Independent Hearings Panel

Christchurch Replacement District Plan

Te paepae motuhake o te mahere whakahou a rohe o Ōtautahi

IN THE MATTER OF section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

AND

IN THE MATTER OF proposals notified for incorporation into a Christchurch Replacement District Plan

Date of hearing: 18–25 January, 2–10 February and 9 and 10 May 2016

Date of decision: 21 October 2016

Hearing Panel: Sir John Hansen (Chair), Environment Judge John Hassan (Deputy Chair), Ms Sarah Dawson, Ms Jane Huria, Dr Phil Mitchell

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DECISION 51

CHAPTER 9: NATURAL AND CULTURAL HERITAGE (PART)
Sub-chapter 9.5 — Ngāi Tahu Values

(and associated changes to Chapters 8 and 16 related to land at North Belfast and changes to other chapters and relevant definitions)

Outcomes: **Proposals changed as per Schedule 1 and Schedule 2**

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INTRODUCTION

[1] This decision is one of a series by the Independent Hearings Panel ('Hearings Panel'/'Panel') relating to the formulation of a replacement district plan for Christchurch City, which includes Banks Peninsula ('CRDP').

[2] Primarily, it concerns what are termed 'Sites of Ngāi Tahu Cultural Significance' ('SONTCS') and related provisions concerning Ngāi Tahu values and the natural environment ('Sub-chapter 9.5'). It also concerns some related Chapter 8 and 16 provisions deferred from earlier determination in relation to the proposed Industrial General (North Belfast) zone ('North Belfast provisions'). Finally, as recorded in the Panel's recently-issued Decisions 44, 45 and 46, on Sub-chapters 9.3 and 9.4, this decision includes (in Schedule 2) other changes to other CRDP chapters for the reasons given in, and to complete, those decisions.

[3] This decision follows our hearing and consideration of submissions and evidence. Further background about the review process pursuant to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 ('the OIC') is set out in the introduction to Decision 1. That decision concerned Strategic Directions and Strategic Outcomes (and relevant definitions) ('Strategic Directions decision').[1]

Background to evolution of Sub-chapter 9.5

[4] The notified version of Chapter 9 ('Notified Version') did not include a separate section for the matters that now form part of Sub-chapter 9.5. In essence, the Notified Version was explicitly a work in progress, rather than a properly informed and comprehensive set of provisions for this matter. It included:

(a) Those 'Silent File' sites identified in the operative Banks Peninsula District Plan (BPDP),[2]

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1 Strategic directions and strategic outcomes (and relevant definitions), 26 February 2015.

2 Defined in the notified Stage 3 proposal for definitions as 'means areas identified by Papatipu Rūnanga as requiring special protection due to the presence of significant wāhi tapu or wāhi taonga in the area. Papatipu Rūnanga protect the specific location and nature of the site within a silent file, holding knowledge of the site as kaitiaki. Where activities occur in silent file areas, engagement with Papatipu Rūnanga is necessary in order to identify effects of the activity and avoid, remedy or mitigate those effects.'

(b) A policy on working with Te Rūnanga o Ngāi Tahu and Papatipu Rūnanga to identify and assess sites for listing and protection, and

(c) Some related rules for the consideration of resource consents for activities in areas that include those sites.

[5] Te Rūnanga o Ngāi Tahu and ngā rūnanga ('Ngāi Tahu') (3722) made a submission seeking a significantly more comprehensive approach to the identification and protection of SONTCS. Its submission proposed a new Sub-chapter 9.5, entitled '9.X Ngāi Tahu Values and the Natural Environment'. It included an extensive proposed set of objectives, policies, and rules ('Ngāi Tahu's Initial Proposal').

[6] Through various subsequent steps in the lead up to the Panel's initial hearing, the Council moved increasingly towards a more comprehensive approach. The Council's 4 November 2015 version of Chapter 9, filed prior to the hearing, proposed a Sub-chapter 9.5 entitled as Ngāi Tahu's submission requested. Its proposed provisions were much more limited than sought by Ngāi Tahu. However, in the evidence in chief of its planning witness, Ms Shirley Ferguson, the Council proposed a significant expansion of the sub-chapter.[3]

[7] Those shifts in the Council's position led to a process of engagement between the Council and Ngāi Tahu that, with some assistance from the Panel, ultimately narrowed differences between those parties significantly:

(a) When the initial Chapter 9 hearing commenced ('the initial hearing'), the Council and Ngāi Tahu were largely agreed on the location of additional SONTCS[4] and on the need to provide for these sites in the CRDP. In addition, the Council and Ngāi Tahu had agreed on a framework of objectives and policies for the identification and protection of these sites and values.[5] However, at that stage, they had not reached agreement on how best to provide for the protection of the identified values, including on the substance of a rules framework and the nature of non-regulatory methods to be used;

3 Evidence in chief of Shirley Ferguson on behalf of the Council, 2 December 2015, at Appendix 2.
4 That is, additional to the "rolled over" sites of the Notified Version.
5 Opening submissions for the Council at 20.2–20.3; opening submissions for Ngāi Tahu at 46.

(b) Following Panel questioning, the Council and Ngāi Tahu sought further time for mediation and to jointly undertake a programme of work. This was to further refine the mapping of SONTCS and to further consider the provisions applicable to these sites.[6] The initial hearing was adjourned to allow this.[7] That further work narrowed differences between those parties. The resumed hearing ('resumed hearing'), on 9 and 10 May 2016, considered the Council's further revised proposal (and related supplementary evidence) and its relationship with some other proposals before the Panel.[8] Differences between the Council and Ngāi Tahu at that time were mainly as to the most appropriate rules, and their geographic coverage with reference to the mapped SONTCS. Other parties also raised some specific issues and concerns in their evidence and representations.[9] The Panel also asked the planning witnesses for the Council and Ngāi Tahu a number of questions concerning the extent of evaluation undertaken of costs and benefits (including for landowners), and also on a range of drafting issues; [10]

(c) Following the resumed hearing, at the request of the Panel, the Council consulted further with other parties and filed a joint memorandum proposing a process to address the Panel's concerns and prepare a further revised proposal.[11] This was approved by the Panel,[12] and included a drafting session facilitated by one of the other Hearings Panel members, Mr Stephen Daysh. This culminated in the Council filing its further revised version on 3 June 2016 ('3 June 2016 Version'). A key aspect of this version was its two-pronged approach to SONTCS rules, a feature to which we will refer later in this decision;

(d) Closing submissions by submitters revealed that differences had significantly narrowed both in terms of the range of parties and the substance of provisions. In Ngāi Tahu's case, it filed a revised proposal with its closing submissions ('Ngāi

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6 Joint memorandum of counsel for Ngāi Tahu and Christchurch City Council regarding working programme related to Ngāi Tahu values topic, 18 February 2016.

7 Minute regarding Topics 9.1–9.5, dated 22 February 2016

8 Minute in relation to reconvening of hearing, dated 21 April 2016.

9 For example, Michael Bayley (3285), North Canterbury Province of Federated Farmers of New Zealand Incorporated (3702), and David Brailsford and Jan Cook (3596).

10 For example, transcript, pages 2081–2095 and 2048–2058.

11 Memorandum of the parties on matters raised by the Panel during resumed hearing for Topic 9.5 Sites of Ngāi Tahu Cultural Significance, 11 May 2016. Filed on behalf of the Council (3723), Ngāi Tahu (3722), the Crown (3721), North Canterbury Province of Federated Farmers of New Zealand Incorporated (3702) and David Brailsford and Jan Cook (3596).

12 Minute re Joint Memorandum on Topic 9.5 dated 11 May 2016, 13 May 2016.

Tahu's Final Proposal') that significantly narrowed its range of differences with the Council. As the Council's closing submissions reported:

(i) Ngāi Tahu's closing submissions and revised proposal:[13]

> … indicate a very high level of agreement between the Council and Ngāi Tahu, with agreement reached on almost all aspects of the proposal. The Council has proposed further amendments to its final proposal of 17 June 2016 … that bring the position of the Council and Ngāi Tahu into even closer alignment. The two key remaining areas of disagreement … relate to:
>
> (i) the wording of the future plan changes policy (9.5.2.8) where the Council does not support Ngāi Tahu's proposed requirement for plan changes to be notified within two years; and
>
> (ii) the notification provision that applies to all non Wāhi Tapu/Wāhi Taonga SONTCS (ie all sites not identified on schedule 9.5.5.1).

(ii) The Crown (FS5030) broadly supports Ngāi Tahu's Final Proposal, Hands off Hagley (3711, 5034) supports scheduling of SONTCS 56 within Little Hagley Park, and Jan Cook and David Brailsford (3596) support the Final Revised Version, subject to some concerns about restrictions imposed by proposed Rule 8.8.3 RD6 on farming practices.[14]

(iii) Mr Bayley (3285) continues to have site specific concerns in relation to the level of control that would be imposed by the proposed scheduling of Kaitōrete Spit as a Wāhi Tapu/Wāhi Taonga site and, in particular, the restrictions that would be imposed on farming practices.[15]

(iv) North Canterbury Province of Federated Farmers of New Zealand Inc ('Federated Farmers') (3702, FS5000) remains concerned about certain matters (pertaining to both the Final Revised Version and Ngāi Tahu's Final Proposal), as we further describe at [56]–[57].

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13 Closing submissions for the Council, 17 June 2016, at 2.4(e).
14 Closing submissions for the Council, 17 June 2016, at 2.4(f), (h) and (i).
15 Closing submissions for the Council, 17 June 2016, at 2.4(g).

[8] In response to closing legal submissions filed by Ngāi Tahu and other parties, the Council proposed some further amendments in its closing legal submissions ('Final Revised Version'), to which we refer later in this decision.

[9] Against this background, in our s 32AA evaluation, we treat the Final Revised Version as effectively superseding the Notified Version and other variations of it advanced by the Council. On a similar basis, we treat Ngāi Tahu's Final Proposal as superseding previous proposals it advanced, including in its submission.

[10] We refer to the provisions we have included in Sub-chapter 9.5 and other CRDP chapters as the 'Decision Version'. The Sub-chapter 9.5 provisions of the Decision Version are in Schedule 1. The other CRDP chapter provisions of the Decision Version are in Schedule 2. Schedule 2 also includes changes to other CRDP chapters for the reasons given in, and to complete, the Panel's recently-issued decisions on Chapter 9 ('other Chapter 9 decisions').

[11] The Decision Version (together with the CRDP chapter provisions that complete the other Chapter 9 decisions) will become operative upon release of this decision and expiry of the appeal period.

Effect of decision and rights of appeal

[12] Explanations about these proceedings and the rights of appeal are set out in earlier decisions.[16] The following persons may (within the 20 working day period specified in the Order) appeal against this decision to the High Court on questions of law:

(a) Any person who made a submission (and/or further submission) on the Notified Version, or the other proposals we determine by this decision;

(b) The Council and the Ministers.

[13] We refer parties to the OIC on the matter of appeal rights.[17]

16 Strategic Directions decision at [5]–[9].
17 OIC, cl 19.

Provisions deferred

[14] On the following matters, we make relevant findings in this decision but defer making changes to related CRDP chapters until we issue our decision on proposed Chapter 6 (General Rules and Procedures):

(a) Changes to the Sub-chapter 6.6 proposal (on water body setbacks), to implement what we determine by this decision concerning Ngā Wai;

(b) Changes to the Sub-chapter 6.8 proposal (on signs), to implement what we determine by this decision concerning Sub-chapter 9.3 (historic heritage).

[15] We defer those matters because of the need to ensure provisions are properly integrated with those to be determined for proposed Chapter 6. For the same reasons, some definitions are deferred pending the related Chapter 2 decision.

Identification of parts of the Existing Plan to be replaced

[16] The OIC requires that our decision also identifies the parts of the Existing Plan[18]to be replaced by the Decision Version. It replaces those provisions of the former Banks Peninsula District Plan pertaining to Silent Files.

Conflicts of interest

[17] Notice of any potential conflicts of interest was posted on the Independent Hearings Panel website.[19] During the course of the hearing it emerged on some occasions that submitters were known to members of the Panel either through previous business associations or through current or former personal associations. Those disclosures were recorded in the transcript, which was available daily on the Hearings Panel's website. Ms Huria disclosed a relationship interest in relation to this decision and Decision 37: Papakāinga/Kāinga Nohoanga Zone.[20] No submitter raised any issue in relation to such matters.

[18] Comprising the Christchurch City District Plan and Banks Peninsula District Plan.
[19] The website address is www.chchplan.ihp.govt.nz.
[20] Minute — disclosure of relationship interest, 23 September 2015. See also Decision 37 at [9].

REASONS

STATUTORY FRAMEWORK

[18] The OIC directs that we hold hearings on submissions concerning proposals and make decisions on those proposals.[21] It sets out what we must and may consider in making that decision.[22] It qualifies how the Resource Management Act 1991 ('RMA') is to apply and modifies some of the RMA's provisions, as to both our decision-making criteria and processes.[23] It directs us to comply with s 23 of the Canterbury Earthquake Recovery Act 2011 ('CER Act').[24] The OIC also specifies additional matters for our consideration.

[19] Our Strategic Directions decision, which was not appealed, summarised the statutory framework for that decision. As it is materially the same for this decision, we apply the analysis in that decision.[25] On the requirements of ss 32 and 32AA of the RMA, we endorse and adopt [48]–[54] of our Natural Hazards decision.[26]

Relevant provisions of Part 2, RMA

[20] As for other Chapter 9 proposals, Part 2, RMA (as to 'purpose and principles') have an important bearing on our decision. In achieving the RMA's sustainable management purpose:

(a) Section 6 requires that we recognise and provide for its specified 'matters of national importance', including:

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21 OIC, cl 12(1).
22 OIC, cl 14(1).
23 OIC, cl 5.
24 Our decision does not set out the text of various statutory provisions it refers to, as this would significantly lengthen it. However, the electronic version of our decision includes hyperlinks to the New Zealand Legislation website. By clicking the hyperlink, you will be taken to the section referred to on that website. The CER Act was repealed and replaced by the Greater Christchurch Regeneration Act 2016 ('GCRA'), which came into force on 19 April 2016. However, s 148 of the GCRA provides that the OIC continues to apply and the GCRA does not effect any material change to the applicable statutory framework for our decision or to related Higher Order Documents. That is because s 147 of the GCRA provides that the OIC continues in force. Further, Schedule 1 of the GCRA (setting out transitional, savings and related provisions) specifies, in cl 10, that nothing in that Part affects or limits the application of the Interpretation Act 1999 which, in turn, provides that the OIC continues in force under the now-repealed CER Act (s 20) and preserves our related duties (s 17).
25 At [25]–[28] and [40]–[62].
26 Natural Hazards (Part) (and relevant definitions and associated planning maps), 17 July 2015, pages 20–21.

(i) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga (s 6(e));

(ii) the protection of historic heritage from inappropriate subdivision, use, and development (s 6(f));

(b) Section 7 directs us to have 'particular regard' to its listed matters including:

(i) kaitiakitanga, defined to mean 'the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources, and includes the ethic of stewardship (ss 7, 2(1));

(c) Section 8 directs us to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

[21] In regard to s 6(e), Ngāi Tahu's closing submissions referred to leading authorities on the meaning of 'ancestral lands'[27] (one of which, *Habgood*, concerned Kaitōrete Spit Site 64, a site identified in Ngāi Tahu's original submission). We accept that those authorities support Ngāi Tahu's related submissions that 'ancestral lands' are lands that have been owned by ancestors and do not have to be in current Māori ownership. Ngāi Tahu also pointed out, and we accept, that s 6(e) is not only concerned with ancestral lands (which was the narrower focus of the legislation in issue in those authorities) but also with 'water, sites, waahi tapu, and other taonga'.[28] As such, we also agree that s 6(e) provides for a significantly strengthened safeguard of the relationship, including cultural relationship, of Māori to these identified matters concerning natural and physical resources.[29]

[22] In regard to s 6(f), Ngāi Tahu noted the broad definition of 'historic heritage' in s 2(1), RMA including its express references to 'archaeological sites', 'sites of significance to Māori, including wāhi tapu' and 'surroundings associated with the natural and physical resources'. As Ngāi Tahu also pointed out, the definition specifies an overall pre-requisite that the natural and physical resources in question 'contribute to an understanding and appreciation of New

27 *Royal Forest and Bird Protection Society Inc v WA Habgood Ltd* (1987) 12 NZTPA 76 (HC); *Environmental Defence Society Inc v Mangonui County Council* [1989] 3 NZLR 257 (CA).
28 Closing submissions for Ngāi Tahu, at 20 – 22.
29 Closing submissions for Ngāi Tahu, at 22.

Zealand's history and cultures, deriving from its listed qualities (including archaeological, cultural and historic qualities).[30]

[23] As is well known, the RMA's purpose is 'to promote the sustainable management of natural and physical resources' (s 5). 'Sustainable management' is defined in terms that include 'managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being.' There are, of course, other elements to the definition, including the matters in s 5(2)(a)–(c).

[24] We set out our findings on the evidence later in this decision. We note that the evidence called by Ngāi Tahu on matters concerning these principles and their relationship to the s 5 purpose was not contested by any other party. Ngāi Tahu submitted in closing that ss 5–8 give "strong directions" that relate to enabling Ngāi Tahu as part of the greater Christchurch community to provide for their social and cultural wellbeing.[31] It submitted that Ngāi Tahu social and cultural wellbeing is inextricably central the RMA's purpose in the context of Christchurch District.[32] On the evidence, we accept those submissions.

Higher Order Documents[33]

[25] Ngāi Tahu's closing submissions were also helpful in identifying relevant Higher Order Documents.[34]

[26] The Higher Order Documents that the CRDP must 'give effect to'[35] include the New Zealand Coastal Policy Statement 2010 ('NZCPS'), the National Policy Statement for Freshwater Management 2014 ('NPSFM') and the Canterbury Regional Policy Statement 2013 ('CRPS').

30 Closing submissions for Ngāi Tahu, at 24
31 Closing submissions for Ngāi Tahu, at 8.
32 Closing submissions for Ngāi Tahu, at 16 and 17.
33 A term we use in our decisions to refer to a range of statutory documents, such as national policy statements, the CRPS, and other documents or provisions of the OIC in respect of which various statutory requirements apply to our decision-making. We also note the relevance of various regional plans and the National Water Conservation (Te Waihora/Lake Ellesmere) Order 1990 as documents the CRDP must not be inconsistent with.
34 Closing submissions for Ngāi Tahu, at 35
35 RMA, s 75(3).

[27] For the meaning of 'give effect to', Ngāi Tahu referred to the Panel's Strategic Directions decision (Decision 1) where we interpreted 'give effect to' as meaning 'implement according to the applicable policy statement's intentions and our related observation as to the importance of reading the applicable directives in higher order statutory instruments according to their true intention.[36] We take the same approach to interpretation in this decision.

[28] Ngāi Tahu also quoted passages from the Supreme Court's *King Salmon*[37] decision on the proper approach to interpretation of the NZCPS and submitted that the same approach was appropriate for other Higher Order Documents where the statutory directive is also 'give effect to'. We agree with that submission, and find it helpful to also set out the relevant passages:

> [129] … the decision-maker must first identify those policies that are relevant, paying careful attention to the way in which they are expressed. Those expressed in more directive terms will carry greater weight than those expressed in less directive terms. Moreover, it may be that a policy is stated in such directive terms that the decision-maker has no option but to implement it. So, "avoid" is a stronger direction than "take account of". That said, however, we accept that there may be instances where particular policies in the NZCPS "pull in different directions". But we consider that this is likely to occur infrequently, given the way that the various policies are expressed and the conclusions that can be drawn from those differences in wording. It may be that an apparent conflict between particular policies will dissolve if close attention is paid to the way in which the policies are expressed.
>
> [130] Only if the conflict remains after this analysis has been undertaken is there any justification for reaching a determination which has one policy prevailing over another. The area of conflict should be kept as narrow as possible. The necessary analysis should be undertaken on the basis of the NZCPS, albeit informed by s. 5. As we have said, s 5 should not be treated as the primary operative decision-making provision.

[29] Turning to the NZCPS, its statutory purpose is:

> to state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand.

[30] The 'coastal environment' includes extensive parts of the district, including on Banks Peninsula and coastal areas in the vicinity of Kaitōrete Spit and the coastal settlements in and around Ferrymead, Redcliffs and Sumner.

[31] We identify the following NZCPS provisions as having particular bearing on our evaluation:

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36 Decision 1, at the Table at [42] and associated footnote 43.

37 *Environmental Defence Society v New Zealand King Salmon Co Ltd* [2014] NZSC 38

(a) Objective 3 which is:

> To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by:
>
> - recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;
> - promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act;
> - incorporating mātauranga Māori into sustainable management practices; and
> - recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.

[32] Policy 2 as to the Treaty, tangata whenua and Māori, which is an extensive policy that includes the following relevant aspects:

> In taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment:
>
> a. recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations;
>
> b. involve iwi authorities or hapū on behalf of tangata whenua in the preparation of … plans, by undertaking effective consultation with tangata whenua; with such consultation to be early, meaningful, and as far as practicable in accordance with tikanga Māori;
>
> c. with the consent of tangata whenua and as far as practicable in accordance with tikanga Māori, incorporate mātauranga Māori … in plans …; …
>
> …
>
> e. take into account any relevant iwi resource management plan and any other relevant planning document recognised by the appropriate iwi authority or hapū and lodged with the council, to the extent that its content has a bearing on resource management issues in the region or district; and
>
> i. where appropriate incorporate references to, or material from, iwi resource management plans … in plans; …
>
> f. provide for opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands, and fisheries in the coastal environment through such measures as:
>
> i. bringing cultural understanding to monitoring of natural resources;
>
> ii. providing appropriate methods for the management, maintenance and protection of the taonga of tangata whenua; …

g. in consultation and collaboration with tangata whenua, working as far as practicable in accordance with tikanga Māori, and recognising that tangata whenua have the right to choose not to identify places or values of historic, cultural or spiritual significance or special value:

i. recognise the importance of Māori cultural and heritage values through such methods as historic heritage, landscape and cultural impact assessments; and

ii. provide for the identification, assessment, protection and management of areas or sites of significance or special value to Māori, including by historic analysis and archaeological survey and the development of methods such as alert layers and predictive methodologies for identifying areas of high potential for undiscovered Māori heritage, for example coastal pā or fishing villages.

[33] In regard to Ngā Wai, the NPSFM includes Objective D1 and related Policy D1 concerning tāngata whenua roles and interests in freshwater management. Relevantly, these give directions to involve iwi and hapū in management, work with them in order to reflect tāngata whenua values and interests in the management of, and decision-making regarding fresh water and freshwater ecosystems in the region.

[34] The CRPS includes a direction to territorial authorities to include 'provisions' (i.e. in their district plans) for the relationship of Ngāi Tahu with their ancestral lands, water, sites, Wāhi Tapu and other taonga (CRPS 4.3.15). We agree with Ngāi Tahu's planning witness, Ms Yvonne Legarth, that CRPS Chapter 13 on historic heritage is relevant, and CRPS Chapter 7 has some bearing on the consideration of provisions in regard to Ngā Wai.[38]

[35] In terms of CRPS Chapter 13, we identify as relevant:

(a) Objective 13.2.1 as to the identification and protection of 'significant historic heritage items, places, and areas, and their particular values that contribute to Canterbury's distinctive character and sense of identity from inappropriate subdivision, use and development'; and

(b) Policy 13.3.1 which is to 'recognise and provide for the protection of the historic and cultural heritage resource of the region from inappropriate subdivision, use and development by', amongst other things:

[38] Evidence in chief of Yvonne Legarth on behalf of Ngāi Tahu at 46.

(i) identifying and assessing the significance of that resource according to criteria based on the matters specified in 13.1.1(1), including 'historic', 'cultural', 'archaeological', 'social', 'spiritual', 'traditional' and 'contextual'.

(ii) working with Ngāi Tahu 'to identify items, places or areas of historic significance to them' (13.1.1(2)); and

(iii) recognising that knowledge about some historic heritage may be culturally sensitive and supporting protection of those areas through 'the maintenance of silent files held by local authorities'(13.1.1(5)).

[36] Related to those matters, we note that the associated 'methods' statement to CRPS Policy 13.3.1 records that territorial authorities will work 'together … with Te Rūnanga o Ngāi Tahu and papatipu rūnanga to identify and manage significant or important historic heritage items, places or areas' and will use iwi management plans as a tool to assist in identification, provide cultural context, and assist in avoiding adverse effects.

[37] We must take relevant iwi management plans into account to the extent that their content has a bearing on the resource management issues of the district (s 74(2A), RMA). The relevant iwi management plans are *Te Whakatau Kaupapa Ngai Tahu Resource Management Strategy for the Canterbury Region* and *Mahaanui Kura Taiao Iwi Management Plan* ('Iwi Management Plans'). As the evidence explains, and we later discuss, these plans are of particular significance in the fact that their identification of Silent File areas is significantly more extensive than what the Notified Version identified.

[38] There are clear themes in the directions of these Higher Order Documents that we weigh in our s 32AA evaluation. In particular, reflecting the statutory principles to which we have referred, there is:

(a) A clear recognition of the cultural and historic relationship of Māori, and in particular Manawhenua, with the environment (and, in that regard, the matters referred to in s 6, RMA);

(b) A consistently strong emphasis on consulting and working with tāngata whenua (iwi and hapū) and to take account of iwi management plans including in order to recognise kaitiakitanga, understand and respect cultural values, and identify and protect historic heritage; and

(c) A consistently clear direction to recognise cultural sensitivity, including with use of Silent Files.

[39] As we later explain, those are matters which the evidence demonstrates clearly as weighing against the appropriateness of the Notified Version and in support of the Final Revised Version (which, we record, owes its origins more to Ngāi Tahu's submission than the Notified Version). They are also matters that we have weighed in our changes to the Final Revised Version, in view of the findings we set out later in this decision.

Council's s 32 report

[40] We refer to the necessary principles set out in our earlier decisions.[39] We have had regard to the s 32 report ('Report') on the Notified Version. However, given that the Notified Version is effectively superseded by the Final Revised Version, we give no substantial weight to that report. While noting the Council's updated s 32 report on the Final Revised Version, we record that our s 32 AA evaluation is according to the evidence and related submissions and representations before us and which we shortly discuss.

ISSUES RAISED BY SUBMISSIONS

[41] We have considered all the submissions and evidence that have been presented in relation to this topic. We have also had regard to the Council's recommendations on submissions in the Accept/Accept in Part/Reject Table filed with the Council's closing submissions.[40] We understand those recommendations to be reflected in the Final Revised Version.

[39] Strategic Directions at [63]–[70].
[40] Closing submissions for the Council, Appendix P ('Accept/Accept in Part/Reject Table').

[42] Our Decision 38: Natural and Cultural Heritage Topic 9.2 sets out counsel appearances and submitter appearances and representations made during the course of the entire hearing of the greater Natural and Cultural chapter.

[43] As we have noted at [7], by the time that closing submissions were filed, differences remaining about the Final Revised Version were confined both in terms of provisions and parties. To provide some context for our discussion of those issues, we firstly set out a summary of the Final Revised Version and how Ngāi Tahu's Final Proposal differs from it.

Final Revised Version and key points of difference with Ngāi Tahu's Final Proposal

[44] Somewhat unusually, on this occasion, the substance of the Final Revised Version owes more to what was proposed by way of submission (i.e. Ngāi Tahu's Initial Proposal) than the Notified Version. Therefore, in now summarising the Final Revised Version, we note key points of difference with Ngāi Tahu's Final Proposal. We have provided references to the Decision Version in brackets.

Objectives 9.5.1.1 to 9.5.1.3 (Decision Version: 9.5.2.1 to 9.5.2.3)

[45] Closing submissions reveal that none of the proposed objectives of the Final Revised Version are contentious between parties. They are:

> **9.5.1.1 Areas and Sites of Ngāi Tahu Cultural Significance**
>
> The historic and contemporary relationship of Ngāi Tahu mana whenua with their ancestral lands, water, sites, wāhi tapu and other taonga is recognised and provided for in the rebuild and future development of Ōtautahi, Te Pātaka o Rākaihautū and the greater Christchurch Area.
>
> **9.5.1.2 Integrated Management of Land and Water**
>
> The natural character of and Ngāi Tahu cultural values associated with water bodies, repo / wetlands, waipuna / springs and the coastal environment of Ōtautahi, Te Pātaka o Rākaihautū and the greater Christchurch Area are maintained or enhanced as part of the rebuild and future development of the District - Ki Uta Ki Tai (from the mountains to the sea).
>
> **9.5.1.3 Cultural significance of Te Tai o Mahaanui and the Coastal Environment to Ngāi Tahu**
>
> The cultural significance of Te Tai o Mahaanui, including Te Ihutai, Whakaraupō, Koukourārata, Akaroa, Te Waihora, Te Roto o Wairewa and the coastal environment as a whole to Ngāi Tahu is recognised and Ngāi Tahu are able to exercise kaitiakitanga

> and undertake customary uses in accordance with tikanga, within the coastal environment.

Proposed policies

[46] The Final Revised Version proposes seven policies, 9.5.2.1 to 9.5.2.7 (9.5.2.4 – 9.5.2.10) to support those objectives. These provide:

(a) Overarching direction regarding the management of cultural values of identified sites of cultural significance;

(b) Targeted direction in relation to different types of sites (Wāhi Tapu and Wāhi Taonga; Ngā Tūranga Tūpuna; Ngā Wai; and archaeological sites); and

(c) Process-related direction on engagement with rūnanga and future work to be undertaken.

[47] Most of these policies are not contentious. Differences with Ngāi Tahu's Final Proposal centre on policies concerning engagement and future work (i.e. proposed Policy 9.5.2.7 and Ngāi Tahu's requested new policy 9.5.2.7 (now 9.5.2.10)).

Relationship of objectives and policies to Sub-chapter 9.5 and other chapters

[48] While these guiding provisions sit within Sub-chapter 9.5, in many cases they are implemented through provisions in other chapters, for example through reference to SONTCS being added to policies and matters of discretion for rules in other chapters, which we explain further below.

SONTCS Schedules and related rules as to activities, assessment and notification

[49] The distinction between different types of SONTCS is also reflected in the Schedules contained in Sub-chapter 9.5. These provide a two-tiered regulatory approach ('Two Tiered Approach'), as follows.

[50] Specific restricted discretionary activity ('RDA') and limited notification rules are proposed for inclusion in Sub-chapter 9.5 for Schedule 9.5.5.1 (9.5.6.1) SONTCS. These SONTCS consist of:

(a) The Wāhi Tapu and Wāhi Taonga sites listed in the BPDP (or the "Inner Circle" sites). The extent of these sites, although taken from the BPDP, is smaller than what the Te Whakatau Kaupapa and Mahaanui Kura Taiao Iwi Management Plans identify as Silent File areas; and

(b) Wāhi Tapu sites registered on the New Zealand Heritage List (and sought through the submission of Heritage New Zealand for inclusion in the Plan); and

(c) Certain pā sites and maunga/mountain tops (sought through the submission of Ngāi Tahu for inclusion in the Plan).

[51] For Schedule 9.5.5.1 (9.5.6.1) SONTCS, the Final Revised Version includes proposed rules that:

(a) Classify as RDA buildings of a certain scale, subdivision and earthworks[41] (subject to an earthworks exemption for "rammed posts for the purposes of fencing, holes for tree planting, the maintenance of existing farm tracks, ponds or cultivation of existing pasture and cropping");[42] and

(b) Specify that these RDA consent applications must be limited notified to the relevant rūnanga (unless written approval is obtained).

[52] Schedules 9.5.5.2 to 9.5.5.4 (9.5.6.2 – 9.5.6.4) were not in the Notified Version, but are included in the Final Revised Version in response to Ngāi Tahu's submission. Schedule 9.5.5.2 (9.5.6.2) lists Wāhi Tapu and Wāhi Taonga sites that are identified in the Te Whakatau Kaupapa and Mahaanui Kura Taiao Iwi Management Plans but were not listed in the BPDP (referred to as "Outer Circle" sites[43]). It also lists Kaitōrete Spit. Schedule 9.5.5.3 (9.5.6.3) is of Ngā Tūranga Tūpuna, comprising "the key 'cultural landscape' category and larger areas of multiple significance". Schedule 9.5.5.4 (9.5.6.4) is of Ngā Wai comprising "the key waterways in the district".[44]

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41 Proposed Rule 8.3.2.3 RD12 pertaining to subdivision, and proposed Rule 8.8.3 RD6 pertaining to earthworks (respectively, 8.3.2.2 RD1 and 8.5A.2 RD6, Decision Version) and related Utilities rules.

42 Proposed addition 18(b) to Rule 8.8.5 Exemptions.

43 For completeness, Schedule 9.5.5.2 also includes two Silent File SONTCS that are in the Iwi Management Plan but not in the BPDP.

44 Rebuttal evidence of Craig Pauling on behalf of the Council, 15 January 2016, at 4.1. These sites are described in more detail in the evidence in chief of Kyle Davis on behalf of Ngāi Tahu, 10 December 2015.

[53] The SONTCS in Schedules 9.5.5.2 - 9.5.5.4 (9.5.6.2 – 9.5.6.4) are not subject to the RDA and limited notification rules we have described in relation to Schedule 9.5.5.1 (9.5.6.1). Instead, for this second tier, changes are proposed to various existing rules of other CRDP chapters to add relevant SONTC assessment matters and to provide for consent application notification to rūnanga. Again, these are targeted to larger scale buildings, subdivision and earthworks.[45] Similar targeted changes are proposed for rules in Sub-chapter 6.6 for when a water body is a Ngā Wai under Schedule 9.5.5.4 (9.5.6.4).

[54] As we explain below, there are several drafting problems associated with some of these proposals.

Proposed Strategic Directions objective

[55] As part of the 'package' of changes proposed by the Council, a new Strategic Directions objective for Water/Wai, to be included in Chapter 3, is proposed. This objective is supported by Ngāi Tahu.[46] The Council submit that the Panel's decision on this objective can be made using the Panel's powers under cl 13(5) of the OIC.[47]

Federated Farmers submission as to the addition of SONTCS and related rules

[56] Federated Farmers stands somewhat apart from other submitters in terms of the nature and substance of the concerns it raises relevant to our consideration of the Final Revised Version.

[57] A particular focus of its concern are the sites that were not in the BPDP (and, hence, not rolled over into the Notified Version) but which Ngāi Tahu or Heritage New Zealand seek to be included in the CRDP (and which the Final Revised Version has included). Although Federated Farmers' final position was not entirely clear, we understand it as follows:

(a) It opposes the inclusion within the CRDP of any additional sites (including further Wāhi Tapu/Wāhi Taonga sites; and the proposed Ngā Tūranga Tūpuna and Ngā

[45] As we have noted at [14], while we record our findings on the changes proposed to Sub-chapter 6.6 for Schedule 9.5.5.4 Ngā Wai (i.e. matters of discretion, notification), the provisions we determine to include for that Sub-chapter are deferred to be determined together with our pending Chapter 6 decision

[46] Closing submissions for Ngāi Tahu at 145.

[47] Closing submissions for the Council (Stage 3 Coastal Environment hearing), 22 March 2016, at 4.16–4.18.

Wai sites) and associated rules, until consultation has been undertaken with affected landowners, the sites have been ground-truthed, and an assessment of the values of the sites has been carried out;[48]

(b) It accepts that there is scope to include additional sites in the CRDP, but only to the extent that these sites are not subject to independent requirements for resource consent (which we take to mean that it accepts Schedules 9.5.5.2 (9.5.6.2), 9.5.5.3 (9.5.6.3)and 9.5.5.4 (9.5.6.4) and the approach of the Final Revised Version to those Schedules); and

(c) It considers that there is no scope for additional sites to be included if they are subject to an independent requirement for resource consent (which we take to mean that it considers there is no scope for the regulatory regime that the Final Revised Version would apply to SONTCS 17–29; 30–38; 40–43 and 97 as a result of their inclusion in Schedule 9.5.5.1 (9.5.6.1) and the associated proposed RDA rule).

Other submitters seeking changes to the Final Revised Version

[58] As the changes that other submitters seek to the Final Revised Version are confined to particular provisions and/or localities, we deal with the issues they raise in the context of our evaluation of the relevant provisions.

SECTION 32AA EVALUATION

[59] Our Strategic Directions decision set out the requirements for the Council's s 32 and our s 32AA RMA evaluations.[49] Our decision serves to report on our evaluation, according to the requirements of ss 32 and 32AA RMA.[50]

Whether a two-tiered design of approach the most appropriate

[60] Ngāi Tahu has accepted the Two Tiered Approach of the Final Revised Version. However, their closing submissions made clear that their support for that Version is qualified.

48 Closing submissions for Federated Farmers at 2.
49 Decision 1: Strategic Directions at [63]–[70].
50 RMA, s 32(1)(c) and s 32AA(1)(a)–(d).

They characterise the Council's approach as essentially one of "retrofitting" provisions for the protection of cultural values into a Notified Version that resulted from an inherently flawed process.[51] Therefore, they do not consider any of the Council's subsequent modifications to the Notified Version as a complete response to the matters in ss 6 and 7, RMA and the Higher Order Documents.

[61] They also noted that the mapped SONTCS do not fully respond to s 6, RMA. Mapping recognises sites of significance, but does not 'provide for' their protection from inappropriate subdivision, use and development (s 6(f), RMA). Nor does it provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga (s 6(e), RMA). To properly respond to s 6, methods, including rules, are also needed.[52] In relation to the requirement in s 7(a) to have particular regard to kaitiakitanga, Ngāi Tahu submitted:[53]

> The [CRDP] should enable manawhenua to exercise guardianship over those [SONTCS] in the District. One important way in which the [CRDP] can help do so, is by ensuring that activities which have the real potential to adversely affect cultural values associated with identified sites will be managed through resource consent processes, and to ensure that Ngāi Tahu will be involved in those processes. Ngāi Tahu cannot exercise kaitiakitanga, if they are excluded from the statutory processes which manage adverse effects on sites of cultural significance. Nor can they do so if there are no processes to ensure such effects are managed.

[62] In essence, Ngāi Tahu consider that the 3 June 2016 Version (and, we surmise, the Final Revised Version) represented work in progress towards what is needed to provide adequate and appropriate protection to SONTCS.[54]

[63] Neither the Council nor the Crown took issue with the substance of those submissions.

[64] In view of Ngāi Tahu's position of qualified support for the Final Revised Version, and some concerns also raised by Federated Farmers, we now set out why, on the evidence, we find the Two Tiered Approach of the Final Revised Version more appropriate than the Notified Version and Ngāi Tahu's Initial Proposal.

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51 Closing submissions for Ngāi Tahu at 53.
52 Closing submissions for Ngāi Tahu at 27-28.
53 Closing submissions for Ngāi Tahu at 33.
54 Closing submissions for Ngāi Tahu at 49–50.

[65] One thing that the evidence clearly shows is the relatively less certain nature of the evidence concerning those SONTCS that are not in Schedule 9.5.5.1 (9.5.6.1). In his summary of evidence, Mr Pauling commented:[55]

> On the whole, and subject to the issue of site extents, I consider the methodology used by Ngai Tahu to identify culturally significant sites to be a sound and robust method and in fact similar to the methods used in the Christchurch Landscape Study and the Tipataka Addendum.
>
> The [ellipse] method [used] for the definition of [site] extents is, however, under developed and with further work could be substantially improved. Sites which have specific extent relating to specific values and features, eg the Raekura/Redcliffs area with expert archaeological extents, are appropriate.
>
> I therefore support the inclusion of sites of Ngai Tahu cultural significance in the district plan, but recommend either changes, refinement to some extents, and/or some recategorisation of sites and/or amendment to the rule framework applied to particular sites.
>
> I also continue to support the need for further and future work by Ngai Tahu and CCC on these sites and cultural landscapes in general, including the potential inclusion for further sites that have not been included at present. …
>
> The majority of wahi tapu/wahi taonga sites were well defined and appropriate to be scheduled and have certain rules included. The majority of Nga Turanga Tupuna sites were not well defined, eg large ellipses, but could be scheduled without rules noting that objectives and policies would provide for these. All Nga Wai sites are well defined and match the sites identified in the Christchurch Landscape Study as significant landscapes. Furthermore, there are numerous sources of information in relation the cultural significance of these water ways.
>
> In terms of planning provisions, I agree that a new section is appropriate and that objectives and policies and types of sites identified are appropriate. However, without refinement of certain site extents and/or re-categorisation of some sites and/or changes to some rules associated with sites, the suite of rule provisions proposed by Ngai Tahu may be unduly onerous on all parties, including Manawhenua.
>
> Further work and collaborative effort is required in respect of maps and provisions and would be worthwhile. A larger extent of silent files should be identified on planning maps, but the rules amended so that these are efficient and effective for existing settlement areas.

[66] A similar position was acknowledged in the following exchange between Dr Mitchell and Mr Kyle Davis concerning the geographic extent of SONTCS 21:[56]

> DR MITCHELL: I suppose, and I don't want to get into debating the silent file … but … it does impinge upon that piece of land that is across the water from the Peninsula itself?

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55 Transcript, page 1549, line 25to page 1550, line 45
56 Transcript, page 2103, lines 21–38.

MR DAVIS: Yes.

DR MITCHELL: Is that just an artefact do you think of saying "We're going to draw a circle of X kilometres around it or X metres around it" or does that particular area have some specific significance that makes it more important than the surrounding area?

MR DAVIS: I can't definitely say. However, the particular bit of land that the circle does capture, there are a couple of NZAA recorded archaeological sites on it, and there is some local tribal knowledge pertaining to some place names on that particular piece of geography. That is to say that the same applies for most of the harbour as well so, yes, I am afraid that it is all I am able to help with you [on] that.

[67] Federated Farmers' South Island Regional Policy Manager, Kim Reilly, argued that Outer Circle areas should be "ground-truthed", for their cultural values, in consultation with landowners.[57]. 'Ground-truthing' is more usually associated with undertaking examination of a site, to verify what is 'on the ground' is consistent with what was anticipated. It can be a potentially invasive method, and hence could be destructive of cultural values rather than assisting their protection. We do not consider it is a method that should be referenced in any way in CRDP provisions.

[68] However, we find the evidence of Messrs Davis and Pauling as to the relative lack of precision in the evidence concerning Outer Circle sites to demonstrate that Ngāi Tahu's Initial Proposal would have been unduly onerous on landowners and, hence, inappropriate. By those same measures, on that evidence we find that the Two Tiered Approach of the Final Revised Version more appropriate.

[69] A second and related important point revealed by the evidence, and related submitter representations, concerns the importance of effective engagement between the Council, Manawhenua and landowners in the further work the Council intends to undertake to include more SONTCS in Schedule 9.5.5.1 (9.5.6.1).

[70] Mr Pauling emphasised the importance of this. For example, it was important to establishing where specific parts of a site need to be excluded from development and what

[57] Supplementary evidence of Kim Reilly for North Canterbury Province of Federated Farmers of New Zealand, 26 April 2016, at 12 and 56. Ms Reilly presented supplementary evidence due to Ms Mackenzie's unavailability for the resumed hearing.

consent conditions should be imposed on activities on those lands, for example in locations where there are burial sites under the ground.[58]

[71] Each of the planning witnesses for Ngāi Tahu and the Council also acknowledged the importance of effective landowner engagement as a step towards effective regulatory protection of SONTCS.

[72] Ngāi Tahu's planning witness, Ms Legarth, expressed concern that Outer Circle areas do not have adequate protection under the Council's approach.[59] However, she accepted that the buy-in of landowners was critical to the effectiveness of the rules.[60]

[73] The Council's planning witness, Ms Shirley Ferguson acknowledged that the CRPS refers to Silent Files in *Te Whakatau Kaupapa* and that there is no distinction in the CRPS or other regional planning documents between the Inner and Outer circles.[61] She also acknowledged that, without identifying sites of Ngāi Tahu cultural significance within the CRDP, there is a risk that impacts on those sites would be overlooked in the consenting process.[62] However, she agreed that it was important that people whose properties are affected know and understand about the rules applying to their properties in order for such rules to be effective.[63] Likewise, the Council's Team Leader District Plan (Strategy and Planning), Mr Alan Matheson, considered that community and landowner consultation and dialogue could assist in the acceptance and implementation of any CRDP provisions.[64]

[74] Landowner, Ms Jan Cook expressed concerns regarding the effects that the rules relating to Silent File areas would have on landowners.[65]

[75] Federated Farmers' representative witness, Ms Fiona Mackenzie, argued that rules should not be imposed in relation to SONTCS, without proper consultation.[66] She stated that

58 Transcript, page 2031, lines 19–30.
59 Evidence in chief of Yvonne Legarth, 10 December 2015; Transcript, page 2066, lines 15-17.
60 Transcript, page 1606.
61 Transcript, page 2039-2040.
62 Transcript, page 1515.
63 Transcript, page 1526, lines 33-45.
64 Transcript, pages 85-86.
65 Transcript, pages 1805-1806.
66 Evidence in chief of Fiona Mackenzie on behalf of Combined Canterbury Provinces, Federated Farmers of New Zealand, 10 December 2015; Transcript, page 1942.

Federated Farmers believed that "real relationships" between local rūnanga and landowners would achieve better outcomes than rules.[67]

[76] Ms Reilly expressed a similar view on behalf of Federated Farmers in her supplementary evidence.[68] She emphasised the need for sites to be properly identified and Ngāi Tahu values properly understood.[69] She commented about the lack of sufficient opportunity for other parties to consider, and properly respond by further submission to Ngāi Tahu's submission.[70] She explained that Federated Farmers considered that submitters need time for prior engagement about such regulation with both the Council and Ngāi Tahu. If this was not possible to achieve within the limitations of the CRDP, she considered that a later plan change was the proper approach.[71]

[77] In response to Federated Farmers, Ngāi Tahu submitted that the RMA "does not confer a right of veto on landowners" in terms of the matters of national importance for protection or which must be given effect to.[72] The Council made a similar closing submission. It pointed out that the Council has obligations under s 6(e) and (f) that must be recognised and provided for.[73] However, we understood both the Council and Ngāi Tahu accepted the importance of landowner engagement before SONTCS are made the subject of rules that restrict activities.

[78] In any case, the importance of landowner engagement was accepted by the various expert witnesses, and we accept that consensus position. We accept Ngāi Tahu's submission that the Notified Version's mapping of SONTCS was not a sufficient response to ss 6 and 7, RMA and to the Higher Order Documents. In terms of s 32AA, it would give rise to inappropriate costs associated with failing to properly protect cultural values associated with identified sites. It would be inappropriate for achieving related Strategic Objectives.

[79] On the evidence, we find that SONTCS need to be properly identified through a process of effective engagement with both Manawhenua and landowners before they are made the subject of related CRDP rules restricting land use activities. Therefore, we find that Ngāi Tahu's Initial Proposal is also inappropriate.

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67 Transcript, page 1943.
68 Supplementary evidence of Kim Reilly, 26 April 2016.
69 Transcript, page 2138, lines 38-41.
70 Supplementary evidence of Kim Reilly at 16–17.
71 Supplementary evidence of Kim Reilly at 11.
72 Closing submissions for Ngāi Tahu at 9 and 11.
73 Closing submissions for the Council at 4.4.

[80] On the evidence we find that the Two Tiered Approach of the Final Revised Version is more appropriate than either the Notified Version or Ngāi Tahu's Initial Proposal. That finding leaves aside the consideration of the appropriateness of the particular provisions of the Final Revised Version. In our following evaluation of objectives, policies and rules, the headings below identify new numbering in the Decision Version in brackets.

Objectives 9.5.1.1 to 9.5.1.3 (9.5.2.1 to 9.5.2.3) and Policy 9.5.2.3.a.i (9.5.2.6.a.i)

[81] For greater clarity and consistency with Objective 9.2.2.4 (as determined by Decision 38), we have made a minor change to the wording of what was proposed Objective 9.5.1.2 (renumbered 9.5.2.2). This is to the effect of focusing it on Ngāi Tahu cultural values (including as to natural character). With that amendment we are satisfied, on the evidence, that the re-numbered objectives are the most appropriate for achieving the RMA's purpose.

[82] For the same reasons, we have modified the wording of proposed Policy 9.5.2.3.a.i of the Final Revised Version (now 9.5.2.6.a.i) so it now reads:

> Protect the natural character of these water bodies by maintaining their natural character where it is high and enhancing it where it is degraded, including through the reinstatement of original water courses where practicable.

[83] As amended, these objectives (together with the new Strategic Objective 3.3.17) are the framework against which we determine the most appropriate rules and other provisions.

Proposed Strategic Objective 3.3.17

[84] The Final Revised Version proposed a new Strategic Objective as follows:

> **3.3.16[74] Wāi (Water) features and values, and Te Tai o Mahaanui**
>
> a. The critical importance of wāi (water) to life in the district, including surface freshwater, groundwater, and Te Tai o Mahaanui (water in the coastal environment) is recognised and provided for by:
>
> i. taking an integrated approach to managing land use activities that could adversely affect wāi (water), based on the principle of 'Ki uta ki tai' (from the mountains to the sea);
>
> ii. ensuring that the life supporting and intrinsic natural and cultural values and characteristics associated with water bodies, their

[74] While the objective number sought was 3.3.16, changes to Strategic Directions since then mean it would be re-numbered 3.3.17.

> catchments and the connections between them are maintained, or improved where they have been degraded;
>
> iii. ensuring subdivision, land use and development of land is managed to safeguard the District's potable wāi (water) supplies, waipuna (springs), and water bodies and their margins; particularly Ōtākaro (Avon River), Ihutai (Avon-Heathcote Estuary), Whakaraupō (Lyttelton Harbour), Whakaroa (Akaroa Harbour) and Te Tai o Mahaanui;
>
> iv. ensuring that Ngāi Tahu values and cultural interests in wāi (water) as a taonga are recognised and protected.

[85] The Council proposed the same objective in its 3 June 2016 Version. It is supported by Ngāi Tahu. As the Council's closing notes, it is not opposed in any other closing submissions.[75] On the evidence, we find that the proposed objective will assist to achieve the purpose of the RMA. Therefore, we have included it in the Decision Version.

[86] Strategic Directions Objective 3.3.9 includes a note to the effect that the Panel may reconsider, as part of further hearings, the requirement for further or alternative strategic direction in respect of the 'Natural and cultural environment'. Having now done so, we find no reason to amend this strategic objective. Therefore, as a consequential change, we have deleted the note in our Decision Version.

Policies 9.5.2.2.a.vii and 9.5.2.3.a.vi (9.5.2.5.a.vii and 9.5.2.6.a.v)

[87] The wording changes sought by Ngāi Tahu to these proposed policies concerning the design, location, and installation of utilities are essentially to the same effect. The Final Revised Version uses the expression "maintain as far as practicable" the relevant cultural values. Ngāi Tahu seeks that those words be replaced by a more stringent direction. That is to the effect that those values are "recognised and provided for" "while enabling their safe, secure and efficient installation and applying the option that has the least adverse effect on" those values.

[88] Ngāi Tahu explains that it seeks these changes "to ensure that cultural values are recognised from the outset in design and installation of utilities, and that they are enabled in a way that has the least effect on Ngā Tūranga Tūpuna and Ngā Wai sites". It also noted that its

[75] Closing submissions for the Council, at 12.3.

Final Proposal should be understood as an integrated package.[76] The Council's closing submissions do not dispute the relevance or significance of these matters raised by Ngāi Tahu.

[89] We find that Ngāi Tahu's preferred expression of these policies generally better reflects the intentions of s 6(e)and (f), particularly in the words 'recognised and provided for' than does the Final Revised Version. To that extent, it also better reflects the Higher Order Documents. In addition, we find an inherent vagueness in the Final Revised Version's use of words such as "appropriately" and "as far as practicable". Those words would allow too much room for discretion on the part of both utility operators and the Council in the sense that they do not properly reflect s 6 and the Higher Order Documents.

[90] However, we find that Ngāi Tahu's proposed reference to and 'applying the option that has the least adverse effect on [cultural values]" overly prescriptive and stringent. Specifically, we find those words do not reflect RMA s 6 and are not directed by the CRPS or other Higher Order Documents. We also find those words would conflict with Strategic Direction Objective 3.3.12 and Objective 11.2.2 in the sense that they could impede the efficient provision of infrastructure. Nor do we find them supportable on the evidence called by Ngāi Tahu.

[91] For those reasons, we have determined that the most appropriate wording of the respective paragraphs for these policies to achieve the related objectives is the following wording included in the Decision Version:

> Ensure that cultural values are recognised and provided for in the design, location and installation of utilities, while enabling their safe, secure and efficient installation.

Policy 9.5.2.7 (9.5.2.10) Future Work and Ngāi Tahu's requested further Policy 9.5.2.8

[92] The Final Revised Version includes the following proposed policy:

> **9.5.2.7 Future Work**
>
> a. The Council will:
>
> i. Facilitate the further identification and classification of sites of cultural significance to Ngāi Tahu mana whenua for inclusion in the district plan over time.
>
> ii. Give priority to future work to provide recognition and protection of the Mahaanui Iwi Management Plan silent files and Kaitōrete Spit

[76] Closing submissions for Ngāi Tahu, 10 June 2016, at 58

> (identified in Schedule 9.5.5.2) and plan changes to reclassify these sites (or part thereof) as Wāhi Tapu / Wāhi Taonga and identify site extents on aerial and planning maps.

[93] This policy is a combination of two policies proposed in the 3 June 2016 Version and is intended to reflect the Council's commitment to undertaking plan change(s) to re-classify sites currently in Schedule 9.5.5.2 (9.5.6.2) (Mahaanui Iwi Management Plan silent files and Kaitōrete Spit) as Wāhi Tapu/Wāhi Taonga (i.e. to include them in Schedule 9.5.5.1 (9.5.6.1)).[77] The policy reflects the acknowledged position that the present placement of these areas in Schedule 9.5.5.2 (9.5.6.2) of the Final Revised Version is a holding measure, pending more thorough investigation that may demonstrate that the more appropriate place for them is Schedule 9.5.5.1 (9.5.6.2).

[94] Ngāi Tahu seek a combination of changes to Policy 9.5.2.7 and a new Policy 9.5.2.8 to make the policy on future work more specific and directive on key elements, namely engagement with Ngāi Tahu, monitoring of land use effects on SONTCS, encouragement of landowners to protect SONTCS, and clarity that a plan change will be notified within a certain (two-year) timetable.

[95] The Crown's closing submissions agreed with Ngāi Tahu that the policy framework needs to highlight that it is the Council's responsibility to lead this future work in collaboration with Ngāi Tahu, and to give clear direction as to how the Council is to progress future work, and by when.[78]

[96] The Council's closing submissions oppose the inclusion of a two year timeframe for notification of a plan change. It says that, while it is committed to undertaking plan change(s), it cannot "confirm its exact work programme". Secondly, it cites a statutory obstacle to such a policy. The Greater Christchurch Regeneration Act 2016 ('GCR Act') extends the operation of the OIC until 30 June 2021, with the effect that the OIC cl 4(1)(a) restriction on notifying a proposed plan change continues until that date. As such, any plan change would have to be according to the GCR Act process, at the Minister's discretion.

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77 Closing submissions for the Council at 7.5
78 Closing submissions for the Crown at 3.2.

[97] We agree that the GCR Act makes it inappropriate for us to specify a two year timeframe in the policy. Theoretically, we could avoid this issue by extending the timeframe to five or so years. However, that would be well beyond Ngāi Tahu's preferred timeframe. In any case, it is at least theoretically possible that the Minister could exercise his discretion to allow for an earlier plan change. We find less merit in the Council's argument that it cannot confirm its work programme. It occurs to us that a plan policy could be a helpful influence in assisting work programming choices. However, given the issues associated with the GCR Act, that point is otiose. All things considered, we find that it would be inappropriate to specify a timeframe. Therefore, we find Ngāi Tahu's requested new policy 9.5.2.8 on timeframes is not appropriate.

[98] The remaining differences between the Council and Ngāi Tahu are matters of degree.

[99] Ngāi Tahu seek that the policy explicitly direct the Council work with Ngāi Tahu in re-classifying Schedule 9.5.5.2 (9.5.6.2) Silent File areas so that they are included, by plan change, in Schedule 9.5.5.1 (9.5.6.1). That request is supported by the Crown. There was essential consensus in the evidence that the lack of effective engagement by the Council with Ngāi Tahu was a significant reason for the preliminary and deficient nature of the Notified Version. While we accept that the RMA does not explicitly require consultation on these matters, effective consultation or engagement with Ngāi Tahu is a necessary element of understanding, identifying and providing for SONTCS as sites that, for example, reflect the values referred to in RMA s 6(e).

[100] On the evidence, we find it should extend beyond simply re-classification to also encompass the protection response to be included in the intended plan change.

[101] Ngāi Tahu seek that the policy refer to encouraging landowners to protect identified SONTCS. We agree that such encouragement is an important element that ought to be expressed in the policy. It pertains to what the RMA describes as the ethic of stewardship (s 7(aa), RMA). The importance of that is enhanced here, in the acknowledged circumstance that the sites are not accorded Schedule 9.5.5.1 (9.5.6.1) regulatory protection at this time. Our impression from hearing landowners such as Mr Bayley is that they are knowledgeable of and sensitive to these matters and would also welcome such encouragement by the Council. However, as we discuss at [69]–[80], the evidence also demonstrates the importance of working with landowners to assist in determining the appropriate regulatory approach to the protection

of identified SONTCS. We observe consistency on that matter with the evidence on other Chapter 9 topics.

[102] For those reasons, we have included in the policy an explicit requirement on the Council to work with Ngāi Tahu and landowners on these matters, and also to encourage landowners to protect SONTCS.

[103] Ngāi Tahu seeks that the policy explicitly require monitoring of the effects of land uses on identified SONTCS. We find that request is also strongly supported on the evidence. Silent File Wāhi Tapu and Wāhi Taonga sites not yet in Schedule 9.5.5.1 (9.5.6.1) remain at greater risk. We agree with Ngāi Tahu that this risk traces from the significant failings of the Notified Version, particularly in terms of ss 6(e) and (f), RMA and related CRPS directives. Those significant failings elevate the importance of effective monitoring, as a partner to effective consultation, for the purposes of the Council's intended future plan change.

[104] Therefore, we have made explicit reference to monitoring in the policy that we have included in the Decision Version. The Decision Version also makes some other minor drafting consistency and clarity refinements.

[105] We are satisfied that, with these changes, what is now Policy 9.5.2.10 properly responds to the statutory and Higher Order Document directions and is the most appropriate for achieving related objectives.

Remaining non-contentious policies are most appropriate subject to minor refinements

[106] We have noted an issue of drafting clarity in proposed Policy 9.5.2.3 of the Final Revised Version (now 9.5.2.6) in its reference to "coastal areas identified as Ngā Wai". Consistent with the language of the RMA, we have tightened to read "those parts of the coastal environment identified as Ngā Wai". We have made some other minor drafting refinements to the policies.

[107] As we have noted, the expert evidence of Ngāi Tahu and the Council was not challenged by expert evidence from any other party. We accept that evidence as supporting our inclusion of the policies in the Decision Version, on the basis of our findings as follows:

(a) The following policies, not in dispute between Ngāi Tahu and the Council, are the most appropriate for achieving related objectives:

(i) Policy 9.5.2.1(now 9.5.2.4) Wāhi Tapu and Wāhi Taonga;

(ii) Policies 9.5.2.4 to 9.5.2.6 (now 9.5.2.7 to 9.5.2.9), specifically as to archaeological sites, engagement with rūnanga, and identified sites of Ngāi Tahu cultural significance).

(b) The following policies, as modified for the reasons we have explained, are also the most appropriate for achieving related objectives:

(i) Policy 9.5.2.2 (now 9.5.2.5) Ngā Tūranga Tūpuna; and

(ii) Policy 9.5.2.3 (now 9.5.2.6) Ngā Wai.

Evidence on SONTCS and whether mapped areas are the most appropriate

[108] While the extent of mapped SONTCS areas was resolved as between Ngāi Tahu and the Council, we have noted Federated Farmers' concerns about this matter and those of Mr Bayley concerning Kaitōrete Spit. As we have noted, Federated Farmers and Mr Bayley have related concerns about associated rules. We deal with those concerns later in this decision, and consider now the prior issue of the most appropriate extent of SONTCS mapping.

[109] Mr Alan Matheson explained "… the process set up to work with Ngāi Tahu in general and specifically with respect to wāhi tapu and cultural landscapes".[79] His evidence was that consultation undertaken with Ngāi Tahu, Mahaanui Kurataio Limited and the Rūnanga Focus Working Group in the development of Chapter 9 resulted in an agreement that the identification (including mapping) and management of places of cultural significance required a comprehensive approach, with suitable time provided outside the CRDP process, and that this work would be started in 2016.[80] He told us that the Council considered consultation critical

79 Evidence in chief of Alan Matheson on behalf of the Council, 2 December 2015, at 1.4.
80 Evidence in chief of Alan Matheson at 4.2.

to the success of this work and it would develop provisions in collaboration with Ngāi Tahu, the community and individual landowners.[81]

[110] We understand that to have explained the Council's position on why only those sites identified in the BPDP were rolled over into the Notified Version of Chapter 9. In essence, the Council had not undertaken the necessary consultation and investigation to allow it to do more than roll over those sites.

[111] In Ngāi Tahu's view, the sites included in the Notified Version recognised and provided for only a portion of SONTCS in the district. As a result, Ngāi Tahu lodged a submission which identified and sought protection of a greater, more representative range of SONTCS. The submission included the identification of SONTCS on aerial photographs and included cadastral boundaries so that property owners could identify where a site was located in relation to their property.[82]

[112] Evidence on the identification of SONTCS was provided by Mr Pauling for the Council and Mr Kyle Davis for Ngāi Tahu.[83] No other parties called expert cultural witnesses or disputed the accuracy of the mapping of these sites.

[113] Mr Davis described the methodology used to compile the SONTCS included in Ngāi Tahu's submission. He explained that the sites had been grouped according to their significance or type, into Wāhi Tapu/Wāhi Taonga, Ngā Tūranga Tupuna, and Ngā Wai. In his opinion, the sites identified are those where the likelihood of disturbance to specific tangible and intangible values is the greatest within the Christchurch District. He commented on the current mechanisms available outside the CRDP to recognise and protect such sites. He considered those mechanisms were inappropriate in that they "do not allow for appropriate recognition and protection commensurate with the significance of the sites". Therefore, he considered that the SONTCS sought by Ngāi Tahu warrant protection in the CRDP.[84]

[114] The evidence of Mr Davis was supported by two further witnesses for Ngāi Tahu — Mr George Tikao and Mr Iaean Cranwell.

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81 Evidence in chief of Alan Matheson at 4.4.
82 Closing submissions for Ngāi Tahu at 5.
83 Evidence in chief of Craig Pauling, 2 December 2015; Evidence in chief of Kyle Davis, 10 December 2015.
84 Evidence in chief of Kyle Davis at 33.

[115] Mr Tikao's evidence provided a more comprehensive understanding of the historical and cultural relationship of Ngāi Tahu with various sites of significance. He described work undertaken by Ōnuku Rūnanga to have heritage sites recognised and protected, provided us information about the significance of a selection of the sites; and explained some broader context as to the importance of Te Pātaka o Rākaihautū (Banks Peninsula) as a whole.[85] He explained that Silent File areas are as identified by tribal experts of the day from information handed down, so that Manawhenua are able to observe and be involved in the management of activities within these areas and so avoid inappropriate disturbance to cultural values. His view was that Silent File areas should be given due recognition by being mapped and accorded appropriate protection under the CRDP.[86]

[116] Mr Cranwell similarly provided evidence on the sites of significance in the takiwā of Wairewa Rūnanga, and in relation to Kaitōrete Spit and Te Waihora (being sites of significance to both Wairewa and Te Taumutu Rūnanga). He noted that the existence of a Silent File does not necessarily mean that Kāi Tahu will oppose an activity; rather it is a trigger for a high level of engagement with tāngata whenua and a way to ensure that activities are consistent with protecting the values associated with the Silent File area.[87]

[117] Mr Pauling accepted that the sites identified in Ngāi Tahu's submission are well-known sites of cultural significance.[88] However, he expressed reservations about Ngāi Tahu's then-proposed rules for these sites, stating that, "without refinement of certain site extents and/or re-categorisation of some sites and/or changes to some rules associated with sites, the suite of rule provisions proposed by Ngāi Tahu may be unduly onerous on all parties, including Manawhenua."[89]

[118] Given that the positions of Mr Davis and Mr Pauling on the mapping of the SONTCS were closely aligned, the Panel (at the initial hearing) raised the possibility of a joint work programme, starting with refinement of the mapping of SONTCS, then working through issues relating to the rules that should apply to these sites.

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85 Evidence in chief of George Tikao on behalf of Ngāi Tahu, 10 December 2015, at 3.1.
86 Transcript, page 1556.
87 Evidence in chief of Iaean Cranwell on behalf of Ngāi Tahu, 10 December 2015, at 25.
88 Evidence in chief of Craig Pauling at 9.6.
89 Transcript, page 1550, lines 37-40.

[119] In his supplementary evidence, Mr Pauling explained the further work he and Mr Davis had undertaken on the mapping, including the methodology and findings and the resulting refinements to the mapped extent of SONTCS. He considered the refined list of sites are the best representation of sites of significance to Ngāi Tahu, based on available information, and within the constraints of the CRDP process.[90] However, he qualified that by noting that further refinements were possible for a number of sites and it was critical that work continued in identifying further sites potentially worthy of inclusion in the CRDP.[91]

[120] Prior to the resumed hearing, the two experts reached full agreement in relation to mapping.[92]

[121] We understand that evidence and related further discussions between the Council and Ngāi Tahu effectively overcame the concerns initially expressed by Mr Matheson and Ms Ferguson as to whether there was sufficient evidence to properly assess the appropriateness of the additional sites that Ngāi Tahu's submission sought be included in the CRDP.[93]

[122] Federated Farmers expressed a concern that Silent File areas have been "enlarged" without explanation.[94] That would appear to reflect a misunderstanding of the factual position, which was explained to us by Mr Davis:[95]

> …there are significant discrepancies, in mapped extent and location, between the accepted iterations shown in Te Whakatau Kaupapa and the Mahaanui IMP, and the mapped iterations as [they] appear in the notified version of the Christchurch District Plan.

[123] At the Panel's request, Mr Philip Helps provided evidence as to his understanding of the process that led to this discrepancy.[96] He explained that he was a member of a steering group for developing the rural section of what is now the BPDP. Part of that process involved "… identifying the silent file areas and as the result of that process we went around all known silent files and ground-truthed them".[97] Mr Helps was involved in this process only with respect to Port Levy, but was aware of others being involved in a similar process in Pigeon Bay

90 Supplementary evidence of Craig Pauling, 15 April 2016, at 6.1.
91 Supplementary evidence of Craig Pauling at 6.2.
92 Joint memorandum of counsel in relation to agreement reached about mapping in advance of the resumed hearing of Topic 9.5, 6 May 2016.
93 Evidence in chief of Shirley Ferguson at 5.5; Evidence in chief of Alan Matheson at 5.2(c).
94 Transcript, page 1944, lines 13–19.
95 Evidence in chief of Kyle Davis at 24.
96 Transcript, page 2162, lines 28–45.
97 Transcript, page 2165 lines 35–37.

and Akaroa, with each including a farming representative, an archaeological society representative and a member of the local rūnanga.[98]

[124] We accept the evidence of Mr Davis that the BPDP "Inner Circle" areas are not consistent with the full extent of the Silent File areas identified within the iwi management plans. Therefore, we do not accept as valid Federated Farmers concern that the Silent File areas are being "enlarged", nor that this is without explanation.

[125] We accept the evidence of Ngāi Tahu (supported by Mr Pauling, and not challenged by any other expert) that it does not provide adequate recognition of and provision for the values of significance to Ngāi Tahu to only identify and protect the reduced "Inner Circle" areas.

[126] On that matter, we were also assisted by an illustration that Ms Jan Cook gave us. On her property on Banks Peninsula, she is aware of "tangible evidence of values", relating to urupā on the Opotiki headland. These sit outside the mapped area in the BPDP, but fall within the "Outer Circle" area and therefore within the full extent of the Silent File area.[99]

[127] We also accept the unchallenged evidence of Ngāi Tahu and Mr Pauling that the limited mapping of sites in the BPDP simply reflects the limits of then-available information and knowledge and the limits of processes for site identification. We agree with Mr Pauling that further investigation may reveal further relevant information, so making it appropriate to make changes to the mapped extent of SONTCS. That is simply a consequence of proper response to the statutory principles and Higher Order Documents, in terms of the best available evidence.

[128] We record, for completeness, that the mapping refinements of the Final Revised Version do not extend beyond the boundaries of those areas identified in Ngāi Tahu's submission.[100] As such, no related scope issue arises in that respect.

[129] We understand that Federated Farmers' position concerning jurisdictional scope pertained to the associated rules on land use, rather than the extent of mapping per se. In any case, we find no scope impediment to the expansion of mapping areas as proposed in the Final

98 Transcript, pages 2165–2166.
99 Transcript, page 2226.
100 Supplementary opening submissions for the Council at 3.9.

Revised Version. Specifically, the mapping expansion gives effect to clearly expressed relief in Ngāi Tahu's submission (and, also the submission by Heritage New Zealand).

[130] The extent of mapping of the SONTCS in the Final Revised Version is supported by the expert evidence of Messrs Pauling and Davis. That evidence was not challenged by any expert evidence called by any other party, including Federated Farmers. We accept that evidence and find it overwhelmingly supports the extent of mapping proposed in the Final Revised Version.

[131] Therefore, to the extent that Federated Farmers opposes the extent of mapping per se, we reject that relief. We deal with Mr Bayley's concerns regarding Kaitōrete Spit at [168]–[176]. Subject to that and our determinations concerning related policies and rules, for the reasons we have stated, we determine that the extent of SONTCS mapping of the Final Revised Version and the related schedules are the most appropriate for achieving the related objectives to which we have referred.

[132] On that basis, we have included in the Decision Version the various Schedules proposed in the Further Revised Version.

Schedule 9.5.5.1 (9.5.6.1) and related rules

The appropriateness of the RDA and notification rules

[133] As we have described, the Final Revised Version proposes RDA classification for buildings, earthworks, subdivision and utilities within a Schedule 9.5.5.1 SONTC.[101] This is as follows:

(a) For buildings, proposed RDA Rule 9.5.3.2.1 and associated Rule 9.5.4.1 on assessment matters are essentially carried forward from the Council's 3 June 2016 Version.

(b) For subdivision, a new RD12 is proposed to be added to existing RDA Rule 8.3.2.3. This classifies as RDA the subdivision of land which includes a Wāhi Tapu or Wāhi

[101] The rules proposed in the Final Revised Version for utilities within a Schedule 1 SONTC are discussed at [196]–[199].

Taonga site listed in Schedule 9.5.5.1. The related matters of discretion are in proposed Rule 9.5.4.1.

(c) For earthworks, two related changes are proposed to the existing Rules 8.8.3 and 8.8.5, respectively on RDA and exemptions from permitted activity rule conditions. The change proposed to existing Rule 8.8.3 adds a new RD6 on earthworks within includes a Wāhi Tapu or Wāhi Taonga site listed in Schedule 9.5.5.1. The matters of discretion are in proposed Sub-chapter 9.5. The change to Rule 8.8.5 specifies, as exempt earthworks, 'rammed posts for the purpose of fencing, holds for tree planting, the maintenance of existing farm tracks, pond or cultivation of existing pasture and cropping'; and

(d) For utilities, three changes are proposed to the activity specific standards for permitted utilities, with associated requirements for RDA where located within SONTCS. These changes proposed apply to access tracks to utilities (Rules 11.3.1.1 P1 and 11.3.1.3 RD1), new electricity distribution and transmission lines and associated structure or equipment (Rules 11.3.2.1 P1 and 11.3.2.3 RD1), and new equipment for assessing site suitability for renewable electricity generation (Rules 11.3.3.1 P1 and 11.3.3.3 RD1).

[134] These various proposed rules of the Final Revised Version provide for the notification of consent applications to the relevant rūnanga and Heritage New Zealand, in the absence of their written approvals.[102]

[135] The proposed exemption for earthworks replaces what the Council's earlier versions proposed by way of an exemption for earthworks to a depth of 0.6m. Various submitters expressed concerns about that earlier limit. Also on behalf of co-submitter David Brailsford, Ms Cook noted how this limit was unsuitable not only in terms of farming practices, but also activities intended to protect waterways or biodiversity values (e.g. fencing of areas for stock exclusion or the erection of public information signage).[103] We find the narrative approach of the Final Revised Version satisfactorily addresses Ms Cook's expressed concern. Mr Bayley noted that the 0.6 m limit would not cover small, otherwise permitted, offal pits (and sought a

102 Closing submissions for the Council at 7.13.
103 Closing submissions for Jan Cook and David Brailsford at 8.

specific maximum dimension of, say, 2m x 2m x 1.5m).[104] However, as we explain at [161]–[176], we find Mr Bayley's concerns about earthworks are appropriately addressed by the inclusion of Kaitōrete Spit in Schedule 9.5.6.2 and our associated changes to related rules on earthworks.

[136] In other respects, what is now proposed in the Final Revised Version was not contentious in closing submissions. We are satisfied that the rules we have described are well-supported by the evidence.

[137] We have made minor drafting refinements to clarify that notification is not necessarily limited to the relevant rūnanga and Heritage New Zealand, in what is now an aspect of Rule 9.5.4.1 and the re-numbered rules of the Decision Version. We have made minor drafting refinements to them in the Decision Version (now as re-numbered rules).

[138] We have identified some anomalies in the drafting of the proposed utility rules in the Final Revised Version. By way of example, new electricity transmission or distribution lines and structures, and monitoring equipment to assess site suitability for renewable electricity generation, would require RDA consent within a SONTCS, but small-scale wind turbines or free-standing communication facilities would not. However, on the evidence, we find that they are most appropriate in responding to the Higher Order Documents, and achieving the related objectives. Subject to limiting their application to Schedule 9.5.5.1 (9.5.6.1) SONTCS, we have included them in the Decision Version (with drafting amendments for clarity and consistency).

[139] For those reasons, we find that the amended rules, as included in the Decision Version, are the most appropriate for responding to the statutory principles and Higher Order Documents and for achieving the related objectives.

Whether sites 17–29; 30–38; 40–43 and 97 appropriate in Schedule 9.5.5.1 (9.5.6.1)

[140] A related issue concerns whether these specified sites should be included in Schedule 9.5.5.1 (9.5.6.1) and, hence, be the subject of the rules we have described.

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104 Closing submissions for Mr Bayley at 19–20. As noted, the Final Revised Version proposes that Mr Bayley's land, as part of Kaitōrete Spit, be put in Schedule 9.5.5.2, and hence not be caught by this rule in any case.

[141] Federated Farmers' opening submissions responded to Ngāi Tahu's Initial Proposal. It submitted that, where a submitter pursued such a change to a notified proposal, it needed to involve the affected landowner. If that landowner did not support the submission, the submission ought to be rejected on its merits.[105]

[142] Federated Farmers explained its concern about lack of landowner awareness of Ngāi Tahu's and Heritage New Zealand's requests for additional SONTCS to be included in the CRDP. Its concern was as to a lack of proper opportunity to engage in the process.[106] Federated Farmers reiterated those concerns in its closing submissions. It argued that, in the absence of landowner agreement, there was no scope for the Panel to grant the relief sought by Ngāi Tahu and Heritage New Zealand if this means that the related land would be made "subject to the requirements for resource consent that are independent of the underlying zoning".[107]

[143] Those concerns of Federated Farmers relate to the issue of whether the Final Revised Version's proposal for including the following additional sites in Schedule 9.5.5.1 (9.5.6.1) is appropriate:

(a) Sites 17–29 and 97, which are identified on the New Zealand Heritage list and are sought to be included by Heritage New Zealand;

(b) Sites 30–38, which are pā sites and are sought to be included by Ngāi Tahu; and

(c) Sites 40–43, which are maunga/mountain tops and are also sought to be included by Ngāi Tahu.

[144] Federated Farmers' concern is not that the sites are listed in the CRDP per se, but that they are included in Schedule 9.5.5.1 (9.5.6.1) (and hence, made the subject of additional resource consent requirements), as opposed to being included in one of Schedules 9.5.5.2 to 9.5.5.4 (9.5.6.2 to 9.5.6.4).

105 Opening submissions for Federated Farmers at 7.
106 Closing submissions for Federated Farmers at 9 and 15.
107 Closing legal submissions – Topic 9.5 North Canterbury Province of Federated Farmers of New Zealand Inc, dated 10 June 2016, at para 5.

[145] Federated Farmers supported its argument on scope by reference to the two limb test the High Court applied in *Clearwater Resort* and which it endorsed in *Motor Machinists* (Kós J),[108] namely:

(a) Assess whether a submission addressed the change to the status quo advanced by the proposal; then

(b) Determine whether there is a real risk that people who are potentially affected have been denied an effective opportunity to participate.

[146] Federated Farmers argued that the lack of scope arises because the second limb of that test is not met. It argued that the further submission process of the OIC was insufficient to ensure adequate notice in order to provide an effective opportunity to participate, given the substance of the relief pursued by Ngāi Tahu and Heritage New Zealand. It drew comparison with directions made by the chair of the Auckland Unitary Plan Independent Hearings Panel in a Minute concerning submissions making site-specific requests for additions to or modifications from proposed Auckland Unitary Plan ('pAUP') schedules ('AUP IHP Minute').[109] Applying the principles expressed in *Clearwater Resort*, the Minute recorded that, where a submission seeks to add an item on private land not identified in the pAUP, the Panel would need to be sure the affected owner has an effective opportunity to participate before proceeding to a merits assessment. The Minute recorded an observation that the Schedule 1 RMA submission and further submission process "is not likely to be sufficient on its own to ensure adequate notice".[110]

[147] By analogy, it argued that Ngāi Tahu and Heritage New Zealand sought to have additional SONTCS included over private land without fair notice to landowners and fair opportunity for them to be involved. It argued that the proper procedure for including sites and related rules in the CRDP was a plan change.[111]

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108 *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003; *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290.

109 Auckland Unitary Plan Independent Hearings Panel Procedural Minute No. 6 by Chairperson of Independent Hearings Panel directions in relation to submissions that seek specific changes to modify, add or delete site specific provisions in the Plan, dated 5 August 2014 ('AUP IHP Minute').

110 AUP IHP Minute at [10].

111 Closing submissions for Federated Farmers at 10. We note that Federated Farmers also made reference to 'variation', although we note that variation is not an available route for the formulation of the CRDP under the OIC.

[148] Ngāi Tahu and the Council agreed that scope was to be considered according to the two limb test in *Clearwater Resort* and *Motor Machinists*.[112] Both submitted that both limbs were met (in the Council's case, including in relation to the relief sought by Heritage New Zealand's submission).

[149] As for the first limb, Ngāi Tahu submitted that its requested listing, recognition and protection of Ngāi Tahu sites of cultural significance, was well within the ambit of the Notified Version. The Council agreed. It submitted that the Notified Version identified SONTCS for protection and the submissions of Ngāi Tahu and Heritage New Zealand were to the effect that the Notified Version's list of SONTCS identified for protection was not complete.[113].

[150] As for the second limb, Ngāi Tahu argued that *Clearwater Resort* confirms that the submission and further submission process can be a legitimate opportunity to seek relief through a plan preparation process. It submitted that persons with a potential interest in its submission were given adequate opportunity to participate in the process by way of a further submission.[114] It argued that Federated Farmers' concerns about procedural fairness were simply as a consequence of the OIC's streamlining of the 'usual' submission RMA processes, rather than demonstrating a jurisdictional issue.[115] It submitted that, in effect, Federated Farmers sought a landowners' veto on recognition and protection of SONTCS not included in the Notified Version and such a veto was contrary to Part 2, RMA (including s 6(e) and (f)) and to the requirements of Higher Order Documents.[116]

[151] On the second limb, the Council also generally endorsed Ngāi Tahu's position. It submitted that parties had an "effective opportunity to respond" to the Ngāi Tahu and Heritage New Zealand submissions through the further submission process. It noted that a number of key stakeholders (including Federated Farmers) did file further submissions, and have been involved in the hearings process for this topic.[117] It also argued that Federated Farmers' position is "misconceived", in that it accepts there is scope to include the SONTCS in the CRDP, but does not accept there is scope for such sites to be subject to independent consenting requirements. The Council argued that the distinction between the regulatory regimes applying

112 Closing submissions for Ngāi Tahu at 121 and following; closing submissions for the Council at 8.7 and following.
113 Closing submissions for the Council at 8.7.
114 Closing submissions for Ngāi Tahu at 126–127.
115 Closing submissions for Ngāi Tahu at 133.
116 Closing submissions for Ngāi Tahu at 134.
117 Closing submissions for the Council at 8.7.

to these sites (i.e. a regime that includes independent consent requirements for such sites or a regime which uses existing consent trigger for the underlying zone) has no bearing on the issue of scope and whether the submissions are "on" the Replacement Plan.[118]

[152] As we have recorded, Federated Farmers' submission focussed on the second limb of the jurisdictional scope test. However, for completeness, we find that the first limb is readily satisfied in the case of both Ngāi Tahu's and Heritage New Zealand's submissions. That is for the reasons given by Ngāi Tahu and the Council.

[153] For the following reasons, we also find on the evidence that the second limb of the test is met.

[154] We have already accepted the uncontested evidence of Messrs Pauling and Davis in relation to the mapping of these sites being appropriate. In addition, we note Ms Ferguson's evidence that sites 17–29 and 97 are well known and documented sites with significant cultural values.[119] With regards to sites 30–38, we also note Mr Pauling's uncontested evidence (relied on by Ms Ferguson) that there is a high probability of archaeological material and that they are sensitive to disturbance.[120] Related to that, Ms Ferguson's opinion was that, to achieve the Plan's policies and objectives that relate to the protection of Wāhi Tapu sites, a specific rule is appropriate.[121] Similarly, she supported a specific rule applying to sites 40–43 in order to give effect to the policy that seeks to protect these sites from inappropriate development.[122] .

[155] That evidence (which we accept) supports the positions of the Council and Ngāi Tahu on the matter of the second limb of *Clearwater Resort*.

[156] Conversely, we do not find Federated Farmers' reference to the AUP IHP Minute of assistance concerning the second limb of the test. Notably, the comments in the Minute concerning procedural fairness are prefaced by the qualifier "subject to fuller consideration in any particular case".[123] As such, it is not making a finding that supports Federated Farmers' position of inherent difficulty in a submitter seeking, by way of relief, the addition of items to

118 Closing submissions for the Council at 8.8.
119 Supplementary evidence of Shirley Ferguson at 4.20.
120 Supplementary evidence of Shirley Ferguson at 4.24.
121 Supplementary evidence of Shirley Ferguson at 4.25.
122 Supplementary evidence of Shirley Ferguson at 4.26.
123 AUP IHP Minute, at [10].

a protection schedule including items on private land. Rather, it is acknowledging a need to consider matters in their specific context. The second limb of *Clearwater Resort* self-evidentially requires such a contextual consideration.

[157] As to context, the evidence we have referred to at [154] gives us sufficient assurance that no real issues of procedural prejudice arise in accepting the additional sites both for listing and the application of the associated rule. Federated Farmers' acceptance of listing as appropriate is a further demonstration of that. We agree with the Council that there is an inconsistency in Federated Farmers' position of accepting there is scope to include the SONTCS but not to impose rules, given its argument is premised on insufficient notice being given to landowners. In any case, we find Federated Farmers' assertion on inadequate notice is not supportable in the face of the evidence we have referred to.

[158] Furthermore, the fact that landowners have not made a further submission is not evidence that they were unaware of Ngāi Tahu's and Heritage New Zealand's submission. Federated Farmers had opportunity, but did not elect to, call evidence from any landowners on these matters.

[159] Therefore, on the evidence of the Council and Ngāi Tahu, we reject Federated Farmers' submission on this matter. We find that:

(a) There is no scope impediment to including these additional sites in what is now renumbered Schedule 9.5.6.1 such as to make them subject to applicable rules; and

(b) The inclusion of these sites in Schedule 9.5.6.1 so that they are made the subject of applicable rules is most appropriate in response to ss 6 and 7 RMA and the Higher Order Documents and to achieve the related objectives.

[160] Therefore, with the inclusion of these additional sites, we find Schedule 9.5.6.1 is the most appropriate for achieving related objectives and so include it in the Decision Version.

The appropriateness of including Kaitōrete Spit Schedule 9.5.5.2 (now 9.5.6.2)

[161] The issues concerning the most appropriate regulatory approach for protection of SONTCS at Kaitōrete Spit were a particular focus during the hearing.

[162] Kaitōrete Spit is not a listed site in the BPDP and was not listed as a SONTC in the Notified Version. Ngāi Tahu's written submission sought that it be included. Its ultimate position was in support of the Final Revised Version, which proposes that Kaitōrete Spit be included in Schedule 9.5.5.2 (9.5.6.2), rather than Schedule 9.5.5.1 (9.5.6.1).

[163] We heard from a number of experts as to the cultural importance of Kaitōrete Spit, and their evidence was not contested by any other expert.

[164] Ngā Tahu cultural expert, Mr Cranwell explained that:[124]

> 64. Kaitōrete Spit is a cultural landscape with a long and rich history of Kāi Tahu land use and occupancy, and strong tradition of mahinga kai. Numerous pā, kāika, mahika kai areas, wāhi taoka and wāhi tapu sites hold the stories of Kāi Tahu whānui settlement and resource use in and around Kaitōrete.
>
> 65. Kaitōrete Spit has been occupied by successive Kāi Tahu whānui generations in one shape or form for centuries. It provides access to the associated aquatic environments of Te Waihora and Te Tai o Mahaanui, a unique terrestrial environment for the gathering of mahika kai. Ample archeological [sic] evidence and oral traditions testify to this fact. Wāhi tapu and wāhi taoka sites populate its length and breath [sic]. Urupā (places where Kāi Tahu ancestors were buried) continue to have special spiritual significance, as do the places where various ceremonies took place. Umu (ovens), middens, Tool (taoka working sites), Kāika (Permanent occupation sites) and Nohoaka (camp sites) attest to its importance. And Kaitōrete Spit has a high concentration of known recorded Māori archaeological sites.

[165] Mr Davis noted that, from an archaeological perspective, a minimum of 122 archaeological sites of Māori origin are located on the spit and are registered with the New Zealand Archaeological Association ('NZAA').[125] He also stated that several of these sites have yielded unique 15th century Taonga Tuturū, including the earliest examples of Te Waipounamu Māori Raranga (weaving). In his view, this lends support to recognising Kaitōrete as a Wāhi Tapu/Wāhi Taonga site within the CRDP.

[166] Mr Pauling's evidence was that the refined extent of this site considers multiple known NZAA, rūnanga and DOC recorded sites, but that with further work separate and/or more specific Wāhi Tapu areas could be identified which could allow the larger site extent to be considered as a Ngā Tūranga Tūpuna site.[126]

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124 Evidence in chief of Iaean Cranwell at 64-65.
125 Supplementary evidence of Kyle Davis, 22 April 2016, at 21.
126 Supplementary evidence of Craig Pauling at 5.14.

[167] We accept the evidence of Messrs Cranwell, Davis and Pauling on these matters.

[168] Farming activities are undertaken on parts of Kaitōrete Spit. Mr Michael Bayley has a reasonably large farm there and has worked on his farm for 53 years. He is the third generation of his family to have done so.[127]

[169] Mr Bayley gave evidence at the resumed hearing and attended the facilitated drafting session. In his evidence, Mr Bayley expressed concerns about the lack of consultation with affected landowners in relation to Ngāi Tahu's Initial Proposal. He also stated.[128]

> We have always known of the important connection of Ngāi Tahu with areas at Kaitōrete Spit and have always been respectful of particular sites that are known to us.

[170] Mr Bayley acknowledged the importance of the spit to Ngāi Tahu, accepted the appropriateness of using the CRDP to provide for the protection of SONTCS, and supported "a designation for Urupā and the like".[129] His closing submissions were in relation to the Council's 3 June 2016 Version which was similar in most respects to the Final Revised Version, but also allowed for what is termed an 'opt in' mechanism.[130] He accepted that there is scope to make the changes that the 3 June 2016 Version proposed to the Notified Version. However, he considered that scheduling the whole of the spit goes too far. His first preference was: [131]

> … that the known specific Wāhi Tapu/Wāhi Taonga sites on Kaitōrete Spit be identified as such, with any further sites that may be identified being progressively added to Schedule 9.5.5.1 under the "opt-in" provision.

Whether 'opt in' or 'opt out' mechanisms appropriate

[171] By way of background to Mr Bayley's preference for an 'opt in' provision, we note that the genesis of this came from the Panel's questioning during the hearing. In broad terms, the idea of 'opt in' is to allow for sites to be inserted into Schedule 9.5.5.1 (9.5.6.1) and made subject to the related rules without the formality of a plan change, where there was landowner agreement and specified certification. As such, the Council included the concept in the 3 June

127 Evidence in chief of Michael Bayley, 22 April 2016.
128 Evidence in chief of Michael Bayley at 6.
129 Closing submissions for Michael Bayley at 5.
130 Closing submissions for the Council at 6.2.
131 Closing submissions for Michael Bayley at 11–12 and 17.

2016 Version simply to assist consideration of this matter by the parties, but it did not endorse the concept.

[172] Opt in was not supported by Ngāi Tahu, the Crown, Federated Farmers or the Council.[132] The Council pointed out that no party challenged the provisions for Schedule 9.5.5.1 (9.5.6.1) sites.[133]

[173] We find that it would be inappropriate to provide for an 'opt in' mechanism (or variation of such a mechanism, such as 'opt out'). We accept the submissions of the various parties who have noted that such a mechanism would be unduly complex and confusing. As such, we find it would not be effective or appropriate in achieving related objectives.[134] In addition, we find that the approach of the Final Revised Version (including what is now numbered Policy 9.5.2.10) more appropriate in two respects. It would allow for a properly holistic approach in keeping with the nature of the cultural landscape of Kaitōrete Spit. Secondly, it would better address the need for both Ngāi Tahu and landowners to be involved in investigatory work that informs a plan change.

Inclusion of Kaitōrete Spit in Schedule 9.5.5.2 (now 9.5.6.2) the most appropriate

[174] As we have already discussed, the Council's position acknowledges the fact that the spit is an important cultural landscape but that insufficient work has been done at this time to identify SONTCS and include them in Schedule 9.5.6.1 with the effect that additional resource consent requirements would be triggered. It submitted that it would be appropriate to go only so far as to have the additional assessment criterion concerning effects on SONTCS apply when relevant consent requirements are triggered by the underlying zone or district-wide rules. Related to that, it submitted that the Final Revised Version is a pragmatic and appropriate response to Mr Bayley's primary concern.[135]

[175] Ngāi Tahu supported the Final Revised Version's approach to Kaitōrete Spit in the interim (i.e. until a plan change is notified). That was especially in view of the evidence that Kaitōrete Spit includes significant Wāhi Tapu and Wāhi Taonga sites. It submitted that the

132 Closing submissions for the Crown at 3.4.
133 Closing submissions for the Council at 6.8.
134 Closing submissions for the Council at 6.3; Closing submissions for the Crown at 2.4; Closing submissions for Federated Farmers at 17–20; Closing submissions for Ngāi Tahu at 56-57.
135 Closing submissions for the Council at 9.2(a).

approach of the Final Revised Version was also properly balanced (although, as we discuss at [185]–[195], Ngāi Tahu's position on that would appear to be based on some misconceptions about the true effect of the Council's proposed earthworks rules).

[176] On the evidence, we find that it is more appropriate for Kaitōrete Spit to be included in Schedule 9.5.6.2 than Schedule 9.5.6.1. That is in the sense that, with the changes we make to associated earthworks and notification rules, it achieves a sufficient degree of protection of SONTCS (pending an anticipated plan change) on a basis that does not unduly or unreasonably restrict farming and other land uses. Hence, we find it the most appropriate outcome in terms of relative efficiency and effectiveness, and costs and benefits, for achieving the related objectives. Therefore, we have provided for this in the Decision Version.

Rules for activities in Schedule 9.5.5.2 to 9.5.5.4 (now 9.5.6.2 to 9.5.6.4) SONTCS

[177] An overall observation we make is that we encountered a range of problems with the drafting of the Final Revised Version's proposed rules for earthworks in relation to Schedule 9.5.5.2 to 9.5.5.4 (now 9.5.6.2 to 9.5.6.4) SONTCS. As we explain, those included inconsistencies between what closing submissions indicated was intended and what was actually drafted, unexplained anomalies in terms of rules that the Final Revised Version proposes to amend and others that it leaves un-amended, and other drafting defects. Pressures on time and resourcing, now that we are towards the end of the time period specified in the OIC for completion of our enquiry, has made it impracticable for us to revert to the parties to rectify these drafting problems. Rather, we have had to attend to the issues ourselves and this has contributed to the time this lengthy decision has taken to be issued.

Earthworks rules in relation to Schedule 9.5.6.2 SONTCS

[178] For the reasons we now explain, we find the drafting inappropriate in that it would both:

(a) Fail to provide adequate protection of Schedule 1 SONTCS or those at Kaitōrete Spit; and

(b) Impose arbitrary costs and unreasonable costs and uncertainties, not only on farming but also on important other activities, including the maintenance of infrastructure and natural hazard management.

[179] Chapter 8, Subdivision, Development and Earthworks, includes a permitted activity Rule 8.8.1 for earthworks. The rule lists an extensive range of activity specific standards. They encompass matters such as maximum gradients, vibration, operation of mechanical or illuminating equipment during night time hours, and a raft of other matters pertaining to general amenity and other effects. They also include volumetric limits for earthworks. For earthworks in the Rural zone, that limit is $100m^3$/ha over a one year time period (formerly Rule 8.8.1, Table 1).

[180] Rule 8.8.5 (which the Decision Version renumbers 8.5A.3) operates to specify exemptions from these permitted activity specific standards for specified permitted activities (P1, P2 and P6). These can be described as general earthworks (with listed exceptions), earthworks for land repair, and earthworks within 5m of any tree in specified parks, public open space and road corridors.

[181] In their closing submissions, Ngāi Tahu explains that, for earthworks in relation to Schedule 9.5.5.2 (9.5.6.2) SONTCS, it seeks the following:

> … reliance would be had on other existing earthworks rules, and specified exemptions. Those exemptions include a range of normal rural activities, fencing, cultivation, cropping and silage making etc, and also foundations for buildings subject to a building consent.

[182] Ngāi Tahu's requested change to Rule 8.8.5 (8.5A.3) is as follows:

> Within Sites of Ngāi Tahu Cultural Significance identified in Table 9.5.5.2 only the following exemptions apply: 1, 2, 3, 4, 5, 9, 14, and, the maintenance of existing farm tracks and ponds.

[183] The Council's closing submissions express support for what Ngāi Tahu seeks, although it proposes a slightly differently worded provision:

> Within a Site of Ngai Tahu Cultural Significance listed in Chapter 9.5, Schedule 9.5.5.2 only exemptions 1, 2, 3, 4, 5, 9 and 14 shall apply.

[184] Both proposals would both mean that the listed exemptions would cease to apply, if the earthworks take place within Schedule 9.5.5.2 (9.5.6.2) SONTCS. In essence, earthworks for specified utility purposes, drains or ponds, geotechnical assessments, fire ponds, stock tracks, and vehicle access tracks, and maintenance or establishment of farm access tracks would cease to be exempt from the raft of permitted activity standards in Rule 8.8.1.

[185] We find these proposals in Ngāi Tahu's Final Proposal and the Final Revised Version entirely inappropriate in view of the following.

[186] One fundamental problem we see with these proposals is that they would not adequately protect SONTCS, particularly at Kaitōrete Spit. That is because the very generous volumetric limits they would continue to allow would, on the Council's and Ngāi Tahu's own evidence, leave the SONTCS entirely exposed to destruction, contrary to the statutory principles and Higher Order Documents to which we have referred.

[187] Coupled with that, the proposals would give rise to significant and unjustified added cost and uncertainty, for farming and other important community activities. That is because they would render those activities subject to the raft of standards in Rule 8.8.1 on matters such as maximum gradients, vibration, operation of mechanical or illuminating equipment during night time hours, none of which have any explained bearing on protection of SONTCS. For example, those unjustified costs and consequences would be imposed on farming activities such as drain and pond maintenance, stock track and vehicle access track construction. They would also be visited on utilities, including for maintenance, geotechnical assessments and fire safety earthworks.

[188] Ngāi Tahu explained that its overall intention is that the rules target activities with a sufficiently high threshold of potential effects on sites of Ngāi Tahu cultural significance.[136] It emphasised the importance of not only avoiding unwarranted restriction on activities but also ensuring those activities likely to adversely affect particular SONTCS cultural values are caught.[137] We find these proposals would fail to meet those intentions.

[189] Ms Mackenzie told us that Federated Farmers were particularly concerned about the added complexity, delay and cost of Ngāi Tahu's Initial Proposal. That was especially through its proposed rules and the associated large number of applications that would be required for routine earthworks. We find the proposals would create similar problems and without justification in terms of the protection of SONTCS. Similar unjustified costs and uncertainties would be imposed on utility operators and other parties.

136 Closing submissions for Ngāi Tahu at 45.
137 Closing submissions for Ngāi Tahu at 45.

[190] For those reasons, we reject this aspect of the Final Revised Version and Ngāi Tahu's Final Proposal.

[191] In terms of our s 32AA obligation to assess the most appropriate rules for achieving related objectives, we are left with two options: rejecting earthworks rules for Schedule 9.5.6.2 SONTCS or providing an alternative rules' regime.

[192] We recognise that the issues the evidence has revealed to us concerning Kaitōrete Spit could also exist for other Schedule 9.5.6.2 SONTCS. However, as the evidence on those other SONTCS was comparatively much more general, we find that we should confine our attention to what should occur at Kaitōrete Spit. In essence, the remainder is best left for the Council to address, through plan change, following the future work directed by Policy 9.5.2.10.

[193] In our consideration of costs and benefits, in addition to the risks for SONTCS, we have weighed the implications for farming operations, including those of Mr Bayley. For completeness, we record that we did not receive evidence that enables us to practicably quantify costs and benefits. Hence, we are not required to do so (s 32(2)(b)). We have noted Mr Bayley's request that we make provision for offal pits.

[194] For those reasons, we find the most appropriate approach is to extend the Schedule 9.5.6.1 SONTCS RDA earthworks rule in Chapter 8 that the Final Revised Version proposed so that it also applies to Kaitōrete Spit (but subject to an exemption for offal pits at Kaitōrete Spit). We have also made changes to improve drafting clarity.

[195] The revised rule is renumbered Rule 8.5A.2.3 RD6, with exemption being found at Rule 8.5A.3.b. On the evidence, we find it properly responds to the statutory principles and Higher Order Documents and is the most appropriate for achieving related objectives (including Objectives 9.5.2.1 –9.5.2.3, and Strategic Objectives 3.3.1 and 3.3.2).

Rules for utilities within Schedule 9.5.6.2 to 9.5.6.4 SONTCS

[196] The Final Revised Version also proposes restricted discretionary activity ('RDA') classification, with associated assessment matters for some utilities located within all SONTCS. At [133]–[139], we set out our findings on the appropriateness of this for Schedule

9.5.6.1 SONTCS. We now address whether it is appropriate for the regime to be applied to Schedule 9.5.6.2 to 9.5.6.4 SONTCS as well.

[197] This is one example of what we have noted earlier, namely of the Final Revised Version not according with the Council's closing submissions. Those submissions, in adopting Ngāi Tahu's approach, explicitly say that new proposed rules that require resource consent are confined to Schedule 9.5.5.1 (9.5.6.1) and Schedule 9.5.5.4 (9.5.6.4) SONTCS. The submissions say that the approach for the remaining SONTCS is to add "… matters of discretion in relation to Ngāi Tahu cultural values in relation to various restricted discretionary activities".[138]

[198] We are also concerned about what the Council's closing submissions record regarding those utility operators who made further submissions on Sub-chapter 9.5. The submissions note that, while those operators were invited to the mediation with the Council and Ngāi Tahu, none attended it. We cannot safely assume, on that basis, that the utility operators are content with these aspects of the Final Revised Version. That is particularly given that the changes the Final Revised Version proposes to make to Chapter 11 would significantly amend provisions that utility operators and the Council essentially agreed, as is recorded in Decision 40. Given the substantive implications of these proposed changes, and the fact they have surfaced so late after the hearing, we would have expected the Council and Ngāi Tahu to have at least tendered evidence, or a joint memorandum with the utility operators, in support of what is proposed. Without that, we have no safe way of knowing that the provisions would not give rise to inappropriate costs and uncertainties for utility operators.

[199] We find there is not sufficient evidence for us to safely conclude, in accordance with s 32 of the RMA, that these proposed utility controls should be applied to Schedule 9.5.5.2 (9.5.6.2) and Schedule 9.5.5.4 (9.5.6.4) SONTCS.

[200] For those reasons, we reject these proposals as inappropriate for responding to the statutory principles and Higher Order Documents, and achieving related objectives. In particular, on the evidence, we find that they could well conflict with Strategic Objectives 3.3.1 and 3.3.2 and they do not assist to achieve the related Sub-chapter 9.5 objectives.

138 Closing submissions for the Council, dated 17 June 2016, at 11.3 – 11.5.

Other rules for assessment of activities within Schedule 9.5.5.1 (now 9.5.6.1) to 9.5.5.4 (now 9.5.6.4) SONTCS

[201] The Final Revised Version proposes changes to rules in other CRDP chapters concerning the assessment matters applicable to relevant resource consent applications. These closely parallel Ngāi Tahu's Final Proposal.[139]

[202] In the Residential, Industrial and Rural Zones, the Final Revised Version proposes that assessment matters concerning all Schedule 9.5.5.1 (9.5.6.1) to 9.5.5.4 (9.5.6.4) SONTCS be added for applications for activities that do not meet the built form standards for site density or site coverage. The Final Revised Version does not seek this change for other built form standards. We were not given assistance on why this apparently arbitrary approach is proposed.

[203] In addition, given the evidence on the nature of SONTCS values, we find that this proposal to attach controls to built form standards for site density is not appropriately targeted. We note that the specific earthworks and subdivision rules included for Schedule 1 SONTCS would enable assessment of effects from those activities, prior to more intensive development proceeding. We find these proposals are a further example of reasonably significant changes to existing rules being proposed without evidence that helps us to understand the relative costs and benefits.

[204] For those reasons, we reject these aspects of the Final Revised Version as inappropriate for responding to the statutory principles and Higher Order Documents or for achieving related objectives. In particular, on the evidence, we find that they could well conflict with Strategic Objectives 3.3.1 and 3.3.2 and they do not assist to achieve the related Sub-chapter 9.5 objectives.

[205] The Final Revised Version proposes a range of other changes to various RDA rules of other chapters to add assessment matters pertaining to the Schedule 9.5.6.1 to 9.5.6.4 SONTCS. Those changes are proposed to Sub-chapter 9.2 (natural character, landscapes etc), and Chapters 8 (Subdivision, Development and Earthworks), 11 (Utilities and Energy), 14 (Residential), 15 (Commercial), 16 (Industrial), 17 (Rural) and 18 (Open Space). In

139 Closing submissions for Ngāi Tahu, at 65, 66

Chapters 14 to 18, the Final Revised Version also proposes similar changes to rules for controlled activities and changes to some objectives and policies to add reference to SONTCS.

[206] None of those changes are contentious, and we find that they are well-supported on the evidence. We find the changes to be appropriate in substance, however, due to the limited time available we have not refined the drafting to the degree that we would have preferred. We have, however, refined them to more clearly reference the identified SONTCS in the different schedules in Appendix 9.5.6, and the specific matters of assessment in Rule 9.5.5. Subject to those refinements, we find these other changes the most appropriate for responding to the statutory principles and Higher Order Documents, and achieving related objectives.

[207] Those findings of appropriateness also pertain to the changes that the Final Revised Version proposes concerning the Sub-chapter 6.6 (Water Body Setbacks). The related provisions will be included (subject to any minor drafting refinements we find appropriate) in our later Chapter 6 (General Rules and Procedures) decision.

Notification provisions applicable to SONTCS in Schedules 9.5.5.2 to 9.5.5.4 (now 9.5.6.2 to 9.5.6.4)

[208] Closing submissions indicate some confined differences between Ngāi Tahu and the Council concerning the most appropriate notification regime for resource consent applications for Schedule 9.5.5.2 to 9.5.5.4 SONTCS:

(a) Ngāi Tahu seeks that, where assessment matters relating to these SONTCS have been added, there should be an associated rule requiring limited notification to ngā rūnanga.[140] In essence, it seeks a rule in similar terms to the one it sought for Schedule 9.5.5.1 (9.5.6.1) SONTCS; and

(b) The Council expresses concern that this would have the unintended consequences of precluding public notification of some application types and excluding limited notification to other potentially relevant parties. [141]

140 Closing submissions for Ngāi Tahu, at 78 - 85
141 Closing submissions for the Council at 7.16.

[209] We agree with the Council that Ngāi Tahu's proposed notification regime could inappropriately preclude public notification and exclude other parties from limited notification. However, as we now explain, we also find several problems with the drafting the Council's Final Revised Version proposes.

[210] In its closing, the Council submits that what it proposes in the Final Revised Version would achieve Ngāi Tahu's drafting intent without preventing full public notification or limited notification to other parties where this is justified under the usual RMA notification tests.[142]

[211] It goes on to describe what it has proposed in the Final Revised Version as follows:[143]

> Activities that do not comply with [insert rule] will be subject to the normal tests for notification under the relevant sections of the RMA. Where an activity is located within a site of Ngāi Tahu Cultural Significance the Council shall give limited notification to the relevant rūnanga, unless the relevant rūnanga have provided written approval.

[212] One difficulty we have with that submission is in the first sentence of it. That sentence appears to say that activities that do not comply with relevant rules would be subject to the normal tests for notification under the relevant sections of the RMA. However, there are a number of examples in the CRDP where, in such circumstances, rules on notification change those normal RMA notification tests.

[213] However, as we have found for a range of other matters, we find that the drafting in the Final Revised Version is inconsistent with what the Council would appear to be saying it is proposing in its closing submissions.

[214] Turning to the Final Revised Version itself, we note that it proposes a rule to be inserted into various zones requiring limited notification of consent applications to be given to the relevant rūnanga when specified activities are within Schedule 9.5.6.4 Ngā Wai. In the Rural Zones (Chapter 17), that regime is proposed for buildings within 40 metres of mean high water springs. In Chapter 11 (Utilities and Energy), that is proposed for applications for utilities. In Sub-chapter 6.6, it is proposed for earthworks and buildings within the water body setbacks.

[215] There is a considerable length of coast and water bodies that are part of Schedule 9.5. The Final Revised Version proposed a requirement for limited notification to rūnanga where

142 Closing submissions for the Council at 7.18.
143 Closing submissions for the Council at 7.17.

activities are within Schedule 9.5.6.4 Ngā Wai. However, we do not have evidence to assist us to evaluate the reasonably significant potential costs and benefits of this provision. Given the provision we have made in the Decision Version for limited notification to rūnanga of Schedule 9.5.6.2 earthworks, subdivision and utilities and earthworks at Kaitōrete Spit, we are not satisfied on the evidence that the further costs and uncertainties of this additional notification regime is appropriate.

[216] In addition, we have identified a number of anomalies in how the Final Revised Version's various notification rules are included in the zone rules. In the Commercial Core zone only, the Final Revised Version proposes limited notification to rūnanga for urban design consent applications. In the Industrial Heavy Zone, similar limited notification is proposed for the processing of quarried materials, but not for other industrial or quarrying activities. Limited notification to rūnanga is proposed for community facilities in several rural zones, but not for other facilities of potentially similar scale. All discretionary activities are targeted for limited notification to rūnanga in the Rural Port Hills Zone only. Those are by way of example of this problem of arbitrary notification proposals on which we have not been assisted, either in evidence or in legal submissions, on the rationale.

[217] The evidence and related legal submissions do not help us to understand how the various activities, to which these proposals for notification relate, have any relationship to particular SONTCS. Nor have we been helped to understand the costs and benefits of these proposals.

[218] Ultimately, we must identify the most appropriate regime considering all relevant matters. Those matters include the cultural values at risk. They also include the OIC Schedule 4 Statement of Expectations including that the CRDP clearly articulates how decisions about resource use and values will be made, in a manner consistent with an intention to reduce significantly (compared with the Existing Plan) "the requirements for notification and written approval". We read that expectation subject to the RMA regime for the making of rules as to notification, including for precluding public or limited notification.

[219] With reference to those matters, and for the reasons we have given, we find that the Final Revised Version's notification regime for Schedule 9.5.6.2 to 9.5.6.4 SONTCS is inappropriate for responding to the statutory principles and Higher Order Documents and achieving related objectives. In particular, on the evidence, we find that they could well conflict with Strategic

Objectives 3.3.1 and 3.3.2 and they do not assist to achieve the related Sub-chapter 9.5 objectives.

[220] As we have explained, we find that the evidence concerning Schedule 9.5.6.2 to 9.5.6.4 SONTCS is relatively less certain and geographically precise than that for Schedule 9.5.6.1 SONTCS. Under s 32(2)(c), we are directed to 'assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.' Those risks apply to both the SONTCS in issue and the costs, delay and uncertainty that can arise from notification of consent applications.

[221] We find that we should strike an appropriate balance on these matters, bearing in mind that it is acknowledged by Policy 9.5.2.10 that what we provide for at this time in the CRDP will need to be the subject of further development and refinement through further plan change.

[222] For those reasons, we find the most appropriate regime for achieving related objectives is to require limited notification to the relevant rūnanga when the activity in issue is already assigned (by the zone specific or district wide rules) to the limited notified track. In several other cases, that will leave the Council to determine the proper approach to notification according to the usual RMA tests. We find the Council able to do so. In some cases, however, it will mean applications are not notified to rūnanga. We find that outcome appropriate at this time, weighing all matters.

[223] Therefore, we are satisfied that this modified approach of the Decision Version is the most appropriate in responding to the Higher Order Documents, including the OIC Statement of Expectations, and achieving related objectives (including Strategic Objective 3.3.1,3.3.2 and related Chapter 9 objectives).

Matters concerning land at North Belfast including in relation to Chapters 8 and 16

[224] We now address a related set of provisions concerning land at North Belfast, where relevant parties have agreed with the Council on the most appropriate outcome.

[225] By Minute on 6 May 2015 ('Deferral Minute'), the Panel agreed to a joint request concerning the hearing and determination of the proposed Industrial General (North Belfast) zone for the land. That was on the basis, reported in a 30 April 2015 Memorandum of Counsel

for the Council ('Council Deferral Memorandum'), that named parties were agreed that it would be appropriate for the Panel to defer determination of the zoning of the land until such time as the Panel heard and made decisions on Sub-chapter 9.5.

[226] The parties made this request so as to allow for an appropriately holistic consideration of the matters in issue, given information concerning 'springs' and Silent Files, pertaining to parts of the subject land[144]. In terms of the joint request, the Panel heard evidence on the non-cultural provisions of the Industrial General (North Belfast) zone proposal as part of the Chapter 16 proposal hearing, but deferred its decision on that zoning proposal until now.

[227] On 30 September 2016, the Panel received a joint memorandum ('Joint Memorandum') on behalf of the following parties (together the 'Joint Parties'), a number of whom were noted in the Council's 30 April 2015 Memorandum as to deferral:[145]

(a) Radford Family Trust (660);

(b) Ngāi Tahu;

(c) Silver Fern Farms Limited (686);

(d) Five Blend Holdings Limited and Foxton Properties Limited (819, FS5074); and

(e) 880 Main North Road Limited (1081, FS1283).

[228] The Joint Memorandum includes provisions which the Joint Parties agree as most appropriate for inclusion in Chapters 8 (Subdivision and Earthworks) and 16 (Industrial), and in Sub-chapter 9 ('Requested Provisions'). The Requested Provisions include changes to Chapter 16 as follows:

(a) A change to Rule 16.2.7.1.1 to add an additional permitted activity ('P1') described as 'any development permitted under 16.2.2.1', and specifying related activity

144 Minute — Industrial General (North Belfast) zone, 6 May 2016.

145 We note that the Council's 30 April memorandum also referred to Lowe Corporation Limited (772). However, that submitter's matters were in relation to other matters determined by Decision 11 at [529]–[550]. The Council's memorandum did not list Five Blend Holdings Limited and Foxton Properties Limited and 880 Main North Road Limited, but we are satisfied they have a relevant interest.

specific standards concerning key structuring elements (including concerning springs) and built form standards;

(b) A new Rule 16.2.7.2.4 as to minimum setbacks from springs;

(c) New and amended matters of discretion, pertaining to the Outline Development Plan ('ODP') and springs; and

(d) A new Appendix 16.5iii which comprises a proposed ODP, entitled 'General Industrial Zone (North Belfast) — Blue Layer', depicting stormwater arrangements and other contextual features.

[229] The Requested Provisions seek changes to Chapter 8 as follows:

(a) An additional activity standard 8.3.3.15 pertaining to the effects of subdivision and/or earthworks in the Industrial General (North Belfast) zone on Wāhi Taonga, Wāhi Tapu and urupā and requiring the implementation of a related protocol with Te Ngāi Tūāhuriri Rūnanga;

(b) A set of changes concerning controlled activity subdivision rules, including:

(i) An addition to Rule 8.4.4.6 on matters of control and natural and cultural values as to whether the above-noted protocol has been agreed (including possible provision for a cultural monitor); and

(ii) Related changes to controlled activity Rule 8.3.2.2 C5 (as to subdivision in an area subject to a ODP);

(c) A set of changes concerning restricted discretionary activity subdivision rules, including:

(i) New Rule 8.5.16 specifying matters of discretion in regard to natural and cultural heritage and the Industrial General (North Belfast) zone;

(ii) A change to restricted discretionary activity Rule 8.3.2.3 to reference and apply that new rule; and

(iii) A further change to Rule 8.3.2.3 to add new RD14 as to subdivision within the Industrial General (North Belfast) zone which either creates an allotment within a new boundary less than 10m from the surveyed point of the spring shown on the ODP or meets an alternative description where a spring is not so identified;

(d) Additions to earthworks rules, including:

(i) An addition to permitted activity Rule 8.8.2 to the effect that earthworks are permitted beyond 20m of specified springs within the Industrial General (North Belfast) zone subject to meeting the standards in 8.3.3.15;

(ii) An additional controlled activity Rule 8.8.2b C1 for earthworks between 10-20m from specified springs, subject to specified matters of control in Rules 8.8.7, 8.4.4.6(i) and 16.2.7.3.4 (Springs);

(iii) Changes to restricted discretionary activity Rule 8.8.3 to provide new RD8 and RD9 concerning activity within 10m of the specified springs and activities not complying with the controlled activity standards (and specifying associated matters of discretion); and

(e) An exemption for inclusion in Rule 8.8.5 for excavations to a depth less than 0.6m in the Industrial General (North Belfast) zone.

[230] Finally, the Requested Changes include the following confined addition of explanatory text to the Final Revised Version (i.e. as to Sub-chapter 9.5) (which now appears in a re-titled 'How to interpret and apply the rules' provision in the Decision Version):

> 9.5.3.1.10 in respect of the Belfast Mahaanui Iwi Management Plan silent file (ID 1 in Schedule 9.5.5.2) within the area identified on the Outline Development Plan in Appendix 16.7.5 the rules are contained within Chapter 8 and Chapter 16.

[231] We commend parties for their efforts and success in securing this full consensus. We find it sufficiently supported by the evidence we have heard, in relation to the Chapter 8 and 16 proposals, and on this occasion, for Sub-chapter 9.5. We find the provisions jointly sought properly respond to the statutory principles to which we have referred and the Higher Order Documents.

[232] To the extent that the provisions jointly sought go beyond those provisions deferred by our earlier decisions, we are satisfied that we have scope to confirm them for inclusion in the various chapters by this decision. In particular, cl 13(5) and (6), OIC effectively enables us to now reconsider and make 'changes of no more than minor effect' to our previous decisions if we consider it is necessary or desirable to ensure that the CRDP is 'coherent and consistent'. In view of the consensus achieved, the lack of opposing submissions, and the evidence, we are satisfied that the threshold for making such changes is met.

[233] We are satisfied on the evidence that the geographic extent of the Industrial General (North Belfast) zone is appropriate. On closer review, we have found it necessary to make some minor drafting clarity and consistency changes. This includes a change to the nature of the rule prescribing the duration of provisions for rural activities, in order to avoid any confusion with a 'deferred-zoning'. This better aligns with our Decision 11: Commercial and Industrial — Stage 1 on a similar situation in the Industrial Heavy Zone (South West Hornby). With those changes, we are satisfied that the Decision Version is the most appropriate for achieving related objectives to which we have referred.

[234] To give effect to this decision, we make associated directions for the Council to update the related CRDP zoning maps.

Other matters

Ngā Tūtohu Whenua sites

[235] As part of the evidence preparation undertaken in relation to the mapping of SONTCS, Mr Pauling proposed a further SONTCS category — Ngā Tūtohu Whenua. There were large catchment based areas, raised by Mr Pauling on the basis that they comprise an identified cultural landscape and catchment, embodying the concept of Ki Uta Ki Tai (from the mountains

to the sea).[146] However, these sites included large areas that were not included in Ngāi Tahu's submission, and as such were not sought or pursued for inclusion in the CRDP by Ngāi Tahu of the Council.[147] As such, we have taken this matter no further.

Definitions

[236] We have included two definitions in our Decision Version. The Council's Final Revised Version included a definition of 'Sites of Ngāi Tahu cultural significance', which we have included with minor changes for clarity. We have also included a definition of 'Spring', which was deferred from our Stage 1 Definitions decision in order to have decided as part of this decision. We have accepted the wording agreed between the Council, Ngāi Tahu and the Radford Family,[148] with a minor drafting change in accordance with the Council's closing submissions on Definitions.[149]

Drafting clarity and consistency matters

[237] The OIC Statement of Expectations refers to clarity of articulation as to "how decisions about resource use and values will be made". Strategic Objective 3.3.2 is as to clarity of language and efficiency. Amongst other things, it refers to 'Uses clear, concise language so that the District Plan is easy to understand and use'.

[238] The Council picked up on a number Ngāi Tahu's drafting refinement proposals in its Final Revised Version. We have carried a number of these into the Decision Version, although on the basis that we have an overarching responsibility for the clarity and consistency of the CRDP as a whole and, therefore, have also made further refinements to the Final Revised Version.

146 Supplementary evidence of Craig Pauling, at 4.3.
147 Supplementary opening submissions for Ngāi Tahu at 67–68; Supplementary opening submissions for the Council at 3.6.
148 Joint memorandum for the Council, Ngāi Tahu and Radford Family regarding the definition of 'Spring', seeking amendments to applications to cross-examine and application to excuse witnesses, 30 March 2016.
149 Closing legal submissions for CCC, 11 August 2016 (Definitions).

Chapter 1 Introduction and 9.5.1 Introduction

[239] Consistent with our approach in other decisions, we have added this short introduction to the Sub-chapter. We have also included an explanation of the different types of schedules SONTCS into Chapter 1 Introduction.

9.5.3.1 — How to interpret and apply the rules

[240] Consistent with our approach in other decisions, we have renamed this section (from 'how to use the rules') to better reflect the substantive effect of this provision. We have made various minor clarity changes to the substance of this provision.

Direction concerning changes to SONTCS maps

[241] In its closing submissions, the Council noted that further detail could be added to the aerial maps showing the SONTCS. In particular, it noted that the detail could include cadastral boundaries, dimensions where the site does not follow a legal boundary, and contour information. That detail would not alter the boundaries of the SONTCS but give helpful further clarity to assist consenting processes. We consider this offer a helpful one, and we make related directions.

Consequential changes to other chapters from Sub-chapters 9.1 to 9.6

[242] We have made various consequential amendments, and included deferred provisions, into other zone and district-wide chapters of the CRDP, as a result of our decisions on Sub-chapters 9.1–9.6, particularly the inclusion of activity specific standards, restricted discretionary activity rules and assessment matters. For the reasons we have explained, we have confined the additional rules on Sites of Ecological Significance to those in Schedule A of Appendix 9.1.6.1. We have also improved the clarity of how provisions refer to matters in Chapter 9 and made other drafting clarity and consistency changes.

[243] The Final Revised Version proposed a built form standard for the Rural Banks Peninsula zone to require that buildings be located a buffer distance from the boundaries of specified Chapter 9 matters. Those are outstanding natural features and landscapes, areas of outstanding, very high or high natural character and Schedule 9.5.5.1 (9.5.6.1) SONTCS. We have not included this buffer distance requirement in our Decision Version. The rule would apply in

addition to the rules already in place within the identified areas themselves. We did not receive evidence to assist us to evaluate the costs and benefits and other implications of having such a rule included in the CRDP. On the evidence, we find it is inappropriate and would not achieve related Strategic Direction or other objectives.

[244] For those reasons, we have rejected this aspect of the Final Revised Version.

[245] The Final Revised Version proposes that a new objective and policies be added to Chapter 8 (Subdivision, Development and Earthworks) and that would relate to subdivision in the natural and built environment. The proposed objective and policies are broadly worded and we find that would not be consistent with the relevant Chapter 9 objectives and policies we have included in the Decision Version. Nor were they supported by evidence. For consistency and clarity, we find it more certain and appropriate to make a cross-reference, in Chapter 8, to the relevant Chapter 9 objectives and policies.

[246] Therefore, we have included such a cross-reference in the Decision Version.

[247] There were a range of other changes proposed by the Final Revised Version to various objectives and policies in Chapters 8 and Chapter 14 (Residential). Where we find the proposals to assist clarity and consistency and properly respond to the statutory principles and Higher Order Documents, we have made those changes. Where we find they do not satisfy us on those matters, we have rejected the proposed changes.

[248] We have made consequential amendments to reflect the relationship between the other chapters of the CDRP and Sub-chapters 9.1–9.6. For those changes to reflect the relationship between Chapter 11 Utilities and Energy and Chapter 9, we have relied on the evidence of Sarah Jenkins for the Council in finding the changes appropriate. We have also accepted the amendments that are proposed in the Final Revised Version for the purpose of achieving alignment of the cross-references in Chapter 11 to the Panel's Chapter 9 decision. We have also placed equivalent provisions in each of the Chapter 9 sub-chapters. This includes consequential amendments to our Decisions on Sub-chapters 9.2, 9.3 and 9.4.

PLANNING MAPS

[249] In our Decision 44, 45, 46 and 50 we deferred the confirmation of updated planning maps until this decision. In light of the fact that there are minor correction applications before the panel on Decision 44, 45 and 46, and the likelihood that applications are inevitable in respect of this Decision and Decision 50, we direct the Council to file a memorandum, at the time of any application for minor corrections for this Decision, setting out a timetable for the filing of updated planning maps incorporating all of our Decisions on Chapter 9 and any minor corrections decision.

CONCLUSION

[250] For the reasons we have given, we confirm the Decision Version.

[251] We direct that, by **4pm, 31 October 2016**:

(i) The Council confer as appropriate with parties and provide to the Secretariat an updated set of aerial maps of the SONTCS so as to include relevant available detail on cadastral boundaries, dimensions where the site does not follow a legal boundary, and contours;

(ii) The Council provide to the Panel for approval an updated zoning map for the inclusion of the Industrial General (North Belfast) zone in the CRDP;

(iii) The Council and any other party seeking minor corrections to this decision file a memorandum identifying those requested corrections.

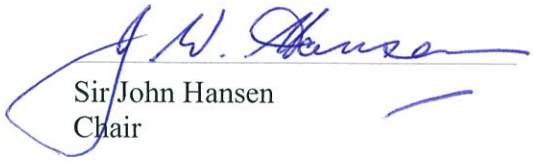
[252] To effect the updating of the aerial maps of the SONTCS and the updating of the zoning maps concerning the Industrial General (North Belfast) zone, a supplementary decision will issue.

CONFIDENTIALITY ORDERS

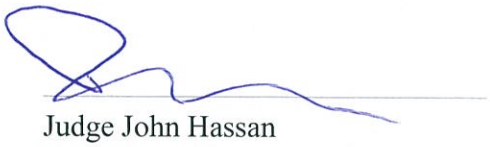
[253] For completeness we record that the orders made by the Chair pursuant to OIC Schedule 3, cl 12(1)(a) in relation to culturally sensitive information received during the course of these proceedings endure and are not expunged by this decision.[150]

150 Transcript, page 1583, line 28 to page 1584, line 15.

For the Hearings Panel:

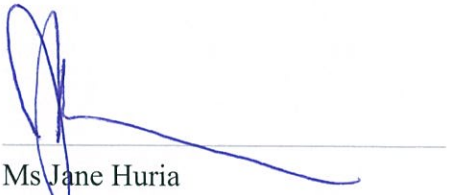


Sir John Hansen
Chair



Judge John Hassan
Panel Member

Ms Sarah Dawson
Panel Member



Ms Jane Huria
Panel Member

Dr Phil Mitchell
Panel Member

SCHEDULE 1

Changes our decision makes to the following chapters:

Chapter 9	Natural and Cultural Heritage – 9.5 Ngāi Tahu Values
Chapter 2	Definitions