

IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE

CIV-2021-412-089

UNDER the Declaratory Judgments Act 1908

IN THE MATTER of an application under the Declaratory Judgments
Act 1908

BETWEEN **OTAGO REGIONAL COUNCIL**
Plaintiff

AND **ROYAL FOREST AND BIRD PROTECTION**
SOCIETY INC
Defendant

AFFIDAVIT OF SANDRA JEAN McINTYRE FOR NGĀ RŪNANGA

Dated 22 December 2021

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I, Sandra Jean McIntyre, Planner, of Dunedin, sincerely and solemnly affirm:

INTRODUCTION

1. I am authorised by Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga, and Te Rūnanga o Ngāi Tahu (collectively **Ngā Rūnanga**), to give this affidavit in relation to these declaration proceedings before the High Court. The contents of this affidavit are true to the best of my knowledge and belief.
2. I hold the qualifications of Bachelor of Horticultural Science from Massey University and Master of Science in Resource Management (with honours) from Canterbury University. I have more than 30 years' experience in resource management planning and policy development at district, regional and central government levels, including experience in developing regional policy statement, district and regional plan provisions and in managing plan development and decision-making processes. This experience has included participating in and managing processes to ensure integration across decisions made on different parts of a plan.
3. I am currently employed as Principal Planner at Aukaha, a consultancy based in Otago and owned by Te Rūnanga o Waihao, Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga. My role at Aukaha is focused on freshwater planning.
4. I took a leading role in providing input on behalf of Kāi Tahu ki Otago to the Proposed Otago Regional Policy Statement (**PORPS**) throughout its development. This included:
 - (a) Facilitating discussions with papatipu rūnaka to develop the expression of Te Mana o te Wai that has been included in the Land and Freshwater – Te Mana o te Wai (LF-WAI) provisions in the PORPS, and to articulate aspirations that mana whenua sought to be incorporated in the Land and Freshwater Visions and Management (LF-VM) provisions;
 - (b) Leading the drafting of the section on Resource management issues of significance to iwi authorities (RMIA) on behalf of papatipu rūnaka;
 - (c) In collaboration with Te Ao Marama Inc (who work on behalf of Ngāi Tahu ki Murihiku), providing significant input into drafting of the Mana Whenua (MW) provisions; and

- (d) With other Aukaha staff, reviewing and providing comments on draft provisions across the PORPS.
5. I was then involved in the preparation of submissions and further submissions on the PORPS on behalf of Kāi Tahu ki Otago. I also sighted and commented on the submissions and further submissions of Te Rūnanga o Ngāi Tahu before they were filed. The submission of Kāi Tahu ki Otago is attached as **Exhibit 1** and the submission of Te Rūnanga o Ngāi Tahu is attached as **Exhibit 2**.
6. I have read the High Court Code of Conduct for Expert Witnesses. My evidence complies with the Code in all respects and the opinions herein are within my area of expertise.

SCOPE OF AFFIDAVIT

7. I have read the affidavits of:
- (a) Anita Jayne Dawe for Otago Regional Council (**ORC**);
 - (b) Dr Anna Louise Johnson for Dunedin City Council;
 - (c) Victoria Jane van der Spek for Waitaki District Council;
 - (d) Alyson Anne Hutton for Queenstown Lakes District Council;
 - (e) Ann Rodgers for Central Otago District Council;
 - (f) Andrew Kenneth Parrish for Canterbury Regional Council; and
 - (g) Claire Elizabeth Hunter for Oceana Gold New Zealand Limited.
8. In this affidavit I discuss:
- (a) The purpose of a regional policy statement;
 - (b) The drivers for the development of the PORPS;
 - (c) Involvement of Kāi Tahu ki Otago and Aukaha in development of the PORPS, and the approach taken to ensure the values and concerns discussed in the cultural affidavit are reflected in the PORPS;
 - (d) The relationship of the various parts of the PORPS to freshwater planning; and
 - (e) The appropriateness of the freshwater planning process to make decisions on the whole of the PORPS.

EXECUTIVE SUMMARY

9. My understanding is that the purpose of a regional policy statement is to provide an overarching framework for integrated environmental management in the region.
10. Following findings that ORC's existing framework for freshwater planning was inadequate, the Minister for the Environment recommended that ORC should undertake a complete review of its regional policy statement and develop a new land and water regional plan. At a similar time, the National Policy Statement for Freshwater Management 2020 (**NPSFM 2020**) was being developed, which strengthened and clarified the direction for freshwater management nationally and reinforced the importance of an integrated approach, ki uta ki tai.
11. Against this context, the PORPS was developed, which provides for an integrated resource management approach across the Otago region.
12. For Kāi Tahu there is no distinction between whenua and wai; wai māori is part of the whenua and they are inseparable. Similarly, the coastal environment cannot be separated from the whenua, or wai tai (coastal waters) from wai māori (freshwater).
13. I agree with ORC that the PORPS as a whole either gives effect to the NPSFM 2020 or relates to freshwater planning. At the chapter level, I consider there are clear connections to freshwater planning throughout the PORPS and I have provided examples in my affidavit.
14. Accordingly, I consider that if the provisions of the PORPS are to be effective as an "integrated package", it is important that the decision-making process that will decide the final version of the various provisions is able to consider how they work together. A segregated decision making process, where different parts of the PORPS are considered through different processes and at different times, would carry the very real risk that the PORPS does not end up as an integrated management package. This is likely to limit the ability to achieve freshwater outcomes and/or to address the way freshwater planning approaches could affect other activities.

THE PURPOSE OF A REGIONAL POLICY STATEMENT

15. As described in section 59 of the Resource Management Act (**RMA**), the purpose of a regional policy statement is to provide an overview of the resource management issues of the region, and policies and methods to achieve integrated management of the natural and physical resources of the region as

a whole. Clearly, the purpose of a regional policy statement is to provide an overarching framework for integrated environmental management in the region.

16. A regional plan and a district plan must give effect to a regional policy statement under sections 67(3)(c) and 75(3)(c) of the RMA respectively. The integration role of a regional policy statement is crucial to ensuring that the management approaches in regional and district plans are developed in a way that will work together towards common outcomes for significant resource management issues.
17. The objectives of the Integrated Management (IM) chapter in the PORPS identify key outcomes that are to be achieved through all resource management decision making,¹ and the policies provide direction on the approach to be taken to achieve these outcomes. Policy IM-P1 describes clearly how Otago Regional Council (**ORC**) intended the various provisions across the PORPS to be considered in relation to each other:

IM-P1 – Integrated approach

The objectives and policies in this RPS form an integrated package, in which:

(1) all activities are carried out within the environmental constraints of this RPS,

(2) all provisions relevant to an issue or decision must be considered,

(3) if multiple provisions are relevant, they must be considered together and applied according to the terms in which they are expressed, and

(4) notwithstanding the above, all provisions must be interpreted and applied to achieve the integrated management objectives IM-O1 to IM-O4.

18. In my opinion, if the provisions of the PORPS are to be effective as an “integrated package”, it is important that the decision-making process provides the decision makers the ability to consider how the relevant provisions work together.

¹ IM-O1 to IM-O4

DRIVERS FOR DEVELOPMENT OF THE PORPS

Skelton Report

19. The affidavit of Ms Dawe for the Plaintiff refers to the enquiry carried out by Professor Skelton into ORC's framework for freshwater planning.² The enquiry found that the existing planning framework for freshwater management was inadequate and recommended to the Minister for the Environment that ORC should undertake a complete review of its regional policy statement and develop a new land and water regional plan. The intent of this was to:³

develop a fit for purpose freshwater management planning regime that gives effect to the relevant national instruments and sets a coherent framework for assessing all water consent applications ...

20. The national instruments specifically referred to in the findings of the enquiry were the National Policy Statement for Freshwater Management 2017, the National Planning Standards and the Proposed National Policy Statement for Highly Productive Land.⁴ Professor Skelton also drew attention to work underway at the time of the enquiry on development of the National Policy Statement for Freshwater Management 2020 (**NPSFM 2020**), the National Policy Statement on Urban Development 2020 and a National Policy Statement for Indigenous Biodiversity.⁵
21. In reference to decision-making on a new regional policy statement, and in the context of the provisions for the freshwater planning process then being considered by the Environment Select Committee, Professor Skelton commented as follows:

Under section 59 of the RMA, the RPS must be designed to achieve 'integrated management of the natural and physical resources of the whole region.' This purpose is supported by the National Planning Standards requirements. If only the freshwater-related changes to the RPS are to be 'carved out' and sent to the freshwater planning process, then this could potentially undermine the integrated management structure of the RPS.⁶

² Investigation of Freshwater Management and Allocation Functions at Otago Regional Council. Report to the Minister for the Environment by Professor Peter Skelton, 1 October 2019.

³ Ibid., p 38, Recommendations 2 and 3.

⁴ Ibid., p. 35.

⁵ Ibid., p. 34, footnote 15.

⁶ Ibid., p. 35.

22. In response to Professor Skelton's Report, the Minister for the Environment recommended that ORC develop a new regional policy statement and a new land and water regional plan within the tight timeframe referred to in Ms Dawe's affidavit.

NPSFM 2020

23. Kāi Tahu ki Otago provided input to the Skelton Report, highlighting concerns about the narrow approach that had been taken in decision-making on freshwater management. Kāi Tahu ki Otago supported the findings in the report.
24. Since completion of the Skelton enquiry, the NPSFM 2020 has strengthened and clarified the direction for freshwater management and reinforced the importance of an integrated approach, ki uta ki tai. As part of this integrated approach:

Every regional council must make or change its regional policy statement to the extent needed to provide for the integrated management of the effects of:

(a) the use and development of land on freshwater; and

(b) the use and development of land and freshwater on receiving environments.⁷

25. The NPSFM 2020 also emphasises the role of tangata whenua in freshwater management and the requirement for tangata whenua involvement in freshwater planning and management at all stages, including in decision-making.⁸
26. ORC must prepare the PORPS in accordance with the NPSM 2020.⁹ The requirements of the NPSFM 2020 have been instrumental in both the process of developing the PORPS and the approach taken in its provisions.

INVOLVEMENT OF AUKAHA AND KĀI TAHU KI OTAGO IN DEVELOPMENT OF THE PORPS

27. Through the agency of Aukaha, Kāi Tahu ki Otago provided input to development of the PORPS at all stages. This included providing feedback on

⁷ NPSFM Clause 3.5(2)

⁸ NPSFM Clause 1.3(4)(a)-(c) and Clause 3.4. Note that Kāi Tahu prefer reference to mana whenua rather than tangata whenua in this context, as mana whenua relates directly to the authority and responsibility for the natural environment that arise from whakapapa.

⁹ Resource Management Act 1991, s 61(1)(da).

issues and policy approaches and commenting on draft provisions across the whole document.

28. Content was also provided on specific mana whenua interests and concerns, as follows:
- (a) The Resource Management Issues of Significance to Iwi Authorities (RMIA) were drafted by Aukaha with input from papatipu rūnaka and are aligned with the issues identified in the Kāi Tahu ki Otago Natural Resource Management Plan 2005.
 - (b) The Land and Freshwater (LF) objective for Te Mana o te Wai (LF-WAI-O1) and the explanation accompanying the LF-WAI provisions was developed through a workshop process with mana whenua. This process also provided a key source of input to development of the LF-WAI policies and methods.
 - (c) An overarching vision for freshwater management was also submitted to ORC from a mana whenua workshop, to be considered in development of long term freshwater visions. Further discussions were held with ORC to ensure that the mana whenua aspirations inherent in this overarching vision were appropriately reflected in the Freshwater Management Unit (**FMU**) visions included in the PORPS.¹⁰
 - (d) Aukaha was involved in drafting the Mana Whenua chapter to ensure Kāi Tahu values and interests in resource management are appropriately identified and ensure adequate provision for the role of mana whenua in resource management processes. A key aim in developing this chapter was to provide clear direction at the regional level to assist local authorities to interpret the requirements of sections 6(e) and 8 of the RMA in a way that appropriately recognises rakatirataka and enables the exercise of kaitiakitaka. Attention was also paid to ensuring the Mana Whenua provisions are consistent with the approach required in the NPSFM 2020.
29. In my opinion, the decision to proceed with a full review of the regional policy statement, rather than making narrower changes, has enabled a more integrated approach to be taken to ensure that matters throughout the document that affect (or are affected by) freshwater planning are dealt with in a

¹⁰ LF-VM-O2 to LF-VM-O6

holistic way. This is consistent with the Kāi Tahu approach to management of wai māori and te taiao described in the affidavit of Mr Ellison.

30. Kāi Tahu ki Otago lodged an extensive submission on the PORPS. This submission supports the overall approach in the PORPS but seeks amendments in some areas to better reflect mana whenua values, interests and concerns.
31. The importance of integrated management is a key theme in the Kāi Tahu ki Otago submission. For Kāi Tahu there is no distinction between whenua and wai; wai māori is part of the whenua and they are inseparable. Similarly, the coastal environment cannot be separated from the whenua, or wai tai (coastal waters) from wai māori (freshwater). The submission seeks greater integration in some places, particularly between the Land and Freshwater chapter and the Coastal Environment chapter.

RELATIONSHIP OF PORPS CHAPTERS TO FRESHWATER PLANNING

32. While I accept that there are individual provisions in the PORPS that do not have a clear link to freshwater, an individual provision cannot be effectively considered separately from the broader context of the package of objectives, policies and methods that it is part of.
33. I agree with ORC that the PORPS as a whole relates to freshwater planning. At the 'package' or chapter level, I consider there are clear connections to freshwater planning throughout the PORPS. I provide examples of these below.¹¹

Part 1 Introduction and General Provisions

34. Part 1 of the PORPS is largely contextual, except for the Mana Whenua chapter, which provides policy direction as discussed above.
35. I consider there is a close link between the Mana Whenua chapter and the provisions relating to freshwater, and in particular the concept of Te Mana o te Wai. The Mana Whenua chapter provides direction as to how the relationship of mana whenua to te taiao should be provided for, how rakatirataka should be recognised and how kaitiakitaka should be enabled. Mr Ellison, in his affidavit, discusses the rakatirataka and kaitiakitaka roles of mana whenua and comments that these sit at the heart of Te Mana o te Wai. As discussed above,

¹¹ Note that I have not undertaken a comprehensive review of all the provisions in the PORPS for the purposes of this affidavit. The examples I discuss are unlikely to represent the full extent of connections to freshwater planning across the PORPS.

the NPSFM 2020 also recognises the central role of mana whenua in giving effect to Te Mana o te Wai. The PORPS provisions relating to Te Mana o te Wai complement the policy direction in the Mana Whenua chapter and cross-refer to some of the Mana Whenua provisions.¹²

Part 2 Resource Management Overview

36. Part 2 of the PORPS sets out the resource management issues that are significant to the region and that are of particular significance to Kāi Tahu. Connections to freshwater management are apparent in the discussion of most of the issues identified, and concerns relating to the lack of an integrated approach between management of freshwater and other matters are identified throughout the RMIA section. I reference some of these in my comments on Part 3 below.
37. Part 2 also includes the Integrated Management (IM) chapter. As discussed above, this chapter provides direction to achieve important outcomes across all resource management decision-making. The outcomes and the approaches to achieve these are closely linked to NPSFM 2020 requirements. Some provisions (for example IM-O2 and IM-O3) relate directly to provisions in Clause 3.5 of the NPSFM 2020, while other provisions reflect other NPSFM 2020 requirements, or provide direction that will assist in giving effect to the NPSFM, while also having relevance beyond freshwater management.
38. The Integrated Management chapter also includes provisions to respond to climate change. Climate change impacts on wai māori are identified in the RMIA section as a concern to Kāi Tahu.¹³ Such impacts may include changes in river flows and lake levels, modification of wetland and estuarine ecosystems, and changes in water quality due to increased temperature. In my view, the potential effects of climate change reach into all parts of te taiao, and I note that the Kāi Tahu ki Otago submission seeks better recognition of this in specific policies and methods across other parts of the PORPS.

Part 3 Domains and Topics

39. Part 3 of the PORPS sets out provisions for the various parts of te taiao and for some specific resource management topics. Mr Ellison's affidavit discusses the interconnections between wai māori and other parts of te taiao, and the concerns that arise when these connections are not properly recognised. Some

¹² See LF-WAI-P2 and LF-WAI-M1

¹³ RMIA-AA-I1

examples of relationships between the various topics and freshwater planning are offered below.

AIR Air

40. Although the connection between the provisions of the Air chapter and freshwater management is not immediately obvious, there are relationships that are of concern to Kāi Tahu. RMIA-I1 comments that air is an integral part of the environment and the cultural impacts of adverse effects on air are seldom recognised. Deleterious cultural impacts of air discharges may be associated with other discharges to land or water and may affect mahika kai, wai tapu and wāhi tūpuna that are located in and dependent on fresh water environments. Mahika kai values are required to be considered in the FMU processes of the NPSFM 2020; if, for example, spray drift or an offensive odour associated with inadequate treatment of animal effluent and human sewage discharges makes a mahika kai site unusable, this may prevent achievement of FMU objectives.

CE Coastal Environment

41. In his affidavit, Mr Ellison refers to the interconnection between wai māori and the coastal environment and describes effects that arise when this is not adequately recognised. Such effects are also identified in the Coastal Environment part of the RMIA section; for example, RMIA-CE-I1 refers to effects on mahika kai through a lack of integrated management across the coastal marine area boundary, including impacts on fish migration. The NPSFM 2020 also specifically recognises the need for freshwater management to incorporate consideration of the receiving coastal environment.¹⁴
42. The need for an interconnected management approach between coastal, freshwater and terrestrial systems is spelt out in the principal reasons for the provisions in this chapter.¹⁵ The importance of this to Kāi Tahu ki Otago is reflected in their submission, which seeks better integration and connectivity between coastal and fresh water management in a number of places.

LF Land and Freshwater

43. There is no need to comment on the relevance of the freshwater provisions in the Land and Freshwater (LF) chapter. There are also connections to freshwater planning in the Land and Soils part of the chapter (LF-LS).

¹⁴ NPSFM 2020 Clause 1.5

¹⁵ CE-PR1

44. Objective LF-LS-O12 specifically seeks to achieve freshwater outcomes through management of land use, and a number of policies and methods provide directions as to how this is to be achieved.¹⁶ I note that the Kāi Tahu ki Otago submission seeks some further direction in this respect, particularly in relation to management of riparian areas. Other submitters are seeking that the availability of water is included as a criterion for identification of highly productive soils;¹⁷ application of this criterion would clearly need to be linked to planning for water allocation.

ECO Ecosystems and Indigenous Biodiversity

45. Mr Ellison has discussed the connection between freshwater management and the health of taoka species and their habitats. Kāi Tahu concerns related to this are also identified in the RMIA section.¹⁸ The central role of mahika kai in Kāi Tahu identity, and the kaitiaki duty toward indigenous species and habitats, is tightly bound to the need to protect the health and well-being of water bodies and freshwater ecosystems.
46. The PORPS recognises that management of indigenous biodiversity and ecosystems, including the Kāi Tahu role as kaitiaki, are inseparable from the management of fresh water under an integrated approach.¹⁹ The responsibilities of local authorities outlined in ECO-M1 specify the requirement for managing indigenous biodiversity both within and on the margins of wetlands, lakes, and rivers. This management requirement for indigenous species and habitats also relates to and is reflected strongly in PORPS freshwater provisions.²⁰

EIT Energy, Infrastructure and Transport

47. In Otago, there is a clear connection between provision for energy generation and freshwater management, given the prominence of hydroelectricity generation in the region. The PORPS renewable energy provisions require regional and district plans to manage the adverse effects on freshwater environments of developing or upgrading renewable electricity generation activities,²¹ and the principal reason accompanying the provisions notes:

¹⁶ LF-LS-P16, LF-LS-P18, LF-LS-P20, LF-LS-P21 and related methods

¹⁷ For example submissions of Toitū Te Whenua Land Information New Zealand (submission point 00101.044), Waitaki Irrigators Collective Limited (submission point 00213.023)

¹⁸ RMIA-WAI

¹⁹ ECO-P10(2)

²⁰ For example LF-WAI-P3(3), LF-VM objectives, LF-FW-O8 and LF-FW-O9

²¹ EIT-EN-M1, EIT-EN-M2

*The ability of existing energy generation activities to continue operating is dependent on access to resources such as water in hydro lakes ...*²²

48. Development and operation of infrastructure and transportation networks is also interconnected with freshwater management due to the need to consider impacts on freshwater environments through physical modification of these environments and, for road networks and infrastructure such as wastewater and stormwater systems, discharges of water or contaminants. This interconnection is recognised in several places in the infrastructure and transport provisions.²³

HAZ Hazards and Risks

49. The RMIA section identifies Kāi Tahu concerns about the impacts of channel modifications and river works associated with natural hazard management structures. These can adversely affect the natural functioning of rivers and the species and habitats the rivers support.²⁴ There is therefore a clear connection between the approach to managing natural hazards and the freshwater provisions seeking to sustain the natural form and function of water bodies.²⁵
50. The Hazards and Risks (HAZ) chapter also includes provisions for management of contaminated land. The effects of poor management and disposal of contaminated land include leaching or surface runoff of contaminants onto water, with consequent impacts on water quality.

HCV Historical and Cultural Values

51. As discussed in Mr Ellison's affidavit, water bodies are the central unifying feature that connects wāhi tūpuna. There are many sites recognised as having cultural, archaeological or historic heritage value that are associated with water bodies across Otago. The integral connection of freshwater management and wāhi tupuna is recognised in the PORPS freshwater visions,²⁶ and the Kāi Tahu ki Otago submission on the PORPS seeks better recognition of this in the wāhi tūpuna and heritage provisions.

NFL Natural Features and Landscapes

52. Natural features and landscapes are the result of natural processes, including hydrological processes. Their attributes and values also often derive from the

²² EIT-EN-PR1

²³ For example EIT-INF-P13, EIT-INF-M4, EIT-INF-M5, EIT-TRAN-M7

²⁴ RMIA-WAI

²⁵ See LF-VM-O2, LF-VM-O5, LF-FW-P13, LF-FW-P14.

²⁶ LF-VM objectives

presence of water bodies within them. The Kāi Tahu spiritual and cultural connection to wai forms part of this expression of landscape values. These connections are recognised in the PORPS criteria for identification of outstanding natural features and landscapes.²⁷

53. Across the region, a number of lakes and rivers are recognised in district plans as outstanding natural features and landscapes - for example the lakes Whakatipu-wai-Māori, Wānaka and Hāwea; and the rivers Mata-Au (Clutha), Kawarau, Kimiākau (Shotover) and Taieri (part). Efficient and effective management of these taoka requires an integrated approach to their management across the LF and NFL provisions.

UFD Urban Form and Development

54. As part of achieving integrated management, the NPSFM 2020 requires that:

Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.²⁸

55. Effects of urban development on water demand and water quality include the effects of population growth in water-short areas and the effects of inadequate or inappropriate stormwater and wastewater management. My experience is that consideration of these effects is often not well integrated into planning for urban development in Otago. Current examples of this from my experience include sewage overflows into Lakes Whakatipu and Wanaka, discharges of contaminated stormwater from new residential development into lakes and rivers, and spatial planning that is not integrated with freshwater planning for water bodies such as the Manuhereki River that are already under significant pressure.

IS IT APPROPRIATE TO USE THE FRESHWATER PLANNING PROCESS TO CONSIDER THE WHOLE PORPS?

56. The freshwater planning process was introduced to the RMA to improve decision-making on freshwater management. In my view the findings of the Skelton enquiry highlight the importance and urgency of this in Otago.

²⁷ APP9(b) and (i)

²⁸ NPSFM 2020, Clause 3.5(4)

57. Mr Ellison's affidavit describes the centrality of wai māori to the health of te taiao and the health and wellbeing of Kāi Tahu whānui. He also explains the importance of recognising and addressing the interconnections between freshwater and other parts of te taiao, and the impacts on te taiao and Kāi Tahu values when these interconnections are not adequately reflected in resource management.
58. In my affidavit above I have shown there are clear links to freshwater planning across the PORPS. I do not consider that these are only 'tangential' or 'indirect' links, as suggested by other parties.²⁹ In my opinion, the failure to recognise and address the linkages I have discussed carries a real risk that:
- (a) it will be more difficult to achieve the freshwater outcomes required to give effect to the NPSFM 2020, and/or
 - (b) the range of management approaches available to achieve these outcomes will be constrained by policy direction that prioritises other matters, and/or
 - (c) the implications of freshwater planning approaches for other activities will be inadequately considered.
59. My experience in plan development is that integrated decision-making is an important component of achieving integration across an RMA plan or policy statement. It is common, and in my view advisable, to incorporate into a decision-making process for a full RMA plan a period of several months for decision-makers to ensure that, once they have drafted decisions on different parts of the plan, those decisions are consistent with each other and achieve an integrated approach across the plan. Insufficient attention to this aspect of decision-making can lead to confusion and ambiguity in interpretation of plan provisions, reliance on the appeal process to correct inconsistencies, and sometimes perverse outcomes when the plan is implemented.
60. In my opinion, separating parts of the PORPS into a discrete decision-making process, with different powers and functions, a different panel and timing, and a different appeal process is likely to be less effective, and would certainly be less efficient, in achieving the integrated management purpose of a regional policy statement under section 59 of the RMA.

²⁹ See affidavits of Ann Rodgers for Central Otago District Council and Alyson Hutton for Queenstown Lakes District Council.

61. I am not aware of any process available under the legislation to facilitate integration between decision-making under the freshwater planning process and separate decision-making under the more usual process set out in Part 1 of the First Schedule of the RMA. In my view this situation is quite different to the example, referred to by Oceana Gold New Zealand Limited, of a combined plan process requiring approval of the Minister of Conservation for the regional coastal plan component.³⁰ In that case a single hearing process is possible; the only adjustment required to the process is to add a further process step for approval to be obtained in respect to the decisions on some provisions.
62. Some parties have suggested that the freshwater planning process or the make-up of a freshwater planning panel is too narrow to provide for proper consideration of matters that have a scope that is broader than freshwater management (such as urban development). The parties refer specifically to:
- (a) A perception that the experience of a freshwater hearings panel will be too narrow to give appropriate consideration to matters with a scope broader than freshwater planning, and
 - (b) The narrower scope available in the freshwater planning process for appeals to the Environment Court, and specifically the contribution to good decision-making that can be achieved through Court-ordered mediation processes.
63. In my opinion, the argument of narrowness of expertise should be given no weight. In any plan or policy statement hearing process, it will never be practicable to establish a hearing panel with specific expertise across all the topics to be considered. To ensure hearing panels have in front of them sufficient information to make appropriate decisions, the RMA provides for planning reports to be prepared, additional reports to be commissioned, and expert evidence to be called. In any event, from my review of the Freshwater Commission website, I am confident that there is a wide range of resource management experience among the Freshwater Commissioners.
64. Parties have highlighted the contribution to good decision-making that can be achieved through participation in Court-ordered mediation processes. While clause 8AA of the First Schedule of the RMA (dispute resolution) does not apply to the freshwater planning process, I note that there is specific provision in Part 4 of the First Schedule for the chairperson of a freshwater hearings panel to convene a pre-hearing meeting to clarify matters or to facilitate dispute


³⁰ Affidavit of Claire Hunter for Oceana Gold New Zealand Limited, paragraph 32.

resolution,³¹ to direct expert conferencing³² or to refer matters to mediation.³³ The chairperson may also seek further information or request reports, or appoint a special advisor, to assist the panel.³⁴

CONCLUSION

65. The purpose of a regional policy statement is to achieve integrated management of natural and physical resources across the region. An integrated approach is consistent with the Kāi Tahu approach to te taiao, and Kāi Tahu view wai māori as central to te taiao as a whole. There is a clear need to establish a more integrated approach to freshwater management in Otago.
66. I consider that if the provisions of the PORPS are to be effective as an “integrated package”, it is important that the decision-making process that will decide the final version of the various provisions is able to consider how they work together. A segregated decision making process, where different parts of the PORPS are considered through different processes and at different times, would carry the very real risk that the PORPS does not end up as an integrated management package.

AFFIRMED at Christchurch)
this 22nd day of December 2021,)
before me:)



A Solicitor of the High Court of New Zealand

Samuel Charles Lester
Solicitor
Christchurch

³¹ RMA First Schedule, Part 4, Clause 41

³² RMA First Schedule, Part 4, Clause 43

³³ RMA First Schedule, Part 4, Clause 44

³⁴ RMA First Schedule, Part 4, Clauses 45-46

