: Disagree As noted earlier in this statement, there is little recognition or protection of the ONL values relating to Mana Whenua, and the SASM chapter has different objectives to the objectives of the landscape overlays meaning it cannot be used as a substitute. The s32 report for landscape overlays notes the medium/high interest in this topic by Mana Whenua. The report comments that the IMP was addressed and recorded in the decision, but the weight applied was a matter of judgement in light of the evidence (Pg13). There was no evidence outside of settlement provisions as no cultural assessment was commissioned from the experts, meaning it is unclear if the Tangata Whenua associations are recognised and protected as required by s6. Both proposed ONL in Schedule 8 state that the Associative Values (which includes Tangata Whenua associations) is 'High' (ONF is moderate to high). However, policy NFL-P4 which addresses how to protect ONL and ONF focuses on the physical and visual protection. The addition of this policy will guide plan users to better consider and protect the associative values of these sites, given the lack of expert peer-review during the development of this chapter.</p>				

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185.85	NFL-R5 New Rule requested	Support	<p><u>Kāti Huirapa Activities Activity Status Permitted</u> <u>Where this includes:</u> <u>1. the use of land and/or buildings for traditional Māori activities and includes making and/or creating cultural goods, textiles and art, medicinal and food gathering, waka ama, events, management and activities that recognise and provide for the special relationship between Kāti Huirapa and places of cultural importance or</u> <u>2. activities associated with the protection and restoration of Kā tuhituhi o neherā; or</u> <u>3. Cultural harvest (which may including the clearance of vegetation) for mahika kai.</u></p>	<p>Reject 9.15.3 <i>I agree that the PDP needs to recognise and provide for the relationship of Māori with sites and other taonga. However, the PDP also needs to recognise and provide for the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development. I therefore do not agree that buildings and structures associated with mahika kai should be a permitted activity in areas identified as having significant landscape values. I also note that the rule is focused on the activities undertaken within a building, whereas the approach taken in the PDP is to manage built form separately to activities. Where the “Kāti Huirapa Activities” do not involve a building (or involve another activity managed in the chapter such as earthworks or tree planting) the activities themselves would not require a resource consent within an ONF/ONL/VAL.</i></p>
<p>Ngāi Tahu position at hearing: Disagree Both the schedules for ONL and ONF note that the Outstanding Landscape values and characteristics of these areas include Kāti Huirapa activities. Given these activities add to the high value of these landscapes, they should be a permitted activity, along with activities that enhance these values such as conservation. Section 6 matters of national importance are of equal weight in law, meaning that ONL and ONF provisions should not override the relationship of Kāti Huirapa with their land, water, sites, wāhi tapu and other taonga. Without a permitted rule, there is the potential that this overlay will restrict these activities that are sought to be enabled in the underlying zoning or other overlays. It is noted that buildings and structures associated with rural or residential activities or for a public amenity or network utility is permitted. Therefore, some buildings and structures are appropriate for these landscapes, depending on the activity. The Kāti Huirapa activities proposed all link to the identified high values of these areas and therefore a continuation of them will only strengthen those values.</p>				
185.86	NFL-R1 structures NFL-R2 Earthworks NFL-R4 Construction	Amend	<p>Matters of discretion are restricted to: ... <u>1. the extent of any adverse social, cultural and environmental effects, including on any sensitive environments;</u> <u>2. the potential of any adverse effects on</u></p>	<p>Reject 9.8.4 <i>It is my view that the rules in the NFL Chapter are related to the policy direction, and ultimately the objectives set out within the chapter. I do not consider that it is appropriate to broaden out the matters of discretion to allow for consideration of any and all adverse social, cultural and environmental effects, as this would in effect negate the restricted</i></p>

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	of fences, including earthworks NFL-R5 Tree planting NFL-R6 Primary production NFL-R7 Afforestation NFL-R8 New roads, farm tracks, walking and cycling tracks		<u>the spiritual and cultural values and beliefs of Kāti Huirapa, including measures to avoid, remedy or mitigate adverse effects</u>	<i>discretionary activity status and allows for consideration of matters that extend beyond the outcomes sought in the NFL Chapter. With respect to effects on the spiritual and cultural values and beliefs of Kāti Huirapa, I note that SASM-O3 seeks that the values of identified areas and sites of significance to Kāti Huirapa are recognised and protected from inappropriate subdivision, use and development. These “identified” areas are those identified in SCHED6. It is through the rules in the SASM Chapter that activities are controlled to achieve SASM-O3. I consider that broadening out the matters of discretion for any restricted discretionary activity in the NFL Chapter is an inefficient approach because it allows for a much broader consideration than that needed to achieve SASM-O3. 9.8.5 However, I note that the approach to SASMs topic will be considered in the Hearing E and the interrelationship between the SASM and other chapters, such as the NFL Chapter may be considered further.</i>

Ngāi Tahu position at hearing:

Disagree

The Restricted Discretionary matters of discretion for these rules are very broad in that they only state ‘effects on landscape values’. This creates the potential that it is so broad it essentially becomes meaningless to the Plan user (although consistent with the policy for this chapter)².

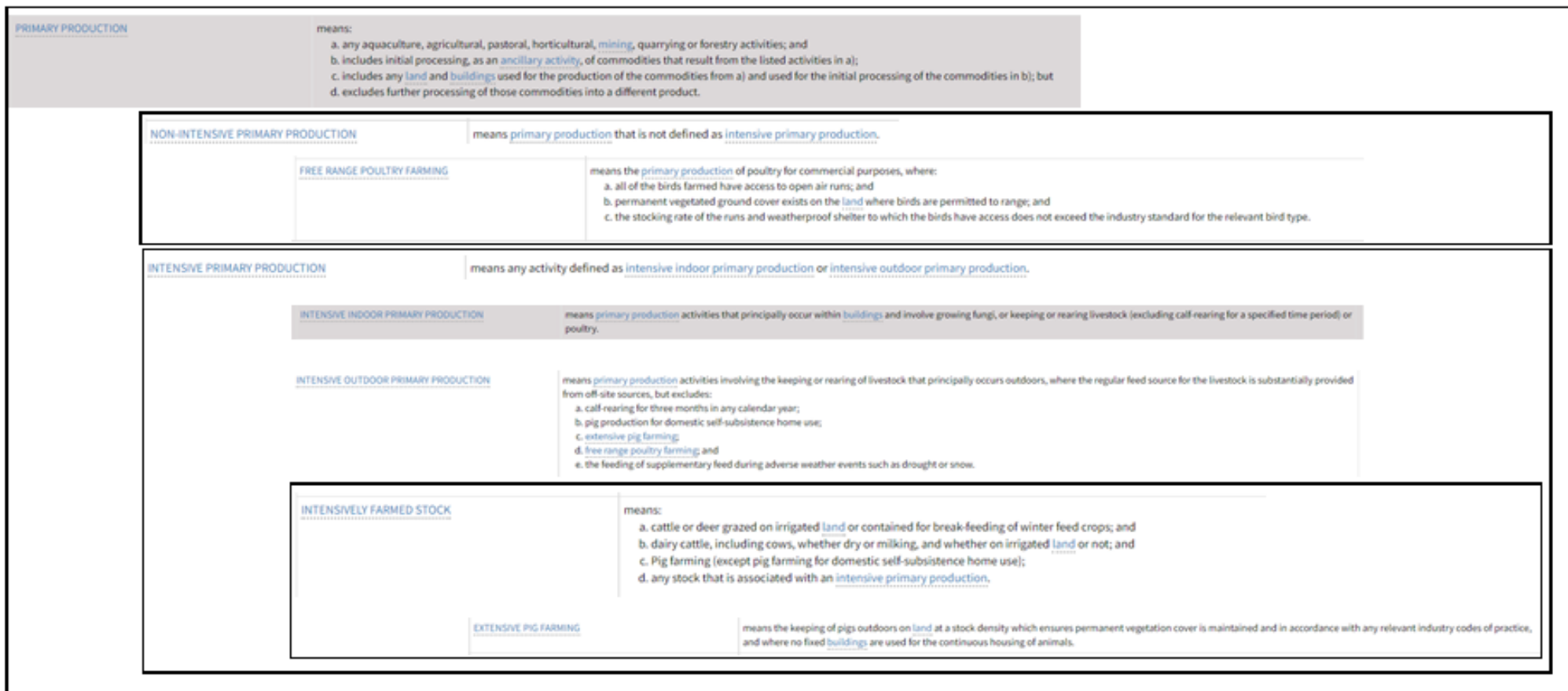
This submission sought to provide more clarity to the Plan user in how to assess these effects by looking at the extent and the potential for effects on Tangata Whenua associations. This is necessary because as stated earlier, the associative values of these areas are high, yet the recognition and protection of them have not been assessed by the experts in this field: Kāti Huirapa are the only ones qualified to assess Tangata Whenua associations for landscape schedules in Timaru.

As an example, the IMP of Kāti Huirapa is referred to in the s32 report for landscapes noting that the plan seeks that there is no scarring of the mountains with tracks and roads. The report comments that the IMP was addressed and recorded in the decision, but weight was a matter of judgement in light of the evidence (Pg13). Yet new roads, farm tracks and walking and cycling tracks is a restricted discretionary activity (NFL-R8) with no specific recognition of the issue raised in the IMP.

Alternative methods to refining the matters of discretion could include Advice Notes or Methods providing this additional clarity on what Plan users need to consider in terms of the Assessment of Environmental Effects and/or cross links to other chapters (like SASM).

² Quality Planning website: “Care needs to be taken in specifying the matters over which a council restricts its discretion. If the restriction is too narrow then the council may not be able to set conditions on consents that avoid or mitigate significant adverse effects (for example a restricted discretionary activity that limits discretion solely to visual amenity matters of a large development may not be able to manage effects associated with traffic generation). Conversely, if the discretion is too wide (e.g. “any effects” or “any matters in chapters A-Z of this plan”) the restriction on discretion becomes meaningless.” [Writing Effective and Enforceable Rules | Quality Planning](#)

APPENDIX B: Venn Diagram of Rural Activity Definitions in the Timaru District Plan



RURAL INDUSTRY means an industry or business undertaken in a rural environment that directly supports, services, or is dependent on primary production.

IMPROVED PASTURE means an area of land where exotic pasture species have been deliberately sown or maintained for the purpose of pasture production, and species composition and growth has been modified and is being managed, for livestock grazing.