BEFORE THE HEARINGS PANEL

UNDER the Resource Management Act 1991

IN THE MATTER of the Proposed Otago Regional Policy Statement 2021

STATEMENT OF EVIDENCE OF TANYA JANE STEVENS

ON BEHALF OF TE RŪNANGA O NGĀI TAHU

23 November 2022

INTRODUCTION

1. My name is Tanya Jane Stevens.

2. I hold the qualifications of Bachelor of Music and Master of Planning Practice (with honours) from the University of Auckland. I am a full member of the New Zealand Planning Institute and a Chartered Member of the Royal Town Planning Institute. I am a Practitioner member of the Institute for Environmental Management and Assessment and a Registered Environmental Impact Assessment Practitioner with the same Institute. I have completed the Making Good Decisions course, including one recertification.

3. I am employed by Te Rūnanga o Ngāi Tahu (**Te Rūnanga**) as a Senior Policy Advisor in Te Whakaariki/Strategy and Influence team. I moved to this position in April this year, having been previously employed by Te Rūnanga as a Senior Planner for eight years.

4. I have over 15 years' experience in planning both in New Zealand and in the United Kingdom. I have worked for councils in both New Zealand and the United Kingdom as a planner, including as a resource consents officer. I have also worked for private consultancies and was employed by Deloitte UK as a planning consultant prior to working for Te Rūnanga.

5. Through my previous role for Te Rūnanga I have been involved in plan review processes as an expert planner, including the Christchurch City Council District Plan Review, and the submissions and hearings process on the Marlborough Environment Plan. More recently I provided expert planning evidence to the hearings panel on the proposed Marlborough Environment Plan aquaculture variations. I have appeared as an expert planning witness in the Environment Court for Te Rūnanga and have also been involved in Environment Court mediation processes. As part of my current role in Te Whakaariki/Strategy and Influence, I have shifted my focus to fisheries and aquaculture.

6. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and have complied with it in preparing this evidence. I confirm that the issues addressed in this evidence are within my area of expertise and

I have not omitted material facts known to me that might alter or detract from my evidence.

7. I whakapapa to Ngāi Tahu hapū Ngāti Kuri and Ngāi Tūāhuriri.

8. My evidence primarily addresses the submissions of Te Rūnanga, but forms part of the overall package of evidence on behalf of Kait Tahu ki Otago, Ngāi Tahu ki Murihiku and Te Rūnanga, and provides some of the background and context for the Ngāi Tahu Settlement which other experts refer to.

9. I prepared primary submissions on the Proposed Otago Regional Policy Statement 2021 (**pORPS**) on behalf of Te Rūnanga and contributed to the preparation of further submissions on behalf of Te Rūnanga. I also prepared further submissions on behalf of Ngāi Tahu Forestry.[1]

10. The key documents I have referred to in drafting this brief of evidence are:

    (a) The Resource Management Act 1991 **(RMA**);

    (b) Te Rūnanga o Ngāi Tahu Act 1996;

    (c) Ngāi Tahu Claims Settlement Act 1998;

    (d) Māori Commercial Aquaculture Claims Settlement Act 2004;

    (e) The New Zealand Coastal Policy Statement 2010;

    (f) New Zealand Government Aquaculture Strategy;

    (g) Kāi Tahu ki Otago Natural Resource Management Plan 2005;

    (h) Te Tangi a Tauira, the Cry of the People, Ngāi Tahu ki Murihiku Natural Resource and Environmental Management Plan 2008;

    (i) Cultural evidence of Messers Edward Ellison, Matapura Ellison, David Higgins, Justin Tipa and Brendan Flack on behalf of Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively **Ngāi Tahu ki Otago**);

[1] Ngāi Tahu Forestry Further Submissions have been resolved through Section 42A reports, therefore I do not cover in this brief.

(j) Planning evidence of Ms Sandra McIntyre and Mr Michael Bathgate on behalf of Kāi Tahu ki Otago, and Ms Maria Bartlett on behalf of Ōraka-Aparima Rūnaka, Awarua Rūnanga, Waihōpai Rūnaka (collectively **Ngāi Tahu ki Murihiku**), all dated 23 November 2022;

(k) Proposed Otago Regional Council Regional Policy Statement 2021;

(l) Section 32 Evaluation, Proposed Otago Regional Council Regional Policy Statement dated May 2021; and

(m) Section 42A reports (all dated 27 April 2022):

- Chapter 4, Manawhenua, James Adams
- Chapter 8, Coastal Environment, Andrew McLennan

(n) Supplementary evidence (all dated 11 October 2022):

- Chapter 4, Manawhenua, James Henry Adams
- Chapter 8, Coastal Environment, Andrew Cameron McLennan

SCOPE OF EVIDENCE

11. My evidence will address the following matters:

(a) Key themes in the submission by Te Rūnanga, including te Tiriti o Waitangi (Te Tiriti) relationship between mana whenua and the Crown, kaitiakitanga and whanaungatanga;

(b) The relevant statutory direction and framework;

(c) Chapter by Chapter discussion of outstanding submission points.

EXECUTIVE SUMMARY

12. Te Rūnanga made primary and further submissions on the pORPS. The submissions support those of Aukaha and Te Ao Marama on behalf of Papatipu Rūnanga and seek retention of those parts of the pORPS that have been supported, and amendment to those where Ngāi Tahu values have not been appropriately recognised and provided for.

13. Specifically, Te Rūnanga submission seeks better provision for outcomes of the Māori Commercial Aquaculture Claims Settlement Act 2004. While space may be gazetted under the Act, resource consent is still required. As such, processes under the RMA must 'speak' to processes under the Māori Commercial Aquaculture Claims Settlement Act and vice versa. I have provided drafting to achieve this.

14. Te Rūnanga submission also seeks that the pORPS recognises and provides for the entire coast as a customary fishery. Cultural evidence speaks to the traditional and ongoing relationship with mahinga kai which occurs both within and outside areas managed under contemporary tools such as Taiāpure and Mātaitai. The need to maintain an environment that supports mahinga kai is as relevant within contemporary management areas, as outside those areas.

TE RŪNANGA SUBMISSION

15. Te Rūnanga primary and further submissions (**Te Rūnanga submissions**) support the submissions on behalf of Papatipu Rūnanga by Aukaha (Kāi Tahu ki Otago) and Te Ao Marama (Ngāi Tahu ki Murihiku).

16. Key themes of the Te Rūnanga submissions are:
    1. Te Tiriti and Ngāi Tahu settlement. Upholding the principles of Te Tiriti and the outcomes of the Ngāi Tahu settlement.
    2. Aquaculture Settlement. Drafting to provide for outcomes of Regional Agreements under the Māori Commercial Aquaculture Claims Settlement Act 2004.
    3. Integrated management. Achieving integrated management, ki uta ki tai, across chapters and in turn in direction to regional and district plans.
    4. Climate change. Better, upfront provision and consideration of the effects of activities on climate change.
    5. Te Tai o Ārai Te Uru. Amendments to better manage the coastal marine area as a customary fishery.
    6. Freshwater and land. Large areas of support for the notified version, some amendment sought to strengthen protection for wai.
    7. Papakainga/Māori Land. Amendments to provide greater flexibility for whānau in the development of papakainga and Māori Land.

RELEVANT STATUTORY DIRECTION

Ngāi Tahu Settlement

17. The following limbs of Settlement are relevant to the consideration of the pORPS.

(a) Te Rūnanga o Ngāi Tahu Act 1996 (**TRoNT Act**). Provides a statutory basis for the modern assemblage of Te Rūnanga o Ngāi Tahu, identifies the tribal takiwā (see map in **Appendix One**)[2] and Te Rūnanga as the iwi authority.

(b) Ngāi Tahu Claims Settlement Act 1998 (**NTCSA**). Enacts the Deed of Settlement 1997 and records the Crown Apology to Ngāi Tahu. In turn the Deed of Settlement sets out the settlement between Te Rūnanga (on behalf of Ngāi Tahu whānui) and the Crown in relation to Te Kerēme – the Ngāi Tahu Claim.

(c) Fisheries settlement. Recorded by Deed of Settlement dated 23 September 1992. The Deed states that the Crown will introduce legislation to empower the making of regulations recognising and providing customary food gathering. For Ngāi Tahu the outcome of this includes the Fisheries (South Island Customary Fishing) Regulations 1998, in turn the Fisheries (South Island Customary Fishing) Regulations 1999, while Part 9 of the Fisheries Act 1996 enables the management of areas as Taiapure. Customary fisheries management and the effects on customary fisheries from other activities is discussed further in the evidence of Mr Higgins and Mr Flack.

Commercial outcomes of the Deed of Settlement 1992 are implemented through the Fisheries Act 1996 and the Māori Fisheries Act 2004. The interface between the management of commercial fishing stocks and the RMA is set out in Section 6 of the Fisheries Act and further explored in case law.[3]

(d) The Māori Commercial Aquaculture Claims Settlement Act 2004 (**Aquaculture Settlement Act**). Provides full and final settlement of Māori commercial aquaculture claims since 1992. Settlement assets are provided on a regional basis via Te Ohu Kaimoana.

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[2] TRoNT Act Section 5 contains a full description of the takiwā.

[3] In summary, the relationship between the Fisheries Act and RMA is that regional council powers under the RMA can be utilised in a way that controls/limits fishing as long as that is done for the purpose of protecting the environment/biodiversity and not for a fisheries management purpose. *Attorney-General v the trustees of the Motiti Rohe Moana Trust & Ors.* [2019] NZCA 532.

18. These are discussed in more detail below.

Te Rūnanga o Ngāi Tahu Act 1996

19. The TRoNT Act provides for the modern structure of Ngāi Tahu. Te Rūnanga is the collective of eighteen Papatipu Rūnanga, which are regional bodies that represent local views of Ngāi Tahu Whānui. Section 15(2) states that:

> *"where any enactment requires consultation with any iwi or with any iwi authority, that consultation shall, with respect to matters affecting Ngai Tahu Whānui, be held with Te Runanga o Ngai Tahu:"*

20. In turn Section 15(3)(a)-(c) requires Te Rūnanga, in carrying out consultation, to seek views of Papatipu Rūnanga, to have regard to those views, and to act in a manner that will not prejudice or discriminate against any Papatipu Rūnanga.

21. The Ngāi Tahu takiwā is described in Section 5 of the TRoNT Act. In general it covers Te Waipounamu with the exception of an area in the Tasman/Marlborough regions.

Ngāi Tahu Claims Settlement Act 1998

22. One of the most important aspects of the Crown's settlement with Ngāi Tahu was a formal apology by the Crown. The wording was given much thought by both parties. The Crown included a formal apology as part of the Deed of Settlement and the NTCSA to acknowledge that Ngāi Tahu suffered grave injustices that significantly impaired its economic, social and cultural development. The Apology provides that Ngāi Tahu is recognised "as the tangata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui."

23. The Manawhenua chapter of the pORPS describes mechanisms from the NTCSA, including locations and places where these instruments appear in the Otago Region, namely:
    a) Statutory Acknowledgements
    b) Tōpuni and
    c) Nohoanga sites.

24. As these are already correctly described and listed in the pORPS I will not repeat them here. I do wish to note however, that those mechanisms are part of a bigger whole, and are not the sum total of the Ngāi Tahu settlement. Throughout the evidence of

Messers Higgins, Edward Ellison and Matapura Ellison, the witnesses discuss the importance of the Ngāi Tahu settlement to them and their whānau within the context of rangatiratanga, kaitiakitanga and ahi ka. Their evidence demonstrates to me that recognising and providing for the Ngāi Tahu settlement and relationship of Ngāi Tahu as tangata whenua within Otago (consistent with RMA Section 6(e)), requires ongoing commitment and dedication on the part of the Otago Regional Council. It is therefore essential that the Ngāi Tahu settlement is understood to be more than Statutory Acknowledgements, Nohoanga and Tōpuni and that its relevance to pOPRS is considered in that light. To that end I note that other planning evidence on behalf of Ngāi Tahu identifies specific areas where the pORPS needs to go further to provide for settlement instruments.

Fisheries Settlement

25. The fisheries settlement is largely an iwi wide settlement part of which created regulation making powers to manage customary non-commercial fisheries rights.

26. The evidence of Mr Higgins describes elements of evidence used as part of the Waitangi Tribunal claim, and Mr Flack talks to his experience as a tangata tiaki of the East Otago Taiapure.

27. The importance of Te Tai o Arai Te Uru, the Otago coast, is fundamental to the experiences described by Mr Higgins and Mr Flack. Mr Higgins in his evidence in "Relationship with Marine and Coastal Environment" speaks about the Otago coast in its entirety in relation to his experience and understanding of the coast as a mahinga kai. The entire coast is a customary fishery. By this what is meant is that the entire coast has historically been and continues to be fished in a customary way by Ngāi Tahu. Within this are traditional fishing grounds managed using contemporary management tools (e.g. the East Otago Taiapure) as provided for through the broader fisheries settlement. I note that the significance of Te Tai o Arai Te Uru and the kaitiaki role of Ngāi Tahu, is set out in Te Tai o Arai Te Uru Statutory Acknowledgment (as set out in NTCSA Schedule 103). Both my evidence on outstanding submission points in the Coastal Environment Chapter, and the evidence or Mr Bathgate, considers this further in a planning context.

Aquaculture Settlement, background

28. In the late 1990's the Government began to progress reforms pertaining to the management of aquaculture. The reforms would provide regional councils with the ability to use aquaculture management areas and coastal tendering to manage allocation. Various iwi, including Ngāi Tahu, made claims with the Waitangi Tribunal on the proposed reforms.

29. Accordingly, Ahu Moana: The Aquaculture and Marine Farming Report (WAI953) found that iwi 'have a broad relationship with the coastal marine area' and that the Māori interest in marine farming forms 'part of the bundle of Māori rights' in the coastal marine area[4]. Various recommendations are made by the Waitangi Tribunal in Ahu Moana. The Māori Commercial Aquaculture Claims Settlement Act 2004 is an outcome of those recommendations.

***Māori Commercial Claims Aquaculture Settlement Act 2004 (the* Aquaculture Settlement Act")**

30. The Aquaculture Settlement Act provides full and final settlement of Māori commercial aquaculture claims since 21 September 1992. It provides iwi with 20% of space already applied for between 21 September 1992 and 31 December 2004 and subsequently granted (precommencement space), and 20% of consented or anticipated (new space) from 1 October 2011.[5]

31. Settlements are made under regional agreements, which are based on regional council boundaries, and between Iwi Aquaculture Organisations that represent iwi in a region,[6] the Crown and Te Oho Kaimoana (the Trustee).

32. Settlement is delivered under the Aquaculture Settlement Act through the provision of assets (which may be space, cash or equivalent assets) through Te Oho Kaimoana as the Trustee.

33. If iwi choose to accept space it will be gazetted as an aquaculture settlement area under Section 11 of the Aquaculture Settlement Act. The RMA and the Aquaculture Settlement Act intersect in the following ways:

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4 WAI953 Section 7.2

5 Definition of "anticipated new space" inserted by section 4(2) of the Maori Commercial Aquaculture Claims Settlement Amendment Act 2011 (2011 No 69)

6 In the case of the Otago Region, Te Rūnanga o Ngāi Tahu is the Iwi Aquaculture Authority.

1. If a Regional Agreement includes settlement areas, the Minister will direct the relevant regional council to provide authorisations for aquaculture activity within an aquaculture settlement area. [7]

2. RMA Section 165E preserves the settlement obligation by placing restrictions on the use of aquaculture settlement areas.

3. Resource consent is still required under the relevant regional coastal plan.

4. If a resource consent for aquaculture activity is declined within space subject to an authorisation as described above, the authorisation will lapse.[8]

34. In the event of a resource consent being declined the specifics of the agreement generally determine what the next steps will be. It may be dependent on whether there is alternative space available and in some cases it can become necessary to renegotiate the agreement which delays, or sometimes may inhibit, iwi participation in aquaculture.

Otago Regional Agreement

35. There is currently no Otago Regional Agreement under the Aquaculture Settlement Act. However, Sanford have lodged applications for resource consent for aquaculture off the Otago Coast. This has triggered a new space obligation and therefore in due course, a Regional Agreement will be developed.

36. Ngāi Tahu have found in other regions that the intent and purpose of the Aquaculture Settlement Act can fall down if regional coastal plans do not anticipate and provide for the gazettal of settlement space in their region. It is for this reason that Te Rūnanga submission has sought amendment to the pORPS to provide for settlement space in order to provide Ngāi Tahu with options in the future. These amendments are discussed further under Chapter 4, MW – Manawhenua and Chapter 8, CE – Coastal Environment.

[7] Māori Commercial Aquaculture Settlement Claims Act 2004, section 13
[8] Māori Commercial Aquaculture Settlement Claims Act 2004, section 16A(2)(a)

New Zealand Coastal Policy Statement

37. The New Zealand Coastal Policy Statement 2010 (**NZCPS**) provides direction on the management of the coastal environment. Any regional plan must give effect to the NZCPS under section 67(3)(b) of the RMA.

38. The purpose of the NZCPS is set out in section 56 of the RMA and is to state [objectives and] policies in order to achieve the purpose of the RMA in relation to the coastal environment of New Zealand.

39. I agree with the summary provided in the evidence of Ms McIntyre in section "overarching themes". In the interests of avoiding repetition I discuss objectives and policies from the NZCPS as relevant in the body of my evidence.

OTHER RELEVANT CONSIDERATIONS

Marine and Coastal Area (Takutai Moana) Act 2011

40. The Marine and Coastal Area (Takutai Moana) Act 2011 (Takutai Moana Act) provides for recognition of customary interests in the common coastal area of New Zealand. There are three applications for customary marine title in the Ngāi Tahu takiwā within the Otago Region:

- Te Rūnanga o Ngāi Tahu on behalf of Ngāi Tahu Whānui
- Paul and Natalie Karaitiana
- Te Maiharoa Whānau

41. Applications for customary marine title within the Otago Region are still before the High Court.

New Zealand Government Aquaculture Strategy to 2025

42. The New Zealand Government Aquaculture Strategy to 2025 (**Aquaculture Strategy**) sets out a pathway for sustainable growth of the New Zealand aquaculture industry. It includes outcomes to achieve; a sustainable industry (Outcome 1), a productive industry that supports regional growth (Outcome 2), resilience through protection from biological harm and by adapting to climate change (Outcome 3), an inclusive industry through partnering with Māori and communities (Outcome 4). Outcomes are then refined as Objectives and followed by Actions to guide implementation.

43. The Aquaculture Settlement Act features in the Aquaculture Strategy and is identified as one part of the Crown-Treaty partnership. Outcome 4 includes actions around engagement with Māori and communities (including Councils) on local and regional priorities, development of skills required in aquaculture, recognising and providing for Māori values including kaitiakitanga, and partnering with Māori on aquaculture opportunities.

44. Amendments sought to the pORPS are consistent with the Aquaculture Strategy and its implementation. Across the industry, not just settlement related sites, regulatory hurdles are one of the biggest constraints to the development of aquaculture and growth of the industry. The amendments sought in Te Rūnanga submission seek to create an appropriately targeted regulatory framework for aquaculture development in settlement sites, within the Otago region.

Te Tahu o Te Whariki – Anchoring the Foundation. He Rautaki Mō te Huringa o te Ahurangil Climate Change Strategy, August 2018

45. Te Tahu o Te Whariki – Anchoring the Foundation. He Rautaki Mō te Huringa o te Ahurangi Climate Change Strategy (**Te Ahu o te Whariki**) is the Ngāi Tahu climate change strategy. It sets out high level direction, priorities and actions that Ngāi Tahu will follow as a response to climate change.

46. Included in the strategy is strategic direction that Ngāi Tahu are effective kaitiaki for taonga species and takiwā, and that Ngāi Tahu are able to maintain a meaningful relationship with their tūrangawaewae.

47. Actions include research, monitoring and minimising the effects of activities on climate change.

48. Te Kounga Paparangi is the Ngāi Tahu action plan for implementing some of the strategies. It sets out 88 actions to mitigate climate change, build resilience and promote sustainable business practices. Of specific relevance to these proceedings it includes actions around building marae and whānau resilience and responsible water use. Specifically, this includes engaging as a Treaty partner in preparing the next generation of freshwater planning instruments.

49. For completeness I note that I have not been involved in the preparation of Te Ahu te Whariki or Te Kounga Paparangi.

CHAPTER 4, MW - MANAWHENUA

Definitions

Māori Land

50. A new definition to Māori Land has been sought by the Ngāi Tahu parties. This is discussed in the evidence of Ms McIntyre in section "Providing for Kāi Tahu values, rights and interests relating to te Taiao" subsection "Use and Development of Māori Land" of her evidence. After consideration of the cultural evidence on behalf of Ngāi Tahu, I agree with her evidence the need to broaden the definition. I also note that the definition will also be discussed further in legal submissions.

Papakainga/Papakaika

51. Te Rūnanga made further submissions on the primary submissions of the Cain Whānau (00010.003) regarding the definition of Papakainga/Papakaika.

52. Aukaha, Te Ao Marama and Te Rūnanga staff have worked on a revised definition with representatives of the Cain Whānau. This was also discussed in pre-hearing hui with Otago Regional Council.

53. I agree with the amended definition, as set out in Appendix 1 to the evidence of Ms McIntyre and discussed in her evidence including the reasons provided by Ms McIntyre for the amendments sought.

MW – P4

54. Amendments sought by Te Rūnanga to MW-P4 have largely been accepted in supplementary evidence. Ms McIntyre at sub-section "Use and development of Māori Land' of her evidence discusses the priority clause as sought by the Cain Whānau (submitter number 0110). An alternative approach has been put forward in Supplementary Evidence. This is discussed below under section MW-M5.

List of native reserves

55. Te Rūnanga submitted on the list of native reserves seeking the inclusion of the Hawea/Wānaka South Island Landless Native Reserves (SILNA) block. This has been included in Supplementary Evidence with wording which is largely consistent with that sought through pre-hearing discussions with Te Rūnanga. Using the accepted

wording in Supplementary Evidence as a basis, Te Rūnanga prefers the wording as indicated below:

"Successors as defined in and pursuant to Section 15 of the Deed of Settlement 1997 between Te Rūnanga o Ngāi Tahu and the Crown, and as ~~enacted~~ **legislated** in Part 15 of the Ngāi Tahu Claims Settlement Act 1998

List of Nohoanga/Nohoaka

56. Supplementary evidence notes that Te Rūnanga submitted on the list of nohoaka. It records the understanding that no further changes are required. I confirm that that is correct.

Aquaculture

57. Te Rūnanga submission sought the following amendments to the Mana Whenua chapter in order to make provision for aquaculture settlement space:
    a.) A new section summarising the Aquaculture Settlement Act and relevance to Otago RPS, and
    b.) Addition of a new subclause to policy MW-P2 – Treaty Principles.
    c.) Addition of a new subclause to method MW-M5

a.) New section

58. The Section 42A report recommends accepting this submission.

b.) MW-P2

59. The Section 42A report recommends accepting this submission with some amendment. The amendments proposed in the Section 42A report to additional clause 8A update the syntax to suit the approach to drafting MW-P2 and achieve the same intent as sought by Te Rūnanga submission.

MW-M5

Papakainga

As noted above the Supplementary Evidence of Mr Adams suggests an alternative approach to the priority clause as sought by the Cain Whānau (submitter number 0110). The suggestion is an amendment to subclause (2) of MW-M5 to better manage

the interface and relationship between section 6(e) of the RMA and other matters of national importance under section 6. Ms McIntyre discusses this amendment further in the section entitled "Use and development of Māori Land" of her evidence. I agree with her suggested redrafting provided in Appendix 1 to her evidence. I also agree that this is an appropriate way to manage matters of national importance to ensure whānau are enabled to develop Māori Land. I note that further evidence on this and the priority clause sought by the Cain Whānau may be discussed further in evidence on behalf of the Cain Whānau, which I will consider.

Aquaculture Settlement

60. Again the Section 42A report recommends accepting the new subclause sought by Te Rūnanga in the method with an amendment.

61. Te Rūnanga sought the following:

> Local authorities must amend their regional and district plans to:
> […]
> **5. <u>set aside areas to achieve Settlement outcomes identified under the Māori Commercial Claims Aquaculture Settlement Act 2004.</u>**

62. Section 42A report writer suggests the following:

> <u>(3A) provide for the outcomes of settlements under the Māori Commercial Claims Aquaculture Settlement Act 2004.</u>

63. The specificity sought in Te Rūnanga submission is due to issues faced elsewhere with outdated regional coastal plans that predate the Aquaculture Settlement Act, and do not recognise that space may be gazetted to Te Rūnanga through that process. While resource consents are still required for that space, the recognition of investigations and processes that occur through settlement negotiations is sought at a regional policy statement level by directing that settlement space is set aside. I accept that the wording sought "set aside" may not be sufficiently clear in meaning. I therefore suggest the following (amendments in **bold**):

> <u>(3A) provide for **and enable** the outcomes of settlements under the Māori Commercial Claims Aquaculture Settlement Act 2004.</u>

64. The use of the term 'enable' rather than 'set aside' better achieves the intent of the submission and is more appropriate drafting.

65. I consider that this better reflects section 6(e) of the RMA which requires that the relationship of Māori with their culture and traditions with ancestral lands, waters, wāhi

tapu and other taonga is recognised and provided for as a matter of national importance. In this context the gazettal of settlement space under section 13 of the Aquaculture Settlement Act recognises the relationship, but providing for the relationship requires action on the part of the Council through the Regional Coastal Plan. The term enable is also consistent with NZCPS Policy 2(a) by recognising the traditional and continuing cultural relationships that Ngāi Tahu have with the coastal environment including places Ngāi Tahu have lived and fished for generations, and Policy 8 which requires that the significant existing and potential contribution of aquaculture to the economic and cultural well-being of people and communities is recognised by (a) including in regional policy statements and regional coastal plans provision for aquaculture in appropriate places, and (b) taking into account the social and economic benefits of aquaculture.

CHAPTER 8, CE – COASTAL ENVIRONMENT

66. Te Rūnanga made extensive submissions and further submissions on Chapter 8, CE – Coastal Environment. Te Rūnanga submissions focus on the following areas:

a. Fisheries, aquaculture and the RMA. Mr Flack and Mr Higgins describe the entire coast as a customary fishery, which includes areas with formalised and legal arrangements in place. Provision for aquaculture settlement areas is also sought in the submission.

b. Climate change. The moana is particularly vulnerable to climate change. The submission seeks better provision for climate change within the chapter.

c. Management of the coastal environment in accordance with tikanga. An holistic, ki uta ki tai, approach to management of the coastal environment.

CE-O1 Te Mauri o Te Moana

67. Both Aukaha and Te Rūnanga submission seek a new objective – CE-O1 Te Mauri o Te Moana. The evidence of Mr Bathgate at section “Mauri and hauora” provides reasoning for the inclusion of this objective and renumbering to ensure that this sits at the front of the CE-Coastal Environment Chapter. Specifically he talks to the need to include, at an objective level, consideration of hauora, being the health of coastal waters.

68. In addition to the evidence of Mr Bathgate I also highlight that in the context of Te Tai o Arai Te Uru being a Statutory Acknowledgement, and the importance of the coast as a customary fishery, the health of coastal waters is essential. With reference to Mr Higgins at section “The degradation of our mahinga kai sites” of his evidence, and Mr

Flack at section "Observations of the impacts of siloed environmental management on the coastal environment" of his evidence, the health of coastal water is fundamental to the relationship of Ngāi Tahu with Te Tai o Arai Te Uru consistent with section 6(e) of the RMA and Policy 2(a) of the NZCPS.

69. I consider this further at paragraphs 84-91 of my evidence, CE-P3 Coastal water quality.

CE-O4 – Kāi Tahu associations with Otago's coastal environment

70. Te Rūnanga made submissions on CE-04 – Kāi Tahu associations with Otago's coastal environment. Submissions have been accepted in part in the Section 42A report.

71. An additional clause stating: 'and manawhenua are able to […] engage in customary and commercial fisheries and mahika kai' is sought by Te Rūnanga. The Section 42A report considers that these matters are included in CE-P13 – Kaitiakitanga and therefore not required[9]. I agree that to an extent customary fisheries and other mahinga kai are included in CE-P13. In my view it is essential for customary and commercial fisheries and mahinga kai to be included at an objective level. The intent of including commercial fisheries is not to confuse the role of the RMA with the Fisheries Act 1996, but to acknowledge at a broad level that engaging in both customary and commercial fisheries is multifaceted and may touch different parts of the planning process. For example, if Ngāi Tahu wanted to develop a plant to process commercial fish, this would be an example of Ngāi Tahu engaging in commercial fisheries.

72. CE-P13, as a policy, is more targeted on implementation. The impacts of climate change and the ways that Ngāi Tahu may have to adapt to continue to engage in commercial and customary fisheries and other mahinga kai more generally are unknown. I consider that this also supports the inclusion of these matters at an objective level.

73. Further, and more fundamentally I have considered the evidence of;

[9] Section 42A Hearing Report, Chapter 8, CE-Coastal Environment, paragraph 89.

(a) Mr Matapura Ellison who speaks of the "decline of the Kaik" (within section titled the same) and how loss of economic opportunity and access to resource has contributed to the decline of traditional kāinga;

(b) Mr Higgins who talks about the importance of the fisheries settlement to Ngāi Tahu and of his experiences growing up learning and engaging in customary fishing activities, the increasing loss of opportunity to engage in those activities due to environmental degradation (at sections "Mahinga Kai" and "Mahinga Kai and Habitat Loss"); and

(c) Mr Flack who in section "Manawhenua Relationships with the Coastal Environment" describes the connection between mahinga kai and kaitiakitanga as a connection between the "health of the environment and the health of our culture" and further in section "Observations of the Impacts of Siloed Environmental Management on the Coastal Environment" the changes that he as kaitiaki is seeing in the environment over time as a result of land based activities which is degrading mahinga kai habitat.

74. I consider that this evidence demonstrates a fundamental relationship between Ngāi Tahu and the health of the coast, and the need for Ngāi Tahu to be able to access and engage in customary and commercial fishing and other mahinga activity in the coast.

75. Working with the current Supplementary Evidence version of this objective, I have provided amended drafting to incorporate the amendment sought. I have included one minor amendment to the drafting sought within the Te Rūnanga submission, which is the inclusion of "other". It has been pointed out to me that the original drafting may indicate that customary and commercial fisheries are not mahinga kai, which was not intended:

CE-O4 - **Mana moana**

The enduring cultural association of Kāi Tahu with Otago's coastal environment is recognised and provided for, and mana whenua are able to:

1. exercise their ~~kaitiaki~~ rakatirataka role, manaakitaka and their kaitiaki duty of care within the coastal environment, and
2. to **engage in customary and commercial fisheries and *other* mahika kai.**

CE-O5 – Activities in the coastal environment

76. In its submission Te Rūnanga sought various amendments to CE-05 – Activities in the coastal environment, in particular to ensure that adverse effects of activities on cultural

values, including customary fishing areas, are avoided (new clause 1) and requiring that other adverse effects are avoided, remedied or mitigated (new clause 2).

77. Amendments to new clause 1 and 2 have not been accepted in the Section 42A report (or Supplementary Evidence), for the reason that the objective needs to be read in conjunction with CE-O2 (however I think the writer means CE-O1 safeguarding the coastal environment).[10] The report notes that CE-O[1] ensures that coastal water quality is safeguarded.

78. Te Rūnanga submission specifically seeks the inclusion of a new clause in CE-05 – Activities in the coastal environment (new clause 1) to avoid adverse effects on customary fishing areas. The evidence of Mr Flack at section "Flooding Infrastructure Damage and Mahika Kai" describes the issues observed by kaitiaki as a result of activities being inappropriately located in the coastal environment. Inclusion of a new clause 1 in CE-05 seeks to better make that connection.

79. Aukaha have submitted on CE-05 on behalf of Kāi Tahu ki Otago. Mr Bathgate in his Appendix 1 sets out consolidated drafting which we have discussed to take in both the Kāi Tahu ki Otago submission and Te Rūnanga submission. I support the drafting set out in Appendix 1 to the evidence of Mr Bathgate. In addition to the above I confirm my support of the drafting and reasons provided in the evidence of Mr Bathgate in the section entitled "Activities".

CE–P2 – Identification

80. Te Rūnanga submission sought amendments as follows:

> Identify in the coastal environment:
>
> […]
>
> **(3) areas of coastal water where takata whenua have a particular interest, including Mātaitai, Taiapure, and any Settlement outcomes under Māori Commercial Aquaculture Claims Settlement Act 2004.**

81. The Section 42A report has accepted the submission in part, as follows:

> (3) areas of coastal water where takata whenua have a particular interest, including Mātaitai and Taiapure,

[10] Section 42A report, CE-Coastal Environment, paragraph 106

82. Te Rūnanga continues to seek the identification of any settlement outcomes under the Aquaculture Settlement Act. I consider that this amendment naturally flows from amendments accepted on the MW-Mana Whenua chapter and are appropriate. On further consideration however, I consider that instead of "settlement outcomes" that "aquaculture settlement areas" is more appropriate in this instance.

83. The Section 42A report has amended the chapeau to the policy. As such, the relief sought by Te Rūnanga is:

> Identify the following in the coastal environment:
>
> […]
>
> (3) areas of coastal water where takata whenua have a particular interest, including Mātaitai**, ~~and~~** Taiapure**, any aquaculture settlement areas gazetted under the Māori Commercial Aquaculture Claims Settlement Act 2004.**

84. The amendments sought are essential to implementing MW-P2 and MW-M5. I do not consider that this is repetitive but rather that the inclusion of identifying outcomes of the Aquaculture Settlement Act are consistent with that policy and method, and part of an integrated approach to the pORPS. I also consider that this will assist users of the Regional Policy Statement and is appropriate in the recognition and provision of the outcomes of settlement.

85. As noted previously, I consider that this better reflects section 6(e) of the RMA which requires that the relationship of Māori with their culture and traditions with ancestral lands, waters, wāhi tapu and other taonga is recognised and provided for as a matter of national importance. In this context the gazettal of settlement space under section 13 of the Aquaculture Settlement Act recognises the relationship, but providing for the relationship requires action on the part of the Otago Regional Council through the Regional Coastal Plan. Identifying settlement outcomes from the Aquaculture Settlement Act is consistent with NZCPS Policy 2(a) by recognising the traditional and continuing cultural relationships that Ngāi Tahu have with the coastal environment including places Ngāi Tahu have lived and fished for generations, and Policy 8 which requires that the significant existing and potential contribution of aquaculture to the economic and cultural well-being of people and communities is recognised by (a) including in regional policy statements and regional coastal plans provision for aquaculture in appropriate places, and (b) taking into account the social and economic benefits of aquaculture

CE-P3 – Coastal Water Quality

86. Te Rūnanga submission sought that the following drafting replace the notified drafting of CE-P3 – Coastal Water Quality:

> CE–P3 – Coastal water quality/**Te Hauora o Te Wai Tai**
>
> **Manage activities either within, or that impact on, the coastal environment by:**
>
> 1. **prioritising the health and well-being of coastal water and coastal ecosystems**
> 2. **involving Kāi Tahu in decision-making in relation to coastal waters,**
> 3. **setting appropriate water quality targets for coastal waters, including areas of customary protection, and other areas used for kaimoana gathering, customary fisheries, contact recreation and habitats of taoka species,**
> 4. **actively enhancing areas of deteriorated coastal water described within CE-P2(2), including by the avoidance of adverse effects of activities on these areas,**
> 5. **avoiding adverse effects on those areas of coastal water where takata whenua have a particular interest including Mātaitai and Taiapure, and**
> 6. **managing effects on other areas of coastal waters so that water quality is maintained or enhanced.**

87. The Section 42A report[11] considers that Te Rūnanga proposed clauses 1 and 2 are provided for elsewhere in the pORPS, specifically IM-P2 and IM-P3(2). The Section 42A report agrees that some reference to environmental limits would be helpful, that clause 4 is already provided for in the pORPS, and that there is merit in the inclusion of clause 5.

88. Te Tai o Arai Te Uru, as noted previously, is a Statutory Acknowledgement in the NTCSA. The fundamental necessity for the health and wellbeing of coastal water and coastal ecosystems to support mahinga kai is described throughout the evidence of Mr Higgins and Mr Flack. Mr Higgins, in particular in section "Relationship with the Coastal and Marine Environment", describes the reliance of Ngāi Tahu as fishers on the sea and the importance of "mana whenua, mana moana, and the ability to fish in our own backyard". Mr Flack, at section "Observations of the Impacts of Siloed Environmental Management on the Coastal Environment", talks specifically about the impacts of increased sedimentation on mahinga kai species.

89. CE-O1 Te Mauri o Te Moana as sought by Te Rūnanga sets out at an objective level the outcomes required by Ngāi Tahu as part of the ongoing relationship between Ngāi Tahu and Te Tai o Ārai Te Uru. Clause 1 and 3 relate back to and implement that objective. Relying on other parts of the pORPS for such fundamental issues is to my view, inappropriate.

[11] Section 42A report, 8, CE-Coastal Environment, Paragraphs 180 – 185.

90. Regarding proposed clause 2 the Crown Apology[12] states:

The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

91. An appropriate expression of the Council acknowledging the rangatiratanga of Ngāi Tahu is to carry through to CE-P3 the ability for Ngāi Tahu to be involved in decision making, consistent with RMA Section 8. This is also consistent with RMA Section 7(a) by providing opportunity for Ngāi Tahu to exercise kaitiakitanga, and with NZCPS Policy 2(d) which requires that opportunities are provided for Māori involvement in decision making.

92. I also note that the use of limits and targets as sought in Te Rūnanga submission is consistent with the emerging approach to Resource Management reform, and is already part of the framework within the National Policy Statement Freshwater Management 2020.

93. Mr Bathgate considers clauses 3-6 further in his evidence in section "Mauri and hauora". I support the amendments as set out in full in Mr Bathgates Appendix 1.

CE-P11 – Aquaculture and CE-M13 Regional Plans

94. The Section 42A report has not accepted the relief sought by Te Rūnanga submission on CE-P11. The relief sought is:

> Provide for the development and operation of aquaculture activities within appropriate locations and limits, taking into account:
> […]
> **(3) Whether the aquaculture development sought is being carried out by Kāi Tahu and has been identified as a Settlement outcome; and**

95. Similarly, the relief sought by Te Rūnanga submission on CE-M13 has not been accepted. The relief sought in the submission is:

> Otago Regional Council must prepare or amend and maintain its regional plans no later than 31 December 2028 to:
> […]
> **13. Allocate areas of aquaculture for Kāi Tahu consistent with Settlement outcomes under Māori Commercial Aquaculture Claims Settlement Act 2004.**

[12] Crown Apology, Clause 7

96. At paragraph 360 of the CE Section 42A report the report writer states that he has not recommended the inclusion of the additional clauses to CE-P11 and CE-M13 as there are currently no aquaculture settlement sites identified within the CMA. As described in paragraphs 35 and 36 of my evidence, the Sanford applications located within the Otago region have triggered the requirement under the Aquaculture Settlement Act for the Crown to provide 20% equivalent space, cash or assets to Te Rūnanga. While the report writer is correct that there are currently no settlement sites located in the Otago CMA, in the life of this RPS there will be.

97. The NZCPS Policy 8 requires that regional policy statements and regional coastal plans include provision for aquaculture activities in appropriate places.

98. The New Zealand Government Aquaculture Strategy sets out to develop an inclusive industry as part of which Government engages with Māori and communities to understand and local and regional priorities to enable community initiatives. The amendments sought by Te Rūnanga to CE-P11 and CE-M13 are consistent with that approach.

99. I also consider that the amendments to CE-P11 and CE-M13, as part of the broader package of amendments sought by Te Rūnanga, provide Ngāi Tahu with options in the future. Mr Flack in his evidence at section "Mana whenua Relationship with the Coastal Environment" speaks to his evolving understanding of the effects of climate change on the coastal environment. As the impacts of climate change become more and more apparent, I think it is important for the Regional Policy Statement to provide options for the way that Ngāi Tahu engages with the coastal environment moving into the future.

100. For those reasons, and consistent with the NZCPS Policy 8, and the purpose of the Aquaculture Settlement Act, Te Rūnanga seeks the relief sought as set out above.

101. In addition to the above I am aware that Mr Bathgate provides evidence in support of Kāi Tahu ki Otago submissions on CE-P11 (see Aquaculture section of his evidence). I support his evidence and the amendments sought.

CE – New Policy, Discharge of contaminants into Te Tai o Ārai Te Uru

102. Te Rūnanga submissions seek a new policy managing discharge of contaminants into Te Tai o Ārai Te Uru. The Section 42A report responds to this relief noting that CE-P3 and CE-M3(5) provide directive guidance on managing the effects of discharge.

103. CE-P3 does not directly manage discharge. I agree that CE-M3(4) directs regional councils to manage discharges into the coastal water.

104. Mr Flack's evidence speaks at length on the issues arising from discharge into the coastal environment in sections "The Importance of Recognising the Interconnectivity of the Taiao" and "Observations of the Impacts of Siloed Environmental Management on the Coastal Environment". He has direct experience with the effects of discharge into the Otago coast on mahinga kai. With this in mind, and in light of the fundamental importance of Te Tai o Ārai Te Uru, I support Te Rūnanga submission seeking that discharge of contaminants into the coastal environment is managed at a policy level.

105. I believe that this will provide CE-M3(4) with a stronger context and better link between CE-M3(4) and CE-O1, CE-04 and CE-O5. This will better enable the policy framework within the pORPS to implement objectives CE-O1, CE-04, CE-05. Considering this specifically as required by section 32(1)(b), the new policy as sought by Te Rūnanga is the most appropriate way to achieve objective CE-O1 as it provides regional and district councils with clear guidance on how coastal water quality will be improved which is essential to the implementation of CE-O1(1) and (2) which relate to mauri and hauora of coastal water and role of coastal water quality in supporting healthy ecosystems and mahinga kai, respectively. Mr Flack in this evidence makes specific reference to discharges to the coastal environment and the impact that has on mahinga kai. In that regard I consider that the proposed policy will directly contribute to the implementation of CE-O4, Mana moana. CE-O5 states outcomes sought regarding activities in the coastal environment. While the new policy as proposed is focussed on coastal water quality, it does so through the management of activities and effects. It therefore assists in the implementation of CE-O5. I do not believe that the new policy will increase the costs of implementing the pORPS for the Council as it is within the outcomes sought.

106. NZCPS Policy 2(a) requires that in taking into account the Treaty of Waitangi and kaitiakitanga, that tangata whenua relationships with the coastal environment, including places where they have lived and fished for generations, is recognised. Te

Tai o Arai Te Uru and the relationships that Ngāi Tahu have with the coast are statutorily acknowledged.

107. In my opinion the inclusion of a policy specifically managing the effects of discharge is consistent with NZCPS Policy 2(a) in light of the importance of Te Tai o Ārai Te Uru.

108. The proposed policy also better provides for NZCPS Policy 4, Integration, which provides for the integrated management of natural and physical resources and activities that affect the coastal environment.

109. To that end, I support the inclusion of a policy as worded, or similarly worded in Te Rūnanga submission as follows:

> **CE-PX Discharge of contaminants into Te Tai o Arai Te Uru**
>
> **Coastal water quality will be improved by:**
>
> **a). in time, ceasing all wastewater discharges into Te Tai o Arai Te Uru**
>
> **b). avoiding adverse effects from discharge originating in terrestrial, freshwater or marine environments.**
>
> **c). cessation of wastewater infiltration into stormwater systems.**
>
> **d). attenuation and treatment of stormwater prior to discharge into coastal waters.**

CONCLUSION

110. Te Rūnanga submissions on the pORPS support those of Aukaha and Te Ao Marama on behalf of Papatipu Rūnanga. The evidence of Ms McIntyre and Mr Bathgate provides relief and reasons for relief to better provide for the values and future of Papatipu Rūnanga. I have supported this in my evidence and provided additional reasoning where appropriate. Te Rūnanga submissions also sought better provision for outcomes of the Aquaculture Settlement Act. The relationship and reliance of the Aquaculture Settlement Act on resource management planning policy and consenting processes is essential in delivering the purposes of the Aquaculture Settlement Act. My evidence provides drafting and supporting reasons to enable the Council to make provision for Aquaculture Settlement Act outcomes in the pORPS.

Tanya Jane Stevens
23 November 2022

APPENDIX ONE: Ngāi Tahu Takiwā