



# **Section 42A Report: Plan Change 24 – Sites and Areas of Significance to Māori**

**Report on submissions and further submissions**

**Author: Liz White**

**Date: 19 April 2024**

## Contents

List of submitters addressed in this report:.....	4
Abbreviations used in this report: .....	4
1. Purpose of Report.....	5
2. Qualifications and Experience .....	5
3. Scope and Format of Report.....	6
4. Plan Change Overview .....	6
Relationship with Wider MDPR .....	7
5. Procedural Matters.....	7
6. Statutory Framework.....	7
7. Assessment of Submissions .....	8
Overview of Submissions.....	8
Structure of Report.....	8
Further Submissions .....	8
8. Provisions where no Change Sought .....	9
9. Supporting Submissions.....	10
Supporting Submissions.....	10
Submissions.....	10
Analysis .....	11
Recommendation.....	11
10. Mapping and Schedules.....	12
Submissions.....	12
Analysis .....	13
Recommendation.....	17
11. Objectives and Policies .....	18
Objectives .....	18
Submissions.....	18
Analysis .....	19
Recommendation.....	20
Policies .....	20
Submissions.....	20
Analysis .....	21
Recommendation.....	23
12. Rules and Definitions .....	24
Rules .....	24
Submissions.....	24
Analysis .....	24
Recommendation.....	26

Definitions.....	27
Submissions.....	27
Analysis .....	27
Recommendation.....	29
Submissions.....	29
13. Relationship with Other Chapters .....	29
Submissions.....	29
Analysis .....	30
Recommendation.....	31

## Appendices

- 1 Recommended Amendments to Definitions Chapter FULL
- 2 Recommended Amendments to SASM Chapter
- 3 Recommended Amendments to Glossary
- 4 Recommended Mapping Changes

## List of submitters addressed in this report:

Submitter Ref	Further Submitter Ref	Submitter Name	Abbreviation
1		Department of Conservation	DOC
2		Ian Morrison	I. Morrison
3		Nova Energy	Nova
4		Transpower New Zealand Limited	Transpower
5		NZ Transport Agency Waka Kotahi	NZTA
6		Milward Finlay Lobb	MFL
7		PF Olsen	PFO
8	FS5	Te Rūnanga o Ngāi Tahu	TRoNT
9		South Canterbury Province Federated Farmers	Fed Farmers
10		Port Blakely	PB
11		Ministry of Education	MoE
12		Genesis Energy Limited	Genesis
13	FS2	Opuha Water Limited	OWL
14		Meridian Energy Limited	Meridian
15		Canterbury Regional Council	CRC
17	FS3	Wolds Station Limited	Wolds Station
18		Grampians Station Limited	Grampians Station
19	FS1	New Zealand Defence Force	NZDF
20		Andrew Anderson	A. Anderson
	FS4	Mt Gerard Station Ltd	

## Abbreviations used in this report:

Abbreviation	Full Text
District Plan	Mackenzie District Plan
INF Chapter	Infrastructure Chapter
MDC	Mackenzie District Council
MRAPA	Māori Rock Art Protection Area
NP Standards	National Planning Standards
NESCF	National Environmental Standards for Commercial Forestry
NESF	National Environmental Standards for Freshwater
NPSFM	National Policy Statement for Freshwater Management
PC18	Plan Change 18 – Indigenous Biodiversity
PC20	Plan Change 20 – Strategic Direction Chapters
PC23	Plan Change 23 - General Rural Zone, Natural Features and Landscapes, Natural Character
PC24	Plan Change 24 - Sites and Areas of Significance to Māori
PC26	Plan Change 26 - Renewable Electricity Generation and Infrastructure
PC27	Plan Change 27 - Subdivision, Earthworks, Public Access and Transport
REG	Renewable electricity generation
RMA	Resource Management Act 1991
SASM	Sites and Areas of Significance to Māori

## **1. Purpose of Report**

1. This report is prepared under s42A of the RMA in relation to Plan Change 24 Sites and Areas of Significance to Māori (PC24) to the District Plan. The purpose of this report is to provide the Hearing Panel with a summary and analysis of the submissions received on this plan change and to make recommendations in response to those submissions, to assist the Hearing Panel in evaluating and deciding on the submissions.
2. The analysis and recommendations have been informed by the evidence of Michael McMillan, a Cultural Consultant with Aoraki Environmental Consultancy Limited (AECL). In preparing this report I have also had regard to the Strategic Direction Chapters, the provisions contained in Section 19 – Ecosystems and Indigenous Biodiversity of the Plan (which were introduced through PC18 and are subject to appeal) and the provisions proposed in PC23, PC26 and PC27, which have also been notified as part of Stage 3 of the MDPR.
3. The conclusions reached and recommendations made in this report are not binding on the Hearing Panel. It should not be assumed that the Hearing Panel will reach the same conclusions having considered all the information in the submissions and the evidence to be brought before them, by the submitters.

## **2. Qualifications and Experience**

4. My full name is Elizabeth (Liz) Jane White. I am an independent planning consultant, and have been self-employed (trading as Liz White Planning) for three years. I hold a Master of Resource and Environmental Planning with First Class Honours from Massey University and a Bachelor of Arts with Honours from Canterbury University. I am a full member of the New Zealand Planning Institute.
5. I have over 17 years' planning experience, which includes experience working in both local government and the private sector. My experience includes both regional and district plan development, including the preparation of plan provisions and accompanying s32 evaluation reports, and preparing and presenting s42A reports. I also have experience undertaking policy analysis and preparing submissions for clients on various RMA documents and preparing and processing resource consent applications and notices of requirements for territorial authorities. I am assisting MDC with their MDPR process. I was not the main author of the PC24 provisions and s32 report but was involved in their preparation in a peer review and integration role.
6. Although this is a Council hearing, I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and that I have complied with it when preparing this report. I have also read and am familiar with the Resource Management Law Association / New Zealand Planning Institute "Role of Expert Planning Witnesses" paper. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person. Having

reviewed the submitters and further submitters relevant to this topic I advise there are no conflicts of interest that would impede me from providing independent advice to the Hearings Panel.

### 3. Scope and Format of Report

7. This report considers the submissions and further submissions that were received in relation to PC24. It includes recommendations to either retain provisions without amendment, delete, add to or amend the provisions, in response to these submissions. All recommended amendments are shown by way of ~~strikeout~~ and underlining in **Appendices 1-3** to this Report, or, in relation to mapping, through recommended spatial amendments to the mapping. Footnoted references to the relevant submitter(s) identify the scope for each recommended change. Where recommendations are made to either delete or add a provision, new provisions are numbered X, and no renumbering has occurred to reflect any additions or deletions. I anticipate that any renumbering requirements will be done in the Hearing Panel's decision version of the provisions.
8. The assessment of submissions generally follows the following format:
  - a. An outline of the relevant submission points;
  - b. An analysis of those submission points;
  - c. Recommendations, including any amendments to plan provisions (and associated assessment in terms of s32AA of the RMA where appropriate).
9. Clause 10(2)(b), Schedule 1 of the RMA provides for consequential changes arising from the submissions to be made where necessary, as well as any other matter relevant to the PDP arising from submissions. Consequential changes recommended under clause 10(2)(b) are footnoted as such.
10. Clause 16(2) of the RMA allows a local authority to make an amendment to a proposed plan without using a Schedule 1 process, where such an alteration is of minor effect, or may correct any minor errors. Any changes recommended under clause 16(2) are footnoted as such.

### 4. Plan Change Overview

11. PC24 proposes to identify Sites and Areas of Significance to Māori (SASM) in the District Plan and introduce a new SASM Chapter containing objectives, policies and rules applying to these sites. In addition to the provisions within the SASM Chapter itself, provisions are also proposed in PC23, PC26 and PC27, which are intended to implement the policies and achieve the objectives of the SASM Chapter.

12. The District Plan does not currently identify any SASM within the District.<sup>1</sup> The mapping, and SASM Chapter are therefore new, rather than PC24 being a review and update of existing provisions.

### **Relationship with Wider MDPR**

13. As noted above, there are provisions within PC23, PC26 and PC27 that are intended to implement the policy direction in, and achieve the objectives of, the SASM Chapter. PC24 also proposes to include provisions relating to indigenous vegetation clearance that will apply (in the specified circumstances) instead of those in Section 19 of the District Plan (which were introduced through PC18).

## **5. Procedural Matters**

14. At the time of writing this s42A report there have not been any pre-hearing conferences, clause 8AA meetings or expert witness conferencing in relation to submissions on this topic.

## **6. Statutory Framework**

15. The assessment under the RMA for this Plan Change includes whether:
- a. it is in accordance with the Council's functions (s74(1)(a));
  - b. it is in accordance with Part 2 of the RMA (s74(1)(b));
  - c. it will give effect to any national policy statement or operative regional policy statement (s75(3)(a) and (c));
  - d. the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA (s32(1)(a)); and
  - e. the provisions within the plan change are the most appropriate way to achieve the objectives of the District Plan (s32(1)(b)).
16. In addition, assessment of the Plan Change must also have regard to:
- a. any proposed regional policy statement, and management plans and strategies prepared under any other Acts (s74(2));
  - b. the extent to which the plan is consistent with the plans of adjacent territorial authorities (s74 (2)(c)); and

---

<sup>1</sup> "*Wahi Tapu Sites and Areas*" are acknowledged in Policy 1C in Section 11 – Heritage Protection, but not identified, and the policy direction is to protect these through informal processes, rather than through the district plan provisions.

- c. in terms of any proposed rules, the actual or potential effect on the environment of activities including, in particular, any adverse effect (s76(3)).
17. The assessment of the plan change must also take into account any relevant iwi management plan (s74(2A)).
18. Specific provisions within the RMA and in other planning documents that are relevant to PC24 are set out in the s32 Report. These documents are discussed in more detail within this report where relevant to the assessment of submission points.
19. The assessment of submission points has also been undertaken in the context of the s32 report prepared for PC24. All recommended amendments to provisions since the initial s32 evaluation was undertaken must be documented in a subsequent s32AA evaluation and this has been undertaken, where required, in this report.

## **7. Assessment of Submissions**

### **Overview of Submissions**

20. 19 submissions and 5 further submissions were received on PC24.
21. No submitters opposed PC24 as a whole.
22. Overall, submitters are generally supportive of the approach taken in the SASM Chapter, with relatively discrete amendments sought relating to the mapping of specific areas as an SASM, and wording edits sought to one objective, and some of the policies and rules. Clarity on the relationship between the SASM Chapter and infrastructure and REG activities is also sought. These are discussed in more detail in the following sections of the report.

### **Structure of Report**

23. Because of the relatively discrete nature of submissions, the assessment has been undertaken on groups of provisions, as follows:
- Mapping of SASMs;
  - Objectives and policies;
  - Rules, definitions and schedules; and
  - The relationship with the Infrastructure and Renewable Electricity Generation chapters.

### **Further Submissions**

24. Further submissions have been considered in the preparation of this report, but in general, they are not specifically mentioned because they are limited to the matters raised in original submissions and therefore the subject matter is canvassed in the analysis of the original

submission. Further submissions may however be mentioned where they raise a valid matter not addressed in an original submission. Individual recommendations on further submissions are not set out in this report. Instead, recommendations on the primary submissions indicate whether a further submission is accepted or rejected as follows:

- Where a further submission supports a primary submission and the primary submission is recommended to be accepted, or where a further submission opposes a primary submission and the primary submission is recommended to be rejected, the further submission is recommended to be accepted.
- Where a further submission supports a primary submission and the primary submission is recommended to be rejected, or where a further submission opposes a primary submission and the primary submission recommended to be accepted, the further submission is recommended to be rejected.
- Where a further submission supports or opposes a primary submission and the primary submission is recommended to be accepted in part, then the further submission is recommended to be accepted in part.

## 8. Provisions where no Change Sought

25. The following provisions included within PC24 were either not submitted on, or any submissions received sought their retention. As such, they are not assessed further in this report, and I recommend that the provisions are retained as notified (except where a clause 10(2)(b) or 16(2) change is recommended):

Section	Provision	Supporting Submissions
Sites and Areas of Significance to Māori	SASM-O1	TRoNT (8.04), Fed Farmers (9.01)
	SASM-O2	TRoNT (8.05), Fed Farmers (9.01)
	SASM-O4	TRoNT (8.07), DOC (1.02), Fed Farmers (9.01)
	SASM-P2	NZTA (5.02), TRoNT (8.08), Fed Farmers (9.02)
	SASM-P5	TRoNT (8.08), Fed Farmers (9.02)
	SASM-P7	TRoNT (8.08), Fed Farmers (9.02)
	SASM-R2	TRoNT (8.10), Fed Farmers (9.02)
	SASM-R3	NZTA (5.05), TRoNT (8.11), Fed Farmers (9.02)
	SASM-R4	TRoNT (8.12), Fed Farmers (9.02)
	SASM-R5	TRoNT (8.13), Fed Farmers (9.02)
	SASM-R7	TRoNT (8.15), Fed Farmers (9.02)

26. The following definitions were included in PC24, as well as in PC23, PC25, PC26 and/or PC27. While no submissions were received on these definitions in relation to PC24 (or any submissions received sought their retention), any submissions on the definition made via another plan change are also considered to be within the scope of that same definition in this plan change. Reference should therefore be made to the s42A Reports for the other plan changes with respect to potential changes to these definitions.

Definition
discharge
commercial forest or commercial forestry
earthworks
exotic continuous-cover forest or exotic continuous-cover forestry
exotic forest
functional need
greywater
industrial and trade waste
landfill
plantation forest or plantation forestry
quarrying activities
subdivision
wastewater
wetland

27. Several operative definitions contained in the District are currently limited in their application to the commercial and mixed use and general industrial zones, with PC24 proposing to extend their application to the chapters introduced through PC24, where the term is used in those chapters. The only submissions received in relation to such definitions are from Genesis (12.04) and Meridian (14.04), who both support the definition of ‘operational need’ and seek that it is applied throughout the Plan. I therefore recommend that the definitions proposed to be applied to the PC24 provisions, including ‘operational need’ are applied (where relevant) to the provisions contained within PC24 and that the submission points from Genesis (12.04) and Meridian (14.04) are accepted.
28. PC24 also proposes to delete several definitions from Section 3 of the Operative District Plan and amend other definitions in that section so that they do not apply to the proposed SASM Chapter. No submissions were received opposing these deletions and amendments. I therefore recommend that the deletions and amendments to Section 3 proposed through PC24 are accepted.

## 9. Supporting Submissions

### Supporting Submissions

#### *Submissions*

29. Various submitters support PC24 as a whole, or the overall approach taken to SASMs within PC24, as follows:
- DOC (1.01) support PC24 in its entirety, stating that the overall approach of providing for SASM is supported as it gives effect to the relevant higher order documents.

- Nova (3.01, 3.02, 3.03) supports the insertion of a proposed new SASM Chapter, the additions, deletions and amendments to various definitions and glossary terms and the mapping of SASM areas, subject to mana whenua supporting these.
  - Fed Farmers (9.01, 9.02, 9.03) supports all objectives, policies and rules in the SASM Chapter.
30. A number of submitters also support definitions which are proposed to be added through PC24<sup>2</sup>. No changes have been sought to these through the submissions on PC24, and therefore I have not discussed these submission points or definitions further within this report. However, I note that these definitions are also proposed in other plan changes forming part of stage 3 and where raised in submissions on another plan change, are discussed in the relevant s42A report.

### ***Analysis***

31. The support for the SASM Chapter is noted. As set out in the s32 Report, the District Plan does not identify, nor include provisions to protect sites and areas of significance to Māori. Through PC20, a Mana Whenua Chapter was added to the Strategic Direction section of the Plan (a section introduced through PC20). This chapter seeks that the role of mana whenua is recognised, and their historic and contemporary relationship with the District's land, water bodies, indigenous species and other sites and areas of significance are recognised and provided for (MW-O1) and that mana whenua are able to be actively involved in decision making of relevance to them, exercise kaitiakitaka responsibilities and carry out customary activities in accordance with tikanga (MW-O2).
32. Section 6(e) of the RMA also requires the recognition and provision for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, as a matter of national importance. PC24 is explicitly about recognising (through mapping) and providing for (through related provisions) the relationship of Ngā Rūnaka with those sites and areas within Te Manahuna / the Mackenzie District which have particular significance. The provisions introduced by PC24, and broadly supported by the submissions set out above, are therefore intended to achieve the strategic directions, and appropriately recognise and provide for the matters set out in s6(e).

### ***Recommendation***

33. I recommend that these submission points (1.01, 3.01, 3.02, 3.03, 9.01, 9.02 and 9.03) are accepted, where no changes have been otherwise been recommended to the provisions in PC24, or accepted in part, where changes are recommended to some provisions in response to other submission points, noting that the recommended changes do not alter the general intent of the provisions.

---

<sup>2</sup> Genesis (12.01, 12.02); Meridian (14.01, 14.02).

## 10. Mapping and Schedules

### Submissions

34. I. Morrison (2.01, 2.02, 2.03) opposes the provisions in PC24 relating to trails and rock art setbacks. He states that *“the ancient trail takes an unnecessary diversion from the Tengawai river and passes through a deer pen and through a deer yards”*. He also considers that the 300m setback from rock art<sup>3</sup> is excessive and affects too much valuable farmland that will never be irrigated. In his view, an area in the northeast corner of approximately 250ha, and 200ha in the southwest corner has been mapped and with no real evidence of being any more significant than any other part of the South Island. He seeks that the ancient trail is rerouted to the riverbed *“as it is everywhere else”* (2.01); that the rock art setback is reduced to 50m (2.02); that the SASM, where it applies to P103 Run 306 Silver Hill is removed, and the SASM in the southwest is reduced (2.03). A. Anderson (20.01) also seeks that the setback from rock art be reduced to 50-100m, stating that the 300m setback is excessive and affects too much farmland.
35. MFL (6.01) raise concerns that the mapping of SASMs within the EPlan does not include the unique identification of each SASM. They seek that each SASM is identified on the EPlan maps, using the identification listed in the SASM schedule.
36. TRoNT supports the sites and areas set out in the schedules (8.19) but seeks that SASM57 (in SASM-SCHED1: Table 1) is amended to add *“Tōpuni”* to the category column (8.20), to reflect that it has been declared as such under sections 237 and 238 of the Ngāi Tahu Claims Settlement Act. It also notes that a consequential change will be required within MW3.2 to reflect this.
37. OWL (13.01) seeks that the SASM overlay for surface waterbodies is amended to more accurately reflect the location and extent of current surface waterbodies. It states that the extent of the overlay does not accurately align with surface waterway boundaries, such as the Ōpūaha/Opuha River immediately downstream of the Opuha Dam. It considers that this will create issues for rule interpretation.
38. OWL (13.05) seeks removal of the area comprising the Opuha Dam and downstream infrastructure, including the weir retention pond, from the SASM overlay. It questions the inclusion of this area in SASM26, as it does not consider it appropriate or necessary for this highly modified part of the river system to be classified as SASM in the District Plan *“in the absence of any explanation as to the reason for its inclusion.”*
39. Wolds Station (17.05) dispute the extent of the SASM overlays on their property (Mt Mary, Mary Burn Stream and Te Wai-a-Kohe / Irishman Creek), which in their view appears to have been identified through desktop or generic assessments rather than *“an actual and in-depth review / identification of significant areas”*. They seek that SASM55 is deleted, or a collaborative identification process is followed to amend the SASM overlays and schedules to align with ground-truthed outcomes.

---

<sup>3</sup> This is explained further below but relates to the extent of the areas identified in SASM-SCHED3.

40. Grampians Station (18.03) would like to better understand the reasons for the extent of the SASM overlays on land farmed by the submitter, to confirm that the mapping is correct, and seeks that the boundaries be confirmed after consultation with mana whenua.

### ***Analysis***

41. I note that the planning maps already include the identifier associated with each SASM, and therefore I do not consider that a change is required. (For completeness, I note that this information displays when the map is zoomed in far enough for the select function to work). I recommend that the submission point from MFL (6.01) be rejected, noting however that what is sought is already provided for.
42. I consider it appropriate to add reference to Aoraki/Mount Cook (National Park) being recognised as a Tōpuni, given that it has been declared as such under the Settlement Act. However, I consider that a change to MW3.2 is outside the scope of PC24, as this section was introduced through PC20 and is now operative, and was not proposed to be amended through PC24. I do not consider that adding reference to Tōpuni in SASM-SCHED1, but not altering MW3.2 results in any conflict in any case, as the purpose of MW3.2 is simply to list statutory acknowledgements and note their relevance to the processing of resource consent applications, and this is not altered by this area having been declared a Tōpuni.
43. With respect to the 300m setback applied to Māori rock art sites, I note that PC24 proposes to map 'Māori Rock Art Protection Areas' (MRAPAs). These incorporate not only the specific rock art sites, but also a 'buffer area' of approximately 300m around these sites. When assessing the size of the buffer area (i.e. the extent of the MRAPAs), I consider that it is important to consider its purpose. This is set out in SASM-P6.3 as relating to controlling specified activities that, where on, in, or in close proximity to, a SASM, could damage the integrity of a particular SASM. The rules which seek to implement the policy:
- a. restrict earthworks within the MRAPAs to those permitted under EW-R1 or EW-R2; in effect, triggering a resource consent requirement for earthworks beyond those listed in the Earthworks Chapter (SASM-R3);
  - b. require consent for any buildings discharging wastewater within a MRAPA (SASM-R4);
  - c. require consent for irrigation within a MRAPA (SASM-R5);
  - d. apply a non-complying activity status to forestry within a MRAPA (SASM-R8);
  - e. apply more stringent controls on 'investigation activities' within a MRAPA (REG-R5 in PC26);
  - f. require consent for various infrastructure where INF-S1 applies (because MRAPAs are included in the definition of 'sensitive areas' in PC26);
  - g. require consent for any 'rural tourism activity' within a MRAPA (GRUZ-R9.8 in PC23); and

- h. apply a discretionary activity status for the subdivision of land wholly or partly within a MRAPA (SUB-R12).
44. The purpose of these rules is therefore to restrict activities within proximity to rock art sites, which have been identified as having the potential to affect the integrity of this type of SASM. The risk to their integrity largely relates to the impact that changes to the freshwater environment can have on rock art. This reflects that rock art sites are fragile, and water use activities in their vicinity can adversely affect the surface condition of rock art pigments<sup>4</sup>. The rules proposed in PC24 have been targeted to land use activities that may affect the values associated with the rock art, which are not already adequately managed through regional plan controls or National Environmental Standards, or where integration is required (e.g. buildings which require discharge consents).
45. The 300m is the area within which changes to the freshwater environment have the potential to impact on rock art sites. It is based on recommendations made through the Ngā Kete o te Wānanga: Mātauranga, Science and Freshwater Management Project in partnership with the Ngāi Tahu Rock Art Trust<sup>5</sup>. The intent of the buffer area is to provide a trigger point for further assessment of the effects of any particular activity, to ensure that it will not compromise the values of these sites. In my view, the alternate to mapping a buffer area, would be for the smaller areas of rock art to be mapped, but with a rule requiring a 300m setback of the identified activities from this area, which ultimately would not alter the effect of the rules. However, I understand that to protect the security of these sites, it is not desirable for the specific location of these to be made widely publicly available.<sup>6</sup> In my view, mapping the buffer area is likely to be clearer for plan users, and avoids highlighting the specific location of these sites to the wider public. I therefore consider the approach taken to the mapping of MRAPAs to be appropriate. With respect to I. Morison's specific comment about irrigation, I note that if irrigation is not proposed in these areas, then a consent requirement would not be triggered.
46. With respect to the rules applying in these areas, I do however note that the earthworks rule (SASM-R3) is restrictive in the MRAPAs, only permitting small-scale earthworks which are listed in EW-R1 or EW-R2 (as proposed in PC27), which relate to earthworks associated with maintenance and repair of existing assets, and for gardening and fence posts etc. Beyond this, earthworks within the buffer area would require a restricted discretionary consent in all cases, regardless of their volume. Earthworks have the potential to intercept groundwater and affect surface water (e.g. earthworks associated with creating a reservoir)<sup>7</sup>. However, my understanding is that these would be managed through the regional plan. Large-scale

---

<sup>4</sup> *Guideline for implementing a land-based taonga risk and vulnerability assessment in the context of freshwater environments: Māori Rock Art*. (November 2018). Gyopari, M. & Tipa, G. With contributions from Symon, A. & Scott, J.

<sup>5</sup> *Māori rock art and associated freshwater taonga protection: A sensitivity-based knowledge convergence approach*. (2019). Gyopari, M., Symon, A. & Tipa, G; and Gyopari, M. & Tipa, G. (2018).

<sup>6</sup> Gyopari, M. & Tipa, G. (2018), page 5.

<sup>7</sup> Gyopari, M. & Tipa, G. (2018), page 7.

excavations are also expected to have some risk.<sup>8</sup> I therefore consider that SASM-R3 should be amended to provide a permitted volume for earthworks outside those listed in EW-R1 or EW-R2. Having considered the earthworks volumes that apply in other cases, I consider it would be appropriate to apply the same limit that applies in ONLs and ONFs of 500m<sup>3</sup> by volume and 500m<sup>2</sup> by area per site in any 5-year period (NFL-R5.2). This reflects that a number of SASMs are within ONL areas, and therefore provides a consistent approach between these types of SASMs.

47. Having considered the rules that apply to REG activities and infrastructure, I also consider that in several cases, these extend beyond activities that have been identified as being a risk to the integrity of the rock art sites. More specifically, I do not consider that there is a need to control investigation activities within the buffer areas, noting that should such activities be proposed in a way that affects the rock art sites themselves, this is controlled by the Historic Places Act 1993. In considering the rules to which INF-S1 applies, my view is that the consent requirement is justified where the infrastructure includes water, i.e. INF-R9 (Reservoirs Containing less than 22,700 litres, Wells and Supply Intakes for the Reticulation or Provision of Public Water Supply) and INF-R10 (Irrigation and Stock Water Races, Open Drains and Channels). However, in the other cases, I do not consider that the infrastructure rules to which INF-S1 applies relate to activities which risk the integrity of the rock art sites. To address this in the simplest way, I recommend that the definition of 'sensitive areas' is amended to remove its application to MRAPAs; and another standard is added to INF-R9 and INF-R10 so that a consent requirement remains where these are proposed to be located within an MRAPA.<sup>9</sup>
48. With respect to rules applying to MRAPAs in the GRUZ, I consider that it is appropriate to continue to require consent for rural tourism activities within MRAPAs, so as to be able to consider the effects that visitors may have on these areas and allow for consent conditions to be imposed to manage these effects. In absence of the consent process, I consider that the permitted scale provided in GRUZ-R9 could allow for large numbers of people to visit and stay in proximity to these sites without any control over their access to and interaction with the sites, which creates risks to the integrity of these sites. I also consider that providing a fully discretionary activity status for subdivision within a MRAPA is appropriate, and similar to the way that sites with listed heritage items are treated (i.e. as a fully discretionary activity under SUB-R9). It essentially flags the need to consider how any rock art site(s) may be affected by a change in boundaries.
49. I therefore recommend that the submission points seeking a reduction in the MRAPAs (2.02 and 20.01) be accepted in part, as while I do not agree with reducing the mapped size of these areas, the recommended changes to the earthworks, renewable electricity and infrastructure rules will allow additional earthworks activities to be undertaken within these areas. This will therefore reduce the effect of the MRAPAs on ongoing farming practises which involve smaller-scale earthworks (as well as other activities).

---

<sup>8</sup> Gyopari, M. & Tipa, G. (2018), page 7.

<sup>9</sup> Note that these changes are set out in the appendices to the Section 42A Report for PC26.

50. With respect to particular areas that submitters have queried the application of a SASM or sought a reduction in / removal of the SASM, I note the cultural evidence of Mr McMillan. In his evidence, Mr McMillan explains the process undertaken to identify the SASMs which were included in PC24. I consider the following to be particularly relevant points in his evidence:
- a. The SASMs were identified using various sources of information, including existing mapping, as well as various written records.
  - b. In order to 'fit' these into a European planning framework, specific boundaries were defined using things such as topographical lines, roads, ridgelines, and the edges of waterbodies.
  - c. While over time these areas/sites may have been modified, their significance to mana whenua remains.
51. Mr McMillan also specifically talks about the significance of types of SASMs that have been identified – including rock art sites, rivers and mauka.
52. It is my view that Mr McMillan's evidence, in addition to the information contained in the schedules to the SASM Chapter, demonstrates why these areas have been identified as being significant. The process to identify these areas reflects that only mana whenua are able to identify sites and areas of significance to them, and have done so using historic evidence, while also taking a practical approach to drawing specific boundaries to reflect the context within which the mapping sits (i.e. within a District Plan, and using modern day delineations). Importantly, while some of these areas have been modified, this does not diminish their significance.
53. It is of course necessary to consider the costs and benefits associated with identification of these areas; and I note that these were considered in detail in the s32 report. I consider that the key conclusions of this are that mapping of these areas provides clear identification of areas that have significant value to mana whenua and what those values are, providing a more efficient approach than leaving identification and consideration of values (which would still be required to meet s6(e) of the RMA) to a consent-by-consent process. While there are costs to landowners associated with the application of SASMs, the provisions in PC24 (and across other Stage 3 plan changes) have been prepared on an integrated basis to make them as efficient as possible and are targeted to only managing the effects of activities which have been identified as having the potential to adversely affect the values of SASM. As such, while I accept that the identification of these areas, (and more importantly, the application of provisions associated with these,) will impose some costs on landowners, I agree with the s32 conclusion that the benefits of ensuring appropriate protection of the values of these areas outweighs these costs.
54. I therefore recommend that the submission points querying or seeking changes to the SASM boundaries or deletion of particular SASMs (2.01, 2.03, 13.05, 17.05 and 18.03), be rejected.

55. With respect to the mapping of the boundaries of the SASM overlay for waterbodies, I have discussed the intent of the mapping with the main author of PC24<sup>10</sup>. Her advice is that the intent behind the identification of these waterways was to generally identify the waterway using a 'line', but not to attempt to map its extent. Having reviewed the mapping, I agree with OWL that the actual mapping (when viewed at a property scale) does not reflect this, as in several cases the mapped line extends outside riverbanks and does not follow the water course. I agree that this could create implementation issues, because it would not be entirely clear where the rules relating to SASM apply to. I recommend that the mapping of waterbodies is reviewed and updated to ensure the mapped line more accurately follows the waterbody. I therefore recommend that OWL's submission point (13.01) is accepted.

### **Recommendation**

56. I recommend, for the reasons given above, that the planning maps are amended to more accurately align with each waterbody (i.e. to ensure the line is located within the banks of each waterbody).
57. In terms of s32AA, I consider that this amendment is a minor change to more accurately identify where the waterbodies in Table 2 of SASM-SCHED 1 are located. Correctly identifying land within the waterbody area will be more effective at achieving the objectives, particularly in terms of more accurately reflecting the relationship of mana whenua with these waterbodies and their associated values (SASM-O2).
58. I recommend that the mapping of SASM areas is otherwise retained as notified.
59. I recommend, for the reasons given above, that SASM57, in SASM-SCHED1, Table 1, is amended to add "*Tōpuni*" to the category column.
60. The scale of change does not require a section 32AA evaluation because it adds further detail to the schedule relating to a particular SASM but does not alter the application of the provisions in relation to this SASM as a result. Therefore, the original s32 evaluation still applies.
61. I recommend that SASM-R3 is amended to apply a 500m<sup>3</sup> volume and 500m<sup>2</sup> area limit for earthworks, per site, in any 5-year period, in any Māori Rock Art Protection Areas, where the earthworks are for a purpose not otherwise specified in EW-R1 or EW-R2.
62. The amendments recommended to SASM-SCHED1 and SASM-R3 are set out in **Appendix 2**.
63. I consider that providing for a permitted volume of earthworks in the Protection Area SASMs does not compromise the achievement of SASM-O2 and SASM-O3, because moderate-scale earthworks are not expected to adversely affect rock art sites, and are therefore not inappropriate, nor will the relationship of mana whenua with the values associated with the sites, or their integrity, be compromised. The approach is therefore still effective at achieving the objectives. However, the permitted volume limits are more efficient, as they allow for

---

<sup>10</sup> Kylie Hall, Principal Planner at Aoraki Environmental Consultancy Limited.

moderate scale earthworks to occur without the need for resource consent and the costs associated with this process, and are not expected to have environmental or cultural costs in terms of impacts on the rock art.

64. I recommend that REG-R5 is amended to remove reference to MRAPAs.
65. I recommend that the definition of 'sensitive area' is amended to remove reference to MRAPAs, and that a restriction on those activities in INF-R9 and INF-R10 being located within a MRAPA is added to those rules.
66. The change to the definition of 'sensitive area' is set out in the **Appendix 1** and the amendments recommended to REG-R5, INF-R9, INF-R10 are set out in **Appendices 2 & 3** to the **Section 42A Report for Plan Change 26**.
67. Under s32AA, I consider that the changes to the rules and definition are a more efficient way of implementing SASM-P6 and achieving SASM-O2 and SASM-O3, because the activities to which these rules apply are not expected to affect the integrity of MRAPAs, and are therefore not considered to be inappropriate, nor will the relationship of mana whenua with the values associated with these sites be compromised. The approach is therefore still effective at achieving the objectives. However, the changes will allow for a wider range of activities to apply within the buffer area, without the need for resource consent and the costs associated with this process, and are not expected to have environmental or cultural costs in terms of impacts on the rock art.

## 11. Objectives and Policies

### Objectives

#### *Submissions*

68. SASM-O3 reads: *"Inappropriate subdivision, use and development within SASM is avoided."* TRoNT (8.06) support this objective. NZTA (5.01) seeks clarification on how *"inappropriate development"* in this objective is defined. It states that while recognising the importance of SASMs and supporting their protection from inappropriate subdivision, use and development, there is a need to understand what is considered inappropriate, so as to ensure that it can fulfil its statutory function of managing the land transport system.
69. In terms of SASM-O3, PB (10.01) notes the approach taken to use other provisions in the District Plan to consider protection of SASM values, but states that the NESCF already comprehensively manages the effects of commercial forestry. It considers that care should be taken to balance the need to recognise and protect the historical and cultural interests of Māori alongside the need to avoid unnecessary duplication of rules, where those effects are already regulated.
70. MoE (11.01) seeks that SASM-O3 is amended to seek that subdivision, use and development within SASM is restricted. It considers that subdivision, use and development for educational facilities should be generally discouraged in the SASM, except where there is an operational

need. It considers that the use of the words “*inappropriate*” and “*avoid*” do not align with the language of the objective “*allowing*” activities were there is an operational need.

71. Wolds Station (17.02) seek that SASM-O3 is amended to “*ensure there is not a blanket approach to avoiding all forms of land use and development within identified SASM where effects can be adequately remedied or mitigated or where land use is existing and lawfully established.*” It considers that this provision should contemplate existing uses of land which are within SASM, and the protection of those activities.

### **Analysis**

72. I note that reference to “*inappropriate*” activities is used here, at the objective level, to set out the outcome that is sought. What is then inappropriate, is expanded on in more detail at the policy level (in SASM-P6) and implemented through the rules. In particular, what is considered inappropriate differs depending on the values of different SASMs, and the particular adverse effects of an activity on those values. I do not consider there is a need to try and further define this at the objective level. I also note that it is common for reference to be made to inappropriate subdivision, use and development and for this to be fleshed out in more detail in more specific plan provisions. For example, in section 6 of the RMA the protection of outstanding natural features and landscapes (s6(b)) and historic heritage (s6(f)), and the preservation of the natural character of various areas and their protection (s6(a)) is from inappropriate subdivision, use and development. What this means and how it is achieved in any particular area is a matter expanded on in the detail of plan provisions. I therefore recommend that the submission point by NZTA (5.01) be rejected, insofar as I do not recommend changes to the provision as a result of the submission. However, the analysis above may provide some clarity for the submitter.
73. With respect to commercial forestry, I understand that the key concern of PB lies in how the provisions seek to manage forestry within SASM areas, and my assumption is that their concern is not with the specific wording of SASM-O3, but in whether or not forestry is considered through the plan provisions to be an “*inappropriate*” land use. This is considered further below, but for completeness, I do not consider that a change to this objective is required in response to this, and therefore recommend that this submission point (10.01) be rejected.
74. I do not agree with amending the objective so that the outcome sought is a restriction on subdivision, use and development within SASMs as sought by MoE. This is inconsistent with the framework proposed (in the SASM Chapter as well as other chapters) whereby the District Plan does not seek that all activities are restricted in SASMs. Rather, the intent is to ensure that where activities occur in these areas, they are appropriate, taking into account the values of these areas. Restricting all activities would in my view be a highly inefficient way of protecting the values and is not a more appropriate way to achieve the purpose of the RMA, and in particular, the direction in s6(e), as it would go beyond what is necessary to recognise and provide for the relationship of Māori and their culture and traditions with various areas and values. With respect to operational needs, I consider that this can be one reason why a particular subdivision, land use or development is not considered to be inappropriate. This is

reflected in the matters of discretion (in SASM-MD1) which refer to functional and operational needs. I recommend that the submission point by MoE (11.01) be rejected.

75. With respect to amending the objective so that it does not seek to avoid all forms of land use and development within identified SASMs, where effects can be adequately remedied or mitigated or where land use is existing and lawfully established, I note firstly, that the submitter (Wolds Station) has not suggested alternate wording to address its concerns. I note that the District Plan rules cannot override existing use rights provided under s10 of the RMA, which would apply to existing lawfully established activities in any case. It is my view that the objective, as currently worded, does not seek to avoid all forms of land use and development within identified SASMs, instead seeking to avoid activities that are inappropriate. In determining the appropriateness of any activity within a SASM where the requirement for a resource consent is triggered, I consider that the adequacy of any remediation and mitigation measures would form part of the consideration as to whether any particular activity was inappropriate. I therefore do not consider a change is required to the wording of the objective and recommend that this submission point (17.02) be rejected.

### **Recommendation**

76. I recommend, for the reasons given above, that SASM-O3 is retained as notified.

### **Policies**

#### **Submissions**

77. TRoNT (8.08) support all policies in the SASM Chapter.
78. Wolds Station (17.03) seek that SASM-P1 is amended to *“build in provision for a collaborative process for identifying areas of significance.”* While respecting that mana whenua are best placed to identify areas of significance and their values, they consider that identification ought to be subject to a collaborative process including affected landowners and may be necessary for site visits to be undertaken.
79. DOC (1.02) supports SASM-P3, as it considers that the proposed approach will appropriately enable mana whenua to practice mahika kai activities, while providing environmental protection through the application of tikaka. OWL (13.02) seeks that *“where appropriate”* is added to SASM-P3. This reflects their concerns that access to SASMs cannot always be made available to mana whenua, for example, for health and safety reasons. OWL notes that the Opuha Dam is located within a SASM, and therefore in their view, where customary activities may be carried out in the future, if the policy is not amended as sought.
80. NZTA (5.03) and OWL (13.03) support SASM-P4. Grampians Station (18.01) seeks that SASM-P4 is amended to recognise the health and safety obligations of landholders and managers, by adding the words *“in a way that ensures health and safety obligations to the public can be met.”* NZDF (19.01) acknowledges the proposed SASM within and adjacent to the Tekapo Military Training Area, and the intention of SASM-P4, but is concerned that access will not be able to be

provided to the Training Area, due to it being an operational military site. It seeks that the provision be retained or amended to address this matter.

81. NZTA (5.04) and MoE (11.02) support SASM-P6. PFO (7.01) seeks that SASM-P6.3 is amended to include primary production, stating that the policy does not mention the control of other primary production activities, such as farming, near limestone outcrops, Māori rock art and silent file areas, to avoid damage to their integrity. With respect to SASM-P6, PB (10.02) notes that the NESCF allows for greater stringency to be applied in the district plan where the rules give effect to the NPSFM. It considers that there is doubt as to whether the rules (relating to areas specified in the policy) are justified and considers that the s32 Report does not sufficiently justify why stricter requirements are needed to manage effects on SASMs from commercial forestry.
82. As with SASM-O3, Wolds Station (17.04) seek that SASM-P6 is amended to *“ensure there is not a blanket approach to avoiding all forms of land use and development within identified SASM where effects can be adequately remedied or mitigated or where land use is existing and lawfully established.”* It considers that this provision should contemplate existing uses of land which are within SASM, and the protection of those activities. More particularly, it seeks that the stem of SASM-P6 is amended so that its focus is on enabling *“land use activities that make efficient use of land and resources”*, while managing the adverse effects of activities within the SASMs. The submission states that while managing adverse effects on SASMs is important, the functional and operational needs of some activities, as well as providing for the renewal of existing lawful activities to locate in SASMs cannot be avoided.

### **Analysis**

83. I do not consider it appropriate for SASM-P1 to be amended to provide for, or in any way require, a collaborative process to be undertaken for identifying areas of significance. It is my view that only mana whenua can identify sites and areas that are of significance to them and therefore the identification of these sites / areas (as distinct to how they are then managed) is not a matter which can be collaborated on. I am also unsure if/how site visits would work with SASM, because these sites and areas relate to the *relationship* mana whenua have with them, on a historic (as well as ongoing) basis, as opposed to what may be physically present in these areas now – so in my view it is different to identification of an ONL or ONF which requires examination of what currently exists in an area. I recommend that the submission point by Wolds Station (17.03) be rejected.
84. I do not consider that it is necessary to add *“where appropriate”* to SASM-P3; nor *“in a way that ensures health and safety obligations to the public can be met”* to SASM-P4. This direction (and related rules) does not override other legal requirements, including, in particular, the legal rights and obligations of landowners. The policies and rules therefore do not of themselves force any landowner or manager to provide access to any SASM. The specific rules which implement this policy are SASM-R1, which provides a permitted activity status for clearance of indigenous vegetation which has been planted and managed specifically for the purpose of mahika kai activities; and SASM-R2, which permits the use of nohoaka sites (i.e. those listed in

SASM-SCHED4) by Ngā Rūnaka to exercise mahika kai and kaitiaki practises. It is my view that neither of these rules 'require' (nor could they) access to be provided to SASM for these purposes, nor do they override other legal obligations that may apply. I further note that the language used in SASM-P4 is about "*encouraging*" the exploration of opportunities for further access to SASM; not requiring its provision. I recommend that the submission points seeking changes to SASM-P3 and SASM-P4 (13.02, 18.01 and 19.01) be rejected, and the submission points supporting either policy (1.02, 5.03 and 13.03) be accepted.

85. With respect to SASM-P6.3, I note that the activities listed in the policy reflect those which were considered to be potential threats to the areas identified as being significant, where intervention through the District Plan was considered to be necessary to manage those threats; and taking into account whether other controls in the Plan (or proposed through other Stage 3 plan changes) sufficiently managed the identified threats. Primary production activities (other than forestry) were not identified as being a threat to the integrity of limestone outcrops, Māori rock art and silent file areas, that was not otherwise sufficiently managed through controls in other chapters. I therefore recommend that the submission point by PFO (7.01) be rejected.
86. With respect to the NESCF, I note that this NES manages the establishment (afforestation) of commercial forestry. Under Regulation 12, afforestation is not permitted within significant natural areas, outstanding natural features or landscapes, and is treated as a restricted discretionary activity under Regulation 16(1). The s32 Report notes that Māori Rock Art and Silent File sites are not included (or proposed to be included) in the District Plan as ONFs or ONLs and therefore, these provisions in the NESCF do not apply in these areas. The NESCF does not otherwise include provisions relating to, or managing effects on, areas of significance to Māori. The District Plan can therefore control forestry with respect the potential effects of this land use activity on the values of SASMs. In addition, a rule in a district plan can be more stringent or more lenient than the NESCF rules in relation to afforestation (i.e. planting of commercial forestry). The implementation guidance on the NESCF<sup>11</sup> also notes that effects on water yield are not a matter addressed in the NESCF and therefore rules that relate to water yield will continue to apply.
87. In absence of the NESCF including any controls which are specific to the potential effects of forestry on the values of SASM, I consider that the correct test for the inclusion of rules in the District Plan is whether such control is necessary to achieve the outcomes sought – in this case, ensuring that forestry does not compromise the relationship mana whenua have with the values within SASM (SASM-O2); nor result in activities that are inappropriate given these values (SASM-O3). SASM-R8 only seeks to control commercial forestry (new or expansions to existing) within MRAPAs. Forestry in other SASM will instead be managed under the NESCF, or, where SASM are located within other areas (e.g. within an ONL) through any other plan rules which apply greater stringency.

---

<sup>11</sup> *Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 Plan Alignment Guidance*. (May 2018). Prepared for Ministry for Primary Industries By 4Sight Consulting Limited, page 36.

88. As noted earlier, the MRAPAs reflect the areas within which changes to the freshwater environment can impact on the integrity of rock art. Forestry is a land use activity that can result in changes to the freshwater environment, such as through increasing the water removed from the ground and reducing the amount of precipitation that reaches the ground. This is reflected in the NESCF implementation guide, which states that *“Afforestation can have an impact on total water yield and low flows in low-to-moderate rainfall areas”*. Rock art is also typically located near a waterbody and therefore changes in groundwater flows can affect flow entering the surface waterbody, which has potential flow-on effects on surface condition of rock art pigments. I therefore consider that the control is appropriate to achieve the outcomes sought in the SASM Chapter and recommend that the submission point by PB (10.02) be rejected.
89. I do not consider it appropriate to amend the focus of the policy to *“enable”* land use and activities within SASMs, as this does not align with the objectives, nor more broadly with the key premise of this chapter, which is about recognising and providing for the relationship of Māori with significant areas. I consider that the approach taken in the SASM Chapter allows for consideration of the functional and operational needs of some activities (such as through the matters of discretion set out in SASM-MD1), while ensuring that the activity does not compromise the values of any SASM.
90. I have also considered whether amendments are required to SASM-P6 so that it does not seek to avoid all forms of land use and development within identified SASMs, where effects can be adequately remedied or mitigated or where land use is existing and lawfully established as sought by Wolds Station. I again note that the District Plan rules cannot override existing use rights provided under s10 of the RMA, which would apply to existing lawfully established activities. It is my view that the policy, as currently worded, does not seek to avoid all forms of land use and development within identified SASMs. It instead seeks to manage adverse effects of activities within SASMs so that the values associated with the SASM are not compromised. I consider that any assessment against this policy would allow for the adequacy of any remediation and mitigation measures to be considered as part of a determination on whether the SASM values would be compromised. I therefore do not consider a change is required to the wording of the policy in relation to this matter. As such, I recommend that the submission point by Wolds Station (17.04) be rejected.
91. As I have not recommended a change to SASM-P6, I recommend that those submission points supporting the provision (5.04 and 11.02) be accepted.
92. Similarly, as I have not recommended changes to the SASM policies, I recommend that the submission point by TRoNT (8.08) be accepted.

### **Recommendation**

93. I recommend, for the reasons given above, that the policies are retained as notified.

## 12. Rules and Definitions

### Rules

#### *Submissions*

94. DOC (1.02) supports SASM-R1, as it considers that the proposed approach will appropriately enable mana whenua to practice Mahika kai activities, while providing environmental protection through the application of tikaka. TRoNT (8.09) seek that SASM-R1 is amended to refer to sites in SASM-SCHED4, as well as SASM-SCHED1, so as to allow Te Rūnanga o Ngāi Tahu and Rūnaka to undertake mahika kai activities on nohoaka sites. Grampians Station (18.02) seek that SASM-R1 is amended to add that the permitted status applies where *“health and safety obligations to the public can be met”*.
95. TRoNT (8.14) support SASM-R6. NZTA (5.06) seek that quarrying associated with the operation and maintenance of the state highway network is excluded from SASM-R6, stating that it needs the provision for aggregate and materials for roading and stockpiling. It considers that the non-complying activity status proposed in the rule would impact on the efficient and effective operation and maintenance of the roading network.
96. TRoNT (8.16) support SASM-R8. PFO (7.02) seek deletion of SASM-R8 as they consider that the rule is disproportionately against commercial activity, and while the NESCF allows for greater stringency to be applied in the District Plan, this has to be necessary. PFO considers that the s32 Report does not sufficiently justify the control.
97. TRoNT (8.17) seeks that the non-notification clauses in the SASM Chapter are amended to add *“for limited notification purposes this will include Ngā Rūnaka and the Ngāi Tahu Māori Rock Art Trust”*. This is sought to be clear that both these parties may need to be notified in relation to activities that trigger the rules.
98. TRoNT (8.18) supports the matters of discretion set out in SASM-MD1 (subject to other changes being accepted). NZTA (5.07) seek that an additional matter of discretion is added to SASM-MD1, to ensure that the functional and operational needs of infrastructure are recognised and provided for when considering an application against these matters. NZTA also seeks that clarification is provided on what *“non-reticulated servicing”* is, which is specified in matter of discretion g.

#### *Analysis*

99. I consider it appropriate to amend SASM-R1 to apply it to sites in SASM-SCHED4, being nohoaka sites. I note that SASM-R1 permits indigenous vegetation clearance in very limited circumstances and that extending its application would not compromise the achievement of the objective in Section 19 (relating to ecosystems and indigenous biodiversity), would better align with SASM-P3 and SASM-P5, and be more effective at achieving SASM-O1, SASM-O2 and SASM-O4, because it would support mana whenua in exercising kaitiakitaka over nohoaka sites, sustaining their relationship with these sites, and enhancing the use of these sites. I recommend

that TRoNT's submission point (8.09) be accepted, and DOC's supporting submission be accepted in part (1.02).

100. I do not consider it necessary to add where *"health and safety obligations to the public can be met"*, as the rule does not override other legal obligations, and this requirement would relate to the achievement of a matter that sits outside the District Plan. In addition, I do not consider the addition would be sufficiently certain in a permitted activity rule, i.e. how it would be determined if the standard had been met. I recommend that the submission point by Grampians Station (18.02) be rejected.
101. I consider that there are difficulties with amending SASM-R6 to exclude quarrying associated with the operation and maintenance of the state highway network, because this relates to the end use of the product (i.e. for the network), rather than the activity itself (i.e. quarrying). Quarrying undertaken for any purposes has the potential to adversely affect the values of SASMs, and in my view should be considered through a consent pathway, regardless of what the end use of the materials are for. I therefore do not support excluding quarrying related to the operation and maintenance of the state highway network from SASM-R6 and recommend that NZTA's submission point (5.06) be rejected and TRoNT's submission point (8.14) be accepted.
102. With respect to forestry, as noted earlier, the NESCF does not include provisions relating to, or managing effects on, areas of significance to Māori. The District Plan can therefore control forestry with respect the potential effects of this land use activity on the values of SASMs.<sup>12</sup> In addition, a rule in a district plan can be more stringent or more lenient than the NESCF rules in relation to afforestation (i.e. planting of commercial forestry).<sup>13</sup> In absence of the NESCF including any controls which are specific to the potential effects of forestry on the values of SASM, I consider that the correct test for the inclusion of rules in the District Plan is whether such control is necessary to achieve the outcomes sought – in this case, ensuring that forestry does not compromise the relationship mana whenua have with the values within SASM (SASM-O3); nor result in activities that are inappropriate given these values (SASM-O4). SASM-R8 only seeks to control commercial forestry (new or expansions to existing) within MRAPAs. Forestry in other SASM will instead be managed under the NESCF, or, where SASM are located within other areas (e.g. within an ONL) through any other plan rules which apply greater stringency.
103. As noted earlier, the MRAPAs reflect the areas within which changes to the freshwater environment can impact on the integrity of rock art. Forestry is a land use activity that can result in changes to the freshwater environment, such as through increasing the water removed from the ground and reducing the amount of precipitation that reaches the ground. This is reflected in the NESCF implementation guide, which states that *"Afforestation can have an impact on total water yield and low flows in low-to-moderate rainfall areas"*. Rock art is also typically located near a waterbody and therefore changes in groundwater flows can affect flow entering

---

<sup>12</sup> Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 Plan Alignment Guidance (2018). Prepared for Ministry for Primary Industries By 4Sight Consulting Limited, page 2.

<sup>13</sup> Clause 4A of Regulation 6 of the NESCF.

the surface waterbody, which has potential flow-on effects on surface condition of rock art pigments. I therefore consider that SASM-R8 is appropriate to achieve the objectives of the SASM Chapter and recommend that the submission point by PFO (7.02) be rejected.

104. In the SASM Chapter, any restricted discretionary activities are stated as not being subject to public notification, and consideration of affected persons is limited to effects on mana whenua only. In my experience, restrictions on notification are normally specific to *who* will be considered an affected party. I therefore recommend that the note is amended to limit notification to Ngā Rūnaka and the Ngāi Tahu Māori Rock Art Trust. I consider that this will provide greater certainty to applicants, as well as to the Council. I recommend that the submission point by TRoNT (8.17) be accepted in part.
105. I consider that there is a difficulty with referencing infrastructure in the matters of discretion in SASM-MD1 as sought by NZTA, because the rules in the SASM Chapter do not apply to infrastructure. The rules applying to infrastructure are instead contained in the INF Chapter. Where within a MRAPA or Silent File Area (which are included in the proposed definition of a 'Sensitive Area'), some infrastructure activities will be subject to a consent requirement (under INF-S1, which applies to Sensitive Areas). The activity status where this applies is restricted discretionary, with the matters of discretion limited to those set out in INF-S1. Therefore, the matters in SAMS-MD1 would not come into play and referencing them in the SASM Chapter might create confusion. I therefore recommend that the submission point by NZTA (5.07) be rejected, and TRoNT's submission point (8.18) be accepted.
106. With respect to providing clarity regarding what "*non-reticulated servicing*" is, this is where a wastewater discharge is proposed that is not into a reticulated system and is controlled via SASM-R4.

### **Recommendation**

107. I recommend, for the reasons given above, that SASM-R1 is amended so that it applies to SASM-SCHED4 as well as SAM-SCHED1 sites.
108. I recommend, for the reasons given above, that the non-notification clause is amended to refer to notification being limited to Ngā Rūnaka and the Ngāi Tahu Māori Rock Art Trust, rather than to "*effects*" on mana whenua.
109. The specific amendments are set out in **Appendix 2**.
110. In terms of s32AA of the RMA, I consider that the extension of SASM-R1 to nohoaka sites would better align with SASM-P3 and SASM-P5 and be more effective at achieving SASM-O1, SASM-O2 and SASM-O4, because it would support mana whenua in exercising kaitiakitaka over nohoaka sites, sustaining their relationship with these sites, and enhance the use of these sites, while not compromising the achievement of the objective in Section 19.

111. I consider that amending the non-notification clause provides greater certainty on the parties that will be considered for the purpose of limited notification, resulting in more efficient plan administration.

## **Definitions**

### ***Submissions***

112. TRoNT (8.01) seek that the definition of Ngā Rūnaka is amended to include reference to Te Rūnanga o Ngāi Tahu for matters that are associated with or related to matters included in the Ngāi Tahu Deed of Settlement or Ngāi Tahu Claims Settlement Act. This reflects that the SASM Chapter proposes to include reference in rules to Ngā Rūnaka only, but Te Rūnanga o Ngāi Tahu has duties under the Settlement Act, and while it seeks to carry out these duties in conjunction with Ngā Rūnaka, the drafting of the rules and related definitions could impact this responsibility, and prevent Te Rūnanga o Ngāi Tahu from using, or being approached on settlement matters. Rather than amending multiple rules, a change to the definition of Ngā Rūnaka is sought so that it also encompasses Te Rūnanga o Ngāi Tahu. TRoNT also seek that Ngā Rūnaka is amended so that it is used only in the Definitions Chapter or the Glossary Chapter, to avoid there being more than one definition in the District Plan. TRoNT (8.02) otherwise support the definitions and glossary terms introduced or amended through PC24.
113. Genesis (12.03) and Meridian (14.03) seek that the definition of 'Infrastructure' is amended to refer to energy storage; or in the alternative, that reference to infrastructure within PC24 is amended to refer to *"Infrastructure and energy storage facilities" / "Infrastructure and energy storage facilities associated with the supply of renewable electricity"*. While acknowledging that the current definition is taken from the RMA, Genesis states that it should be extended to include energy storage systems, to recognise the role such systems are likely to play in future electricity systems. Meridian considers that there is a gap in the definition without this inclusion and that such storage facilities aid efficiency of energy use.
114. Wolds Station (17.01) seeks that the definition of 'irrigation' is amended to include border dyke irrigation, as it may not be considered to fall within the reference to a *"constructed system"*.
115. CRC (15.01) seeks that a note is added to the definition of 'irrigation' to state that this is a definition from the NESF. CRC (15.02) similarly seeks that a note is added to the definition of 'wetland' to state that it is a National Planning Standards definition.

### ***Analysis***

116. I note that PC24 proposes to introduce a definition for 'Ngā Rūnaka', that refers to Te Rūnanga o Arowhenua, Te Rūnanga o Waihao and Te Rūnanga o Moeraki. Within the glossary 'Ngā Rūnanga' is also included, and was introduced through PC20, meaning more broadly, multiple rūnanga. I agree with TRoNT that it is appropriate to ensure that the provisions in the SASM Chapter which refer to Ngā Rūnaka are applied to TRoNT, where associated with or related to matters included in the Ngāi Tahu Deed of Settlement or Ngāi Tahu Claims Settlement Act. While I agree in principle with only having one definition / glossary term, I note that 'Ngā

Rūnanga' is not within the scope of PC24. I therefore do not consider that there is scope to remove it. I note however, that it does not appear to be used in the District Plan provisions in any case. I recommend that the submission point (8.01) be accepted in part.

117. The definition of 'infrastructure' was introduced in PC20 and is not proposed to be amended through PC24. I therefore consider the changes sought to it by Genesis and Meridian are outside the scope of the plan change. Notwithstanding this, I consider that how the term is used within the PC24 provisions is within the scope of PC24, i.e. it is relevant to consider whether the provisions themselves should be extended to apply to infrastructure and energy storage facilities, as sought in the alternate by the submitters. However, there are no provisions in PC24 relating to infrastructure in any case, so this consideration is not required. Therefore, I recommend that these submission points (12.03 and 14.03) be rejected.
118. I note that where a definition is taken from the National Planning Standards, this is noted in the definition itself, and reflects that this is a requirement of those standards. I therefore agree with adding reference to the National Planning Standards in the definition of 'wetland' as this is consistent with other terms taken from those standards and recommend the submission point (15.02) be accepted. There is however no requirement to adopt definitions from other planning documents, and therefore I do not consider it appropriate to add a note referring to the NESF in the definition of 'irrigation' in the same way. I note however that where definitions have been adopted from the NESCF, this is noted in the definition, but in a different manner (i.e. the definition starts "*has the same meaning as in Section 3 of the National Environmental Standard for Commercial Forestry (as set out below)*"). Should the Hearing Panel agree with adopting the definition from the NESF and consider that this should be made clear in the definition, then I recommend that the definition is amended to read the same as the NESCF related definitions. My recommendation, however, is not to link the definition to the NESF, because in future the NESF may change, and therefore I recommend that the submission point (15.01) be rejected.
119. In terms of whether the definition should include explicit reference to border dyke irrigation, I consider that it is necessary to consider how the definition is used in the provisions. The word is used in SASM-R5 to apply a restricted discretionary activity status to irrigation which is within a MRAPA, as reflected in the direction in SASM-P6.3. In this context, and as set out earlier, the intent is to manage the potential impact that water uses, and changes to the freshwater environment can have on rock art sites, through alteration to the chemical balance of limestone. I therefore agree that this should include border dyke irrigation. My recommended drafting is to refer simply to "*including border dyke systems*" rather than to "*lawfully established flood (border dyke) irrigation system(s)*" as whether these have been established lawfully is a compliance matter and there is no need to refer to lawful establishment with respect to only this type of system. I recommend the submission point by Wolds Station (17.01) be accepted in part.
120. Because I have recommended a minor change to the definitions, I recommend that TRoNT's supporting submission point (8.02) be accepted in part.

## ***Recommendation***

121. I recommend, for the reasons given above, that:

- a. the definition of 'irrigation' is amended to add explicit reference to border dyke irrigation;
- b. the definition of 'Ngā Rūnaka' is amended to refer to Te Rūnanga o Ngāi Tahu for matters that are associated with or related to matters included in the Ngāi Tahu Deed of Settlement or Ngāi Tahu Claims Settlement Act; and
- c. the definition of 'wetland' is amended to note that it is taken from the National Planning Standards.

122. The amendments recommended to these definitions are set out in **Appendix 1**.

123. The addition to the definition of 'Ngā Rūnaka' has implications where it is used in the SASM Chapter, including in rules SASM-R1 and SASM-R2, and matters of discretion SASM-MD1, whereby their application is limited to 'Ngā Rūnaka' under the proposed definition. Extending the definition to apply to Te Rūnanga o Ngāi Tahu better reflects Te Rūnanga o Ngāi Tahu's responsibilities under the Ngāi Tahu Deed of Settlement and Ngāi Tahu Claims Settlement Act and allows them to use the rules in the chapter, or be approached on settlement matters which relate to these rules. I consider that this extension is a more efficient approach, and better achieves the objectives, which refer more broadly to mana whenua, allowing the exercise of kaitiakitaka over SASM (SASM-O1) and providing for the use of mahika kai and nohoaka sites.

124. The addition to the definition of 'wetland' does not require a section 32AA evaluation because the addition does not change the effect of the definition. However, it provides clarity to plan users that the definition is as per the NP Standards.

125. I consider that explicitly referring to border dyke irrigation in the definition of 'irrigation' will provide clarity to plan users that the related rules apply to this form of irrigation and will therefore improve plan administration. This will assist in achieving SASM-O3.

## ***Submissions***

# **13. Relationship with Other Chapters**

## ***Submissions***

126. TRoNT (8.03) support the Introduction to the SASM Chapter, because it recognises mana whenua within the District and introduces the types of SASMs and mātauraka māori principles and tools, as well as setting out how the chapter should be read with other parts of the Plan.

127. OWL (13.04) supports the approach for infrastructure activities located in SASMs to be governed by rules in the INF and REG chapters, not the SASM Chapter.

128. Transpower (4.01) is concerned that the Introduction to the SASM Chapter could be taken to contradict with what it considers is “*the unambiguous direction in the Infrastructure Chapter*”, whereby the latter chapter sets out what chapters and provisions apply to infrastructure activities, and do not include the SASM Chapter. They consider that the SASM Introduction implies the SASM provisions might apply to an activity requiring resource consent under the INF Chapter rules, and seeks an amendment to avoid this interpretation.
129. Genesis (12.05) seeks that the Introduction is amended to explicitly state that its provisions do not apply to renewable electricity generation activities (REG activities). It considers that it is unclear whether reference in the REG Chapter introduction to Historical Heritage (as being applicable to REG activities) includes SASM. Meridian (14.05) also seeks this addition to the introduction, to provide clarity that REG activities are managed in the REG Chapter.

### **Analysis**

130. The introduction to each of the INF and REG chapters states that the provisions in other chapters of the District Plan do not apply, except as listed in the respective introduction sections to each of those chapters. I do not consider it necessary to then include reference within the SASM Chapter (or any other chapter) to the provisions not applying to infrastructure and REG activities as this creates unnecessary duplication. For completeness, I note that some provisions within the SASM Chapter as notified do apply to specific infrastructure activities – namely irrigation within MRAPAs (SASM-R5) and wastewater treatment plants (SASM-R6). I have made a recommendation in the PC26 s42A report to address this via changes to the Introduction of the INF Chapter. However this does not alter my view that there is no need to duplicate the detail contained in the Introduction to the INF and REG chapters within the SASM Chapter Introduction.
131. I do not agree with Transpower that the wording of the SASM Introduction implies that the SASM provisions might apply to an activity requiring resource consent under the INF Chapter rules, noting that the chapters referred to in the introduction (Natural Character, Natural Features and Landscapes, Public Access and Earthworks chapters) contain references back to the SASM Chapter; whereas the INF and REG chapters are explicit in what other chapters apply to the activities managed in those chapters. I also consider that if such a note was included in the SASM Chapter, then from a drafting perspective it would need to then be repeated across the introductions to multiple chapters in the Plan to which the provisions do not apply in relation to REG activities and infrastructure, despite this being clearly set out in the INF and REG chapters already. This would result in avoidable duplication that I simply do not see as being necessary.
132. With respect to Historical Heritage, this is a separate chapter (the National Planning Standards require separate SASM and Historical Heritage chapters), and the relationship between the content of this chapter at the INF and REG chapters will be addressed through Stage 4 of the District Plan review. I therefore recommend that these submission points (4.01, 12.05 and 14.05) be rejected, and the supporting submission points (8.03 and 13.04) be accepted.

***Recommendation***

133. I recommend, for the reasons given above, that the Introduction section of the SASM Chapter is retained as notified.