BEFORE INDEPENDENT HEARING COMMISSIONERS
AT DUNEDIN

MAI I KĀ KAIKŌMIHANA MOTUHAKE
KI ŌTEPOTI

UNDER	the Resource Management Act 1991 ("**RMA**")
AND	
IN THE MATTER OF	the Proposed Otago Regional Policy Statement 2021 (non-freshwater parts) ("**PORPS**")
AND	the **CE** – Coastal Environment provisions of the PORPS

LEGAL SUBMISSIONS ON BEHALF OF KĀI TAHU

Dated 1 March 2023

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May it please the Commissioners | Ki kā Kaikōmihana

Introduction and summary | Whakatakika

1. The coast, and its waters, bear special significance for Kāi Tahu. The moana is the domain of the atua, Takaroa, the guardian of all sea creatures, and according to creation histories, an earlier husband to Papatūānuku, which acts to underscore its importance to takata whenua.

2. At the core of the Kāi Tahu relationship with the coast is the principle of ki uta ki tai – from the mountains to the sea – a holistic approach which recognises that the entire catchment is more than the sum of its parts, requiring an integrated management framework which prioritises the mauri of that entire catchment, and not just individual parts or resources.

3. These submissions address the relief sought by Kāi Tahu in relation to the Coastal Environment provisions of the PORPS. You will hear from Mr Michael Bathgate and Ms Tanya Stevens, who will provide their expert planning opinion on the proposed provisions. You will also hear again from Edward Ellison, who brings a unique perspective to the issues before you as someone whose whānau have always been closely associated with the moana.

4. You will hear of the central importance of the moana, and of its inhabitants, to Kāi Tahu. You will also hear that, unlike other parts of the PORPS, rather unfortunately, the Coastal Environment (or "**CE**") provisions of the PORPS received limited input from Kāi Tahu and its expert advisors, as a result of the compressed timeframes for consultation on the PORPS and the focus on freshwater provisions. The result has been a set of notified provisions which resemble a poor restatement of the requirements of the New Zealand Coastal Policy Statement 2010 ("**NZCPS**"), which do not incorporate the unique Otago regional context.

5. The evidence of Mr Bathgate, and the provisions attached to his evidence at Appendix 1, seek to remedy the issues that arose through the lack of early and meaningful mana whenua input into the CE provisions. A number of the proposed amendments have since been adopted in the opening statement provided by the reporting officer.

6. These submissions are aimed at the legal issues that arise from the matters that remained in dispute between ORC and Kāi Tahu, following the exchange of evidence. They should be read together with previous submissions where appropriate.

7. In summary, the approach taken by Kāi Tahu and the expert planning witnesses better recognises and provides for the relationship of Kāi Tahu with the coastal environment and the taoka of that environment. It ensures that the mauri of that environment will be front and centre, and that Kāi Tahu are able to exercise their rakatirataka, kaitiakitaka, and mana moana in a way that is consistent with tikanga, the obligations under the NZCPS, Part 2 of the RMA, and Te Tiriti.

Legal framework | Ngā ture

The NZCPS

8. As these provisions address the coastal environment, the requirement to give effect to the NZCPS in s 62(3) is engaged. "To give effect to" means to "implement", although how the national direction in the NZCPS is to be implemented in any particular region is left to regional councils to decide.[1]

9. The majority of the Supreme Court in *King Salmon* found that the NZCPS is formulated in a way that allows flexibility in implementing its objectives and policies in, inter alia, regional policy statements.[2] That is especially so where policies in the NZCPS are framed in flexible terms. But it is also clear that scope for choice is not infinite, and that directive language may leave little room for movement.[3]

10. Objective 3, and its associated Policy 2, are the key NZCPS provisions in relation to tangata whenua values. These are set out in full in an appendix to these submissions. In summary, they require:

    (a) tangata whenua involvement in management of the coastal environment;

    (b) recognition of the role of tangata whenua as kaitiaki, and of their ongoing and enduring relationship over their lands, rohe and resources; and

    (c) taking into account the principles of Te Tiriti, including by recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.

11. Those requirements map onto, with greater specificity, the strong directions in ss 6(e), 7(a) and 8 of the RMA. That is consistent with the concept of the hierarchy of documents under the RMA, and the national perspective provided by the NZCPS in relation to the coastal

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1 *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [77] and [79].

2 *King Salmon*, above n 1 at [91].

3 In particular, policies 11, 13 and 15, which all deploy the "avoid" requirement. Importantly, and until and unless the Supreme Court in *Port Otago* alters the test, the requirement to avoid will continue to carry its natural meaning of "do not allow".

environment.[4] They provide a broad and flexible framework for the further refinement of those objectives and policies at the regional level.

12. Other objectives and policies of note, discussed in further detail below, include:

    (a) Objective 1, which requires the safeguarding of the coastal environment as a matter of national significance;

    (b) Policy 1, which recognises that regional differences may require more specific responses when implementing the direction in the NZCPS than merely restating the relevant objectives and policies; and

    (c) Policy 4, which requires that documents giving effect to the NZCPS provide for the integrated management of natural and physical resources of the region.

Section 8

13. In addition to Objective 3 and Policy 2 of the NZCPS, and of relevance to tangata whenua values, the majority of the Supreme Court held that s 8 of the Act and the obligation to take into account[5] the principles of Te Tiriti will have "procedural as well as substantive implications, which decision-makers must always have in mind, including when giving effect to the NZCPS".[6]

14. The wider scope of s 8 is said to reflect the fact that, among the matters of national importance identified in s 6, are the requirements of s 6(e), and that s 7(a) addresses kaitiakitanga.[7]

Applications for customary marine title

15. As Ms Stevens notes, there are currently three applications for customary marine title in the Kāi Tahu takiwā within the Otago Region.[8] These applications are currently before the High Court.[9]

16. In my submission, the Panel should remain cognisant of the existence of the applications when considering submissions seeking relief in the coastal environment. This is important to ensure that the PORPS, and

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4 *King Salmon*, above n 1 at [14].

5 The relevant paragraph of the majority says that a decision-maker must "have regard to" Te Tiriti principles.

6 *King Salmon*, above n 1 at [88]. For example, Treaty principles may be relevant to matters of process, such as the nature of consultations that a local body must carry out when performing its functions under the RMA: [27].

7 *King Salmon*, above n 1 at [27].

8 Brief of evidence of Tanya Stevens at [40], namely Te Rūnanga o Ngāi Tahu on behalf of Ngāi Tahu Whānui; Paul and Natalie Karaitiana; and Te Maiharoa Whānau.

9 Specifically, the TRONT application remains adjourned until June 2023, to allow the gathering of historical evidence to continue, as well as negotiations with other applicants whose applications overlap. At the time of the most recent Minute, a final decision had not been made whether to pursue litigation or direct engagement with the Crown: Minute (No 10) of Churchman J, CIV-2017-485-280 dated 20 June 2022.

lower order documents promulgated beneath it, remain in a position to respond as and when those applications are determined, and do not foreclose opportunities to better facilitate the exercise of customary rights in the interim.

Statutory acknowledgement – Te Tai o Arai Te Uru

17. Finally under this heading, it is important to recognise the statutory significance given to Te Tai o Arai Te Uru through the Ngāi Tahu Claims Settlement Act 1998 ("**Settlement Act**"). The statutory acknowledgement recalls the formation of the coastline of Te Wai Pounamu, and its contribution to Kāi Tahu tradition. It refers to the "whole of the coastal area offer[ing] a bounty of mahinga kai", including kaimoana, sea fishing, and a variety of plant resources. The acknowledgement concludes as follows:

> The mauri of the coastal area represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the coastal area.

18. The statutory acknowledgement is incorporated as an appendix to the Kāi Tahu ki Otago Natural Resource Management Plan, which must be taken into account under s 61(2A)(a) of the RMA.

Issues | Ngā take

19. The following issues arise out of the evidence:

    (a) The Kāi Tahu proposed CE-O1, Te Mauri o te Moana, and the need for an approach which prioritises the mauri, health and wellbeing of coastal waters.

    (b) The role of ki uta ki tai in the coastal environment.

    (c) Mana moana, and the place of customary fisheries and mahika kai within the CE provisions.

    (d) The role of aquaculture within the coastal environment.

20. At the outset, I note that the approach taken by Kāi Tahu has been to provide greater specificity and direction at the regional level to implement the higher-order directives in the NZCPS and Part 2.[10] That approach is consistent with the concept of the hierarchy of documents, as well as Policy 1 of the NZCPS, which recognises that different responses may well be required in different parts of the coastal environment across the motu.

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[10] To the extent that the latter remains relevant under s 61 in relation to the coastal environment.

Issue #1 | Te take tuatahi – Te Mauri o te Moana

21. In the Kāi Tahu submissions, and as set out in the evidence of Mr Bathgate and Ms Stevens, Kāi Tahu is seeking to prioritise the mauri, health and wellbeing of coastal waters in the PORPS, including through the creation of a new CE-O1.[11] The reporting officer agrees that the health and wellbeing of coastal waters, and the coastal environment, should be the principal focus of any outcomes for the coastal environment, and now supports the new objective proposed by Kāi Tahu to achieve this.[12] Mr Bathgate agrees with this proposed new objective, but seeks amendments to provide a more aspirational outcome for coastal waters within the region.

The need for prioritisation of mauri in the CE provisions

22. In paragraphs 27 to 31 of his evidence, Mr Bathgate explains the need for an amendment to CE-P3, in order to provide a holistic, active approach to the management of effects on coastal waters from all activities.[13] It is consistent with the priority given to mauri and hauora elsewhere in the PORPS, including the IM provisions.

23. Objective 1 of the NZCPS requires decision-makers to "*safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems*". In my submission, safeguarding the life-supporting capacity (including the health and well-being) of the natural environment is both inherent within, and sits at the core of, that overarching objective.

24. As previously submitted, safeguarding the life-supporting capacity of the natural environment is equivalent to, and synonymous with, protecting the mauri of the taiao, and in particular, coastal waters. Consistent with the approach taken to IM-P1,[14] it is appropriate that priority is given to mauri and hauora within the provisions of the PORPS, including in relation to the coastal environment. It is also consistent with the approach to freshwater management embodied in Te Mana o te Wai, which prioritises first the health and well-being of water bodies and freshwater ecosystems.[15]

25. The same submissions apply to the proposed changes to CE-M3 and M4, which place priority on the health and well-being of coastal water and coastal ecosystems in all decision-making.

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11 Evidence of Michael Bathgate at [21]. See also Kāi Tahu ki Otago submission, p 37.

12 The initial reporting officer's view in the Section 42A Report, [55], has now been revised, see Opening Statement of Mr Andrew MacLennan, [12].

13 Evidence of Michael Bathgate at [27]-[31].

14 As to which, see paragraphs 4 to 9 of counsel's earlier submissions.

15 Note the inclusion of the coastal marine area within the definition of "receiving environment" in the NPSFM, and the application of the NPSFM to receiving environments to the extent they are affected by freshwater: NPSFM, cl 1.5(1).

Issue #2 | Te take tuarua – the role of ki uta ki tai in the coastal environment

26. The evidence of the cultural witnesses,[16] as well as the previous presentations during the IM chapter, have emphasised the importance of a ki uta ki tai approach to integrated management in the PORPS.

27. The principle of ki uta ki tai, along with Te Mana o te Wai, has been held to be "fundamental" to the development of a proposed regional policy statement.[17] It receives specific recognition in the NPSFM.[18]

Evidence in support of a ki uta ki tai approach

28. The approach is equally relevant to the coastal environment, especially in relation to the need for integration required by Policy 4 of the NZCPS.

29. As Edward Ellison describes, contaminants and sediment from land use activities can have a devastating effect on seabed, benthic ecosystems, and spawning grounds for marine species, reducing the availability of viable marine habitats for indigenous biodiversity and taoka species.[19] He goes to on to say that the approach embodied by Te Mana o te Wai (ie mauri first) needs to be better applied to the coastal environment to "properly recognise the interconnection between freshwater and coastal environments, and between land and coastal waters".[20]

30. Brendan Flack describes how ki uta ki tai works in practice, and the dangers of a siloed approach to land use management, by reference to his role as takata tiaki for Puketeraki.[21] Specifically, in relation to mātaitai and taiāpure, he notes that the restoration work done by whānau on the rivers upstream has an impact on those mātaitai and taiāpure, and so there is a need to focus not only on the mātaitai or taiāpure itself, but also the areas outside of them, to see change within them.[22]

31. The work of Mr Flack's whānau within the mātaitai and taiāpure is hindered by what occurs on the land upstream, including the combination of reef sedimentation, low water flows, contamination, and storm damage.[23] As he says, takata tiaki can exercise control within the mātaitai and taiāpure, but they cannot influence what happens outside these areas to the same degree. In my submission, this is where the provisions of the PORPS need to fill the gap.

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16 See, in particular, the evidence of Edward Ellison and Brendan Flack.
17 *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc* [2022] NZHC 1777, [2022] NZRMA 565 at [208].
18 NPSFM 2020, cls 3.2(2)(e) and 3.5(1).
19 Brief of evidence of Edward Ellison at [60].
20 Brief of evidence of Edward Ellison at [87].
21 Brief of evidence of Brendan Flack at [15]-[19] and [38].
22 Brief of evidence of Brendan Flack at [38].
23 Brief of evidence of Brendan Flack at [46].

Analysis

32. Logic dictates that if what is occurring on land and in our freshwater systems must be considered through a ki uta ki tai lens, so too should activities in the tai, the coastal environment, which receives the effects of those activities. The CE provisions of the PORPS should reflect the fundamental role of the tai in that concept.

33. Mr Bathgate has suggested a number of amendments which are intended to better give effect to the principle of ki uta ki tai in the coastal environment. They include a proposed amendment to CE-P1 to put a ki uta ki tai management framework at the forefront in the coastal environment, by specifically referencing the concept and drawing attention to the interactions referred to above.[24] The reporting officer is now proposing a new CE-P1A related to ki uta ki tai, which Mr Bathgate supports (subject to the addition of a further sub-clause which addresses the physical interface between land, freshwater and the coastal marine area).

34. The principle also sits behind the proposed new policies to address the physical modification of the interface between land, fresh and coastal waters; and to address the effects of discharges and sedimentation (including dredging) on the coastal environment.[25] For reasons Mr Bathgate and Ms Stevens will explain, the proposed policy on discharge and sedimentation remains an important part of the relief sought in the Kāi Tahu submissions.

35. In my submission, these proposed amendments are critical to ensuring that the PORPS provides proper direction for the integrated management of resources within the region.

36. As the Honourable Justice Joe Williams has said, the link to "ancestral water" in s 6(e) of the RMA need not be taken to mean the water of their ancestors, but is "equally capable of meaning the relationship between Māori and water *as* their ancestor".[26] A ki uta ki tai approach, as set out in the evidence of Mr Bathgate and Ms Stevens, acknowledges that ancestral status, "te mana, te tapu me te mauri o te wai", in the coastal environment.

Issue #3 | Te take tuatoru – mana moana and the place of customary fisheries and mahika kai within the CE provisions

37. Both the statutory acknowledgement for Te Tai o Arai Te Uru, and the cultural evidence, recognises the significance of the coastal environment to Kāi Tahu customary fishing and mahika kai practices, as an expression of Kāi Tahu mana moana, rakatirataka and kaitiakitaka.

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24 Appendix 1 to the evidence of Michael Bathgate, p 4.

25 Appendix to the evidence of Michael Bathgate, p 11.

26 Joe Williams "He Pūkenga Wai" (Salmon Lecture 2019, Resource Management Law Association, 12 September 2019).

The whole of the coast is a customary fishery for Kāi Tahu

38. The statutory acknowledgement speaks of the "whole of the coastal area", including its sand banks, channels, currents and depths, as providing a bounty of mahinga kai; and the many reefs along the coast as being customary fishing grounds.[27]

39. David Higgins references the moana, from the close inshore to beyond the 12 nautical mile limit under the RMA, as a customary fishery that Kāi Tahu were able to control and sustain their families from.[28] He also describes the impact of the arrival of Pākehā settlers on customary fishing practices, and the QMS which initially eroded the ability of whānau to rely on the fishery for sustenance.[29] Mātaitai and tāiapure are referred to as tools for customary fisheries management, but importantly, they are not the only tools for ensuring continued access and nor do they encapsulate the entirety of Kāi Tahu customary fishing grounds within the region.[30]

40. As Mr Flack says, "the entire coast, whether or not it is within a mātaitai or tāiapure, is a customary fishing area", and environment standards need to be achieved to support the ability for Kāi Tahu to access safe and abundant kai everywhere.[31]

Analysis

41. As such, it is important that the provisions of the PORPS support the ability of Kāi Tahu to practice customary fishing and mahika kai activities within the coastal environment. That is a direct consequence of the recognition given to these practices in Policy 2(a), (f) and (g) of the NZCPS; and the requirement to actively protect Kāi Tahu rights to fisheries under article 2 of Te Tiriti, which must be taken into account under s 8 of the RMA.

42. This is recognised by the expert planning witnesses, Mr Bathgate and Ms Stevens in their evidence.[32]

43. The relief sought by Kāi Tahu seeks to increase the recognition of customary fishing and mahika kai practices within the CE provisions of the PORPS. It also seeks to ensure that these practices are not only recognised, but provided for in a manner that is consistent with ORC's obligations under s 6(e) and Objective 3 and Policy 2 of the NZCPS.

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27 Settlement Act, Sch 103.
28 Brief of evidence of David Higgins at [17]-[24].
29 Brief of evidence of David Higgins at [24]-[25].
30 Brief of evidence of David Higgins at [26].
31 Brief of evidence of Brendan Flack at [20].
32 Brief of evidence of Michael Bathgate at [27]; Brief of evidence of Tanya Stevens at [27].

This is reflected in the proposed amendments to CE-O4,[33] CE-O5,[34] CE-P10, and CE-M4.[35]

44. The relief sought by Kāi Tahu also seeks to protect these practices from the adverse effects of other activities in the coastal environment, or further upstream. These include the proposed amendments to CE-O1,[36] CE-O5,[37] CE-P1, CE-P2, P3, P5, P10, and the new policies in relation to discharges and the interface between land, fresh and coastal waters.[38] It is also reflected in the proposed amendments to CE-M3 and M4.

Ancillary issue – the inter-relationship between the Fisheries Act and RMA

45. Although not a matter that is directly addressed in the evidence, there are submissions (particularly from industry participants) which seek to clarify the relationship between the RMA, the PORPS and other legislative requirements, such as the Fisheries Act.[39]

46. The inter-relationship between the RMA and the Fisheries Act has been the subject of recent judicial commentary, arising out of the Court of Appeal's decision in *Attorney General v Trustees of the Motiti Rohe Moana Trust*,[40] and the recent decision of the Environment Court in *Bay of Islands Maritime Park Inc v Northland Regional Council*.[41]

47. The effect of those decisions is that regional councils might control fishing and fisheries resources in the exercise of their functions under s 30, so long as they do not do so for Fisheries Act purposes. However, a regional council will have to bear Treaty and tikanga-related issues in mind before it does so.

48. No party, as far as counsel is aware, is seeking to require specific policy direction in the PORPS in relation to the control of fishing, where that might otherwise be achieved pursuant to the Fisheries Act. However, counsel submit that the Panel should be careful in the way it casts the objectives and policies of the CE provisions to ensure that any wording adopted does not create unintended consequences for the promulgation of regional coastal plans.[42]

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33 See proposed CE-O3 in the appenfix to Mr Bathgate's evidence.
34 See proposed CE-O6 in the appendix to Mr Bathgate's evidence.
35 The rationale for which is set out in paragraphs 36 to 42 and 60 to 68 of Mr Bathgate's evidence, and paragraphs 66 to 93 of Ms Stevens' evidence.
36 See proposed CE-O2 in the appendix to Mr Bathgate's evidence.
37 See proposed CE-O6 in the appendix to Mr Bathgate's evidence.
38 The rationale for which is set out in paragraphs 20 to 31, 43 to 54, 60 to 70, and 76 to 85 of Mr Bathgate's evidence; and paragraphs 66 to 92 of Ms Stevens' evidence.
39 00124.025 Southern Inshore Fisheries, 00126.025 Harbour Fish, 00125.014, 00125.017, 00125.018 Otago Rock Lobster.
40 *Attorney-General v Motiti Rohe Moana Trust* [2019] NZCA 532, [2019] 3 NZLR 876.
41 *Bay of Islands Maritime Park Inc v Northland Regional Council* [2022] NZEnvC 228.
42 Where any such controls are most likely to be found, and where the previous disputes *(Motiti* and *Bay of Islands*) have arisen.

49. The decision as to where, and in what circumstances, controls are required is likely to be intensely fact-specific, and so it is important that the objectives and policies of the PORPS do not pre-determine outcomes under a proposed regional coastal plan, especially where customary fishing rights and rights secured under Treaty settlements are involved.

Issue #4 | Te take tuawha – the role of aquaculture in the coastal environment

50. Finally, the following issues arise in relation to the role of aquaculture:

(a) the relationship between the PORPS and aquaculture settlements reached under the Māori Commercial Aquaculture Claims Settlement Act 2004 ("**MACSA**"); and

(b) when aquaculture activities should be enabled or provided for under the PORPS, and conversely, when they should not.

The relationship between the PORPS and aquaculture settlements

51. The Panel will recall that this was an issue that was discussed during the MW / RMIA hearings, in relation to proposed MW-M5. MW-M5, as proposed by Ms Stevens, sought the inclusion of wording which required local authorities to provide for and enable the outcomes of settlements under the MACSA.

52. In particular, a concern was raised from the Chair that Ms Stevens' proposed wording would require ORC to identify areas for aquaculture in a regional coastal plan in circumstances where the coastal environment may already be at capacity (and/or where such space is not available under the MACSA, and is substituted with a cash settlement).

53. Ms Stevens addressed the issue at the MW / RMIA hearing by noting that the intent was not to require space to be identified where it could not be provided for. Instead, the intent behind the proposed amendments was that where space *is* feasible and is allocated under MACSA, local authorities are to ensure that there is an appropriate consenting framework[43] which acknowledges the significant amount of work which goes into the identification of such space at the "front end". That was the purpose behind the use of "enable" in those circumstances.

54. The same submissions and rationale applies to the proposed amendments to CE-P11 and CE-P13, as set out in Ms Stevens' evidence.[44] The intent is to ensure that where feasible space is available under MACSA, local authorities are directed to both provide for and allocate that space for Kāi Tahu aquaculture activities.

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43 Eg through the use of restricted discretionary activity status.

44 Brief of evidence of Tanya Stevens at [94]-[100].

55. Ms Stevens advises that this is precisely the approach that has been taken through the variations to the Marlborough Environment Plan, by identifying areas that are appropriate for aquaculture.

The extent to which aquaculture activities should be provided for under the PORPS

56. In his evidence, Mr Bathgate proposes amendments to CE-P11, which sets out where and in what circumstances aquaculture should be provided for in lower order documents promulgated pursuant to the PORPS. CE-P11 is addressed at giving effect to Policy 8 of the NZCPS at the regional level.

57. Mr Bathgate proposes that CE-P11 should "only allow" aquaculture within appropriate locations and limits, taking into account a range of factors, including its environmental effects; effects on cultural values; and, importantly, and related to the above point, whether it is being carried out pursuant to redress granted under MACSA.[45] He explains that the notified wording is "presumptive of aquaculture", and the proposed amendments provide better direction as to, and emphasis on the role of appropriate limits and locations in any considering any proposed regional coastal plan.

58. Mr Low for Sanford takes issue with this proposed amendment, and disagrees that the notified wording of CE-P11 is presumptive of aquaculture.[46] In his opinion, the drafting of CE-P11 is not such that it should be read in isolation, and that other provisions will be relevant to the consideration of the appropriateness of aquaculture activities.

59. However, in my submission, Mr Low relies heavily on the general approach undertaken by ORC referred to earlier, whereby the CE objectives and policies do no more than to restate the higher-order directions in the NZCPS.

60. In my submission, it is entirely appropriate for the PORPS, drawing the different threads of the NZCPS together, to provide more refined direction as to where, and in what circumstances, aquaculture activities ought to be provided for. That is consistent with the concept of the hierarchy of documents and the greater specificity required at the regional level, referred to above.

Conclusion

61. In summary, Kāi Tahu seeks the amendments to the CE provisions that are included in Appendix 1 to Mr Bathgate's evidence, and as supplemented by the amendments sought in his hearing statement.

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45 Brief of evidence of Michael Bathgate at [72].
46 Rebuttal evidence of Adrian Low for Sanford at [10]-[13].

62. Those provisions are the most efficient, effective and appropriate means of achieving the purpose of the RMA, as particularised in the coastal environment through the NZCPS and s 8 of the RMA.

Dated 1 March 2023

A M Cameron
Counsel for Kāi Tahu

APPENDIX – OBJECTIVE 3 AND POLICY 2 TO THE NZCPS

Objective 3

To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by:

- recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;
- promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act;
- incorporating mātauranga Māori into sustainable management practices; and
- recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.

Policy 2

In taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment:

(a) recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations;

(b) involve iwi authorities or hapū on behalf of tangata whenua in the preparation of regional policy statements, and plans, by undertaking effective consultation with tangata whenua; with such consultation to be early, meaningful, and as far as practicable in accordance with tikanga Māori;

(c) with the consent of tangata whenua and as far as practicable in accordance with tikanga Māori, incorporate mātauranga Māori in regional policy statements, in plans, and in the consideration of applications for resource consents, notices of requirement for designation and private plan changes;

(d) provide opportunities in appropriate circumstances for Māori involvement in decision making, for example when a consent application or notice of requirement is dealing with cultural localities or issues of cultural significance, and Māori experts, including pūkenga, may have knowledge not otherwise available;

(e) take into account any relevant iwi resource management plan and any other relevant planning document recognised by the appropriate iwi authority or hapū and lodged with the council, to the extent that its content has a bearing on resource management issues in the region or district; and

    (i) where appropriate incorporate references to, or material from, iwi resource management plans in regional policy statements and in plans; and

(ii) consider providing practical assistance to iwi or hapū who have indicated a wish to develop iwi resource management plans;

(f) provide for opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands, and fisheries in the coastal environment through such measures as:

(i) bringing cultural understanding to monitoring of natural resources;

(ii) providing appropriate methods for the management, maintenance and protection of the taonga of tangata whenua;

(iii) having regard to regulations, rules or bylaws relating to ensuring sustainability of fisheries resources such as taiāpure, mahinga mātaitai or other non commercial Māori customary fishing; and

(g) in consultation and collaboration with tangata whenua, working as far as practicable in accordance with tikanga Māori, and recognising that tangata whenua have the right to choose not to identify places or values of historic, cultural or spiritual significance or special value:

(i) recognise the importance of Māori cultural and heritage values through such methods as historic heritage, landscape and cultural impact assessments; and

(ii) provide for the identification, assessment, protection and management of areas or sites of significance or special value to Māori, including by historic analysis and archaeological survey and the development of methods such as alert layers and predictive methodologies for identifying areas of high potential for undiscovered Māori heritage, for example coastal pā or fishing villages.