Ngāi Tahu Cultural Values and the Natural Environment

Issues and plan evaluation (s32AA) report

The Council has provided a section 32 report for all of Proposal 9 which includes evaluation of various options to deal with historic heritage (including Sites of Ngai Tahu Cultural Significance (SoNTCS) which concludes that further work is needed to identify and provide for these Sites.

This evaluation is undertaken in accordance with RMA s.32AA and only deals with the revised provisions being sought by Te Runanga o Ngai Tahu and Nga rūnanga (Ngai Tahu) which are additional to those discussed in Council’s s 32 report, and does not relate to the entire Proposal 9.

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ABBREVIATIONS

Sites of Ngai Tahu Cultural Significance = SoNTCS
Canterbury Regional Policy Statement = Canterbury RPS
Te Runanga o Ngai Tahu and nga rūnanga = Ngai Tahu
New Zealand Coastal Policy Statement 2010 = NZCPS 2010
Ngāi Tahu Claims Settlement Act 1998 = NTCSA

Description of the planning provisions proposed in the Ngai Tahu submission

1. The Ngai Tahu Stage 3 submission seeks amendments to Chapters 9 and 19 and the planning maps to recognise and provide for the traditional and contemporary relationship of Ngāi Tahu and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga, including the customary use of natural resources including mahinga kai and the exercise of kaitiakitanga in accordance with RMA ss.6(e), 6(f), 7(a), 7(aa), 7(g), and s.8 (the Ngai Tahu Proposal).

2. The approach proposed in the submission is to include an overlay in the Replacement Plan with specific Objectives, Policies and Rules that incorporate and add to the existing silent file requirements in the operative Banks Peninsula District Plan (BPDP), which complement and control adverse effects of activities on sites of Ngai Tahu Cultural Significance. The SoNTCS overlay deals with different matters than those addressed by the Significant Ecological Sites overlay and Outstanding Landscape overlays.

3. The evidence of Mr Davis sets out the methodology used to identify and map the significant cultural sites. The revised Proposal 9.0 attached to the evidence Ms Ferguson dated 2 December (Council’s Revised Proposal) identifies ‘silent files’ which are only generally consistent with the Iwi Management Plan. In addition to having regard to the iwi management plans, there are a number of other requirements that are to be met when preparing a plan. The additional documents to have regard to are set out in paragraphs 3.3 to 3.14. The maps draw together the range of instruments that should be used to identify SoNTCS, and as a result are more comprehensive.

4. The SoNTCS have been identified on the maps under the following categories:

Wāhi tapu/wāhi taonga

Wāhi tapu/wāhi taonga sites are defined in the Canterbury Regional Policy Statement as “Wāhi tapu - Sacred places” and “Wāhi taonga - Places of sacred or extreme importance.”

Nga Tūranga Tupuna

Nga tūranga tupuna are areas of settlement or occupation in the past. These are broader areas or landscapes of Ngāi Tahu cultural significance. There is not usually known
physical features on the sites to be protected, (there may be archaeological sites) but there is an opportunity to incorporate Ngāi Tahu history and values into the development or redevelopment of these areas.

**Nga Wai**

Nga wai are water bodies, including wetlands, tupuna (springs) and coastal waters which are significant areas of mahinga kai or other customary use for Ngāi Tahu. These areas include Te Tai o Mahaanui – the coastal area of Te Pātaka o Rākaihautū/Banks Peninsula and Wairewa/Lake Forsyth – both areas listed as areas of statutory acknowledgement in the Ngai Tahu Claims Settlement Act 1998 (see Chapter 1, Introduction, section 3.2).

5. There remains some potential that some SoNTCS (particularly archaeological sites) have not yet been recognised and identified. In the absence of a district wide comprehensive survey it is not possible to be absolute. A common practice has been to use accidental discovery protocols to ensure a process is in place in the event that activities undertaken after a resource consent has been granted are subject to conditions where previously unknown archaeological sites may be uncovered.

6. Future resource consent processes and research may reveal areas that are also of cultural significance, and a policy is proposed that provides for further work and additional sites to be included in the plan at a later time.

### 1.0 Introduction and planning context

1.1. In order to meet the requirements of the RMA the Objectives, Policies and methods (including rules) in the plan must recognise and provide for the contemporary and traditional relationships of Ngai Tahu with their ancestral lands, water, sites, wahi tapu and other taonga as a matter of national importance under section 6(e), and have particular regard to kaitiakitanga under RMA s.7(a) and the ethic of stewardship under RMA s.7(aa). In preparing the plan the principles of the Treaty of Waitangi are to be taken into account when managing the use, development and protection of natural resources.

1.2. The revised Objectives and Policies should provide a transparent, clear and efficient planning framework that decision-makers and plan users can use to assess proposed activities that may affect sites with significant cultural values. The methods used should ensure that the Objectives can be achieved. The methods (including maps) that provide for the use, development and protection of those areas should be those that best achieve the purpose of the RMA.

1.3. The Council has included the Objectives and Policies (with amendments) that were sought in the Ngai Tahu Proposal into its Revised Proposal\(^1\). After discussions with Ms Ferguson the heading and the numbering of the Objectives have been revised to assist with the references in this report. The word ‘Scheduled’ has been deleted from the heading, and the Objectives have been re-numbered.

9.0 Objectives - Ngāi Tahu Values and the Natural Environment

Objective 9.0.1.1 **Scheduled** Areas and Sites of Ngāi Tahu Cultural Significance

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\(^1\) Appendix 2 attached to the EIC of Ms Ferguson (dated 2 December 2015).
Objective 9.0.1.2 (revised version 9.0.2) Integrated Management of Land and Water

1.4. The main focus of this RMA s.32AA report is to evaluate the extent to which the objectives meet the purpose of the RMA and to evaluate the various methods of implementation of the Objectives and Policies.

Proposal 9 as notified

1.5. Proposal 9 as notified focuses on a range of topics which all have special ‘values’. The topics broadly cover:
- Indigenous Biodiversity and Ecosystems
- Landscapes and Natural Character in the Coastal Environment
- Historic Heritage
- Trees

1.6. SoNTCS have been dealt with predominantly as part of the criteria for landscapes and natural character.

The development of plan provisions and (process)

1.7. In comparison, Ngai Tahu identify the SoNTCS on maps under the following categories:
- Wāhi tapu/wāhi taonga
- Nga Tūranga Tupuna (areas of settlement or occupation in the past. These are areas or landscapes of Ngāi Tahu cultural significance)
- Nga Wai (water bodies, including wetlands, tupuna (springs) and coastal waters which are significant areas of mahinga kai or other customary uses)

1.8. Ngai Tahu have undertaken a GIS based mapping project that identifies known sites of significance to Māori and consider that these sites should be specifically provided for in the proposed Plan. This information has been provided to the Council in electronic form, and the submission process has been used to seek to have those provisions included in the Plan. Submissions were publically notified and people were able to make further submissions in response.

1.9. A number of publically available documents (including some statutory instruments) provide information about sites with significant cultural values including many of the SoNTCS identified in the Ngai Tahu submission. These sources include:
- Operative Christchurch District Plan vol 2 Chapter 5 – mapped areas and sites of early maori occupation and resource areas of significance to tangata whenua
- Operative BPDP includes silent files, marae, statutory acknowledgement areas, known archaeological sites and urupa on the maps, and a restricted discretion activity rule, which with specific exceptions, controls any activity involving earthworks, planting or removal of trees, or the establishment of any building or structure²
1.10. The Operative Natural Resources Regional Plan (Chapter 2)\(^3\) NRRP pg 2-8 refers to Silent files as identified in Te Maire Tau (et al.). 1990 Te Whakatau Kaupapa, and references statutory acknowledgement areas. The plan must not be inconsistent with a regional plan\(^4\).

1.11. Christchurch City Council has engaged with Ngai Tahu via the Rūnanga Focus Working Group\(^5\) The Council’s RMA s.32 report states that meetings and workshops were held throughout 2014 and into early 2015.

1.12. The Revised Proposal is limited to those areas identified as silent files that are included in the Plan. These do not include all known and documented SoNTCS.

1.13. The SoNTCS in the Ngai Tahu Proposal were identified by a different process than that used for the other ‘RMA s.6 sites’ that were identified in the Plan. To develop the SoNTCS, Ngai Tahu undertook an assessment of existing documented information including Cultural Impact Assessments, archaeological association sites, and silent file areas, to identify the Wahi Tapu/Taonga sites. These were then discussed with Runanga representatives on an individual basis. The starting point for the nga turanga tupuna sites is that the whole district is a landscape that has cultural values, but in the RFWG discussions this was narrowed to areas of particular sensitivity.

1.14. The mapped SoNTCS have been identified because of a concern that they require recognition, restoration or protection from the impacts of activities associated with land use and subdivision. Most importantly the general location of known sites of significance are shown on maps and as such it is clear that there are matters to be addressed as part of an application for consent.

**Community/stakeholder engagement**

1.15. The SoNTCS are divided up into three different types that reflect the values (Wāhi Tapu and Wāhi Taonga; Nga Tūranga Tupuna; and Nga Wai). These are described in the evidence of Kyle Davis.

1.16. Many of the sources used to identify and map the cultural values are readily available to the public, or have been the subject of a statutory process under different legislation.

1.17. Some sites are identified as silent files in operative planning documents (BPDP and NRRRP), and have been the subject of the RMA Schedule 1 process.

1.18. The Iwi Management Plan includes silent files that were identified at the time that plan was written and is readily available on the website, noting that the extent of the SoNTCS is not the same as the area covered by the silent files.

1.19. The Heritage NZ List is also a publically available statutory document, and as part of the process of including a site on the list, the land owner and the council must be notified and have the opportunity to comment\(^6\). The process for including Wahi Tapu sites on the


\(^4\) RMA s.75 (4)

\(^5\) The Rūnanga Focus Working Group (RFWG) includes a representative from each of the 6 Papatipu Rūnanga in the Christchurch District.

\(^6\) Historic Places Act 1983 (relevant at the time the sites were registered) s.25(3) If satisfied that the proposal is supported by sufficient evidence, the [Maori Heritage] Council shall

(a) publicly notify the proposal for registration in such manner as the Maori Heritage Council Council considers appropriate; and

(b) give notice in writing of the proposal to:

(i) the owner of the wahi tapu concerned; and

(ii) the relevant territorial authority and regional council; and

(iii) every person having a registered interest in the wahi tapu; and
register is prescribed in the legislation, and at the time the sites mapped by Ngai Tahu were registered the requirement was to specify the general location and nature of the wahi tapu.

1.20. The HNZ process does not duplicate the RMA plan process, and inclusion on the HPT list does not remove the need for protection under the district plan because the List is an information only tool. The RMA anticipates that District and Regional Plans will provide the recognition and protection of those sites. Those wahi tapu sites that are in the NZ Historic Places register are not subject to a regulatory process under Heritage New Zealand Pouhere Taonga Act unless they are also a pre-1900 archaeological site.

1.21. Other sources of information include the New Zealand Archaeological Association site recording scheme available on the internet, and the Ngai Tahu Settlement Act identified statutory acknowledgement areas that are also included in the NRRP.

2.0 Significant Resource Management Issues

2.1. There are significant resource management issues arising from RMA s.6, s.7 and s.8, the NPS-FW, NZCPS and the Canterbury RPS. These are:

- Recognising and providing for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;
- Having particular regard to kaitiakiatanga;
- Recognising and providing for the cultural values of tangata whenua in resource management processes;
- Protecting historic heritage (including archaeological sites) from inappropriate subdivision, use, and development.

2.2. The subdivision, use and development in SoNTCS has the potential to have significant adverse effects on cultural values. The RMA and higher order planning documents require that the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; and the protection of historic heritage from inappropriate subdivision, use and development is recognised and provided for; and that particular regard is given to the exercise of kaitiakitanga in the Christchurch Replacement Plan.

3.0 Evaluation of additional Objectives 9.0.1.1 and 9.0.1.2

Statutory context

3.1. RMA s.6 directs all those with functions and powers under the Act to recognise and provide for matters of national importance when managing the use, development, and protection of natural and physical resources. Key to the provisions proposed by Ngai Tahu are RMA s.6 (particularly s.6(e) and (f)); RMA s.7(a) and (aa), and RMA s.8. The definition of historic heritage in section 2 of the RMA includes archaeological sites and sites of significance to Māori, including wahi tapu.

(iv) the appropriate iwi.
3.2. In preparing the Replacement Plan particular regard is to be had to the Statement of Expectations. The Plan is to give effect to the NZCPS and NPS-FW, and consistency is to be achieved with the Strategic Directions and Outcomes, the LURP and the Christchurch Central Recovery Plan. Regard is to be had to iwi management plans, the Heritage NZ list (register), management plans and strategies prepared under other Acts, including Conservation Management Strategy and Conservation Management Plans, Council’s Public Open Space Strategy 2010 - 2040, and the Council’s Surface Water Strategy 2009.

Strategic planning framework

Statement of Expectations

3.3. In considering whether it is appropriate to include specific Objectives and Policies in the plan to address the above significant resource management issue regard has been had to the Statement of Expectations. The Objectives are to articulate how decisions about resource use are to be made, and the intention to recognise and provide for the protection of areas that have cultural significance is clearly stated. The level of specificity in the Objectives, Policies and maps and use of clear language (with the assistance of definitions), promotes efficient consent processing. To a degree the maps provide investment certainty because the areas where significant cultural values are known to be located are identified and it is clear to the applicant when information on cultural values is relevant to a consent decision, and who to obtain opinions from about possible management of any potential adverse effects of activities on cultural values.

Strategic Directions and Outcomes

3.4. The Strategic Directions and Outcomes decision identify Objectives 3.3.1 and 3.3.2 as overarching Objectives, and includes two Objectives 3.3.3 and 3.3.9 that directly refer to values of interest to Ngai Tahu.

3.5. Table 2 of summary table attached below, illustrates this evaluation in more detail.

NZ Coastal Policy Statement (NZCPS)

3.6. There are a number of relevant objectives and policies in the NZCPS 2014. A number of the SoNTCS identified in the Ngai Tahu submission are within the coastal environment. Relevant provisions include NZCPS Objective 3 which draws on the Treaty of Waitangi and is to recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by incorporating mātauranga Māori into sustainable management practices; and recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.

3.7. NZCPS Policy 2 includes recognising the importance of Māori cultural and heritage values through such methods as historic heritage, landscape and cultural impact assessments; and 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

7 Recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; and the protection of historic heritage from inappropriate subdivision, use, and development; and providing for kaitiakitanga.
pā or fishing villages. NZCPS Policy 2 has relevance to all three areas identified on the maps.

3.8. Another relevant policy, NZCPS Policy 6h is to consider how adverse visual impacts of development can be avoided in areas sensitive to such effects, such as headlands and prominent ridgelines, and as far as practicable and reasonable apply controls or conditions to avoid those effects. Policy 6h has particular relevance to Wahi tapu and Nga Tūranga Tupuna.

**NPS Fresh Water Management (NPS-FW)**

3.9. The NPS-FW 2014 is relevant to those areas identified as Nga Wai, and to sustainable management of land use and use of surface water that may have adverse effects on water and freshwater ecology. NPS FW 2014 section D deals with Tāngata whenua roles and interests and is to ensure that tāngata whenua values and interests are identified and reflected in the management of fresh water and freshwater ecosystems in the region.

**Canterbury Regional Policy Statement (Canterbury RPS)**

3.10. The Canterbury RPS and the Strategic Directions and Outcomes both have objectives that are targeted at the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga; and the protection of historic heritage from inappropriate subdivision, use, and development.

3.11. The Canterbury RPS includes numerous objectives and policies that manage the relationship of Maori with natural resources, and directs the territorial authorities to work with Ngai Tahu to identify areas of cultural significance and include methods to protect those areas in their plans. Among other things, these direct the council to:

- include methods for the protection of Ngāi Tahu ancestral lands, water, sites, wāhi tapu and other taonga within district plans,
- engage with Te Rūnanga o Ngāi Tahu and the appropriate papatipu rūnanga to ensure adverse effects of activities on culturally significant sites are avoided, remedied or mitigated; and
- consider the protection of Ngāi Tahu ancestral lands, water sites, wāhi tapu and other taonga in the processing of resource consents. 8

3.12. In preparing a plan, regard is to be had to the following:

- Heritage NZ Register 9
- Canterbury Conservation Management Strategy 10
- Takapuneke Conservation Management Plan 11

3.13. Council must take into account the following relevant iwi management plans 12:

- Kura Taiao Iwi Management Plan (including silent files)

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8 CRPS 4.3.15-19 and also see section 13 of the RPS for a comprehensive framework of objectives and policies relating to the protection of SoNTCS and section 7 of the RPS which deals with the protection of freshwater with cultural values and the corresponding duties of local authorities
9 RMA s.74(2)(b)(iiia)
10 RMA s.74(2)(b)(ii)
11 RMA s.74(2)(b)(i)
12 RMA s.74(2A)
3.14. Other sources of information are:

- New Zealand Archaeological Association site recording scheme
- Sites identified in the NTCSA 1998

4.0 Conclusion - Evaluation of Objectives 9.0.1.1, 9.0.1.2 and 9.0.1.3

Are the Objectives the most appropriate way to achieve the purpose of the Act?

4.1. The Objectives promote cultural well-being while managing the use, development and protection of natural and physical resources of significance to Ngai Tahu in terms of the matters in RMA s.5, in particular RMA s.5(a) and (c).

4.2. Objectives 9.0.1.1 to 9.0.1.3 deal with matters of national importance in RMA s.6, matters to have particular regard to in RMA s.7 and a requirement to take into account the Treaty of Waitangi in RMA s.8. Article two of the Treaty promised to uphold the authority that tribes had always had over their lands and taonga.

Do the Objectives have regard to the Statement of Expectations

4.1. The proposed specific Objectives and Policies are within Council’s functions and are necessary to ensure RMA s.6, 7 and 8 matters are addressed. Reliance on resource consent processes is not reduced, but the matters that may be relevant are clarified.

4.2. Under the operative Christchurch City Plan, when a consent is required for an activity which is controlled by zone rules, then consideration of potential adverse effects on cultural values may occur as part of the RMA s.104 consideration of any application for a discretionary activity. This is not always explicit in the operative City Plan and there can be uncertainty for plan users and consent applicants.

4.3. Under the operative BPDP silent files are identified, and rules are included that require resource consents to be obtained for specific activities in those areas.

4.4. Identifying where cultural values might be a relevant matter relies in part on silent files under the operative BPDP, and statutory acknowledgement areas triggering affected party requirements.

4.5. The SoNTCS maps are more accessible and cover additional areas. The information on the location of known sites is drawn together in one place and included within the plan which gives greater certainty for plan users and consent applicants, while also recognising and providing for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; and the protection of historic heritage from inappropriate subdivision, use, and development; and providing for kaitiakitanga.

4.6. The overall approach sought to regulate activities with potential adverse effects in SoNTCS to be assessed through the resource consent process is consistent with the approach for other significant or outstanding RMA s.6 values in the notified version of Proposal 9.
4.7. Internal consistency within the plan is important, as is the need to deal with the potential for duplication. The types of activities that would have potential adverse effects on cultural sites differ from those activities that have potential adverse effects on indigenous vegetation, landscapes and the coastal environment.

4.8. A key method to implement the Objectives and Policies is mapping the SoNTCS, so that it is explicit in the plan where those known areas are. A site identified on the planning maps as nga turanga tupuna, nga wai, wahi tapu or wahi taonga, is identified as an area that is culturally significant to Ngai Tahu manawhenua. The mapped SoNTCS include large areas and the degree of existing regulation under the operative plans varies depending on the site.

4.9. The mapped SoNTCS are more extensive than the silent file areas identified in the Council’s Revised Proposal. The Council’s Revised Proposal only included silent files from the operative plans and not other known sources. The silent file areas referred to in the Revised Proposal are also different from those in the Iwi Management Plan. While the maps alone have no regulatory impact, the rules associated with the sites will do so. The regulatory impact of the proposed SoNTCS provisions when compared with the operative plans varies because different regulatory approaches were taken in the two operative plans.

4.10. Areas identified as silent files that are within the jurisdiction of the operative BPDP are already subject to regulation in that plan which requires consideration of effects on Ngai Tahu cultural values. Other areas included in the SoNTCS would only be the subject of an assessment of effects if the activity triggered the need for a consent under a restricted discretionary activity rule where the matters of discretion included silent files, or the general considerations under a discretionary or non-complying activity rule.

4.11. While the SoTCS map additional sites and identify areas that were not previously covered in the operative plans, the rule framework in the Ngai Tahu Proposal has sought to achieve a more targeted approach. There are activities (such as earthworks to previously excavated depths) that are permitted within these areas which would have been subject to consent under the operative BPDP. Including maps in the Replacement Plan makes it clear where plan provisions apply, and that specific cultural values are to be considered as part of a resource consent application.

4.12. Tables 1 and 3 of 9.0 summary table attached7.0 below, also illustrates this evaluation in more detail.

Are the Objectives consistent with the Strategic Directions and Outcomes

4.13. The Strategic Directions and Outcomes, which are directly relevant to the plan provisions that recognise and provide for SoNTCS are 3.3.1, 3.3.2, 3.3.3 and 3.3.9.

4.14. The Objectives (and Policies) that specifically manage effects on SoNTCS implement, and are generally consistent with the following Strategic Directions and Outcomes:

3.3.1 Objective - Enabling recovery and facilitating the future enhancement of the district.

The proposal to include specific plan provisions that recognise and provide for SoNTCS is consistent with the Strategic Directions and Outcomes that deal with meeting the community’s immediate and longer term needs for cultural wellbeing; and sustaining the important qualities and values of the natural environment.
3.3.2 Objective - Clarity of language and efficiency

The proposal to include specific plan provisions that recognise and provide for SoNTCS is consistent with the Strategic Directions and Outcomes that deal with the clear and efficient language. The Objectives and Policies that specifically manage effects on SoNTCS clearly state the outcomes intended; and use clear, concise language, and are supported by definitions as needed.

4.15. Objectives 9.0.1.1 and 9.0.1.2 in the Council’s Revised Proposal are consistent with the Strategic Direction and Outcomes 3.3.3 and Objective 3.3.9.

3.3.3 (d) Ngāi Tahu Manawhenua’s historic and contemporary connections, and cultural and spiritual values, associated with the land, water and other taonga of the district are recognised and provided for; (e) Ngāi Tahu Manawhenua can retain, and where appropriate enhance, access to sites of cultural significance; and (f) Ngāi Tahu Manawhenua are able to exercise kaitiakitanga.

3.3.9 (b) Important natural resources are identified and their specifically recognised values are appropriately managed; and (c) Objects, structures, places, water/wai, landscapes and areas that are historically important, or of cultural or spiritual importance.

4.16. Tables 1 and 4 of 9.0 summary table attached7.0 below, illustrates this evaluation in more detail.

Are the Objectives consistent with the National Policy Statements?

4.17. The NZCPS 2010 and the NPS-FW 2014 contain a number of relevant objectives and policies that are to be given effect to by the Replacement Plan. The recognition of, and provision for, Māori values and mana whenua interests are integral to the provisions in both National Policy Statements and in this regard the Objectives of the Ngai Tahu Proposal are consistent with the relevant National Policy Statements.

4.18. Table 4 of 9.0 summary table attached7.0 below, illustrates this evaluation in more detail.

Are the Objectives consistent with the Canterbury RPS?

4.19. The Objectives of the Ngai Tahu Proposal give effect to the Canterbury RPS, and address the significant resource management issue in accordance with the statutory and planning framework.

4.20. There are a number of relevant provisions in the Canterbury RPS. The Canterbury RPS should be read as a whole. The primary theme running throughout this higher order planning document is to direct the council to include methods in the district plan for the protection of Ngāi Tahu ancestral lands, water, sites, wāhi tapu and other taonga. These methods are not limited to cultural landscapes. In addition, significant historic cultural and historic heritage landscapes are to be protected from inappropriate subdivision, use and development, and the Council when exercising its functions (which include preparing a plan and making decisions on consents) is to engage with Te Rūnanga o Ngāi Tahu and the appropriate papatipu rūnanga to ensure adverse effects to culturally significant sites are
avoided, remedied or mitigated. Freshwater values, and in particular, cultural values associated with freshwater are also to be protected.\(^\text{13}\)

4.21. The Canterbury RPS method for identifying sites and consideration for including them in the Replacement Plan, was not prioritised in the period covered by the operative district plan and there is limited implementation in Proposal 9 as notified.

4.22. Tables 3 and 4 of 7.0 below, illustrates this evaluation in more detail.

5.0 Evaluation

Revised Objectives and Policies

5.1. The sustainable management of SoNTCS and the recognition and protection of such sites will depend on an operative district plan that includes provisions for those areas.

5.2. Objectives 9.0.1.1 and 9.0.1.2 in the revised version of the Council’s Revised Proposal better recognise and provide for Ngai Tahu’s aspirations, historic and contemporary connections, and cultural and spiritual values, associated with the land, water and other taonga, and the exercise kaitakitanga than Proposal 9 as notified. The Objectives are implemented by appropriate policies.

5.3. The inclusion of maps and associated Objectives, Policies and rules is considered to be consistent with the Strategic Directions and Objectives 3.3.3 and 3.3.9 that are targeted at the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

5.4. The Ngai Tahu Proposal includes mapped sites and rules that apply to a significantly larger numbers of properties, but these are considered necessary to ensure the amended Objectives are achieved.

5.5. The proposed provisions do not significantly reduce regulation when compared with the operative plan in the overall sense. Greater specificity in mapping SoNTCS has the potential to reduce uncertainty in those areas outside of the mapped SoNTCS when an application for a discretionary activity triggers RMA s.104 considerations. Where silent files are already identified in the operative plan, the level of regulation over those areas remains the same or is reduced for some activities.

5.6. As with the other RMA s.6 matters, the Ngai Tahu Proposal to identify SoNTCS on maps along with rules to control adverse effects of activities does increase the level of regulation over some activities.

5.7. The protection of significant cultural values is provided for through regulating specific activities using rules that trigger an assessment as part of an application for consent and activity specific rules that provide for permitted activities. This is to ensure particular regard is had to significant cultural values. Mapping significant sites promotes efficiency in planning and consenting processes. The approach gives effect to the Canterbury RPS provisions that direct local authorities to include methods for the protection of Ngāi Tahu ancestral lands, water, sites, wāhi tapu and other taonga within district plans.

\(^{13}\) See section 7.0 of the RPS
5.8. To be comprehensive and effective, the Replacement Plan should include maps of all known SoNTCS, together with robust objectives and set of policies that clearly articulate how decisions about resource use and values will be made. As not all sites are known, a policy is needed that promotes a relationship between Ngai Tahu and the Council (as envisaged in the CRPS) working to identify significant sites and a process that enables active participation in decision-making; recognises Ngai Tahu’s aspirations, reflects Ngai Tahu’s culture and identity, historic and contemporary connections, and cultural and spiritual values, associated with the land, water and other taonga, and the exercise kaitiakitanga (as envisaged in the Strategic Directions and Outcomes).

6.0 Methods to implement the Objectives and Policies

6.1. The Council functions that apply to sustainable management of natural and physical resources include, but are not limited to, those areas that are significant and are under threat from activities that have potential adverse effects.

6.2. The additional Objectives 9.0.1.1 and 9.0.1.2 and Policies 9.0.2.1 are not limited to mapped or significant cultural sites. The Objectives and Policies are intended to guide decisions for cultural values where these occur. Recognising and providing for the historic and contemporary relationship of Ngāi Tahu mana whenua with their ancestral lands, water, sites, wāhi tapu and other taonga; and the maintenance and enhancement of natural character and Ngāi Tahu cultural values associated with water bodies, wetlands, springs (tupuna) and the coastal environment.

6.3. The options for implementing the additional Objectives 9.0.1.1 and 9.0.1.2 are:

1) Option 1 (ie the Ngai Tahu Proposal). Include maps showing the SoNTCS (as identified in the submission) in the Replacement Plan along with Policies and targeted rules to control inappropriate use and development

2) Option 2 Identify those SoNTCS that are already subject to rules that control activities in tables 9.1, 9.2 and 9.3, and include policies to ensure particular regard is had to those cultural values associated with the site when resource consents are applied for (no specific targeted rules). The approach relies on the general RMA s.104 provisions to deal with potential adverse effects on cultural values and SoNTCS.

3) Option 3 Include the SoNTCS (as identified in the submission) in the Replacement Plan along with Policies and rules to control inappropriate use and development as interim provisions until such time as an additional Proposal under the Replacement Plan Order In Council process that deals with the sites of Ngai Tahu cultural significance has been made operative.

4) Option 4 No change from Council’s revised proposal (include Objectives, Policies and only map the North Belfast silent file site 015 and the silent files already in the operative plan, the activities that are controlled by restricted discretionary rules are reduced and rules only apply in silent file areas; include a policy to work with Ngai
Tahu to identify sites of significance and include those through a future Schedule 1 plan change.

5) Option 5 Include Objectives and Policies in a new section 9.0, and specific restricted discretionary activity rules to control subdivision and earthworks in Proposal 8. Proposal 8.8.3 includes a restricted discretionary activity rule for earthworks in an identified silent file area; and district wide rules for subdivision (under the natural and heritage part). The Council planner has considered Option 5 and Ms Ferguson has concluded that this is not the most efficient and effective means of implementing the Objectives.

6.4. Options 4 and 5 are evaluated in Tables 1 – 3 in 9.0 summary table attached section 7.0 below.

7.0 Existing regulation and desired outcomes

7.1. There are different approaches that can be taken in a plan to manage future development pressure on natural and physical resources of cultural significance. Ngai Tahu’s submission sought changes to the provisions in the Replacement Plan so that there are clear Objectives and Policies, that significant cultural values are included on maps, and that the effects of specific activities in mapped areas can be assessed and considered as part of the resource consent process.

7.2. Option 1 relies on the maps identifying known significant cultural areas. The inclusion of maps provides certainty for lay people and plan users about where significant cultural values must be considered, where rules apply and where specified activities may be carried out without the need for a consent. The additional Objectives, Policies and maps assist with efficiency in the processing of applications for consent by being transparent about the need to avoid, remedy or mitigate actual or potential adverse effects on Ngai Tahu cultural values. Mapped sites provides a platform for targeted rules.

7.3. On the other hand, an option is to include maps and a default general rule that that applies in the interim, and requires a consent to be obtained so that cultural values can be assessed. The default rule applying until such time as a plan change that re-assesses the cultural values and mapped extent has been undertaken. This Option has not been progressed as it is considered to be less efficient than Option 1.

7.4. Option 4 (being the Council’s notified and Revised Proposal) transfers the silent files in the operative BPDP into the Replacement Plan, (with the addition of silent file site 015 at North Belfast). The Council’s Revised Proposal includes Objectives, Policies and a restricted discretionary activity rule for new buildings or additions to existing buildings; and earthworks within a silent file area. The additional Objectives and Policies are implemented through rules that are limited to mapped silent files.

Silent files
7.5. Silent files were identified in the operative BDBP, along with a restricted discretionary activity rule. There are differences between the size of the 'silent files' that are linked to the Council's Revised Proposal and those silent files in the Iwi Management Plan.

7.6. The broader grouping of sites of cultural significance which have been mapped as SoNTCS in the Ngai Tahu Proposal largely include the areas identified as 'silent files' in the operative BPDP. The areas mapped as SoNTCS in the Ngai Tahu Proposal also include additional areas that are not 'silent file' areas in either the iwi management plan or the BPDP. This is appropriate because in preparing the plan, regard is to be had to other statutory documents that include sites and areas of cultural significance to Ngai Tahu.

7.7. There are resource issues for consent applicants and financial implications, with both Option 1 (the Ngai Tahu Proposal) and Option 4 (the Council’s revised proposal). Option 1 (including SoNTCS maps and associated rules) identifies more areas that are of significant cultural value that are vulnerable to specific activities which are the subject of proposed rules. Activity specific permitted activity rules have been identified to enable activities where there is a minimal risk of adverse effects on the values within areas mapped as SoNTCS.

7.8. As with the plan provisions that recognise and provide for other matters in accordance with RMA s.6 (natural character, SES, ONL and historic heritage) along with maps, schedules and specific rules, it is also appropriate to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga in a similar, consistent manner.

8.0 Methods of implementation

8.1. The method of implementation proposed by Ngai Tahu is consistent with the approach taken in the other parts of Proposal 9. Activity specific permitted activities have been included, along with conditions that are considered to adequately control the potential for adverse effects on cultural values.

8.2. There is a degree of overlap between the provisions in SoNTCS, and the SES, coastal environment and ONL provisions that require an assessment of the adverse effects on the environment. Rather than relying on the consideration of the effects of an activity on cultural values in accordance with RMA s.104, the Restricted Discretionary activity rules in the Ngai Tahu submission are focused clearly on those particular activities which are likely to have potential adverse effects on cultural values. The intention is that activities are not the subject of unnecessary regulation while providing for the protection of areas with significant value to give effect to the directions to territorial authorities in the Canterbury RPS and to NZCPS, NPS - FW and RMA requirements.

Methods - Classification of rules

Rules

8.3. The rules proposed by Ngai Tahu have been written to focus the requirement for resource consent only where necessary to protect significant cultural values. A higher resource consent activity status for activities within sites identified on the maps as Wahi Tapu and Wahi Taonga may be appropriate if it can be demonstrated that such a rule would be more efficient and effective to achieve Objectives 9.0.1.1 to 9.0.1.3.
Permitted

8.4. Permitted activity rules are appropriate where the effects of the activity are known, and can be readily addressed in performance standards specified in the plan.

8.5. Appropriate permitted activity rules should address:

- Earthworks
- Fencing
- Removing any artefact or disturbing any archaeological site
- Planting or removal of vegetation, and
- Any activity undertaken within a papakāinga zone

Controlled

8.6. Controlled activities are appropriate when the activity is considered to be appropriate subdivision, use or development and the associated adverse effects on the environment are known and can be readily controlled with conditions. As notified, the Replacement Plan does not contain controlled activity rules. There may be an issue of internal consistency with activities controlled in the Zones, and other parts of the Plan.

Restricted Discretionary

8.7. Where effects are well understood and standards can be identified a Restricted Discretionary activity rule should be paired with appropriate permitted activities to avoid unreasonable regulation. Key to the test of reasonableness is the matters over which the Council retains discretion. These must be robust enough to ensure potential adverse effects on the cultural values identified are appropriately managed, and sufficiently clear to that distinguish between activities with no or minor adverse effects that can be addressed in permitted activity rules.

Discretionary

8.8. All matters can be considered under a Discretionary activity rule. Including such a rule would not be consistent with the Statement of Expectations to reduce regulation in comparison with the operative plans. As with a Restricted Discretionary activity, where effects are well understood and standards can be identified a Discretionary activity rule should be paired with appropriate permitted activities to avoid unreasonable regulation. A Discretionary activity rule needs to be pitched at activities that have the potential for adverse effects on cultural values identified within each of the three types of SoNTCS.

Non-complying

8.9. A non-complying activity rule ties an assessment of adverse effects to the Objectives and Policies in the plan (RMA s.105 tests). The other overlays in the Revised Proposal trigger a non-complying rule where the provisions deal with matters of national importance. A Non-complying activity rule would be consistent with management of other matters in chapter 9 (RMA s.6 matters) and provide a higher degree of protection for Wahi Tapu and Wahi Taonga.

8.10. A non-complying activity rule signals that an activity is generally considered to be inappropriate. Given the scale of the SoNTCS and the ability to identify and manage
potential adverse effects through targeted matters over which discretion is retained, a non-complying activity rule is considered to be unnecessary in this instance.

9.0 Methods to implement the Objectives - Options (Other practicable options)

Non-regulatory methods

9.1. Ideally a mix of regulatory and non-regulatory controls would implement the Objectives. Currently non-regulatory methods are being proposed by the Council as an interim method, and a commitment is made through a revised policy in the Council's Revised Proposal, and provision would need to be made through the annual plan and LTCCP processes.

9.2. Currently the operative BPDP¹⁴ includes the following provisions:

- Rate relief may be available for heritage items and archaeological sites which are protected by suitable long-term measures.

- For resource consent applications which are required solely in relation to the heritage protection controls associated with the provisions below, the Council shall:
  - waive application fees for non-notified applications (up to and including the release of Council’s decision),
  - reduce application fees for notified applications up to the comparable amount for non-notified applications, and will give consideration to waiving application fees over and above this:
    
    - ‘Silent file’ areas
    - Archaeological sites

11.0 Assessment of effectiveness, efficiency, benefits, costs, risk of not acting

Are the Policies and rules the most efficient means of achieving the Objectives

11.1. The identification of measures for SoNTCS and their incorporation into resource management processes and decision making are needed to ensure the revised Objectives in the Council’s Revised Proposal can be achieved. Maps along with specific rules provide clarity about matters that are relevant when cultural values are to be considered in the consenting process.

11.2. An additional policy is necessary to make a clear link between the maps and the planning framework in the Council’s Revised Proposal:

Policy 9.0.2.5

¹⁴ BPDP pg 78 Chapter 14 Method 3: Council Assistance
Kaitiakitanga, and the relationship of Ngai Tahu and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga, shall be recognised and provided for by managing natural and physical resources in sites of Ngai Tahu cultural significance identified on the maps in Schedule x in the manner set out in Policies 9.0.2.1 to 9.0.2.4

Costs and benefits

Costs

11.3. The cost of identifying and mapping the Sites of Ngai Tahu Cultural Significance has been carried by Ngai Tahu. The cost of on-the ground research to comprehensively identify all sites with cultural values in the district would be significant. Option 1 relies on existing knowledge and a two layer approach, with potential adverse effects on SoNTCS managed with targeted rules. Where unmapped, cultural values may be considered where activities require consent under other provisions unless constraints in the matters of discretion prevent that.

11.4. The potential costs of the plan provisions proposed by Ngai Tahu to recognise and provide for SoNTCS relate to whether or not a proposed activity would require a resource consent. There will be some additional costs to resource consent applicants to assess potential impacts on cultural values within mapped sites. In the event that an activity requires a resource consent the potential costs will relate to the significance and scale of actual and potential effects.

11.5. It is difficult to predict precisely what plan administration and resource consent applications will cost over the life of the Replacement Plan as a consent is only needed when a change in land use or development is proposed. Some of the SoNTCS are already identified in the operative plan, or are otherwise subject to consent requirements in the Replacement Plan (for example in rural areas where many activities require resource consent, or for those SoNTCS which overlap with SES, ONLs and the coastal environment), so additional costs in these instances are likely to be limited.

11.6. Non-financial costs can also be considered, and include the cost of loss or damage to significant cultural values.

Benefits

11.7. The costs are outweighed by the direct benefits to environmental, cultural and social well-being identified in the plan. The RMA requires that the council, in exercising its functions, recognise and provide for the matters of national importance. These include the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

11.8. A partnership or relationship approach is signalled in the Canterbury RPS, and in the Council’s Revised Proposal. It would be difficult to achieve the Objectives and Policies identified in the Council’s Revised Proposal 9 without the mapped SoNTCS identified in the Ngai Tahu submission.

11.9. The benefits to decision making and resource consent applicants of including maps that show where the location of the SoNTCS are located, include clearer obligations around
matters to be considered in decision making, and when consultation is required or additional specialist expertise and involvement is needed.

11.10. The benefits to environmental, cultural and social well-being by including provisions that clearly identify SoNTCS in the plan, are that the use, development, and protection of natural and physical resources is managed in a way which enables people and communities to provide for their social, economic, and cultural well-being, by placing value on the role and perspective of Ngai Tahu in the plan provisions.

11.11. Mapping the sites supports the Objectives and Policies and allows the plan to prescribe a level of regulatory control that corresponds with the scale and significance of the potential adverse effects of activities on Sites of Ngai Tahu Cultural Significance.

**Risk of not acting**

11.12. RMA s.32 requires an assessment of the risk of not acting. The effects of activities on natural and physical resources can be controlled in a plan prepared to assist the council to carry out its functions where there is a risk that the values, or extent of important natural resources, may be used or developed at a rate that requires intervention to ensure they are not diminished or lost, in order to achieve the sustainable management purpose of the RMA.

11.13. Risks of not acting include;

- a delay in recognition of sites in the plan and decision making, and
- the potential loss or damage to SoNTCS, and
- delay to the development and implementation of appropriate plan provisions, and
- failure to give effect to the Canterbury RPS, NZCPs, and NPS FW, and
- potential damage to the relationship with Ngai Tahu by not providing for the cultural values to be recognised and provided for in the plan, as part of the assessment in resource management processes.

**12.0 Decide most appropriate option**

12.1. Ngai Tahu have identified known sites of cultural significance on maps, and the Ngai Tahu submission includes Objectives and Policies to provide for appropriate management of the natural and physical resources within those sites. The inclusion of maps creates a platform for appropriate permitted activities and rules are proposed to support the consideration of cultural values in decisions on resource consents. The approach promotes consultation with relevant Runanga to determine the nature of the values and possible alternative approaches where there are sites of significance that may be adversely affected by activities. Where cultural values must be protected through the control of activities the provisions recognise and provide for the sustainable management of natural resources and the relationship of Ngai Tahu and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

**13.0 Conclusions**

**Relevant Objectives in the Replacement Plan**
13.1. The additional Objectives 9.0.1.1 to 9.0.1.3 address a significant resource management issue, and address a gap in the notified plan. Objectives and Policies are needed to be consistent with the Strategic Directions and Outcomes 3.3.3 and 3.3.9, and to give effect to the NZCPS 2010, the NPS FW 2014 and the Canterbury RPS.

13.2. As shown in the tables below, Option 1 when compared with the plan as notified, the additional provisions in the Ngai Tahu Proposal are necessary to address a significant resource management issue associated with cultural well-being, which has only partially been addressed in the Council's Revised Proposal.

For a summary of the options' consistency with the Statement of Expectations in Schedule 4 of the Order see Table 1 in 9.0Z.0 Section 32AA summary evaluation tables.

For a summary of the options against the Strategic Directions and Outcomes relevant Objectives 3.3.1; 3.3.2; 3.3.3; 3.3.9 see Table 2 in 9.0Z.0 Section 32AA summary evaluation tables.

For a summary of the options against the Canterbury RPS Objectives and Policies see Table 3 in 9.0Z.0 Section 32AA summary evaluation tables.

For an overall summary of the evaluation of Option 1 (Ngai Tahu's Proposal) see Table 4 in 9.0 summary table attached below.

13.3. The additional Objectives and Policies provide a clear and efficient policy framework with which decision-makers and plan users can assess proposed activities that may affect sites with significant cultural values. The Objectives must be implemented with appropriate policies and methods.

13.4. The inclusion of maps and focused rules to control potential adverse effects on those SoNTCS is a more efficient and effective method for addressing the significant resource management issue than Proposal 9 as notified.

13.5. The level of regulation provided in the operative plans, compared to the rules in the Ngai Tahu Proposal, is increased in most instances. The additional SoNTCS provisions improve transparency and have potential to reduce complexity. The level of regulation will reduce in some areas when compared with the operative BPDP silent files provisions, as the permitted activities reduce the need to consider cultural values for specified activities.

13.6. Overall the level of regulation may be increased in some parts of the Christchurch District, and in others it is similar or less than the current requirements under the operative and notified plan provisions.

13.7. The additional Objectives 9.0.1.1 and 9.0.1.2 are useful in achieving the purpose of the RMA as they:

- are broadly consistent with some of the Statement of Expectations and Strategic Directions and Outcomes; in particular those provisions that deal with the community’s immediate and longer term needs for cultural well-being, and sustaining the important qualities and values of the natural environment; to prepare a plan that sets objectives and policies that clearly state the outcomes intended; and uses clear, concise language so that the District Plan is easy to understand and use; and that recognises and provides for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;
• Give effect to the NZCPS 2010, NPS FW 2014 D1, and Canterbury RPS; and
• Provide clear, consistent and comprehensive direction on the outcomes sought to be achieved

13.8. The Objectives are more efficient and comprehensive than the notified version of Proposal 9, and better achieve the purpose of the RMA.

13.9. The inclusion of maps would assist the implementation of plan provisions, and ensure that the need to consider cultural values in decisions on resource consents is transparent.

13.10. Regulation of specific activities is necessary to achieve the Objectives and to ensure that particular regard is had to cultural values through resource consent processes. Appropriate permitted activities are identified where the potential adverse effects can be identified, are known and can be controlled by conditions.

Evaluation of preferred Option (Option 1 – Ngai Tahu Proposal)

<table>
<thead>
<tr>
<th>Statutory requirement</th>
<th>Criteria</th>
<th>Option 1</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Include maps of SoNTCS, specific rules that apply to all SoNTCS</td>
</tr>
<tr>
<td>General quality criteria</td>
<td>1.1. The proposed plan provisions are communicated in plain English, with minimal use of jargon and any technical terms are explained.</td>
<td>✓</td>
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<tr>
<td></td>
<td>1.2. The information was used in preparing the proposed plan provisions is from an appropriate source.</td>
<td>✓</td>
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<tr>
<td></td>
<td>1.3 The proposed plan provisions are structured in a way that is easy to understand and helpful to the reader.</td>
<td>✓</td>
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<tr>
<td></td>
<td>1.4. The material contained in the proposed plan provisions are concisely presented with minimal duplication, and references to more detailed evidence or source material, as necessary.</td>
<td>✓ (partial)</td>
</tr>
<tr>
<td>Scale and significance (s32)(1)(c)</td>
<td>2.1 The proposed plan provisions address the scale and significance of a resource management issue that must be resolved to promote the purpose of the RMA.</td>
<td>✓</td>
</tr>
<tr>
<td>Appropriateness of objectives to achieve the purpose of the Act (s32)(1)(a)</td>
<td>3.1 The proposed plan provisions link the objective with a resource management issue that must be resolved to promote the purpose of the RMA.</td>
<td>✓</td>
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<td></td>
<td>3.2 The proposed plan provisions link the objective with its intended outcome and the outcomes are achievable and within the Council’s powers under s30 &amp; 31 of the RMA.</td>
<td>✓</td>
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<td>3.3 The proposed plan provisions promote decisions that have regard to relevant matters and assist the overall broad judgment under Part 2 and sustainable management purpose of the RMA.</td>
<td>✓</td>
</tr>
<tr>
<td>Appropriateness of provisions to achieve the objectives (options) (s32)(1)(b)</td>
<td>4.1 The proposed provisions address a significant resource management issue and achieve the Objectives.</td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>4.2 The proposed policies and rules implement the objectives.</td>
<td>✓</td>
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</tbody>
</table>

9.07.0 Section 32AA summary evaluation tables attached.
(Corrected 3 February 2016)