

BEFORE THE HEARING COMMISSIONERS

UNDER

The Resource Management Act 1991

AND

IN THE MATTER

of the Proposed Otago Regional Policy Statement
2021

**SUBMISSIONS FOR HEARING FOR THE OTAGO REGIONAL COUNCIL
MW – MANA WHENUA AND RMIA - RESOURCE MANAGEMENT ISSUES OF
SIGNIFICANCE TO IWI AUTHORITIES IN THE REGION
CHAPTERS 4 & 5**

Dated 23 January 2023

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May it Please the Commissioners:

Introduction

- 1 This section of the hearing addresses:
 - 1.1 MW – Mana whenua, Chapter 4 of Part 1 of the proposed Otago Regional Policy Statement 2021 (“pORPS 21”).
 - 1.2 RMIA – Resource management issues of significance to iwi authorities in the region, a section of Chapter 5 of Part 2 of the pORPS 21.

Statutory Framework

- 2 The function of a regional policy statement “*is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region*”¹.
- 3 A regional policy statement must state the resource management issues of significance to iwi authorities in the region².
- 4 Recognition of and provision for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga is a matter of national importance³. Unlike many other matters of national importance in section 6, recognition of and provision for such relationships is not subject to any qualifiers.
- 5 Section 6(e) and the discussion in *Royal Forest & Bird Protection Society Inc v W A Habgood Ltd*⁴ is also relevant to the submissions received with respect to definition of “Māori land”. *Royal Forest & Bird Protection Society Inc v W A Habgood Ltd* remains good law, and states:

¹ Section 59 of the RMA.

² Section 62(1)(b) of the RMA.

³ Section 6(e) of the RMA; *Royal Forest & Bird Protection Society Inc v W A Habgood Ltd* (1987) 12 NZTPA 76, pages 80- 81

⁴ *Royal Forest & Bird Protection Society Inc v W A Habgood Ltd* discusses s 3(1)(g) of the Town and Country Planning Act 1977, which was the predecessor to s 6(e) RMA

“What is said to be of national importance under section 3 is the relationship of the Maori people with their ancestral land, the culture of the Maori people with their ancestral land and the traditions of the Maori people with their ancestral land. Under this subparagraph it is no more a matter of considering the Maori culture and traditions in isolation than it is a matter of considering the land in isolation. There must be some factor or nexus between their culture and traditions and the land in question which affects the relationship of the Maori people to the land.

Clearly continuous ownership of the land by Maoris would often be a relevant factor in that relationship. Likewise it may be an important factor to consider the extent to which a special relationship by Maoris has been claimed or recognised by them throughout the generations. More importantly, the effect of the proposed use of the land on that relationship will have to be considered in each case. These instances are clearly not intended to be exhaustive. I can see no logical or legal reason why section 3(1)(g) of the Act should be of no application solely because the land in question is no longer owned by Maoris....

The general purpose of the legislature in including paragraph (g) in section 3(1) was to require the Tribunal and others affected with town planning principles to have regard as a matter of national importance, and in relation to town planning in particular to recognise and provide for, the relationship of Maori people and their culture and traditions with the land which was once theirs. Parliament put no limitations on the extent or nature of this relationship to the land and there is no justification for a judicial limitation being imposed.”

- 6 The protection of protected customary rights must also be recognised and provided for as a matter of national importance. “*Protected customary right*” is defined in the Marine and Coastal Area (Takutai Moana) Act 2011 as:

“an activity, use, or practice—

- (a) established by an applicant group in accordance with [subpart 2 of Part 3](#); and*
- (b) recognised by—*

- (i) *a protected customary rights order; or*
- (ii) *an agreement*⁵.

- 7 Particular regard is to be given to kaitiakitanga⁶ in exercising powers and functions under the RMA.
- 8 The principles of Te Tiriti o Waitangi must be taken into account⁷.
- 9 The principles of Te Tiriti o Waitangi most relevant to the development of the PORPS 21 are:
- 9.1 Partnership;
 - 9.2 Recognition of rakatirataka; and
 - 9.3 Active protection of mana whenua interests.
- 10 National direction is provided with respect to iwi engagement, involvement and collaboration⁸.

National Planning Standards

- 11 A regional policy statement must be prepared in accordance with and give effect to the National Planning Standards⁹.
- 12 The National Planning Standards require a nationally consistent structure¹⁰.
- 13 In particular a regional policy statement must comply with Table 2 of the National Planning Standards¹¹.
- 14 Both RMIA and MW are mandatory chapters under the National Planning Standards 2019¹².

⁵ Section 9(1). At present there are no protected customary rights in the Otago region, however there are proceedings in the High Court that are yet to be determined.

⁶ Section 7 (a) of the RMA.

⁷ Section 8 of the RMA.

⁸ To the extent relevant to these proceedings, see NZCPS, Policy 2 The Treaty of Waitangi, tangata whenua and Māori heritage, Policy 6 Activities in the coastal environment and Objective 3, NPS-FM, Clause 3.4 Tangata whenua involvement, NPS-HPL, Clause 3.3 Tangata whenua involvement, NPS-UD, Policy 9, Clause 3.15 Consultation and engagement.

⁹ Section 61(1)(da) and section 62(3) of the RMA.

¹⁰ National Planning Standards 2019, Foundation Standard, Purpose, page 5.

¹¹ National Planning Standards 2019, pages 8 to 10.

¹² See Standard 2, Regional Policy Statement Structure.

Partnership

- 15 Regional Councils must and do work in partnership with local iwi in carrying out their functions under the RMA¹³.
- 16 Otago Regional Council's ("ORC") value of, and commitment to its partnership is encapsulated in the Memorandum of Understanding and Protocol for Effective Consultation and Liaison, which was entered into by ORC and Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago in 2003.
- 17 The purpose of this protocol is to define the process for facilitating Iwi involvement and consultation in resource management processes¹⁴ and the mechanisms intended to promote and facilitate effective consultation and liaison¹⁵.
- 18 ORC, together with Kāi Tahu are part of Te Rōpū Taiao Otago¹⁶ and the Mana to Mana Group¹⁷.
- 19 ORC has two appointed mana whenua representatives on the Strategic and Planning Committee¹⁸ and engage with mana whenua on various issues through consultancy services Aukaha and Te Ao Marama Inc¹⁹.
- 20 The pORPS 21 has been developed in partnership with Kāi Tahu Whānui as tangata whenua of Otago.
- 21 Additional to the community consultation undertaken by ORC,²⁰ a draft of the pORPS 21 was provided to mana whenua in April 2021 prior to the

¹³ *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Incorporated* [2022] NZHC 1777 at [161].

¹⁴ Memorandum of Understanding and Protocol between Otago Regional Council, Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago for Effective Consultation and Liaison at page 3, paragraph 1.1.

¹⁵ Memorandum of Understanding and Protocol between Otago Regional Council, Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago for Effective Consultation and Liaison at page 1, paragraph 1.1.

¹⁶ These are regional coordinating groups. Page 10, paragraph 30 of the Section 32 Evaluation Report.

¹⁷ This group provides a forum for Councillors and Rūnaka Chairs to meet regularly to identify and agree key areas for engagement and partnership. Page 10, paragraph 31 of the Section 32 Evaluation Report.

¹⁸ Ibid.

¹⁹ Aukaha and Te Ao Marama Inc provide a first point of contact for ORC and facilitate engagement in resource management processes. Page 10, paragraph 32 of the Section 32 Evaluation Report.

²⁰ As set out in the Section 32 Evaluation Report at 2.2

original notification, followed by a hui, written feedback and co-drafting revisions²¹.

MW – Mana whenua

- 22 This chapter deals with the role of Mana whenua in the region and in particular, the integrated management of natural and physical resources.
- 23 The concept of integrated management consistent with hauora and ki uta ki tai – all parts of te taiao are interconnected and must be managed as a whole, in a holistic way²².

RMIA – Resource management issues of significance to iwi authorities in the region

- 24 RMIA contains expressions of Kāi Tahu resource management concerns, as identified by Kāi Tahu as mana whenua.
- 25 The MW and RMIA chapters set out the environmental management perspectives and values of Kāi Tahu and affirm the basis for the policy framework of this pORPS:

“He taura whiri kotahi mai anō te kōpunga tai nō i te pū au”

“From the source to the mouth of the sea, all things are joined together as one”²³

Conclusion

- 26 The Section 42A Report author is James Adams, who produced his reports on 27 April 2022 and 4 May 2022 respectively. Mr Adams has also provided supplementary evidence dated 11 October 2022 on these topics.

²¹ Pages 15 and 16, paragraphs 58 to 61 of the Section 32 Evaluation Report.

²² pORPS21, page 64

²³ pORPS21, page 62 and Section 42A Hearing Report, page 4, at paragraph 1

27 ORC calls James Adams, the Chapter Author for Chapters 4 and 5 of the pOPRS21: MW – Mana whenua and RMIA – Resource management issues significance to iwi authorities in the region.

Dated this 23rd day of January 2023



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T M Sefton
Otago Regional Council