

**BEFORE THE FRESHWATER HEARINGS PANEL**

**IN THE MATTER**

of the Proposed Otago Regional Policy Statement 2021

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**MEMORANDUM ON BEHALF OF NGĀ RŪNANGA  
RESPONDING TO MINUTE 2  
Dated 13 April 2022**

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## INTRODUCTION

1. This memorandum is on behalf of Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou, Hokonui Rūnanga (**Kāi Tahu ki Otago**),<sup>1</sup> Waihōpai Rūnaka, Te Rūnanga o Ōraka Aparima, Te Rūnanga o Awarua (**Ngāi Tahu ki Murihiku**),<sup>2</sup> and Te Rūnanga o Ngāi Tahu<sup>3</sup> (collectively referred to as **Ngā Rūnanga**).
2. This memorandum responds to matters raised in the Freshwater Hearings Panel's Minute 2 dated 18 March 2022 and Otago Regional Council's (**ORC**) Memorandum dated 21 March 2022 in relation to the proposed Otago Regional Policy Statement (**PORPS**), namely:
  - (a) how to proceed with hearings on matters that are "unquestionably freshwater issues" (Minute 2, paragraph 24);
  - (b) proposed timing (Minute 2, paragraph 30 and ORC Memorandum, paragraph 8); and
  - (c) the proposal to appoint a second Panel (Minute 2, paragraph 25).
3. Ngā Rūnanga have also reviewed ORC's draft memorandum to the Freshwater Hearings Panel (to be filed 13 April) and have indicated support for some aspects of that memorandum below.

### **Ngā Rūnanga Position**

4. Consistent with the submissions on behalf of Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago in the High Court declaratory proceedings in February 2022, the position of Ngā Rūnanga is that the PORPS is a freshwater planning instrument and should be considered by the Freshwater Hearings Panel in its entirety. As required under the Resource Management Act 1991 (**RMA**), the PORPS has been prepared in a manner that provides for the integrated management of natural and physical resources. The National Policy Statement for Freshwater Management 2020 (**NPSFM**) and the concepts and values of Te Mana o te Wai and ki uta ki tai further support this integrated approach and framework.

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<sup>1</sup> Submitter 00226.

<sup>2</sup> Submitter 00223.

<sup>3</sup> Submitter 00234.

5. Ki uta ki tai reflects the Ngāi Tahu view of environmental and resource management. It is a traditional concept representing kaitiakitanga from the mountains and great inland lakes, down the rivers to hāpua/lagoons, wahapū/estuaries and to the sea. Ki uta ki tai involves holistic management and is not limited to the connections along a waterbody. Recognition and consideration of the interconnections between the wai and the whenua across the whole of the catchment is also part of a ki uta ki tai approach. For Ngā Rūnanga 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 maori (freshwater).
6. Accordingly, it is the position of Ngā Rūnanga that Te Mana o te Wai and ki uta ki tai cannot be limited to a discrete section of the PORPS; rather, these concepts and values are woven throughout the PORPS. The PORPS as a whole either gives effect to the NPSFM or relates to freshwater and therefore should be considered by the Freshwater Hearings Panel.

#### **How to proceed with hearings**

7. Without prejudice to the position set out above, Ngā Rūnanga would support a pragmatic approach to enable the Freshwater Hearings Panel processes to proceed while awaiting the High Court decision.
8. First, if the PORPS is to be split for the purpose of hearings, Ngā Rūnanga have a strong preference for doing this on a chapter-by-chapter basis, as opposed to at the submission point or provision level. Individual provisions or submission points cannot effectively be considered separately from the broader context of the package of the descriptions, objectives, policies, methods, explanations and reasons that make up a chapter.
9. Secondly, Ngā Rūnanga consider there to be some priority freshwater chapters that could be heard first by the Freshwater Hearings Panel, irrespective of the High Court decision, as they address what are “unquestionably freshwater issues”. These are:
  - (a) Mana Whenua (MW);
  - (b) Resource Management Issues of Significance to Iwi Authorities in the region (RMIA);
  - (c) Significant Resource Management Issues for the Region (SRMR);
  - (d) Integrated Management (IM); and

(e) Land and Freshwater (LF).

10. These chapters, aside from LF, make up the “front end” (Parts 1 and 2) of the PORPS and make sense to be heard first from a chronological perspective; they set the scene and provide context for the rest of the PORPS. There are also a number of policies in these earlier chapters that refer to the application of the provisions to the rest of the PORPS, for example IM-P2 (Decision Priorities) and LF-WAI-P4 (Giving effect to Te Mana o te Wai).
11. There is a close link between the MW chapter and freshwater. The Mana Whenua chapter provides direction as to how the relationship of mana whenua to te taiao (natural environment) should be provided for, how rangatiratanga should be recognised and how kaitiakitanga should be enabled. This direction is central to determining how the principles of Te Mana o te Wai in the NPSFM should be interpreted and embedded in management of issues relating to freshwater. The provisions of the LF chapter in respect to mana whenua involvement in freshwater management rely on the MW provisions.<sup>4</sup>
12. The RMIA chapter sets out the issues of particular significance to Ngā Rūnanga as mana whenua in the Otago region. All the issues have a connection to freshwater and the importance of integrated management. The issues relate directly to the values and resources of significance to Ngāi Tahu that are identified and described in the MW chapter.
13. Ngā Rūnanga seek that the MW and RMIA chapters be heard together given the significant overlap and complementary issues they cover. Hearing these chapters together would avoid unnecessary duplication of evidence and submissions, which in turn would assist the Freshwater Hearings Panel in its decision-making.
14. Ngā Rūnanga also seek that the hearings for the MW and RMIA chapters are held at a local marae of Papatipu Rūnanga. Ngā Rūnanga considers opening the PORPS hearings with a pōwhiri and then consideration of these two chapters on a marae would appropriately recognise Ngāi Tahu tikanga.
15. Following the MW and RMIA chapters, Ngā Rūnanga seek that the SRMR and the IM chapters then be heard, which would complete the substantive parts of Parts 1 and 2 of the PORPS. The SRMR chapter matters all touch on freshwater to some degree. The IM chapter provides direction to achieve integration across resource management decision-

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<sup>4</sup> See LF-WAI-P2 and LF-WAI-M1.

making and is closely linked to the NPSFM 2020 requirements. This chapter also includes provisions relating to climate change and its impacts, which greatly affect wai māori.

16. It would then make sense for the LF chapter to then be heard as the first “Domain” chapter. This chapter unquestionably relates to freshwater issues. For completeness, we disagree with the Oceana Gold proposal referred to in ORC’s draft memorandum that the Land and Soils part of the LF chapter could be separated from the overall chapter. This is contrary to the strong preference of Ngā Rūnanga for the PORPS to be considered on a chapter-by-chapter basis, and fails to take into account that the Land and Soil part of the chapter includes an objective, LF–LS–O12 (Use of land), and associated policies and methods that are specifically directed to achieving freshwater outcomes.
17. Following the completion of the above hearings, Ngā Rūnanga consider it would be beneficial for the Freshwater Hearings Panel to issue an interim decision on these “unquestionably freshwater” chapters. Importantly, these chapters all involve the NPSFM’s fundamental concept Te Mana o te Wai and will guide how this concept is to be applied in Otago. An interim decision on the above chapters would provide clarity regarding Te Mana o te Wai and ensure consistency and integration in relation to NPSFM outcomes for the subsequent domain and topic chapters, particularly if some chapters end up going through a process that is not under the auspices of the Freshwater Hearings Panel. An interim decision would provide parties with clear direction as to the Panel’s approach and may also assist in narrowing issues in the hearings to follow.

### **Timetable**

18. While Ngā Rūnanga acknowledge the need to respect the High Court and its processes, it is important that momentum on the PORPS is maintained to avoid undue pressure on other processes such as the proposed Land and Water Regional Plan.
19. As outlined above, there are chapters that could continue to be heard that would not prejudice the outcome of the High Court’s declaratory proceedings.
20. In light of the approach proposed above, Ngā Rūnanga respectfully seek that evidence exchange be staggered and undertaken in four tranches as follows:
  - (a) Tranche 1: Parts 1 and 2 of the PORPS
  - (b) Tranche 2: LF Chapter

- (c) Tranche 3: The rest of Part 3 (excluding LF Chapter)
  - (d) Tranche 4: Parts 4, 5 and Definitions (although we expect some definitions will be dealt with earlier in their associated chapter).
21. Ngā Rūnanga has reviewed the proposed timetable in ORC's draft memorandum. Ngā Rūnanga support ORC's proposed evidence exchange and hearing commencement dates in relation to 'Tranche 1' as described above.
  22. In addition, Ngā Rūnanga respectfully seek that the Freshwater Hearings Panel direct pre-hearing meetings to occur on a without prejudice basis to assist in clarifying and narrowing the issues. In our experience such directions have been helpful in other processes. This would be an efficient use of time while awaiting the High Court decision.
  23. In order for such pre-hearing meetings to be effective, it would be beneficial for the amendments recommended in ORC's section 42A Report to be used as a starting point, based on which parties could effectively engage and seek to build consensus or at least narrow the issues, leading to more focused evidence and better use of hearing time.

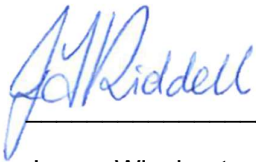
#### **Appointment of a second panel**

24. The Freshwater Hearing Panel's Minute 2 proposes that ORC (without prejudice to its case in the High Court) appoint a second panel of identical membership to make decisions under the traditional Schedule 1, Part 1 process (with the existing Freshwater Hearings Panel to make recommendations under Schedule 1, Part 4). On review of ORC's draft memorandum, Ngā Rūnanga understand that ORC intends to adopt this proposal and that the two processes would be administered together with one overarching timetable.
25. Ngā Rūnanga supports this proposal. A consistent panel making recommendations/decisions will go some way to ensuring that the PORPS achieves the integrated management purpose of a regional policy statement under section 59 of the RMA and would also allow the hearings to be procedurally efficient due to consistency of approach. As pointed out by the Freshwater Hearings Panel, all the members are appropriately qualified and have the necessary expertise to sit on both panels.

#### **Directions sought**

26. Accordingly, Ngā Rūnanga respectfully seek that:

- (a) pre-hearing meetings are scheduled and begin to take place as soon as possible following circulation of ORC's section 42A report;
- (b) the evidence exchange be staggered and done in four tranches as set out in paragraph 20 above;
- (c) the MW and RMIA chapters are the first chapters to be heard, that they be heard together, and that the hearings take place at a marae;
- (d) the SRMR, IM and LF chapters are then heard;
- (e) the Freshwater Hearings Panel issue an interim decision on the MW, RMIA, SRMR, IM and LF chapters to guide subsequent hearings; and
- (f) ORC appoint a second panel of identical membership to make decisions under the traditional Schedule 1, Part 1 process and that the two processes be administered together, with one overarching timetable.



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