

On behalf of J Swap Contractors Ltd (Daniel Murray) Response to Panel Questions

...”Following questions by Yvette Couch-Lewis during the presentation of J.Swap Contractor Limited’s evidence on Thursday 12th November, I undertook to research alternatives to the deletion of reference to Ngāi Tahu sites from permitted activity conditions in rules. This email provides that response – could you please pass back to the panel through the appropriate channels.

To firstly reiterate and expand on the points made in my evidence, reference to sites which are undefined or unmapped in the plan (not just Ngāi Tahu sites, but any sites) is fraught with potential difficulties, both for plan users proposing to undertake an activity, and for ECan in implementing and enforcing the plan. In my experience, conditions of this nature do not align with the basic principles of good plan formulation, where clarity and certainty are of the utmost importance. In my view, the likely outcome from a lack of specificity is that plan users may well conclude that their activity meets the permitted activity condition and, as they are entitled to do, simply proceed without any consultation with ECan or Ngāi Tahu or going through any consenting process. This results in the permitted activity condition being ineffective. Plan users may then be in a situation where either ECan or Ngāi Tahu considers the condition has been breached, but with no common reference point, debate would inevitably ensue. This potentially adds great uncertainty and cost for all parties, and means the permitted activity condition is inefficient.

I have thought through some potential solutions such as requiring the condition to refer to external documents which list sites of significance or at minimum provides a very clear framework for determining such sites. To be fair and reasonable, this would require that those external documents are statutory in nature and have been through a participatory process, e.g. the Canterbury Regional Policy Statement (RPS) or district plan. Currently the RPS does identify statutory acknowledgement areas, which could potentially be identified in a permitted activity condition in the Air Plan. However, the RPS does not identify any wāhi tapu, wāhi taonga or other sites of significance. The district plans have a mixed approach to identifying sites, meaning that reference to district plans in the Air Plan could result in an uneven implementation across the Canterbury region.

I have also thought about a condition which would require consultation with Ngāi Tahu to determine the sites in any given instance. However, this does not necessarily resolve uncertainty and simply adds cost and inefficiency to plan implementation and use.

Overall, my view remains the same as identified at the hearing. That is, I agree that maintaining suitable buffer distances from sites of significance to Ngāi Tahu is important, but to be a permitted activity condition, plan users must know what those sites are. My preferred solution would be to identify the sites in the Air Plan itself. However, the only fair way of introducing this would be through a plan change, so all users would have the opportunity to assess the impact on them and make submissions accordingly. In the interim, the continued existence of the remaining suite of permitted activity conditions throughout the rules in my view provides some level of comfort that any adverse effects on Ngāi Tahu interests will be adequately managed.”