

**Before the Hearings Panel
At Waimakariri District Council**

Under Schedule 1 of the Resource Management Act 1991

In the matter of the Proposed Waimakariri District Plan

Between **Various**

Submitters

And **Waimakariri District Council**

Respondent

**Council Officer's Preliminary Response to written questions on
Ngā whenua tapu o ngā iwi - Sites and areas of significance to Māori
on behalf of Waimakariri District Council**

Date: 11 May 2023

INTRODUCTION:

- 1 My full name is Alan Ross Matheson. I am employed as a Consultant Planner for Waimakariri District Council.
- 2 The purpose of this document is to respond to the list of questions published from the Hearings Panel in response to my s42 report.
- 3 In preparing these responses, I note that I have not had the benefit of hearing evidence presented to the panel at the hearing. For this reason, my response to the questions may alter through the course of the hearing and after consideration of any additional matters raised.
- 4 I also note that given the timing of these questions, my preliminary responses in some instances have not been informed by consideration of evidence or legal submissions lodged with the Council following the issuing of my s42A report. Where I have considered such evidence, I have recorded this within the preliminary answers below.
- 5 Following the conclusion of this hearing, a final right of reply document will be prepared outlining any changes to my recommendations as a result of evidence presented at the hearing, and a complete set of any additions or amendments relevant to the matters covered in my s42A report.
- 6 The format of these responses in the table below follows the format of questions identified in within the Commissioner's minute.

Date: 11 May 2023

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Paragraph or Plan reference	Question
Para 60	Please set out where in Rule EI-R4 does it say that the provisions of the SASM chapter do not apply to “customer connection...”

Officer’s preliminary reply pre hearing

The s42A report states that “...Rule EI-R4 **identifies** that the provisions of the SASM chapter do not apply...”, it does not **state** that they do not apply.

Rule EI-R4 ‘identifies’ that the SASM provisions do not apply, as the SASM overlay is not listed within any of the subparts of the rule. By contrast and explanation, the SNA, ONF etc overlays are listed (eg EI-R4 (3) and EI-R4 (4)) as shown in the snip below.

- 3. a new customer connection shall not involve earthworks in the following areas (except where earthworks are located in a road corridor or accessway, or where connections are an extension of existing infrastructure adjoining a site, or where connections are undertaken by trenchless means):
 - a. SNAs;
 - b. places adjoining the coastal marine area.
- 4. a new customer connection shall not involve above ground infrastructure in the following areas (except where located in a road corridor):
 - a. ONF, ONL and SAL;
 - b. areas of ONC, VHNC and HNC; and
 - c. places adjoining the coastal marine area.

That ‘identification’ in Rule EI-R4 is complemented by Rule SASM-R4 which provides for earthworks and land disturbances associated with other activities including SASM-R4 (1)(h) as permitted activities, as shown in the following snip:

- h. a customer connection between a building, other structure, site, and infrastructure as per EI-R4; and

For comparison and illustration, Rule EI-R20(3) identifies that a new infrastructure building is not a permitted activity within specified locations, including the SASM overlay, as shown in the snip below.

- 3. a new infrastructure building shall not be located in the following areas (except where located in a road corridor):
 - a. the root protection area of a notable tree;
 - b. SASM;
 - c. SNAs;
 - d. ONF, ONL and SAL; and
 - e. areas of ONC, VHNC and HNC.

Paragraph or Plan reference	Question
Para 61	Please explain why there is a different approach with Rule SASM-R4 to other s6 RMA matters? For example, EI-R4 covers heritage, indigenous biodiversity, SNAs, ONF, etc.
<p>Officer’s preliminary reply pre hearing</p> <p>As discussed in the s32 report, the approach to SASM provisions has been informed by two main factors, being:</p> <ul style="list-style-type: none"> a. the imperative set out in s6(e) of the RMA and as given effect to in the New Zealand Coastal Policy Statement and Canterbury Regional Policy Statement; and b. the approach advocated by Te Ngāi Tūāhuriri Rūnanga (through Mahaanui Kurataiao Limited). <p>The imperative in s6(e) is to recognise and provide for the <u>relationship</u> of Maori and their culture and traditions with their ancestral lands etc (emphasis added). This contrast with other imperatives within s6 which include ‘preservation’ (s6(a)), ‘protection’ (s6(b), s6(c), s6(f) and s6(g)), ‘maintenance and enhancement’ (s6(d)) and ‘management’ (s6(h)). Refer to section 3 of the s32 report for fuller discussion.</p> <p>The approach advocated by Te Ngāi Tūāhuriri Rūnanga (through Mahaanui Kurataiao Limited), which in summary recognises that due to the nature of existing activities within the sites and areas, reasonable use of land needed to be provided for, with the focus of the rules being on those activities having the potential to have adverse effects on the values within a SASM.</p> <p>Reference to three parts of the s32 report are set out below which explains this approach.</p> <p>Section 2.6 – Consultation Undertaken</p> <ul style="list-style-type: none"> c. refining the rules to ensure that unnecessary resource consent application requirements are avoided in order that appropriate land use, development and subdivision can be carried out (such as enabling households to connect to infrastructure); and <p>Section 5.4 – Proposed Methods</p>	

Paragraph or Plan reference	Question
<p>5.4.1 Rules</p> <p>There are five rules (Rules SASM-R1 to SASM-R5) that provide for permitted activities and restricted discretionary activities (subject to compliance with standards) within some or all of the of the categories of sites and areas of significance to Māori to provide for the following:</p> <ul style="list-style-type: none"> a. installation of fence posts(SASM-R1); b. structures ancillary to mahinga kai and customary harvesting activities (SASM-R2); c. earthworks (SASM-R3 and SASM-R4); and d. new community scale natural hazard mitigation works (SASM-R5). <p>Rule SASM-R4 provides generally for earthworks and land disturbance associated with other activities not provided for in the other proposed rules. Through the inclusion of a number of activities (particularly subparts 'c' and 'h') reasonable uses are provided for and for those not provided, a resource consent (restricted discretionary activity) is required.</p> <p>Section 9 – Summary (page 24)</p> <p>(c) The objective, policies, rules, standards, definitions, matters of discretion and classification and schedule of sites and areas of significance to Māori, provide a framework to enable activities, structures and buildings to occur, but for those that could have an adverse effect on sites and areas, a clear resource consent assessment process</p>	
<p>Para 79</p>	<p>Your report states that:</p> <p><i>The submitter suggests that SASM-P4 needs to be amended to include management of earthworks through a farmer discovery protocol. In my opinion, such an addition is not required as this is covered in Policy SASM-P8 Engagement with rūnanga which encourages persons undertaking activities and/or applying for resource consent to engage with Te Ngāi Tūāhuriri. This policy would support the suggested farmer discovery protocol.</i></p> <p>The Panel’s reading of the submission is that it is seeking that the policy is amended to include management of earthworks through a farmer discovery protocol, <u>and</u> that changes are made to the rules (i.e. R1) to avoid the need for resource consent - if a farmer discovery protocol is first put in place.</p> <p>So when you say a change to the policy is not required (as farmer discovery protocols are already encouraged by Policy 8) do you nevertheless acknowledge that this will not meet the</p>

Paragraph or Plan reference	Question
	submitter's intentions with removing the need for resource consents in that situation?
<p>Officer's preliminary reply pre hearing</p> <p>It is correct that as written, a resource consent would be required for activities not provided for as a permitted activity under the rules, even where a <i>'farmer discovery protocol'</i> was in place.</p> <p>There is potential for a policy and rule framework to be developed that would provide for farming activities to be included as a permitted activity subject to a <i>'finer grained map'</i>, a <i>'traffic light approach'</i> and a <i>'farmer discovery protocol'</i> to be a permitted activity through a certification process.</p> <p>However, no specific details were provided within the submission or in evidence (9 May 2023) as to what would be contained within the <i>'finer grained map'</i>, <i>'traffic light approach'</i> and <i>'farmer discovery protocol'</i> or how the preparation and certification of the protocol would be undertaken.</p> <p>I am familiar with the certification provisions of the Christchurch District Plan that create a permitted activity pathway as they relate to historic heritage, and significant trees and the Farm Biodiversity Plan provisions with respect to indigenous biodiversity vegetation clearance. In the absence of the information to support the <i>'finer grained map'</i>, <i>'traffic light approach'</i> and <i>'farmer discovery protocol'</i>, it has not been possible to develop a similar permitted activity certification approach.</p>	
Para 111	<p>Your report states in 110 that:</p> <p><i>The submitter is concerned that the assessment of indigenous vegetation and restoring natural features may be inconsistent with the primary purpose of the rural zone and override private property rights.</i></p> <p>Your position is that these matters of discretion are s6 matters. However, the wording used in the matters of discretion are on the face of them broader than s6(b) and (c) which relate to "outstanding" and "significant" respectively. Please explain how using broader terms and extending beyond s6 matters is more appropriate.</p>
<p>Officer's preliminary reply pre hearing</p> <p>There is no intention to infer that the matters of discretion are 'broader' than the provisions of s6(b) and s6(c) of the RMA. There are instances where the SASM overlay coincides with other overlays including coastal environment, wetlands, lakes, rivers and their margins, natural features and landscapes, and significant indigenous vegetation and significant habitats of indigenous fauna. Where such overlays occur,</p>	

Paragraph or Plan reference	Question
<p>it is likely that the SASM values for the site or area will also include values that are related to s6(a) and s6(c) matters.</p> <p>Where no such overlay occurs then the matters of discretion would be in relation to the values (such as riparian indigenous vegetation) as they are expressed with respect to the specific site or area.</p>	
<p>Section 32 – section 2.6</p>	<p>This section concludes that no consultation was undertaken with landowners whose properties would be subject to the proposed provisions. Were they separately or specifically advised of the proposed provisions when the PDP was notified?</p>
<p>Officer’s preliminary reply pre hearing</p> <p>Council generic sent a notification letter to all ratepayers, along with public notice as required by Clause 5 of Schedule 1 of the RMA. There was no specific notification on the SASM proposed provisions.</p>	