

**BEFORE THE HEARING PANEL**

**UNDER** the Resource Management Act 1991  
**IN THE MATTER** of the Proposed Otago Regional Policy Statement 2021

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**STATEMENT OF EVIDENCE OF MICHAEL JOHN BATHGATE**

**ON BEHALF OF  
KĀI TAHU KI OTAGO, NGĀI TAHU KI MURIHIKU AND  
TE RŪNANGA O NGĀI TAHU**

**23 November 2022**

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## INTRODUCTION

1. My name is Michael John Bathgate. I hold the qualifications of a Bachelor's Degree in Economics from the University of Canterbury and a Masters of Regional and Resource Planning (with Distinction) from the University of Otago.
2. I have been employed since February 2020 as a Senior 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.
3. Prior to joining Aukaha, I worked for seven years as a planner and senior planner at Dunedin City Council and was involved in the development of the second generation Dunedin City District Plan. I previously had seven years' experience as a research planner with Dunedin City Council undertaking district plan monitoring and research. I have a further 15 years' experience in a range of other policy and research positions not directly related to the Resource Management Act, in central and local government and the private sector.
4. My evidence addresses the submissions of the following parties in respect to provisions in the Proposed Otago Regional Policy Statement 2021 (PORPS):
  - (a) Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively Kāi Tahu ki Otago);
  - (b) Waihōpai Rūnaka, Te Rūnanga Ōraka Aparima and Te Rūnanga o Awarua (collectively Ngāi Tahu ki Murihiku); and
  - (c) Te Rūnanga o Ngāi Tahu.
5. When referring to the submitters collectively in my evidence, I have used the form Kāi Tahu, which is most commonly used by mana whenua in Otago.
6. I had a limited role in reviewing, on behalf of Kāi Tahu ki Otago, the PORPS at the latter stages of its development. This was predominantly in relation to the CE, ECO, HCV-WT, and NFL provisions.
7. I was involved in the preparation of submissions and further submissions on the PORPS on behalf of Kāi Tahu ki Otago and, together with other staff from Aukaha, Te Ao Marama and Te Rūnanga o Ngāi Tahu, represented the submitters in pre-hearing meetings.

8. Although this is a Council hearing, I confirm I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and I agree to comply with it. I confirm that the issues addressed in this statement are within my area of expertise, except where I state that I am relying on information provided by another party. I have not knowingly omitted to consider material facts known to me that might alter or detract from the opinions expressed.
9. The key documents that I have referred to in preparing my evidence include:
- (a) Proposed Otago Regional Council Regional Policy Statement 2021 (PORPS), Section 32 Evaluation, relevant Section 42A reports and Supplementary Evidence;
  - (b) Resource Management Act 1991 (RMA) and relevant instruments of national direction;
  - (c) Kāi Tahu ki Otago Natural Resource Management Plan 2005;
  - (d) Te Mana o te Taiao – the Aotearoa New Zealand Biodiversity Strategy 2020;
  - (e) Natural and Built Environment Bill (NBA);
  - (f) Exposure draft National Policy Statement for Indigenous Biodiversity;
  - (g) Relevant submissions of other parties;
  - (h) Cultural evidence of Edward Ellison, Matapura Ellison, David Higgins, Justin Tipa and Brendan Flack on behalf of Kāi Tahu ki Otago;
  - (i) Planning evidence of Sandra McIntyre, Maria Bartlett and Tanya Stevens, on behalf of Kāi Tahu, all dated 23 November 2022.

## **SCOPE OF EVIDENCE**

10. My evidence will address the following matters:
- (a) Provisions in the following sections of the PORPS:
    - (i) Coastal environment (CE);
    - (ii) Ecosystems and indigenous biodiversity (ECO);
    - (iii) Historic and cultural values (HCV); and
    - (iv) Natural features and landscapes (NFL).

- 11.** The Section 42A report recommends acceptance of many of the points in the Kāi Tahu submissions, and agreement on a number of other matters in pre-hearing meetings is reflected in the Otago Regional Council (ORC) supplementary evidence. My evidence generally focuses on areas of remaining disagreement between Kāi Tahu and ORC or other parties.
- 12.** The Section 32 report includes an overview of the statutory framework for the PORPS, and the Section 42A report also discusses aspects of this framework as relevant to the analysis of submissions. I do not consider it is necessary to repeat this discussion, but instead will focus on matters that are of particular relevance to the Kāi Tahu submissions and offer my planning assessment where my opinion differs from those expressed in the Section 42A report.
- 13.** The planning evidence of Sandra McIntyre on behalf of Kāi Tahu discusses a number of overarching themes, including provision for mana whenua values, rights and interests in relation to te taiao (the natural environment) and the use and development of Māori land; the need for an integrated management approach throughout the PORPS; and the need for climate change considerations to be embedded across the PORPS. I rely on the evidence of Ms McIntyre in relation to these matters, which set the scene for the more specific chapter-by-chapter discussion which follows.
- 14.** The planning evidence of Tanya Stevens on behalf of Te Rūnanga o Ngāi Tahu sets out in some detail the Ngāi Tahu Settlement, including the fisheries and aquaculture settlements, and associated redress mechanisms. This material is of wider relevance, but in particular for my discussion of the CE provisions. Rather than repeating this material, I rely on the evidence of Ms Stevens in respect of these matters.
- 15.** Appendix 1 to my evidence sets out my recommendations with respect to each of the Kāi Tahu submission and further submission points, with reference to where these are discussed in my evidence. Appendix 1 also incorporates recommended amendments from the planning evidence of Maria Bartlett and Tanya Stevens, so that all Kāi Tahu amendments in relation to the same PORPS sections are contained in one place.

## COASTAL ENVIRONMENT (CE)

16. The Kāi Tahu parties made wide-ranging, detailed submissions on the CE provisions; in summary stating that the CE provisions needed considerable improvement to provide an appropriate overarching policy framework for the development of a new regional coastal plan.<sup>1</sup> One of the key concerns expressed was the lack of direct policy response to the significant environmental issues raised in SRMR12, SRMR18, RMIA-CE and the iwi management plans.
17. The planning evidence of Ms McIntyre describes the input by Kāi Tahu into the development of the PORPS, including the limited input into the CE chapter.<sup>2</sup> While cognisant of the timing and other constraints that led to this situation, I concur with the opinion of Ms McIntyre that the opportunities for early and meaningful mana whenua input into the development of the CE chapter fell short of meeting New Zealand Coastal Policy Statement (NZCPS) Policy 2 requirements. I consider that, due to the tight timeframe within which the new PORPS was developed, the CE chapter has ended up as a poor restatement of the NZCPS. There has been no apparent attempt to meaningfully give effect to the NZCPS at a regional level; nor to develop outcomes and management approaches specific to the Otago coast and the issues it faces;<sup>3</sup> nor to understand coastal management within a Treaty principles framework.
18. The Kāi Tahu submissions sought a restructuring and realignment of the CE objectives and policies to place mauri and hauora first and foremost in coastal management; to provide for a ki uta ki tai management approach; and to properly recognise and provide for the Kāi Tahu mana whenua relationship with the coast.<sup>4</sup> I broadly support these proposed changes - developed further in my recommended amendments in Appendix 1 - as necessary to provide a regional policy framework for the coast that can guide the development of a new regional coastal plan, as well as other regional and district plans where they intersect or influence the coastal environment.
19. The current Regional Plan: Coast for Otago was made operative in September 2001 and has undergone little change since, even with the gazettal of a new NZCPS in 2010. I am unaware of any set timeframe for review of the existing coastal plan and notification of a

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<sup>1</sup> Paragraph 3.16 Kāi Tahu ki Otago submission

<sup>2</sup> Planning evidence of Sandra McIntyre: *The relationship of Kāi Tahu to te taiao*

<sup>3</sup> Compared, for example, to the Freshwater Visions process undertaken to meet NPS-FM requirements

<sup>4</sup> Paragraph 3.19 Kāi Tahu ki Otago, pp 14-15 Ngāi Tahu Ki Murihiku, pp 8-12 Schedule 1 Te Rūnanga o Ngāi Tahu submissions

new regional coastal plan,<sup>5</sup> with the focus of the ORC being on the development of this PORPS and a new Land and Water Regional Plan. Until such time as a new regional coastal plan is notified, I consider that the coastal provisions in the PORPS should go further than merely restating the NZCPS to provide a policy framework that can more effectively guide sustainable management of Otago's coast, consistent with the notion of a hierarchy of instruments which moves from the general (at the national level) to the increasingly specific (at the regional level), and in line with NZCPS Policy 1(1).

## **Mauri and Hauora**

- 20.** The cultural evidence of Edward Ellison explains that mauri is the life-affirming quality evident in all things, and that the primary resource management principle for Kāi Tahu is the protection of mauri.<sup>6</sup> Mauri is a critical element of the spiritual relationship of Kāi Tahu with te taiao (natural environment), with degradation of mauri deeply upsetting to mana whenua as well as impacting negatively on their kaitiaki responsibilities.<sup>7</sup> Related to and underpinning mauri is the concept of hauora, or health and wellbeing.<sup>8</sup>

### CE-O1 Te Mauri o Te Moana

- 21.** Kāi Tahu submissions sought to prioritise the mauri, health and wellbeing of coastal waters within the CE policy framework, including through creation of a new CE-O1.<sup>9</sup> The Section 42A author agreed in part that health and wellbeing should be the principal focus, but disagreed that a new objective is required.<sup>10</sup> In my opinion, the new CE-O1 proposed by Kāi Tahu provides greater clarity and priority to this focus, when separated from the existing CE-O1, which is a complex restatement of NZCPS Objective 1.
- 22.** The cultural evidence supports such a central focus on mauri as necessary to restore te taiao and properly recognise the interconnection between freshwater and coastal environments, and between land and coastal waters.<sup>11</sup> I consider this is also consistent with the central focus on health and wellbeing signalled in the Natural and Built Environment Bill (NBA), with part of its core purpose being to recognise and uphold te

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<sup>5</sup> Although method CE-M3 seems to indicate a 31 December 2028 timeline

<sup>6</sup> Cultural evidence of Edward Ellison: *Mauri*

<sup>7</sup> Cultural evidence of David Higgins: *Protecting mauri*

<sup>8</sup> A description of hauora has been inserted in the Supplementary Evidence version of this PORPS under the Kāi Tahu values part of the Mana whenua chapter

<sup>9</sup> For example, refer Kāi Tahu ki Otago submission page 37

<sup>10</sup> Section 42A Report, CE-Coastal Environment, paragraph 90

<sup>11</sup> Cultural evidence of David Higgins: *Roles and responsibilities of mana whenua as kaitiaki*, Cultural evidence of Edward Ellison: *Mauri*



Oranga o te Taiao.<sup>12</sup> Te Oranga o te Taiao is broadly interpreted as the health of the natural environment, but the definition also encompasses the intrinsic relationship between iwi and hapū and te taiao.<sup>13</sup>

- 23.** With a new CE-O1 focused on the health of coastal waters, the existing CE-O1 would then focus on the form and natural functioning of the coastal environment more broadly. I am generally supportive of the Section 42A changes to CE-O1, particularly the insertion of clause (6) which promotes the need for ki uta ki tai management and clause (7) in relation to the effects of climate change.<sup>14</sup> I consider that clause (2) should be amended so that it is less about uses of the coast (which is already covered in CE-O5) and more about achieving healthy ecosystems and habitats for mahika kai and kaimoana, not otherwise covered by the objective.

#### CE-P2 Identification

- 24.** CE-P2 seeks to identify the extent of the coastal environment and key features and areas within it. Inclusion of CE-P2(1) matters in an appendix would aid the clarity of the policy and is consistent with treatment of other RMA section 6 matters in this PORPS (outstanding natural features and landscapes, significant natural areas, historic heritage, wāhi tūpuna), with the exception of natural character in CE-P4(1) which could also be treated in the same way.
- 25.** The submission of Kāi Tahu ki Otago expressed difficulty with clause (2) due to a cultural preference that all deteriorated coastal water should be addressed, due to the spiritual and cultural significance of wai tai.<sup>15</sup> In line with the submission, I consider a pragmatic approach is needed to prioritising areas for remediation, but consider clause (2) should be amended to add mauri and hauora to link to the achievement of CE objectives.
- 26.** To provide for the appropriate exercise of Kāi Tahu kaitiakitaka, the identification of deteriorated coastal waters that are restricting Kāi Tahu customary fisheries should also be part of clause (2). The cultural evidence of Brendan Flack covers in some detail the effects on customary fisheries management areas,<sup>16</sup> including the mātaimai and taiāpure in his takiwā, from a range of activities and environmental influences and how this is

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<sup>12</sup> Section 3, Natural and Built Environment Bill

<sup>13</sup> Section 7, Natural and Built Environment Bill

<sup>14</sup> Climate change integration across the PORPS is covered in the planning evidence of Sandra McIntyre

<sup>15</sup> Page 42, Kāi Tahu ki Otago submission

<sup>16</sup> Customary fisheries management areas include mātaimai reserves, taiāpure or areas temporarily closed under sections 186A or 186B of the Fisheries Act 1996

affecting rakatirataka and kaitiakitaka responsibilities.<sup>17</sup> I also note that the Kāi Tahu ki Otago submission to add wāhi tūpuna to clause (3) does not appear to be addressed in the Section 42A report. I consider that inclusion of customary fisheries and wāhi tūpuna within CE-P2 is necessary to give effect to RMA s6(e) and NZCPS Policy 2. I note and support the amendment proposed by Ms Stevens to add aquaculture settlement areas to clause (3).<sup>18</sup>

### CE-P3 Coastal water quality

- 27.** CE-P3 deals with an RMA matter of national importance, namely the s6(e) relationship of Kāi Tahu and their culture and traditions to the Otago coastal waters. The planning evidence of Ms Stevens emphasises the importance of the entire Otago coast, Te Tai o Arai Te Uru, as a statutory acknowledgement under the Ngāi Tahu Claims Settlement Act 1998.<sup>19</sup>
- 28.** I consider that, even with amendments proposed in the Section 42A report and Supplementary Evidence, CE-P3 reads too much like an objective; does not contain an appropriate pathway toward active management or an overarching policy setting for lower-order documents; does not respond to the issues raised in RMIA-CE; and will not be an appropriate or effective policy to achieve the CE objectives. I note that, unlike other CE policies that deal with RMA s6 matters,<sup>20</sup> there are no effects tests within CE-P3.
- 29.** I recommend amendments that take a holistic, active approach to managing effects on coastal water from all activities. This includes the prioritisation of the health and well-being of coastal waters and ecosystems. The Section 42A author contends that this approach is not needed as it is provided for by IM-P2.<sup>21</sup> However, I consider that its inclusion in CE-P3 would be appropriate to achieve the mauri and hauora-based approach sought by Kāi Tahu in the CE objectives. It also reflects a cultural preference for a consistent approach to prioritising the health and well-being of wai, regardless of what part of te taiao it is located within.<sup>22</sup>
- 30.** The Section 42A author agreed with Kāi Tahu that water quality targets would assist in achieving CE-O1, but has opted for limits in CE-P2 to be consistent with terminology

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<sup>17</sup> Cultural evidence of Brendan Flack: *The Waikōuaiti Mātaitai and East Otago Taiāpure*

<sup>18</sup> Planning evidence of Tanya Stevens: *CE-P2 - Identification*

<sup>19</sup> Planning evidence of Tanya Stevens: *Fisheries Settlement*

<sup>20</sup> Such as CE-P4, CE-P5, CE-P6

<sup>21</sup> Section 42A Report, CE Coastal, paragraph 180. IM-P2 has been incorporated into IM-P1 in the Supplementary Evidence version of the PORPS.

<sup>22</sup> Cultural evidence of Edward Ellison: *Te Mana o Te Wai*

elsewhere in the PORPS.<sup>23</sup> Consistent with the hauora-based approach to the coast sought by Kāi Tahu, I consider the policy should set targets for coastal water quality as well as limits. I note that the NBA Bill signals that both targets and limits will be mandatory for coastal water (and other parts of te taiao).<sup>24</sup>

- 31.** I consider there should be more active policy language for areas of deteriorated coastal water. Rather than 'improve', I consider that 'actively enhancing' gives better effect to the NZCPS Policy 21 requirement to 'give priority to improving' deteriorated water quality.

#### CE-P12 Reclamation

- 32.** The cultural evidence of Mr Ellison discusses how the impacts of dredging and reclamation have degraded the mana whenua relationship with the Otago harbour, altered its ability to function naturally, and had negative impacts on mahinga kai species. Mr Ellison sets out in his evidence that it has been the stated position of Te Rūnanga o Ōtākou to oppose further incremental reclamation of the harbour for some time,<sup>25</sup> with the 2005 iwi management plan also setting out policies opposing further reclamation of the coastal marine area.<sup>26</sup>
- 33.** In light of this position, I consider that the ORC should have taken a more precautionary approach and had more regard to NZCPS Policy 2(b) in its development of policy CE-P12. Rather than merely restating the NZCPS reclamation policy, in seeking to implement the NZCPS at a regional level the presumptive 'avoid' in NZCPS Policy 10(1) should be interpreted more stringently, particularly when mana whenua consider there has been a surfeit of reclamation that has affected the mauri and functioning of Otago's harbours, inlets and coastal waters.
- 34.** I note also that the further considerations in NZCPS Policy 10(2) and (3), as to the environmental, cultural and other effects of reclamation are referenced in method CE-M3(10), but have no visibility at a policy level in the PORPS.
- 35.** I have recommended an amendment to CE-P12(1A) to reflect this Kāi Tahu position, as well as a consequential amendment to CE-M3(10). I support the relocation of the de-reclamation clause from Policy CE-P4, but consider it should be expanded to include enhancing the natural functioning of the coastal marine area as a reason for encouraging

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<sup>23</sup> Section 42A Report, CE Coastal, paragraph 181

<sup>24</sup> Natural and Built Environment Bill, part 3, subpart 2

<sup>25</sup> Cultural evidence of Edward Ellison: *Degradation of wāhi tūpuna*

<sup>26</sup> Kāi Tahu ki Otago Natural Resource Management Plan 2005, policies 5.8.4.5 and 5.8.16.10.

de-reclamation. This would reflect Kāi Tahu concerns that reclamation has significantly affected the natural functioning of the coastal environment along with Kāi Tahu uses and cultural associations.<sup>27</sup>

## Mana moana

36. The Kāi Tahu desire for mauri and hauora to be prioritised in coastal management arises from a whakapapa connection to Te Tai o Arai Te Uru which, via mana, confers rakatirataka rights and kaitiakitaka obligations.<sup>28</sup> The enduring Kāi Tahu relationship to the coast and associated sense of kaitiaki obligations are described throughout the cultural evidence.<sup>29</sup>
37. Mana moana is also reflected in the ability to provide manaakitaka which requires healthy ecosystems and kaimoana resources. A core part of Kāi Tahu identity is engaging in customary fishery and mahika kai practices, which confirm and sustain mana and enable manaakitaka.<sup>30</sup> The importance of customary fisheries management tools (such as mātaimai and taiāpure) in affirming Kāi Tahu rakatirataka and kaitiakitaka responsibilities is described in the cultural evidence of Brendan Flack and David Higgins.<sup>31</sup> Mr Flack also describes some of the environmental projects that Kāi Tahu kaitiaki are undertaking in his takiwā, as well as the importance of mahika kai to Kāi Tahu culture,<sup>32</sup> a prevalent theme throughout Kāi Tahu cultural evidence.<sup>33</sup>
38. The Kāi Tahu submissions sought greater recognition of the mana whenua roles and responsibilities as rakatirataka and kaitiaki of the coast, as well as better recognition of and provision for customary fisheries mechanisms, mahika kai and kaimoana practices.<sup>34</sup> While a number of amendments to this effect have been recommended in the Supplementary Evidence, I consider more is required to properly give effect to RMA S6(e), s(7a) and s8 and to NZCPS Objective 3 and Policy 2.

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<sup>27</sup> Page 50, Kāi Tahu ki Otago submission

<sup>28</sup> Planning evidence of Sandra McIntyre: *The relationship of Kāi Tahu to te taiao*

<sup>29</sup> For example, cultural evidence of Brendan Flack: *Mana whenua relationships with the coastal environment*

<sup>30</sup> Cultural evidence of Edward Ellison: *Wai māori and wai tai*

<sup>31</sup> Cultural evidence of Brendan Flack: *The Waikōuaiti Mātaimai and East Otago Taiāpure*, cultural evidence of David Higgins: *Relationship with the coastal and marine environment*

<sup>32</sup> Cultural evidence of Brendan Flack: *Mana whenua relationships with the coastal environment*

<sup>33</sup> Refer paragraph 95 below for more discussion on the importance of mahika kai

<sup>34</sup> For example, refer para 3.19, Kāi Tahu ki Otago submission

#### CE-O4 Mana moana

39. I suggest this objective appears earlier in the objective suite, in recognition of the centuries-old Kāi Tahu relationship with Otago's coast. Along with a recommended renumbering of CE-P13, I consider this provides a more logical flow to the objectives and policies and greater clarity in how they are read. I support the Supplementary Evidence version of CE-P13 as appropriately recognising and giving effect to Kāi Tahu mana moana, rakatirataka and kaitiakitaka in the coastal environment.
40. The Section 42A author asked for advice as to whether 'association' in CE-O4 should be replaced by 'relationship'.<sup>35</sup> I consider this an appropriate amendment, consistent with RMA s6(e) and NZCPS Objective 3. The cultural evidence of Edward Ellison shows that Kāi Tahu consider themselves to have a whakapapa relationship with all wāi, including coastal waters.<sup>36</sup> This is better expressed as a relationship rather than an association.
41. I recommend the addition of a new clause (2) to CE-O4 that reflects that mana involves the ability to engage in customary fisheries and mahika kai practices.<sup>37</sup> This change gives effect to Objective 3 of the NZCPS in its intent to recognise the ongoing relationship of Kāi Tahu over rohe and resources, provide for mana whenua involvement in coastal management, and recognise and protect those characteristics of the coast that are of special value to Kāi Tahu. It recognises that Kāi Tahu relationship and traditions are very much reflected in coastal fishing and mahika kai, thus giving effect to RMA s6(e) and consistent with MW-P2(4) and MW-P3(1) and (2). For similar reasons, I recommend the addition of a new clause 3(a) to policy CE-P5, so that mahika kai practices are recognised when considering effects on coastal indigenous biodiversity.

#### CE-M1A Mana whenua/mana moana involvement

42. The Kāi Tahu ki Otago submission sought a new method to involve mana whenua/mana moana role in implementation, including direct reference to the implementation of some MW-methods.<sup>38</sup> I consider the new CE-M1(A) set out in the Section 42A report merely restates CE-O4 and, in fact, provides less clarity on the Kāi Tahu mana moana role than CE-P13. I prefer the version of this new method in the Kāi Tahu submissions, which

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<sup>35</sup> Section 42A Report, CE Coastal environment, paragraph 90, in response to 00230.049 Forest and Bird

<sup>36</sup> Cultural evidence of Edward Ellison: *Mana Whenua Relationships with the Taiao*

<sup>37</sup> I note the Te Rūnanga o Ngāi Tahu submission to include 'commercial fisheries' in this clause, which is covered in the evidence of Tanya Stevens.

<sup>38</sup> Pages 61-62, Kāi Tahu ki Otago submission

mirrors method LF-WAI-M1 and, as such, provides consistency and clarity in relation to how Kāi Tahu rakatirataka and kaitiakitaka across te taiao will be given effect to.

### **Ki uta ki tai**

- 43.** The effects in the coastal environment of a lack of integrated management are clearly laid out in cultural evidence, highlighting how this adversely affects Kāi Tahu rakatirataka, kaitiakitaka, mahika kai and mātauraka.<sup>39</sup> Brendan Flack’s evidence describes how land-based and marine activities are degrading the East Otago Taiāpure and Waikōuaiti Mātaitai via effects such as sedimentation, low water flows and contamination.<sup>40</sup> The planning evidence of Ms McIntyre states that clear direction for lower order plans must be provided to achieve integrated management, to give effect to the RMA, NZCPS Policy 4 and other national instruments.<sup>41</sup> I concur with the planning assessment of Ms McIntyre that the PORPS should go beyond general statements about the need for integrated management to provide directive guidance for lower order plans and to ensure consistency of management across different environments.

### CE-O1 Safeguarding the coastal environment (Te Hauora o Te Tai o Arai-te-uru)

- 44.** As stated at paragraph 23 above, I support the addition of clause (6) to CE-O1 which draws attention to the need to recognise and understand the interconnectedness of different environments. However, the term ‘managed’ in clause (6) would make more sense than ‘protected’, as it relates to dealing with environmental effects which may be adverse. I recommend an amendment to clause (3) to better recognise the shifting and dynamic nature of the coastline.

### CE-P1 Links with other chapters

- 45.** The Section 42A author has accepted in part the Kāi Tahu submission that CE-P1 should be reframed to highlight integrated management by making a change to the chapeau.<sup>42</sup> In my opinion this does not go far enough and simply listing other chapters of the PORPS provides no real policy direction for integrated management. I consider the clauses suggested by the Kāi Tahu submission provide better direction on the need to recognise

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<sup>39</sup> Cultural evidence of Edward Ellison: *Degradation of te taiao and mahika kai, Degradation of Wāhi tūpuna*;  
Cultural evidence of Brendan Flack: *Observations of the impacts of siloed environmental management on the coastal environment*

<sup>40</sup> Cultural evidence of Brendan Flack: *The Waikōuaiti Mātaitai and East Otago Taiāpure*

<sup>41</sup> Planning evidence of Sandra McIntyre: *Integrated Management*

<sup>42</sup> Para 116 of CE Section 42A Report

and manage the interconnectedness of te taiao across jurisdictions, and is a more appropriate approach to give effect to NZCPS Policy 4.

46. In general, and consistent with the submissions of Kāi Tahu, there needs to be a greater level of integration between the CE chapter and other parts of the PORPS, to properly achieve integrated management and address the issues raised in cultural evidence as discussed in paragraph 43 above.<sup>43</sup> Integration issues between CE and other chapters are also discussed in my evidence at paragraphs 110-112 and 135-136 below.

#### New Policy – Discharges, sedimentation & dredging

47. The cultural evidence has described sedimentation and discharges as matters of great concern to mana whenua, causing adverse impacts on mahika kai and kaitiakitaka.<sup>44</sup> All RMIA-CE issues of significance to iwi express concerns about sediment or discharge effects on the coastal environment. For example, RMIA-CE-I1 discusses a lack of integrated management approach to matters such as sediment transport on coastal ecosystems and hence on mahika kai. RMIA-CE2 discusses the cultural offense that is felt from the effects of discharges into coastal water, providing a long list of specific concerns.
48. The Kāi Tahu ki Otago submission seeks policy guidance on these matters, including by mana whenua involvement in policy drafting.<sup>45</sup> The Section 42A author disagreed with the need for a new policy, stating that CE-P3 and CE-M3 provide directive guidance.<sup>46</sup> In my opinion this is an incorrect assessment, for the following reasons:
- (a) CE-P3 is a very-outcome focused policy with little directive guidance. My evidence recommends a more directive version of CE-P3 but, even with these changes, I consider it too focused on high-level water-quality outcomes to provide meaningful guidance on the management of discharges and sedimentation.
  - (b) CE-M3(4) sets out as a regional plan method most, but not all, policy content from NZCPS Policies 22 (Sedimentation) and Policy 23 (Discharge of contaminants). I consider that reframing NZCPS policy content as a method

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<sup>43</sup> Refer also to the planning evidence of Sandra McIntyre: *Integrated Management*

<sup>44</sup> Cultural evidence of Edward Ellison: *Degradation of te taiao and mahika kai*; cultural evidence of Brendan Flack: *Observations of the impacts of siloed environmental management on the coastal environment*

<sup>45</sup> Kāi Tahu ki Otago submission, page 52.

<sup>46</sup> Section 42A Report, CE Coastal Environment, paragraph 453, noting a reference to CE-M3(5) is likely meant to mean CE-M3(4).

without clear policy framing does not provide clarity on either the PORPS policy intent or how CE objectives are to be achieved. In effect, a number of policy directions are provided within CE-M3(4) without any overarching policy framing.<sup>47</sup>

- (c) In merely restating these NZCPS policies, there has been no attempt to interpret them at a regional level, nor to understand mana whenua priorities in relation to these matters. I note that NZCPS Policy 12 regarding harmful aquatic organisms is also relevant but does not appear to have been incorporated into the PORPS.
  - (d) LF-FW-P15 provides policy direction on stormwater and wastewater discharges to freshwater, giving rise to an inconsistency of approach within the PORPS if a corresponding policy is not considered necessary for the coastal environment.<sup>48</sup>
  - (e) There is little or no guidance, directive or otherwise, on these matters in CE-M4 District plans. I contrast this with LF-FW-M7 District plans.
- 49.** The Section 42A author recommends changes to CE-M3(4) relating to the management of discharges of untreated human sewage and cross-contamination of sewage and stormwater.<sup>49</sup> As well as being counter to NZCPS Policy 23, these changes appear to set new policy approaches without the early and meaningful consultation with mana whenua required by both the NZCPS and this PORPS.
- 50.** I consider that not addressing these matters at policy level in the CE chapter does not give effect to the NZCPS, particularly Policies 2, 12, 22 and 23. In my opinion, this is also inconsistent with the policy approaches set out under MW-P2 (Treaty principles) and MW-P3 (Supporting Kāi Tahu well-being). It does not support the integrated management approach required by IM-P1, IM-P3 and IM-P5 by relying on an outcome-focused CE-P3, without corresponding policy direction as to how activities and effects should be managed, including across the interface between land, fresh and coastal waters. I am not recommending any drafting to fill this policy gap, as I consider that this needs to be done in conjunction with Kāi Tahu as mana whenua.<sup>50</sup>

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<sup>47</sup> To further confuse matters, para 205 of the CE Section 42A Report discusses the policy intent of CE-M3(4).

<sup>48</sup> The planning evidence of Sandra McIntyre describes the unintended consequences that may arise from such inconsistent policy approaches. Refer *Integrated Management* section of Ms McIntyre's evidence.

<sup>49</sup> Section 42A Report, CE – Coastal environment, paragraphs 204-206, in response to DCC submission

<sup>50</sup> Although I note that Tanya Stevens in evidence is recommending inclusion of a new policy as per the Te Rūnanga o Ngāi Tahu submission version



## New policy - land/freshwater/sea interface

51. The Kāi Tahu ki Otago submission sought policy guidance relating to physical modification of the coastal environment at the interface of fresh and coastal waters, from activities other than reclamation. A list of activities of specific concern were set out in the submission including damming, mining, and openings of river mouths, lagoons and estuaries.<sup>51</sup> Similar concerns are expressed in the RMIA-CE chapter in this PORPS, as well as in cultural evidence.<sup>52</sup>
52. The Section 42A author considers such policy guidance as unnecessary as the CE chapter follows the NZCPS framework of focusing on protecting important areas and values, without specifying policy direction for activities that may affect these values.<sup>53</sup> Leaving aside that CE-P12 covers reclamation, I consider the policy gap identified by Kāi Tahu is in managing the physical modification of this interface, rather than necessarily the activities themselves. While CE-P4 covers natural character which includes natural coastal form and processes, this largely restates NZCPS Policies 13 and 14 and provides no guidance at a regional level. Further, the NZCPS Policy 14(a) requirement to identify areas for restoration or rehabilitation of natural character does not appear to be reflected in the CE methods.
53. There is a NZCPS Policy 7(2) requirement to identify coastal processes that are under threat or at significant risk from adverse cumulative effects. Apart from deteriorated coastal waters, the PORPS does not appear to provide a framework for giving effect to this requirement. Method CE-M2 prioritises identification of areas of outstanding natural character, but this is not the same matter.
54. I consider there is no CE policy guidance in relation to the natural functioning of the coastal environment and therefore a gap in terms of achieving CE-O1. This leads to the same inconsistency with MW and IM polices as identified in paragraph 50 above. I note by way of comparison the range of policies in the LF chapter that address the protection or restoration of natural form, functioning and character.<sup>54</sup> Again, I am not recommending any drafting to fill this policy gap, as I consider that this needs to be done in conjunction with Kāi Tahu as mana whenua.

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<sup>51</sup> Kāi Tahu ki Otago submission, pages 52-53

<sup>52</sup> Cultural evidence of Edward Ellison: *Degradation of te taiao and mahika kai*

<sup>53</sup> Section 42A Report, CE – Coastal environment, paragraph 452

<sup>54</sup> For example, LF-FW-P13 and LF-FW-P14

## Māori land

55. The evidence of Ms McIntyre outlines the planning issues associated with Native Reserves and Māori land and summarises the cultural evidence setting out the history of alienation and inequity for Kāi Tahu in relation to this whenua.<sup>55</sup> Ms McIntyre discusses the implications of a rural planning framework being imposed on these areas that were originally set aside for settlement including, *inter alia*, the imposition of restrictive planning overlays relating to matters such as biodiversity and landscape.
56. As outlined by Ms McIntyre, sections 6(e) and 8 of the RMA compel the PORPS to allow for a different approach to this whenua, one that allows for expression of rakatirataka by enabling mana whenua to lead decision-making in relation to managing effects on this land.<sup>56</sup> The Supplementary Evidence version of MW-M5 goes some way toward recognising this, although I note Ms McIntyre is proposing further amendment to broaden how and when a rakatirataka management approach may be applied.
57. Noting the traditional importance of the coast as an area for Kāi Tahu settlement and cultural expression, I consider the PORPS should supply more detail on the management approach to Native Reserves and Māori land in the coastal environment as follows:
- (a) An alternate approach to the management of indigenous biodiversity on Native Reserves and Māori land is proposed at paragraphs 107-109 below. I consider that the same approach should be taken in the coastal environment and have made a corresponding recommendation alongside amendments to CE-P5.
  - (b) The effects tests in the policies for natural character (CE-P4) and natural features and landscapes (CE-P6) take no account of the fact that, in my opinion, natural character or landscape values may only exist in some areas because Kāi Tahu have not been able to settle and use these areas for the reasons they were originally set aside.<sup>57</sup> I consider that an alternate policy approach as promoted by MW-P4 and MW-M5 is required in these areas.

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<sup>55</sup> Planning evidence of Sandra McIntyre: *Use and development of Māori land*

<sup>56</sup> Planning evidence of Sandra McIntyre: *Use and development of Māori land*.

<sup>57</sup> The cultural evidence of Matapura Ellison describes the difficulty in retaining land and communities within the Native Reserves. The planning evidence of Sandra McIntyre (*Use and development of Māori land*) sets out the planning and other restrictions that have affected the ability of Kāi Tahu to settle on this whenua.

## Access

58. In my opinion, the Supplementary Evidence version of the PORPS is inconsistent with the NZCPS in its management of vehicle access to the coastal environment. I recommend a modification to CE-O2 so that it is not seeking to 'maintain or enhance' vehicle access, which is not an outcome provided for under NZCPS Objective 4.
59. I also consider that CE-P8 needs amendment to provide a broader range of circumstances for controlling vehicle access to and along the coastal marine area, in line with NZCPS Policy 20. For example, the potential risks to flora, fauna and ecosystems are not sufficiently recognised in CE-P8 subclauses (b) and (c) which are limited to significant or sensitive areas only. Similarly, effects on the peaceful enjoyment of the beach as per NZCPS Policy 20(1)(d) are not included. In the available time prior to lodging this evidence, I have not been able to draft an amendment, but am happy to work with the Section 42A author and the Panel to craft a suitable amendment.

## Activities

60. The objective CE-O5 and associated policies are, to varying degrees, presumptive of development. Policy 3 of NZCPS requires a precautionary approach toward proposed activities where effects are uncertain, unknown or little understood. I consider this the case for much of the coastal environment, noting the Appendices to the Section 32 Report for this PORPS have no background studies specific to coastal matters. A new approach is required that is consistent with the precautionary approach, as set out in the following paragraphs.

### CE-O5 Activities in the coastal environment

61. CE-O5 reads like a policy and is presumptive of development. I am unclear what the outcome sought is but recommend an amendment so that the chapeau of CE-O5 links the occurrence of any activities in the coastal environment to the cultural, social and economic wellbeing or health and safety of people and communities, as per NZCPS Policy 6.<sup>58</sup> This ensures the outcome sought is wellbeing or health and safety, not the activities themselves.

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<sup>58</sup> Activities associated with environmental improvement may also occur – these are covered by other objectives.

- 62.** I support the Kāi Tahu submission that CE-O5 should prioritise avoidance of adverse environmental or cultural effects when activities occur in the coastal environment, noting that neither CE-P9 or CE-P10 directly consider environmental or cultural effects.
- 63.** Clause (4) has been amended to refer to ‘constraints’ instead of ‘limits’, citing the Fish and Game submission on environmental limits terminology.<sup>59</sup> This was not a change through the consideration of language used to describe environmental limits in the Supplementary Evidence and, for consistency of language across the PORPS, I consider it should revert to limits for the reasons set out therein.<sup>60</sup>

#### CE-P9 Activities on land within the coastal environment

- 64.** CE-P9 has been amended by Supplementary Evidence to include additional elements from NZCPS Policy 6, as well as reference to climate change and coastal hazard risk. The chapeau of CE-P9 reads as an objective, so that it is unclear whether the policy intent is to manage activities on land more broadly or to achieve the strategic use of coastal land. Nevertheless, I consider that additional clauses are needed to:
- (a) give effect to NZCPS Policy 6(1)(d), MW-O1 and MW-P4 in relation to papakāika, marae and associated activities;
  - (b) reflect NZCPS Policy 6(1)(h) which may not otherwise be given effect to, unless an area is within an identified natural feature, landscape or area of outstanding or high natural character; and
  - (c) provide policy direction for controls on land use activities in the coastal environment, as set out in the district plan method CE-M4.

#### CE-P10 Activities within the coastal marine area

- 65.** The chapeau of Policy CE-P10 does not provide policy direction as to when activities are suitable in the coastal marine area. As such, I consider it does not achieve the CE objectives including CE-O5, with its focus on appropriate locations and constraints; nor is it in line with NZCPS Policy 6(2)(c) and (d). I recommend a change to the chapeau to rectify this.
- 66.** I recommend a change to clause (2) to include a focus on the health of coastal waters and ecosystems, in line with the hauora-based approach to coastal waters sought by Kāi

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<sup>59</sup> 00231.009 Fish and Game

<sup>60</sup> Supplementary Evidence: Introduction and General Themes, page 28.

Tahu more generally.<sup>61</sup> I do not support the removal of 'and' from the end of clause (2). It is not onerous to expect activities to 'maintain' the health, integrity, form, function and resilience of the coastal marine area, and be in line with the precautionary approach required by NZCPS Policy 3.

- 67.** Clause (4) should refer to an 'open space' public benefit as per NZCPS Policy 6(2)(b) and NZCPS Objective 4, as I consider the term public benefit too broad and indeterminate.
- 68.** I support the Kāi Tahu submission for a new clause (5) that provides for use and development associated with the cultural wellbeing of Kāi Tahu mana whenua. I consider this gives effect to NZCPS Objective 3, Policy 2 and 6(a) and is consistent with MW-P2, MW-P3, CE-O4 and CE-P13 of this PORPS. I refer to paragraphs 36-38 of my evidence in relation to Mana moana, which describe the Kāi Tahu desire to be able to express rakatirataka and kaitiakitaka in relation to the coastal marine area.

#### **Coastal indigenous biodiversity**

- 69.** For clarity, I recommend changes to the introductory sentences in clauses CE-P5(1) and (2) to clarify that the policy requires, in the first instance, identification of the ecosystem types, vegetation and areas; and secondly, management of adverse effects. As stated at paragraphs 110-111 in my evidence, I support the addition of significant natural areas (SNA) and taoka to policy CE-P5.
- 70.** I consider further change is needed to CE-P5(2) to apply the effects management hierarchy in relation to indigenous biodiversity for less-than-significant adverse effects. The Supplementary Evidence drafting mirrors NZCP Policy 11(b). However, it seems incongruous in terms of the broader policy approaches in this PORPS that the effects management for coastal indigenous biodiversity (in areas that are not SNA or taoka or otherwise ecologically significant) are subject to a more lenient policy approach than for outside the coast (as managed by ECO-P6). I recommend an amendment to clarify that the effects management hierarchy for indigenous biodiversity should apply in these cases.

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<sup>61</sup> Refer paragraphs 21-22 of my evidence

## **Aquaculture**

- 71.** The evidence of Ms Stevens outlines the background to and implications of the Māori Commercial Aquaculture Claims Settlement Act 2004, including the requirement for allocation of space under regional aquaculture agreements. I rely on and support the evidence of Ms Stevens in relation to how the PORPS should integrate consideration of aquaculture settlement outcomes. My evidence considers the potential environmental and cultural effects of aquaculture.
- 72.** The chapeau wording of CE-P11 is presumptive of aquaculture, with little guidance as to what the 'appropriate locations and limits' for aquaculture are - although some guidance is provided by the additions of clauses (1A) and (1B) in response to the Kāi Tahu ki Otago submission.<sup>62</sup> I consider that starting CE-P11 with the wording 'Only allow' and further amending clause (1A) to expand on the types of environmental effects<sup>63</sup> provides better policy direction as to what appropriate locations or limits might be and that aquaculture in the Otago region must be assessed against these.
- 73.** I support the addition of clause (2) to CE-P11 requiring that the effects of aquaculture on cultural values including mahika kai and customary fisheries are taken into consideration. This is an appropriate recognition of Kāi Tahu rakatirataka and mana moana in the coastal environment, as discussed in the Mana Moana section of my evidence above.

## **CE methods**

### CE-M2 Identifying other areas

- 74.** I recommend changes to CE-M2(2) to correctly align it with the policy approach for identifying and protecting natural features and landscapes in the coastal environment as set out under CE-P6.<sup>64</sup>
- 75.** The reference to 'significant' indigenous vegetation in CE-M2(4)(b) is unclear. I consider that confirming it as those categories of indigenous vegetation listed under CE-P5(1) brings clarity to what is prioritised for identification.

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<sup>62</sup> 00226.146 Kai Tahu Ki Otago

<sup>63</sup> Refer recommended amendment to CE-P11(1A) in Appendix One

<sup>64</sup> The Kāi Tahu ki Otago submissions on CE-M2(2) and (4)(b) do not appear to be addressed in the Section 42A Report.

### CE-M3 Regional plans

- 76.** While I have endeavoured to provide comprehensive drafting recommendations for CE-M3, I note that consequential amendments may be required if policy recommendations elsewhere in my evidence are accepted.
- 77.** I recommend a change to clause (1) to include a requirement for management processes for deteriorated coastal water in regional plans to implement CE-P3. I disagree with the Section 42A author's contention that this is covered under CE-M3(4),<sup>65</sup> noting that clause (4) applies more broadly and is, as discussed in paragraph 48 of this evidence, disconnected from the CE policies.
- 78.** In clause (1A), I consider there should be an imperative to 'manage' rather than 'protect' areas where mana whenua have a particular interest. Some of these areas may be protected under different legislative mechanisms, and protection may not be the appropriate management tool in every instance.
- 79.** I recommend a change to clause (3) to clarify that natural character in the coastal environment includes the natural functioning, health and resilience of coastal waters and ecosystems. This dynamic aspect of natural character, encompassing form and function, is not sufficiently signalled in CE-P4. Cultural values should be added to CE-M3(4) – I do not agree with the Section 42A author's contention that such values are adequately covered by the RMA definition of amenity values, which in my opinion has a far more general interpretation.<sup>66</sup>
- 80.** I agree with the Kāi Tahu ki Otago submission to expand clause (5) to prioritise the functioning, resilience and health of coastal waters and ecosystems, and avoid adverse effects on deteriorated water or culturally significant waters. These changes reflect the Kāi Tahu intent in relation to a mauri and hauora-based approach to the management of coastal waters and ecosystems, as outlined in paragraphs 20-22 of this evidence, which I support. I do not support the amendment to add coastal water quality to clause (5), as it is counter-intuitive to suggest that coastal water quality should be preserved where it may be degraded.
- 81.** I support the addition of wāhi tūpuna to clause (5) but consider that customary fisheries management areas, mahika kai and kaimoana should also be added. The Section 42A

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<sup>65</sup> Section 42A Report, CE – Coastal Environment, paragraph 191

<sup>66</sup> Section 42A Report, CE – Coastal Environment, paragraph 194

author asks whether wāhi tūpuna is broad enough to encompass these other elements.<sup>67</sup> While wāhi tūpuna are yet to be mapped in the coastal marine area in regional plans, they are designed to reflect RMA section 6(e) relationships which, in coastal waters, may include traditional fishing grounds. However, customary fisheries management areas (such as mātaimai or taiāpure) are a contemporary mechanism which may be located in different areas to traditional fisheries. Mahika kai areas may have changed over time due to access issues, environmental degradation or the physically changing coastal environment. Therefore, the references in clause (5) should be broadened to include those areas, in addition to kaimoana itself.

- 82.** Clause (7) on aquaculture also includes a change from 'limits' to 'constraints' which does not seem supported by the Supplementary Evidence on limits terminology.<sup>68</sup> I also consider changes should be made to clause (7) that are consequential to those I am recommending for policy CE-P11. I note the evidence of Ms Stevens for Te Rūnanga o Ngāi Tahu stating that CE-M3 should require the allocation of areas of aquaculture under the Māori Commercial Aquaculture Claims Settlement Act 2004, and I support this recommendation.

#### CE-M4 District plans

- 83.** Method CE-M3 contrasts to method CE-M2 in not being as directly linked to the CE policy suite. I support the addition of new clause (3A) regarding integrated management, although consider it would be improved by including reference to CE-P1 (as amended by this evidence) which contextualises an integrated management approach to the coastal environment.
- 84.** I am uncertain as to the choice of activities listed in clause (1)-(3), as there will be other land use activities that affect the coastal environment and need management within district plans to achieve the CE objectives. I support the addition of mining as included in the Kāi Tahu ki Otago submission – other activities such as forestry could also be included. I support the clarification that mahika kai activities should be provided for, which is consistent with CE-O4, CE-P13 and changes sought to CE-P5.
- 85.** Consistent with the amendment to CE-M3(12), I consider clause (11) should be expanded to include provision for and encouragement of a broader range of enhancement outcomes (for example, enhancing coastal habitats and ecosystems). The expansion of this list is

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<sup>67</sup> Section 42A Report, CE – Coastal Environment, paragraph 197

<sup>68</sup> Supplementary Evidence: Introduction and General Themes, page 30



consistent with the integrated management approach included in new clause (3A), recognising that enhancement activities on land can have beneficial outcomes both on land within the coastal environment and within aquatic environments.

## **ECOSYSTEMS AND INDIGENOUS BIODIVERSITY (ECO)**

- 86.** The cultural evidence for the submitters describes the deep and enduring relationship of Kāi Tahu mana whenua to te taiao (the natural environment).<sup>69</sup> This relationship is manifested via whakapapa and associated rakatirataka and kaitiakitaka responsibilities. The ability to protect and restore the mauri of the natural environment is crucial, as is the ability to access and use mahika kai resources.
- 87.** I consider it important to understand the RMA matters of national importance in relation to indigenous biodiversity are not confined to the section 6(c) focus on 'significant' biodiversity. Section 6(e) requires recognition and provision for the relationship of mana whenua to a range of areas and resources, including taoka. I agree with the planning evidence of Ms McIntyre that this obligation carries not just a duty of protection to areas and resources valued by mana whenua, but requires that mana whenua are enabled to have decision making roles in relation to natural resources and to carry out cultural practices such as mahika kai.<sup>70</sup>
- 88.** In terms of other sections of RMA Part 2, section 7(a) requires particular regard to be had to kaitiakitaka, which in itself is bound to rakatirataka. Giving effect to the rakatirataka and kaitiakitaka responsibilities of Kāi Tahu mana whenua in relation to indigenous biodiversity is in accordance with the Treaty principles of active protection, partnership and recognition of rakatirataka under s8.<sup>71</sup> Kaitiaki duties of mana whenua are also recognised and must be given effect under both the NZCPS and the National Policy Statement for Freshwater Management 2020.<sup>72</sup>
- 89.** In preparing this evidence I have had regard to Te Mana o te Taiao – the Aotearoa New Zealand Biodiversity Strategy 2020.<sup>73</sup> This Department of Conservation strategy sets a strategic direction for the protection, restoration and sustainable use of biodiversity across all land, freshwater, estuaries, wetlands and the marine environment. The strategy places

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<sup>69</sup> Planning evidence of Sandra McIntyre: *The relationship of Kāi Tahu to te taiao*

<sup>70</sup> Planning evidence of Sandra McIntyre: *The relationship of Kāi Tahu to te taiao*

<sup>71</sup> The planning evidence of Sandra McIntyre sets out the Treaty principles relevant to providing for the relationship of Kāi Tahu to te taiao (section: *The relationship of Kāi Tahu to te taiao*)

<sup>72</sup> NZCPS Objective 3 and Policy 2; NPS-FM Te Mana o te Wai 1.3(4)(b)

<sup>73</sup> <https://www.doc.govt.nz/globalassets/documents/conservation/biodiversity/anzbs-2020.pdf>

the Treaty partnership at the centre of biodiversity work, with goals that by 2025 mana whenua are better able to practice their rakatira and kaitiaki responsibilities, including by leading and partnering in decision making about taoka species and the whenua, awa and moana with which they associate.<sup>74</sup>

- 90.** I have also taken into consideration the June 2022 exposure draft of the National Policy Statement for Indigenous Biodiversity (NPS-IB). While it remains in draft, I consider it represents a clear direction of travel in relation to matters such as tangata whenua as kaitiaki, the management of indigenous biodiversity on Māori lands, and management of taoka. I understand that the Ministry for the Environment is intending gazettal of the NPS-IB prior to the end of 2022 which, if it happens, would allow for consideration of how to give effect to its provisions at the PORPS hearing.

### **Kāi Tahu as Kaitiaki**

- 91.** Kaitiakitaka is an inherited responsibility for Kāi Tahu mana whenua that carries a requirement to be active in seeking to sustain and enhance the natural environment.<sup>75</sup> I support the amendments to ECO-O3 and the chapeau of ECO-P1, which clarify this inherited duty for mana whenua to exercise kaitiakitaka. I consider these amendments are consistent with RMA section 7(a), the language in MW – P2(6) and outcome 4 in Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020.
- 92.** The Section 42A author recommends a change to ECO-P1(3) from ‘providing for’ to ‘facilitating’ access in response to a Federated Farmers submission,<sup>76</sup> stating the clause does not give access over private land for Kāi Tahu. I understand the intent in that clause (3) does not provide indiscriminate access; nevertheless, in my opinion ‘facilitating’ does not encompass the statutory tools (such as ECO-M5(3)) available as well as non-statutory methods. I consider ‘promoting’ a more active verb that would serve more effectively in the achievement of ECO-O3.
- 93.** The ECO methods fail to mention anything about how Kāi Tahu as kaitiaki will be involved in biodiversity management, particularly glaring when ECO-M6 provides description of how councils will work with individuals, landowners, community groups and other agencies (but not mana whenua) in implementing the ECO provisions. The cultural

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<sup>74</sup> See for example section 2.2.2 (p14), Tūāpapa goals 2.1-2.3 (p48).

<sup>75</sup> Cultural evidence of Edward Ellison: *Rakatirataka and kaitiakitaka*

<sup>76</sup> 00239.099 Federated Farmers of New Zealand

evidence of Brendan Flack describes in detail the kaitiaki duties being carried out within the Kāi Huirapa takiwā through various environmental projects.<sup>77</sup>

94. The Section 42A author invited Kāi Tahu ki Otago to suggest specific amendments in evidence in relation to this gap in the methods.<sup>78</sup> On behalf of Kāi Tahu, I have proposed a new method for Kāi Tahu kaitiakitaka, set out in Appendix 1. This method has been drafted to directly implement ECO-P1 and achieve ECO-O3. I have tried to ensure consistency of approach with similar methods expressing the mana whenua role in the MW and CE chapters. I have also considered the approaches to kaitiakitaka and Māori land signalled in subparts 3.3 and 3.18 of the exposure draft NPS-IB, along with the direction in Te Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020 to place the Treaty partnership at the centre of biodiversity work.<sup>79</sup> I have not included the identification of taoka in this new method, as I consider this adequately covered by ECO-M3.

### **Mahika kai**

95. The fundamental role of mahika kai as a cornerstone of Kāi Tahu culture is set out in the evidence of Edward Ellison and Brendan Flack.<sup>80</sup> Mr Ellison describes mahika kai as the ninth ‘Tall Tree’ that formed part of the Ngāi Tahu claim before the Waitangi Tribunal, in addition to the eight claims relating to land transactions.<sup>81</sup>
96. Mahika kai is more than just the practice of gathering resources. It involves the inter-generational transfer of mātauraka and tikaka.<sup>82</sup> It is an expression of mana and manaakitaka. As well as reinforcing and sustaining the Kāi Tahu connection to te taiao more broadly, the practice of mahika kai helps return and re-connect whānau to ancestral areas.<sup>83</sup>
97. Kāi Tahu concerns about the issues facing mahika kai and biodiversity are clearly set out in the RMIA-MKB section of this PORPS, reflecting similar concerns articulated throughout the iwi management plans. The evidence of Edward Ellison describes the

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<sup>77</sup> Cultural evidence of Brendan Flack: *Mana whenua relationships with the coastal environment, The Waikōuaiti Mātaitai and East Otago Taiāpure*

<sup>78</sup> Section 42A Report, ECO – Ecosystems and indigenous biodiversity, paragraph 473

<sup>79</sup> Refer Section 2.2.2

<sup>80</sup> The central importance of mahika kai is demonstrated by its reference in all the Kāi Tahu cultural witness statements to this hearing.

<sup>81</sup> Cultural evidence of Edward Ellison: *Te Kerēme (The Ngāi Tahu Claim)*

<sup>82</sup> Cultural evidence of Edward Ellison: *Mahika kai*

<sup>83</sup> Cultural evidence of Justin Tipa: *Changes to our landscape and the impacts on mahinga kai practices*

wholesale degradation of mahika kai habitats since European settlement, with the result that “the mahika kai resource is now a shadow of what our kaumatua and tūpuna once experienced”.<sup>84</sup> Adverse effects on mahika kai species and habitats through habitat loss or degradation and poor resource management practices remain ongoing.<sup>85</sup>

- 98.** The addition of new clause (2A) to ECO-P4 is an appropriate recognition of mahika kai and kaimoana as cornerstones of Kāi Tahu culture and values, which I consider is well aligned with ECO-P1 and will assist in the achievement of ECO-O3.
- 99.** Policy ECO-P6 which manages adverse effects on indigenous biodiversity has no consideration for the mahika kai practices of mana whenua. While tikaka dictates that mahika kai should be undertaken in a sustainable manner,<sup>86</sup> there is a risk that the policy will be read too narrowly in terms of the meaning of adverse effects. I recommend an amendment to allow for mahika kai practices – an amendment which I consider aligned with ECO-O3 and ECO-P1 and is consistent with the approach signalled in the draft NSP-IB.<sup>87</sup>
- 100.** This allowance for sustainable mahika kai practices should also be reflected in the methods requiring plans to manage the clearance or modification of indigenous biodiversity. I support the amendments to ECO-M4(1A) and ECO-M5(2)-(3) to this effect.
- 101.** I support amendments to ECO-M7 and ECO-M8 to include mahika kai species and ecosystems in requirements for monitoring, information gathering and guidance. These amendments are necessary to properly implement ECO-P1 and achieve ECO-O1 in terms of mana whenua being able to exercise their kaitiaki role.

## **Taoka**

- 102.** The cultural evidence of Edward Ellison describes some of the indigenous species valued as taoka by Kāi Tahu.<sup>88</sup> Mr Ellison sets out how kaitiakitaka responsibilities require that these species and their habitats are protected through a whole-of-system management approach that recognises connections across land, freshwater and the coast.

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<sup>84</sup> Cultural evidence of Edward Ellison: *Degradation of te taiao and mahika kai*

<sup>85</sup> Ibid.

<sup>86</sup> Cultural evidence of Edward Ellison: *Mana whenua*

<sup>87</sup> Exposure draft NSP-IB, part 3.3(2)(d)

<sup>88</sup> Cultural evidence of Edward Ellison: *Taoka*

- 103.** The requirement to recognise and provide for the relationship of Kāi Tahu to taoka arises from RMA s6(e), as well as the need to have regard to kaitiakitaka under s7(a). I consider that, in general, the PORPS has taken an appropriate approach to the management of taoka species and ecosystems by aligning the management approach with that for significant natural areas, also a RMA s6 matter. I note, however, that the draft NPS-IB signals a specific approach to managing taoka that enables the exercise of kaitiakitaka by mana whenua. Gazettal of the NPS-IB will necessitate consideration as to whether the PORPS approach to taoka needs updating.
- 104.** I consider the creation of a new clause (1A) for ECO-P1 clarifies the different roles for Kāi Tahu, but also the particular requirements in relation to identifying taoka species and ecosystems, which will involve councils and possibly other agencies, as well as mana whenua.
- 105.** I support the amendment to ECO-P2(2), which recognises that mana whenua will not always seek to identify or map taoka species or ecosystems. For similar reasons, I consider an amendment is necessary to ECO-P3(1)(b), as taoka values may be identified through other mechanisms than mapping.
- 106.** I support ECO-M3 for the identification of taoka using a process agreed between mana whenua and councils and also providing for their identification in regional and district plans where appropriate. I consider this appropriate in giving effect to RMA s6(e), achieving ECO-03, and in line with ECO-P1. It is also consistent with the approach signalled in the exposure draft NSP-IB (clause 3.19(3)).

### **Biodiversity on Māori land**

- 107.** The requirement for an alternate management approach for Native Reserves and Māori land was discussed at paragraphs 55-57 of my evidence above. In terms of indigenous biodiversity, such an alternate approach is signalled in the exposure draft of the NPS-IB. Subpart 3.18 requires local authorities to work in partnership with mana whenua and Māori landowners to develop objectives, policies and methods to manage biodiversity on Māori land.
- 108.** I consider such an approach would be the most appropriate and effective mechanism for Kāi Tahu to express kaitiakitaka on their ancestral lands and enable the achievement of objective ECO-O3. It would be consistent with the approaches signalled in (amended) MW-P4, MW-M1 and MW-M5, and would be an appropriate way to achieve MW-O1 in relation to the principles of The Treaty of Waitangi.

109. ECO-P4 clauses (2) and (3) stipulate that new activities within Native Reserves or Māori land aimed at enhancing the well-being of mana whenua, that could adversely affect significant natural areas or taoka species and habitats, are subject to the indigenous biodiversity effects hierarchy of ECO-P6 rather than ECO-P3. I support amendments to these clauses in response to the submission of Te Rūnanga o Ngāi Tahu,<sup>89</sup> with the caveat that this policy directs to ECO-P6 which I consider should be replaced by a new policy approach for indigenous biodiversity on Native Reserves and Māori land.

### **ECO integration with CE provisions**

110. The Supplementary Evidence recommends amending ECO-P7 to clarify that indigenous biodiversity and taoka species and ecosystems in the coastal environment are managed by CE-P5 as well as all objectives and policies in the ECO chapter, with the exception of ECO-P3 to ECO-P6. A consequential amendment clarifies that taoka species and ecosystems in the coastal environment are managed under CE-P5(1).
111. In general, I support these amendments to ECO-P7 which provide greater clarity, particularly in relation to the management of taoka in the coastal environment. I consider these are in line with and give effect to RMA s6(e), NZCPS Policy 2 (particularly clause (f)) and are also consistent with the approach signalled in Policy 2.2 of the exposure draft NPS-IB.
112. I recommend further amendments to ECO-P7, to:
- (a) include an amendment to the title suggested in the ECO Supplementary Evidence that does not appear in the combined Supplementary Evidence version of the PORPS; and
  - (b) clarify that the methods in the ECO chapter apply in the coastal environment.

### **Clarity of ECO provisions**

113. A Kāi Tahu ki Otago submission to clarify and make consistent the titles of ECO-P4 & ECO-P5 has not been accepted. Both policies cover significant natural areas and taoka, yet (unlike the ECO-P3 title) the ECO-P4 title includes neither, while the ECO-P5 title only

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<sup>89</sup> Te Rūnanga o Ngāi Tahu 00234.009, 00234.032

includes significant natural areas. I consider amendments to the titles of ECO-P4 and ECO-P5 are required for clarity.

114. ECO-P10 has been renamed to avoid confusion with the IM policy suite, a change I support. A Kāi Tahu ki Otago amendment to consider the effects on coastal biodiversity from land-based activities has been accepted by the Section 42A author with changed wording. I prefer the wording in the submission, as it is the effects on coastal biodiversity and ecosystems under consideration (within this ECO chapter provision) not the coastal environment more broadly. I consider that new clause (2A), in response to Te Rūnanga o Ngāi Tahu submission,<sup>90</sup> is a necessary addition to highlight that management approaches take into account the effects of climate change on indigenous biodiversity.

## HISTORIC AND CULTURAL VALUES (HCV)

### HCV – WT – WĀHI TŪPUNA

115. Wāhi tūpuna provisions in the PORPS directly give effect to s6(e) of the RMA, which provides for the relationship of mana whenua and their culture and traditions to a broad range of inter-related elements - ancestral lands, water, sites, wāhi tapu and taoka. In combination with the 'cultures and traditions' aspect of s6(e) (including matters such as tikaka, mātauraka and mahika kai), these elements form wāhi tūpuna – an embodiment of the relationship of Kāi Tahu to whenua and wai. Wāhi tūpuna move beyond a first-generation RMA planning approach that has given effect to s6(e) on a very restricted basis – typically only providing for mana whenua relationships to historic elements such as archaeological sites, or to Treaty settlement mechanisms such as statutory acknowledgements or nohoaka - and embrace a more tikaka-consistent and whakapapa-based approach to sustainable management.
116. The evidence of Edward Ellison<sup>91</sup> describes the link between landscape and whakapapa; the different but inter-related elements that make up wāhi tūpuna; how mana whenua view their associations to wāhi tūpuna; and how adverse effects from inappropriate use or development can impact on the Kāi Tahu relationship to wāhi tūpuna. This evidence sits within a broader backdrop of cultural evidence explaining the deep and enduring

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<sup>90</sup> 00234.033 Te Rūnanga o Ngāi Tahu

<sup>91</sup> Cultural evidence of Edward Ellison: *Wāhi tūpuna*

relationship between Kāi Tahu and te taiao (the natural environment), summarised in the planning evidence of Ms McIntyre.<sup>92</sup>

117. The evidence of David Higgins<sup>93</sup> describes how Kāi Tahu whānau keep alive the connection to wāhi tūpuna, along with aspirations for how kaitiakitaka and mātauraka in relation to wāhi tūpuna can be nurtured and passed on to tamariki and mokopuna. I consider this cultural imperative to both exercise kaitiakitaka and preserve and pass on knowledge to younger generations is appropriately recognised and provided for in the wāhi tūpuna provisions of this PORPS, subject to some minor amendments I am recommending. In properly recognising Kāi Tahu mana and rakatirataka, I consider this PORPS provides an appropriate policy framework to both guide subsidiary plan-making in relation to wāhi tūpuna and to properly give effect to s6(e).

### **HCV-WT-P1 Recognise and identify wāhi tūpuna**

118. The Kāi Tahu ki Otago submission proposed changing the chapeau of HCV-WT-P1 to begin with the RMA s6 language of ‘recognise and provide for’. However, I consider that ‘recognise’ and ‘provide for’ are adequately incorporated into the subclauses of the policy to fulfil the intent of RMA s6(e). I support the Supplementary Evidence version which moves ‘sustain’ to be a more active verb at the start of the chapeau. I also support other changes to clause (1) and (2) of HCV-WT-P1, which both improve the readability and the understanding of the mana whenua role in relation to wāhi tūpuna.
119. The Kāi Tahu ki Otago submission proposed a new clause for HCV-WT-P1 to recognise that Kāi Tahu hold an ancestral and enduring relationship with all whenua, wāi māori and coastal waters in their takiwā. The intent of this clause was to explain that, while wāhi tūpuna are a tool to give effect to s6(e), Kāi Tahu hold a mana whenua relationship across the entire Otago region. The evidence of Edward Ellison highlights that Kāi Tahu are bound to the landscape and waterbodies of Otago by whakapapa.<sup>94</sup> The Section 42A author has recommended the inclusion of this clause in policy MW-P3, stating that it is a broadly applicable statement about Kāi Tahu’s relationships with te taiao rather than being specifically about wāhi tūpuna. I accept that its location in MW-P3 is clearer and provides an appropriate focus on the need to support Kāi Tahu well-being through recognising this region-wide relationship with the natural environment.

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<sup>92</sup> Planning evidence of Sandra McIntyre: *The relationship of Kāi Tahu to te taiao*

<sup>93</sup> Cultural evidence of David Higgins: *Relationship with wāhi tūpuna, Protecting wāhi tūpuna*

<sup>94</sup> Cultural evidence of Edward Ellison: *Mana whenua relationships with the taiao*



## **HCV-WT-P2 Management of wāhi tūpuna**

- 120.** I support the Supplementary Evidence changes to the HCV-WT-P2 effects test, which help to delineate the management of significant and less-than-significant adverse effects. I consider the amendments move the effects test closer in line with other effects tests in this PORPS. I recommend a further amendment to HCV-WT-P2(2) to align the policy wording for adverse effects with that of HCV-HH-P5(4).

## **HCV-WT Methods**

- 121.** I agree with the Section 42A rationale for re-ordering the HCV-WT methods so that Treaty Partnership is the first method, followed by Identification and then Regional and district plans. This follows a logical flow of approaching wāhi tūpuna through a Treaty lens in terms of establishing a partnership approach with mana whenua; working with Kāi Tahu to identify, record and protect wāhi tūpuna areas and values; then establishing methods in regional and district plans to appropriately manage wāhi tūpuna.
- 122.** I support the amendments to HCV-WT-M1, which provide for a tikaka approach to identification and recording, using methods deemed suitable by mana whenua. This recognises that there may be sensitivity around the identification of some areas and mapping may not be appropriate, with other mechanisms such as alert layers more suitable. I accept the deletion of clause (5), with local authority collaboration with Kāi Tahu covered by MW-M1(1) and HCV-WT-M3.
- 123.** As discussed at paragraph 129 of my evidence below, I support the approach of creating a new APP11 and integrating it into provisions that refer to accidental discovery protocols (ADPs). However, it appears this has mistakenly been added to clause (3) rather than clause (4) of HCV-WT-M2. I also consider that, with the inclusion of APP11, ADPs should be required as a resource consent condition rather than an advice note, consistent with the approach taken in HCV-HH-M4 amendments.
- 124.** I support the amendment to clause (2) of HCV-WT-M2 in response to the Ngāi Tahu ki Murihiku submission,<sup>95</sup> which clarifies that cultural impact assessments (CIAs) will be required where Kāi Tahu have identified the need for one. This is an appropriate approach as only mana whenua will know when the potential for adverse effects is significant

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<sup>95</sup> 00223.122 Ngāi Tahu ki Murihiku

enough to warrant a CIA. Without this amendment, the clause implies that CIAs will be required more frequently than what will occur in reality.

### **Clarity of HCV-WT provisions**

**125.** The Section 42A author recommends a change to HCV-WT-AER1 based on a Toitū Te Whenua submission highlighting there can sensitivity around public release of information on cultural values.<sup>96</sup> I agree in principle with the intent of the recommendation, but consider further amendments necessary so that:

- (a) the AER remains focused on identification (amended AER2 covers protection); and
- (b) identification in plans is not a mandatory requirement but is at the discretion of Kāi Tahu. I consider the addition of the words 'where appropriate' is in line with the intent of the Toitū Te Whenua submission.

**126.** I support and/or recommend other minor amendments in the Supplementary Evidence version as follows:

- (a) to HCV-WT-O2 to clarify that kaitiakitaka is an inherited role for Kāi Tahu mana whenua;
- (b) to HCV-WT-AER2 to provide consistency with HCV-WT-O1 language, and to include improvement as a possible outcome as per the Ngāi Tahu ki Murihiku submission; and
- (c) to APP7 to provide clarity of language and meaning, include tuhituhi neherā (rock art sites), and align the introductory text with the definition of wāhi tūpuna.

## **HCV-HH – HISTORIC HERITAGE**

### **HCV-HH-P3 Recognising historic heritage**

**127.** An amendment has been made to clause (1) to change 'Māori' to 'Kāi Tahu'. I do not support this amendment as, while the vast majority of Māori heritage in Otago will be of Kāi Tahu whānui origin, there may be Māori historic heritage of non-Kāi Tahu origin. For

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<sup>96</sup> 00101.053 Toitū Te Whenua, Land Information New Zealand

example, various structures in Dunedin, such as the Otago Harbour walls, built using the labour of Taranaki Māori prisoners.

- 128.** While I understand the intent of the amendment, I do not support the addition of ‘sites’ to clause (1). I consider this should be amended to ‘places and areas’ to be consistent with HCV-HH-P4 and APP8. In my opinion, it also clarifies that under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA), listed Māori historic heritage may include wāhi tūpuna, wāhi tapu or wāhi tapu areas.

#### **HCV-HH-P5 Managing historic heritage**

- 129.** I support the Supplementary Evidence approach to create a new appendix APP11 and reference this in those HCV provisions requiring the use of ADPs. I consider this will provide greater clarity and consistency around what an ADP should contain and how it should be used, along with associated HNZPTA requirements.
- 130.** While APP11 correctly contains all the elements from the HNZPTA ADP, I am aware that rūnaka will sometimes seek additional elements in an ADP to reflect the particular circumstances of a location. Further, there is a Te Rūnanga o Ngāi Tahu policy specific to kōiwi (human remains) that recognises papatipu rūnaka as kaitiaki of kōiwi tangata on behalf of Kāi Tahu whānui, to allow for the exercise of tino rakatirataka in relation to kōiwi.<sup>97</sup>
- 131.** I consider that APP11 needs adaptation to recognise that the management of kōiwi and other Kāi Tahu archaeological heritage should recognise Kāi Tahu rakatirataka and kaitiakitaka. This would better give effect to RMA s6(e) and s(8) and would be more consistent with MW-P2. I have not had time to discuss possible amendments with rūnaka or Heritage New Zealand Pouhere Taonga between the time of Supplementary Evidence release and evidence lodgement but, with the Panel’s leave, will circulate recommended amendments in advance of the HCV hearing.
- 132.** I note that a Supplementary Evidence recommendation<sup>98</sup> to amend HCV-HH-M5 to reference APP11 is not reflected in the Supplementary Evidence version of the PORPS.
- 133.** In regard to the effects test in HCV-HH-P5, I prefer the approach set out in the Kāi Tahu ki Otago submission. I consider it still not sufficiently clear that clauses (4) and, in

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<sup>97</sup> Te Wawata o Ngāi Tahu e pa ana ki Ngā Tāonga Kōiwi o Ngā Tūpuna, The Policy of Ngāi Tahu Concerning the Human Remains of our Ancestors, Te Rūnanga o Ngāi Tahu, 2019

<sup>98</sup> Supplementary Evidence, HCV – Historical and cultural values, paragraph 31

particular, (5) do not tie back to clause (2). I have recommended some drafting that adapts the Kāi Tahu ki Otago submission drafting, which I consider provides greater clarity.

## **NATURAL FEATURES AND LANDSCAPES (NFL)**

### **NFL and Māori land**

- 134.** The potential application of NFL-P2 and NFL-P3 to Native Reserves and Māori land gives rise to the same issues regarding restricting the use of these areas for Kāi Tahu settlement purposes, as described in paragraphs 55-56 above. Again, I consider that an alternate policy approach to these areas is provided for, consistent with MW-P4 and MW-M5.

### **NFL integration with CE**

- 135.** Kāi Tahu ki Otago submitted that all provisions concerning Otago's outstanding and highly valued natural features and landscapes should be located in the NFL chapter, to encourage a more integrated and holistic management approach. The Supplementary Evidence proposes changes to NFL-P1, NFL-P2, NFL-P3 and APP9 to clarify their application, or lack thereof, in the coastal environment. The changes to the NFL policies are useful in differentiating them from CE-P6. However, I consider there is still uncertainty as to the application of the NFL provisions in the coastal environment, as follows:

- (a) Direct exclusion of the coastal environment from policies NFL-P1 to P3 implies that the remaining NFL policies apply in the coastal environment, while NFL-P6 implies that no NFL policies apply in the coastal environment. This uncertainty is relatively moot for NFL-P4 Restoration which has a corollary in CE-P6(4), albeit the latter promotes 'enhancement' as well as 'restoration' and applies to all features and landscapes, not just outstanding and highly valued ones. However, NFL-P5 relating to wilding conifers has no corollary in the CE provisions and thus is unclear as to its applicability in the coastal environment.
- (b) NFL-P6 states that implementation of CE-P6 contributes to achievement of NFL-O1, however, there is a higher outcome sought under CE-O3 of protection for all features and landscapes in the coastal environment. This raises the question of why NFL-O1 applies in the coastal environment – is it so that other NFL provisions also apply in the coast? Further, if NFL-O1 applies in the coastal environment, should 'seascapes' be included in the objective?

- (c) Owing to this uncertainty around how the NFL objective and policies apply in the coastal environment, the applicability of other NFL provisions is also unclear, as follows:
- (i) NFL-M1 Identification has a corollary in CE-M2(2) although, as pointed out in the Kāi Tahu ki Otago submission, the latter only relates to the identification of outstanding features and landscapes. NFL-M1 only applies to territorial authorities and district plans, whereas CE-M2 applies to all local authorities and both regional and district plans.
  - (ii) NFL-M2 and NFL-M3 require the ORC and district councils to amend regional and district plans to manage outstanding and highly valued natural features and landscapes. These methods list the NFL policies they are implementing, some of which (following Supplementary Evidence amendments) specifically exclude the coastal environment. I assume that the CE methods CE-M3(5), (12) and CE-M4 apply instead.
  - (iii) NFL-M4 has some incentives and mechanisms not available under CE-M5, such as land purchase and fee waivers or reductions. It would be useful to know if these are intended to be encouraged in the coastal environment also.
  - (iv) It is uncertain whether NFL-E1 Explanation, NFL-PR1 Principal reasons and the NFL AERs apply in the coastal environment. None of the CE AERs specifically refer to natural features and landscapes.
  - (v) APP9 has been amended by the Supplementary Evidence to clarify that seascapes are a subset of outstanding and highly valued features and landscapes. However, APP9 criteria are used to identify all natural features and landscapes in the coastal environment, regardless of whether they are outstanding or highly valued (refer CE-O3 and CE-P6). I recommend an amendment to APP9 to clarify that it applies to features and landscapes more broadly.

**136.** While the submission of Kāi Tahu ki Otago sought the removal of landscape provisions from the CE chapter and integration within the NFL chapter, there may be benefit in the retention of these in CE as they refer to all natural features and landscapes, not just outstanding and highly valued ones. However, my evidence shows there are still matters

of differentiation and alignment between the NFL and CE chapters that require clarification and fundamentally better integration.

### **NFL-P2 Protection of outstanding natural features and landscapes**

- 137.** NFL-P2 as notified manages the adverse effects on values of outstanding natural landscapes and features, with a requirement to avoid adverse effects on values that contribute to the feature or landscape being considered outstanding. The Section 42A amendment, updated via Supplementary Evidence, has introduced the concept of 'capacity' into this management approach, now allowing adverse effects on the values of outstanding natural features and landscapes where there is deemed to be 'more than limited' capacity to absorb use or development. Clause (1) now manages adverse effects on all values, not just those that contribute to the feature or landscape being outstanding.
- 138.** I do not support the inclusion of capacity in clause (1) as it promotes a 'maximum permissible harm' approach within the NFL policy framework; effectively an approach of 'managing down' to environmental bottom lines. I consider the Supplementary Evidence version of NFL-P2 problematic in the following respects:
- (a) It signals a tolerant approach to adverse effects within outstanding natural features and landscapes prior to some theoretical capacity limit being reached, counter to the approach under the notified version of this policy.
  - (b) An outstanding feature or landscape may be adversely affected within existing capacity limits (for example, painting an existing building in an outstanding natural landscape bright orange) - the redrafted policy appears to offer no effects management in situations where capacity for use or development is available.
  - (c) The meaning of 'other adverse effects' in clause (2) is now unclear, with the proposed amendments to clause (1).
  - (d) NFL-P3 does not have capacity introduced into its policy tests, despite NFL-P1 and NFL-M1(2) requiring identification of capacity for highly valued features and landscapes. This detracts from clarity of how the policies will work together to achieve NFL-O1.
  - (e) Identifying and quantifying or qualifying capacity to absorb use or development is conceptually difficult. Lower order plans currently have differing or non-existent approaches to identifying capacity. There is no definition of 'capacity' in this PORPS nor any guidance as to how to determine landscape capacity. I

consider that linking tolerance of adverse effects to capacity in NFL-P2 in the face of such methodological uncertainty runs counter to the precautionary approach towards activities where effects are uncertain or unknown required by policy IM-P6.

- 139.** In my opinion this policy should revert to the notified version; identification of capacity should be directed by NFL-P1; and the inter-relationship between capacity and effects management should be resolved in lower order plans. I consider this a more appropriate and effective approach to the achievement of NFL-O1.

### **NFL-M1 Identification**

- 140.** I support the addition of clause (2A) to NFL-M1 in response to the Ngāi Tahu ki Murihiku submission<sup>99</sup> as a replacement of the notified clause MW-M1(4), which provides for collaboration with Kāi Tahu in the identification of natural features and landscapes.

- 141.** I recommend further amendments to the clause as follows:

- (a) To provide for the use of a tikaka based approach to collaboration with Kāi Tahu, in line with similar identification methods in the PORPS, such as MW-M1 and HCV-WT-M1.
- (b) To provide for a broader range of methods and management responses in relation to landscape identification and description. This addresses the intent of the Ngāi Tahu ki Murihiku submission to enable mātauraka and a Kāi Tahu lens to be applied in landscape identification and management. I consider this in line with current best practice guidance for landscape assessment and management, as set out in the New Zealand Institute of Landscape Architects landscape assessment guidelines Te Tangi a te Manu – Aotearoa New Zealand Landscape Assessment Guideline (NZILA Tuia Pito Ora, 2021).<sup>100</sup>

### **Clarity of NFL provisions**

- 142.** I consider the amendment to NFL-O1 to add clause (3), relating to the restoration of natural features and landscapes, clarifies that such restoration (given effect to via policy

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<sup>99</sup> 00223.128 Ngāi Tahu ki Murihiku

<sup>100</sup> See for example, paras 5.37-5.43 - Engagement with tangata whenua when assessing landscapes

NFL-P4) is an outcome sought by the PORPS. I support the Supplementary Evidence amendment.

143. I recommend a minor amendment to the chapeau of NFL-P1 which I consider makes the policy language more active and consistent with the other policies in the NFL suite.

## CONCLUSION

144. Through the agency of Aukaha and Te Ao Marama, Kāi Tahu had substantial input into the development of certain parts of the PORPS, particularly the MW, RMIA and LF chapters. However, the tight timeframe for developing a new PORPS created an uneven approach to Kāi Tahu involvement leading, in my opinion, to a deficit in the recognition of mana whenua values, rights and interests in other chapters.

145. This is particularly the case in the CE chapter, as discussed earlier in my evidence. The RMIA-CE context statement, which precedes a long list of Kāi Tahu concerns in relation to coastal management, states:

*The coastal environment is particularly significant for Kāi Tahu in the southern South Island. The spiritual and cultural significance of taku tai moana me te wai māori (saltwater and freshwater) and the interconnection between land and sea environments are not always well recognised in management of the coastal environment.*

146. In my opinion, even with Section 42A and Supplementary Evidence amendments, the CE chapter falls short in providing a policy framework to respond to these concerns and guide development of a new regional coastal plan. My evidence, along with that of Ms Stevens, recommends a range of amendments to address this. However, there are some matters that require a more considered approach to policy development, involving mana whenua input into their drafting.

147. In general, the other chapters covered by my evidence give appropriate recognition to Kāi Tahu values and aspirations for the environment, with many Kāi Tahu submission points adequately addressed by the Section 42A report and supplementary evidence recommendations. My evidence recommends some further amendments that I consider will both address remaining Kāi Tahu submission points and improve sustainable management outcomes for the Otago region.





**Michael Bathgate**

**23 November 2022**

## **APPENDIX 1: RECOMMENDED AMENDMENTS**

[Refer separate document]