

# **Reply Report**

## **Proposed Otago Regional Policy Statement 2021**

### **8: CE - Coastal Environment**

**Andrew MacLennan**



**23 May 2023**

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# 1. Introduction

1. This report forms part of a suite of reply reports that have been prepared to sit alongside and explain the “marked up” version of the final recommendations on the proposed Otago Regional Policy Statement (pORPS). The approach to the whole suite is set out in the first report in this series, *Reply Report – Chapter 1: Introduction and General Themes*. Appended to the suite of reports is a consolidated version of the pORPS containing all final recommendations from the reporting officers.
2. This report is the final set of advice on this chapter and is in addition to:
  - a. Section 42A report on Chapter 8: CE - Coastal Environment (27 April 2022)
  - b. First brief of supplementary evidence of Andrew Cameron MacLennan: CE – Coastal Environment Integrated management (11 October 2022)
  - c. Opening Statement of Andrew Cameron MacLennan: CE – Coastal Environment (24 February 2023).
3. The Hearing for the Coastal Environment (CE) Chapter was held over two days on the 1<sup>st</sup> and 2<sup>nd</sup> of March 2023, with Sanford on 8 May and Port Otago on 9 May 2023. At the hearing the key matters of contention, in my view, were as follows:
  - a. Kāi Tahu relationship to the coastal environment.
  - b. Identifying biodiversity in the coastal environment.
  - c. Providing for Infrastructure in the coastal environment.
  - d. Connections to other chapters within the pORPS21.
  - e. Identifying the extent of the coastal environment
  - f. Providing for aquaculture.
4. This report takes a provision-by-provision approach to addressing these issues and largely builds off the analysis provided within my opening statement at the hearing. It does not address the following provisions because I do not consider there are any additional matters to address as a result of the:
  - Methods CE-M1, CE-M5, and CE-M6
  - CE-E1, CE-PR1, CE-AER1, CE-AER2, CE-AER3, CE-AER4, CE-AER5, CE-AER6, CE-AER7, CE-AER8 and CE-AER9
5. My previously recommended amendments to those provisions, in addition to my amended recommendations in this report, are incorporated in the Reply Report version of the pORPS attached to this suite of reports.

## 2. CE-AO1 - Te Mauri o te Moana

### 2.1. Introduction

6. CE-AO1 is discussed in section 8.5 of the section 42A report, with my analysis in paragraph [55].
7. In my s42A report I disagreed that a new objective was required. However, as set out in paragraph [12] of my opening statement, based on the evidence of Mr Bathgate for Kāi Tahu ki Otago, I now agree with the introduction of a new objective (Te Mauri o te Moana) to highlight the central focus on mauri within the chapter.
8. The recommended version of this provision currently reads:<sup>1</sup>

#### CE-AO1 –Te Mauri o te Moana

The mauri of Otago’s coastal waters and their health and well-being is protected and restored where it is degraded, including through enhancing coastal water quality where it has deteriorated from its natural condition.<sup>2</sup>

### 2.2. Submissions and evidence

9. CE-AO1 is discussed in in paragraph 48 of the section 42A report, with my analysis in paragraph 55.
10. At the hearing Mr Bathgate for Kāi Tahu ki Otago supported the introduction of a new objective (Te Mauri o te Moana) as set out within my opening statement. There was discussion with the Hearing Panel as to whether the scope of this objective should be widened to include mauri of the coastal environment more broadly rather than being restricted to the mauri of coastal waters which was supported by Mr Bathgate, provided there was scope within the Kāi Tahu ki Otago submission for this amendment.

### 2.3. Analysis

11. I retain the view set out within my opening statement that a new objective (CE-AO1 Te Mauri o te Moana) is required to highlight the central focus on mauri within the chapter. When considering whether there is scope within the Kāi Tahu ki Otago submission to broaden the scope of the objective, Mr Bathgate and Mr Cameron for Kāi Tahu ki Otago highlighted at the hearing, the drafting of CE-AO1 was taken directly from the submission from Kāi Tahu ki Otago. Given this, there was a view at the hearing that any amendment to the widen the objective would be restricted by the scope of the Kāi Tahu ki Otago submission.
12. Mr Logan counsel for ORC has reviewed the Kāi Tahu ki Otago and notes:

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<sup>1</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>2</sup> 00226.131 Kāi Tahu Ki Otago

*As drafted the objective is clearly within the scope of the specific relief requested. Within the Kāi Tahu submission there are general submissions point at 3.1-3.5 and 3.19 which raise additional points about Kai Tahu relationships with the coastal environment. However, they seem to be now covered by CE-O4. I don't think there's scope to extend the objective to other resources in the coastal environment.*

13. I agree with the advice of Mr Logan that there is no scope to broaden the objective, and therefore no change of this nature is recommended. I consider a slight re-phrasing of the objective would add to the readability of the objective. As such, I have suggested a minor amendment to the version included within my opening statement.

## 2.4. Final recommendation

14. My final recommended amendments to the notified version of the pORPS are:

### **CE-O1A – Te Mauri o te Moana**

The mauri, health and well-being of Otago's coastal water is protected, and restored where it is degraded, including through enhancing coastal water quality where it has deteriorated from its natural condition.<sup>3</sup>

15. In terms of s32AA, I consider that the objective is the most appropriate to achieve the purpose of the RMA, because:
- (a) gives greater effect to Objective 1 of the NZCPS which is to safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems by, among other things, maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, and
  - (b) gives greater effect to Objective 3 of the NZCPS which requires recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.
  - (c) it more clearly demonstrates how the requirements of Section 6(a) of the RMA are given effect to.

## 3. CE-O1 – Safeguarding the coastal environment (Te Hauora o Te Tai o Arai Te Uru)

### 3.1. Introduction

16. CE-O1 is discussed in section [8.5] of the section 42A report, with my analysis in paragraphs [55] to [59]. CE-O1 is also discussed in my brief of supplementary evidence (11 October 2022).

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<sup>3</sup> 00226.131 Kāi Tahu Ki Otago  
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17. The recommended version of this provision currently reads:<sup>4</sup>

**CE-O1 – Safeguarding the coastal environment (Te Hauora o Te Tai o Arai Te Uru)<sup>5</sup>**

The health,<sup>6</sup> integrity, form, functioning and *resilience* of Otago's coastal environment is safeguarded so that:

- ~~(1) the mauri of coastal water and its health and well-being<sup>7</sup> is protected, and restored where it has degraded,<sup>8</sup>~~
- (2) *coastal water* quality supports healthy ecosystems, natural habitats, *water*-based recreational activities, existing activities, and customary uses, including practices associated with ~~mahika kai~~ *mahika kai*<sup>9</sup> and kaimoana,
- (3) the dynamic and interdependent natural biological and physical processes in the coastal environment are maintained or enhanced,
- (4) the diversity of indigenous coastal flora and fauna is maintained, and areas of representative or significant indigenous biodiversity are protected, areas of biodiversity are protected,<sup>10</sup> and
- (5) *surf breaks* of national significance are protected,~~z~~
- ~~(6) the interconnectedness of wai Māori and wai tai is protected<sup>11</sup>, and the effects of terrestrial and fresh water uses and activities on coastal waters and ecosystems, are recognised, and understood, and protected,<sup>12</sup> and<sup>13</sup>~~
- (7) the ongoing effects of climate change within the coastal environment are identified and planned for.<sup>14</sup>

### 3.2. Submissions and evidence

18. Both Mr Bathgate for Kāi Tahu ki Otago<sup>15</sup> and Ms Stevens for Te Rūnanga o Ngāi Tahu<sup>16</sup> (Ngāi Tahu) seek amendments to subclauses (2), (3) and (6) of Objective CE-O1. As part of my opening statement<sup>17</sup>, I agreed in part with the amendment to subclause (6). At the hearing both Mr Bathgate and Ms Stevens, and Ms Ho for Waka Kotahi, supported my suggested amendment to subclause (6) and indicated they did not intend to pursue their suggested changes to subclauses (2) and (3).

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<sup>4</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>5</sup> 00226.131 Kāi Tahu Ki Otago

<sup>6</sup> 00226.131 Kāi Tahu Ki Otago

<sup>7</sup> 00226.130 Kāi Tahu Ki Otago

<sup>8</sup> 00226.131 Kāi Tahu Ki Otago

<sup>9</sup> Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

<sup>10</sup> 00137.049 DOC, 00230.046 Forest and Bird

<sup>11</sup> 00226.131 Kāi Tahu Ki Otago

<sup>12</sup> 00226.131 Kāi Tahu Ki Otago

<sup>13</sup> 00226.131 Kāi Tahu Ki Otago

<sup>14</sup> 00226.131 Kāi Tahu Ki Otago, 00234.015 Te Rūnanga o Ngāi Tahu

<sup>15</sup> Michael Bathgate for Kāi Tahu, para [21] -[23]

<sup>16</sup> Tanya Stevens for Ngāi Tahu, para [67]-[69]

<sup>17</sup> Paragraph 14

19. Mr Brass of DOC<sup>18</sup> suggests that CE-O1(3) should be amended to require that the dynamic and interdependent natural biological and physical processes in the coastal environment are maintained 'and' enhanced rather than maintained 'or' enhanced.

### 3.3. Analysis

20. In response to the suggested amendment from Mr Brass, I consider the phrase maintaining or enhancing better reflects the NZCPS Objective 1. I disagree an amendment is required. I continue to support the version of Objective CE-O1 as set out in my opening statement.

### 3.4. Final recommendation

21. My final recommended amendments to the notified version of the pORPS are:

**CE-O1 – Safeguarding the coastal environment (Te Hauora o Te Tai o Arai Te Uru)**<sup>19</sup>

The health,<sup>20</sup> integrity, form, functioning and *resilience* of Otago's coastal environment is safeguarded so that:

- (1) ~~the mauri of coastal water is protected, and restored where it has degraded,~~<sup>21</sup>
- (2) *coastal water* quality supports healthy ecosystems, natural habitats, *water*-based recreational activities, existing activities, and customary uses, including practices associated with ~~māhika kai~~ *māhika kai*<sup>22</sup> and kaimoana,
- (3) the dynamic and interdependent natural biological and physical processes in the coastal environment are maintained or enhanced,
- (4) the diversity of indigenous coastal flora and fauna is maintained, and areas of representative or significant indigenous biodiversity are protected, areas of biodiversity are protected,<sup>23</sup> and
- (5) *surf breaks* of national significance are protected,<sup>24</sup>
- (6) the interconnectedness of wai māori and wai tai is protected,<sup>24</sup> and the effects of terrestrial and fresh water uses and activities on coastal waters and ecosystems, are recognised and understood, and<sup>25</sup>
- (7) the ongoing effects of climate change within the coastal environment are identified and planned for.<sup>26</sup>

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<sup>18</sup> Murray Brass for DOC, para [66]

<sup>19</sup> 00226.131 Kāi Tahu Ki Otago

<sup>20</sup> 00226.131 Kāi Tahu Ki Otago

<sup>21</sup> 00226.131 Kāi Tahu Ki Otago,

<sup>22</sup> Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

<sup>23</sup> 00137.049 DOC, 00230.046 Forest and Bird

<sup>24</sup> 00226.131 Kāi Tahu Ki Otago,

<sup>25</sup> 00226.131 Kāi Tahu Ki Otago

<sup>26</sup> 00226.131 Kāi Tahu Ki Otago, 00234.015 Te Rūnanga o Ngāi Tahu

22. In terms of s32AA, I consider that the amendments to the objective are the most appropriate to achieve the purpose of the RMA, because they:
- a. give greater effect to Objective 3 of the NZCPS which is to incorporate mātauranga Māori into sustainable management practices, and
  - b. give greater effect to Objective 5 of the NZCPS which is to ensure that coastal hazard risks, taking account of climate change, are managed, and
  - c. more clearly demonstrates how the requirements of Section 6(h) and Section 7(i) of the RMA are given effect to.

## 4. CE-O2 – Public access and recreation

### 4.1. Introduction

23. CE-O2 is discussed in section 8.6 of the section 42A report, with my analysis in paragraph [67].
24. The recommended version of this provision currently reads:<sup>27</sup>

**CE-O2 – Public access and recreation ~~Maintaining or enhancing highly valued areas of the coastal environment~~**

Public walking<sup>28</sup> access, and recreation opportunities, ~~and highly valued natural features and landscapes~~<sup>29</sup> in the coastal environment are maintained or enhanced, and vehicle access is controlled<sup>30</sup>.

### 4.2. Submissions and evidence

25. Within his evidence Mr Bathgate<sup>31</sup> supports the submission of Kāi Tahu ki Otago seeking amendments to Objective CE-O2 to ensure that vehicle access is controlled within the coastal environment, as required by Policy 20 of the NZCPS.

### 4.3. Analysis

26. As set out in my opening statement<sup>32</sup> I agree that amendments to Objective CE-O2 controlling vehicle access within the coastal environment would assist in giving effect to the NZCPS. I note that Policies 19 and 20 of the NZCPS provide include the requirement to ‘maintain and enhance public walking access’<sup>33</sup> and ‘control vehicle access’<sup>34</sup>. As such

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<sup>27</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>28</sup> 00226.132 Kāi Tahu Ki Otago

<sup>29</sup> 00121.039 Ravensdown, 00230.047 Forest and Brid, 00239.057 Federated Farmers, 00306.027 Meridian Energy, 00124.015 Southern Inshore Fisheries

<sup>30</sup> 00226.132 Kāi Tahu Ki Otago

<sup>31</sup> Michael Bathgate for Kāi Tahu, paras [58]-[59]

<sup>32</sup> Paragraph 15

<sup>33</sup> Policy 19(2) of the NZCPS

<sup>34</sup> Policy 20(1) of the NZCPS



I continue to support the version of Objective CE-O2 as set out in my opening statement which includes more nuanced direction on public access by differentiation between controlling vehicle access and maintaining and enhancing walking access. I also support replacing 'or' with 'and' within the objective as this reflects the requirements of section 6(d) of the RMA and also Objective 4 and Policy 19 of the NZCPS.

#### 4.4. Final recommendation

27. My final recommended amendments to the notified version of the pORPS are:

**CE-O2 – Public access and recreation ~~Maintaining or enhancing highly valued areas of the coastal environment~~<sup>35</sup>**

Public walking<sup>36</sup> access, and recreation opportunities, ~~and highly valued natural features and landscapes~~<sup>37</sup> in the coastal environment are maintained and ~~or~~<sup>38</sup> enhanced, and vehicle access is controlled<sup>39</sup>.

28. In terms of s32AA, I consider that the objective is the most appropriate to achieve the purpose of the RMA, because it:

- a. gives greater effect to Objective 4 of the NZCPS which is to maintain and enhance public walking access to and along the coastal marine area without charge, and where there are exceptional reasons that mean this is not practicable providing alternative linking access close to the coastal marine area, and
- b. gives greater effect to Policy 19 and 20 of the NZCPS which require the maintenance and enhancement public walking access and the control vehicle access, and
- c. more clearly demonstrates how the requirements of Section 6(d) of the RMA are given effect to within the pORPS.

## 5. CE-O3 – Natural character, features and landscapes

### 5.1. Introduction

29. CE-O3 is discussed in section 8.7 of the section 42A report, with my analysis in paragraphs [75] to [81].

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<sup>35</sup> 00121.039 Ravensdown, 00230.047 Forest and Brid, 00239.057 Federated Farmers, 00306.027 Meridian Energy, 00124.015 Southern Inshore Fisheries

<sup>36</sup> 00226.132 Kāi Tahu ki Otago

<sup>37</sup> 00121.039 Ravensdown, 00230.047 Forest and Brid, 00239.057 Federated Farmers, 00306.027 Meridian Energy, 00124.015 Southern Inshore Fisheries

<sup>38</sup> 00226.132 Kāi Tahu ki Otago

<sup>39</sup> 00226.132 Kāi Tahu ki Otago

30. The recommended version of this provision currently reads:<sup>40</sup>

**CE-O3 – Natural character, features and landscapes**

Areas of natural character, are preserved and<sup>41</sup> natural features, and landscapes and (including seascapes) within the coastal environment are protected from inappropriate activities, and restoration is encouraged where the values of these areas have been compromised.

## 5.2. Submissions and evidence

31. Within his evidence Mr Brass supports the submission of DOC<sup>42</sup> seeking an amendment to CE-O3 which would require restoration where values have been degraded, as opposed to the notified version of the objective that requires that restoration is ‘encouraged’. Mr Brass states that the notified drafting simply repeats the requirement of the NZCPS 2010, so does not adequately respond to the Otago context. He also notes that the drafting describes an action so is more appropriate for a policy or method (which set out ways of achieving objectives), whereas an objective should set out a desired result or outcome.

32. Ms O’Callahan supports the submission for Port Otago<sup>43</sup> seeking a number of amendments to CE-O3 to better align the wording of the objective with Policies 13 and 15 of the NZCPS.

## 5.3. Analysis

33. In relation to the amendment supported by Mr Brass, I disagree this amendment is required. I continue to support the version of Objective CE-O3 as set out in my opening statement which I consider better gives to the Objective 2 of the NZCPS.

34. In relation to the amendments supported by Ms O’Callaghan, I disagree these amendments are required. I note that the intention of the objective is to align with Objective 2 of the NZCPS which uses ‘preserve’ and ‘protect’ in relation to the management of natural character and natural features and landscapes. I consider it is more appropriate that the policies of the CE chapter detail how this preservation and protection is to occur.

## 5.4. Final recommendation

35. My final recommended amendments to the notified version of the pORPS are:

**CE-O3 – Natural character, features and landscapes**

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<sup>40</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>41</sup> 00226.133 Kāi Tahu Ki Otago

<sup>42</sup> Murray Brass for DOC, paras [67]-[68]

<sup>43</sup> Mary O’Callahan for Port Otago, para [71]

Areas of natural character, are preserved and<sup>44</sup> natural features, and landscapes and (including seascapes)<sup>45</sup> within the coastal environment are protected from inappropriate activities, and restoration is encouraged where the values of these areas have been compromised.

36. In terms of s32AA, I consider that the objective is the most appropriate to achieve the purpose of the RMA, because:

(d) gives greater effect to Objective 2 of the NZCPS which is to preserve the natural character of the coastal environment and protect natural features and landscape values, and

(e) it more clearly demonstrates how the requirements of Section 6(a) of the RMA are given effect to within the pORPS.

## 6. CE-O4 – Mana moana

### 6.1. Introduction

37. CE-O4 is discussed in section 8.8 of the section 42A report, with my analysis in paragraphs [89] to [91].

38. The recommended version of this provision currently reads:<sup>46</sup>

**CE-O4 – ~~Kāi Tahu associations with Otago's coastal environment~~ Mana moana**<sup>47</sup>

The enduring cultural relationship association<sup>48</sup> of Kāi Tahu with Otago's coastal environment is recognised and provided for, and *mana whenua* are able to exercise their kaitiaki rakatirataka role, manaakitaka and their kaitiaki duty of care<sup>49</sup> within the coastal environment.

### 6.2. Submissions and evidence

39. Both Mr Bathgate<sup>50</sup> and Ms Stevens<sup>51</sup> support the submissions of Kāi Tahu ki Otago and Ngāi Tahu seeking an addition to CE-O4 to include a new subclause ensuring mana whenua are able to engage in customary and commercial fisheries and other mahika kai. As part of the hearing Ms Stevens refined this drafting so that the additional subclause did not include reference to 'commercial fisheries'.

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<sup>44</sup> 00226.133 Kāi Tahu Ki Otago

<sup>45</sup> 00301.057 Port Otago

<sup>46</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>47</sup> 00226.134 Kāi Tahu Ki Otago

<sup>48</sup> 00230.049 Forest and Bird

<sup>49</sup> 00226.134 Kāi Tahu Ki Otago

<sup>50</sup> Michael Bathgate for Kāi Tahu, para [39]-[41]

<sup>51</sup> Tanya Stevens for Ngāi Tahu, paras [70]-[75]

### 6.3. Analysis

40. In relation to the original drafting proposed by Ms Stevens, it was my view that it is not the role of an objective in the pORPS to be 'providing for' commercial fisheries. I support the re-drafting proposed by Ms Stevens at the hearing as I consider the additional clause proposed highlights the key role customary fishing and mahika kai plays in Kāi Tahu ki Otago's relationship with Otago's coastal environment.

### 6.4. Final recommendation

41. My final recommended amendments to the notified version of the pORPS are:

**CE-O4 – ~~Kāi Tahu associations with Otago's coastal environment~~ Mana moana**<sup>52</sup>

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

- (1) exercise their rakatirataka role, manaakitaka and their kaitiaki duty of care within the coastal environment, and
- (2) engage in customary fishing and other *mahika kai*.

42. In terms of s32AA, I consider that the objective is the most appropriate to achieve the purpose of the RMA, because it:
- a. gives greater effect to Objective 3 of the NZCPS which is to recognise the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources, and
  - b. more clearly demonstrates how the requirements of Section 6(e) of the RMA are given effect to within the pORPS.

## 7. CE-O5 – Activities in the coastal environment

### 7.1. Introduction

43. CE-O5 is discussed in section 8.9 of the section 42A report, with my analysis in paragraphs [102] to [106].
44. The recommended version of this provision currently reads:<sup>53</sup>

**CE-O5 – Activities in the coastal environment**

Activities in the coastal environment:

- (1) make efficient use of space occupied in the *coastal marine area*,
- (2) are of a scale, density and design compatible with their location,

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<sup>52</sup> 00226.134 Kāi Tahu Ki Otago

<sup>53</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

- (3) are only provided for within appropriate locations and ~~limits constraints~~ limits,<sup>54</sup> and
- (4) maintain or enhance public access to and along the *coastal marine area*, including for customary uses, such as mahika kai<sup>55</sup>, except where public access needs to be restricted for reasons of health and safety or ecological or cultural sensitivity.<sup>56</sup>

## 7.2. Submissions and evidence

45. Ms Justice supports the submission of Aurora Energy<sup>57</sup> seeking an amendment to CE-O5(3) to provide for infrastructure to locate within the coastal environment where there is a functional or operational need. In her view, some provision for infrastructure should be included in CE-O5, and this is anticipated by the NZCPS Objective 6. Ms Ho supported the submission of Waka Kotahi<sup>58</sup> seeking an addition to subclause (3) which would provide for infrastructure where there is a functional or operational need. Mr Taylor supported the submission of DCC<sup>59</sup> which raised concerns that CE-O5(2) requires that activities in the coastal environment are ‘of a scale density and design compatible with their location’ because infrastructure is often arguably of an incompatible scale within a coastal environment. Specifically, the stormwater outfalls, retaining structures or jetties.

## 7.3. Analysis

46. As a starting point, I note that the CE chapter is not to be read in isolation. As set out in CE-P1(4)(e), where relevant, the provisions within the EIT – Energy, infrastructure and transport chapter of the pORPS also apply within the coastal environment. Turning to the EIT chapter I note that EIT-INF-O4 enables effective, efficient and resilient infrastructure, and EIT-INF-O5 requires that the development of infrastructure avoids or minimises adverse effects on the environment. When the objectives of the CE chapter are read together with the objectives of the EIT chapter, I am not convinced that CE-O5(2) and (3) present the barrier to the development of infrastructure that Ms Ho and Mr Taylor are concerned about.
47. However, I also acknowledge that Objective 6 of the NZCPS includes direction enabling certain forms of subdivision, use, and development in the coastal environment. In particular bullet point 3, which recognises that: ‘functionally some uses and developments can only be located on the coast or in the coastal marine area’. I acknowledge that this enabling direction is not included with CE-O5 which is the objective of the CE chapter that relates to activities in the coastal environment. Given this I consider the addition to clause (3) is appropriate to acknowledge that some activities have a functional need to be located in the coastal environment.

<sup>54</sup> 00231.009 Fish and Game

<sup>55</sup> 00226.014, 00226.135 Kāi Tahu ki Otago

<sup>56</sup> 00234.017 Te Rūnanga o Ngāi Tahu

<sup>57</sup> Megan Justice for Aurora Energy, paras [10.1]-[10.3]

<sup>58</sup> Sarah Ho for Waka Kotahi, paras [8.2]-[8.6]

<sup>59</sup> James Taylor for DCC, paras [28]-[32]

## 7.4. Final recommendation

48. My final recommended amendments to the notified version of the pORPS are:

### **CE-O5 – Activities in the coastal environment**

Activities in the coastal environment:

- (1) make efficient use of space occupied in the *coastal marine area*,
- (2) are of a scale, density and design compatible with their location,
- (3) are only provided for within appropriate locations and limits acknowledging that some activities have a *functional need* to be located in the coastal environment<sup>60</sup>, and
- (4) maintain or enhance public access to and along the *coastal marine area*, including for customary uses, such as *mahika kai*<sup>61</sup>, except where public access needs to be restricted for reasons of health and safety or ecological or cultural sensitivity.<sup>62</sup>

49. In terms of s32AA, I consider that the amendments to the objective are the most appropriate to achieve the purpose of the RMA, because:

- (f) gives greater effect to Objective 4 of the NZCPS which is to recognise the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources, and
- (g) gives greater effect to Objective 4 of the NZCPS which is to maintain and enhance public walking access to and along the coastal marine area without charge, and where there are exceptional reasons that mean this is not practicable providing alternative linking access close to the coastal marine area, and
- (h) gives greater effect to Objective 6 of the NZCPS which is to enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that, functionally some uses and developments can only be located on the coast or in the coastal marine area, and
- (i) it more clearly demonstrates how the requirements of Section 6(d) of the RMA are given effect to within the pORPS.

## 8. CE-P1A – Integrated management/ki uta ki tai

### 8.1. Introduction

50. CE-P1A is not discussed in the section 42A report, or within my supplementary statement. It is the result of discussions with Kāi Tahu ki Otago prior to the CE hearing and is discussed in paragraphs [18] to [19] of my opening statement.

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<sup>60</sup> 00315.021 Aurora Energy

<sup>61</sup> 00226.014, 00226.135 Kai Tahu ki Otago

<sup>62</sup> 00234.017 Te Rūnanga o Ngāi Tahu

51. The recommended version of this provision currently reads:<sup>63</sup>

**CE-P1A Integrated management/ki uta ki tai**

Implement an integrated approach to managing Otago’s coastal environment that:

- (1) recognises the interactions, ki uta ki tai, between the terrestrial environment, fresh water, including the migration of fish species between fresh and coastal waters, and the coastal marine area,
- (2) manages the effects of the use and development of land and fresh water to maintain or enhance the health and well-being of the coastal environment and
- (3) takes into account the ongoing effects of climate change.<sup>64</sup>

## 8.2. Submissions and evidence

52. As the hearing Mr Bathgate for Kāi Tahu ki Otago generally supported the drafting I proposed in Appendix 1 of my opening statement. However, he suggested a slight re-ordering of subclause (1) and also an additional subclause (3) as a response to the Kāi Tahu ki Otago submission seeking a new policy related to the management of physical modification to the land/freshwater/coastal interface.

## 8.3. Analysis

53. I agree with the re-ordering proposed by Mr Bathgate, as I consider it improves the readability of the policy. In relation to the suggested additional subclause, I agree this amendment assists with the integration between the CE chapter and the LF chapter.

54. During the hearing, Commissioner Sullivan questioned Mr Bathgate on the intention of the term ‘Implement’ at the start of the policy and in particular, whether of this word was deliberate or not. Mr Bathgate responded by stating that the intention of the drafting was not to suggest that ‘Implement’ had any more directive meaning than other policies. I agree with Mr Bathgate. I consider ‘implement’ could be replaced with a number of verbs which would retain the intent of the policy (Take, apply, adopt, etc). I have recommended that ‘Implement’ be retained but I would equally support any other of the verbs suggested above. Following the hearing I have reviewed the drafting of the policy and have suggested two minor amendments to the drafting proposed by Mr Bathgate at the hearing. These are an amendment to clause (2) to replace ‘coastal marine area’ with ‘coastal water’ as I consider broader application of ‘coastal waters’ better reflects the concept of the ki uta ki tai within the policy. I also recommended minor amendment to clause (3) replacing ‘manages’ with ‘ensures’ to improve the readability of the clause, to remove the ‘manage’ by ‘managing’ drafting when clause (3) is read the chapeau.

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<sup>63</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>64</sup> 00226.136 Kāi Tahu ki Otago

## 8.4. Final recommendation

55. My final recommended amendments to the notified version of the pORPS are:

### **CE-P1A – Integrated management/ki uta ki tai**

Implement an integrated approach to managing Otago’s coastal environment that:

- (1) recognises the interactions, ki uta ki tai, between the terrestrial environment, fresh water, and the coastal marine area, including the migration of fish species between fresh water and coastal water,
- (2) provides for the natural functioning of coastal processes at the physical interface between land, fresh water, and the coastal water,
- (3) ensures the effects of the use and development of land and fresh water maintain or enhance the health and well-being of the coastal environment and
- (4) takes into account the ongoing effects of climate change.<sup>65</sup>

56. In terms of s32AA, I consider that the addition of the new policy will assist in giving effect to CE-AO1 and CE-O1. In my view the addition of this policy will also help to articulate how the pORPS is to be interpreted and is therefore more effective in achieving the integration sought within IM-02.

## 9. CE-P1 Links with other chapters

### 9.1. Introduction

57. CE-P1 is discussed in section 8.10 of the section 42A report, with my analysis in paragraphs [113] to [119]. CE-P1 is also discussed in my brief of supplementary evidence (11 October 2022).

58. The recommended version of this provision currently reads:<sup>66</sup>

### **CE-P1 – Links with other chapters**

~~Implement an integrated approach to managing Otago’s coastal environment which R~~recognises<sup>67</sup> that:

- (1) coastal hazards must be identified ~~in accordance with CE-P2(4)~~<sup>68</sup> and managed in accordance with the HAZ–NH – Natural hazards section of this RPS;

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<sup>65</sup> 00226.136 Kai Tahu ki Otago

<sup>66</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>67</sup> 00226.136 Kāi Tahu ki Otago

<sup>68</sup> Clause 10(2)(b)(i) of Schedule 1 of the RMA – consequential amendment arising from 00301.047 Port Otago Proposed Otago Regional Policy Statement 2021



- (2) commercial<sup>69</sup> port activities must be managed in accordance with EIT-TRAN-P23 the TRAN – Transport section of this RPS<sup>70</sup>; and
- ~~(3) historic heritage must be managed in accordance with the HCV – Historical and cultural values section of this RPS.~~
- (4) where relevant, the provisions within the following chapters of this RPS also apply within the coastal environment, unless expressly excluded:
  - (a) IM – Integrated management,
  - ~~(aa) MW – Mana whenua,~~<sup>71</sup>
  - (b) AIR – Air,
  - (c) LF – Land and freshwater,
  - (d) ECO – Ecosystems and indigenous biodiversity,
  - (e) EIT – Energy, infrastructure and transport,
  - (f) HAZ – Hazards and risks,
  - (g) HCV – Heritage and historical values, and
  - ~~(h) NFL – Natural features and landscapes, and~~<sup>72</sup>
  - (i) UFD – Urban form and development.<sup>73</sup>

## 9.2. Submissions and evidence

- 59. Across the pORPS, submitters raise concerns about the links between chapters and the use (or not) of cross-referencing between chapters and between provisions. A number of parties<sup>74</sup> raise concerns that the links between the CE chapter and other chapters within the pORPS are not clear or needs to be more explicit.
- 60. In addition, during the CE chapter hearing, Commissioner Sullivan raised questions as to whether greater consistency was required within the pORPS when it came to cross referencing. Ms McLeod for Transpower suggested that an additional limb be added to CE-P1 stating that nationally significant infrastructure in the coastal environment must be managed in accordance with EIT-INF-P13A.

## 9.3. Analysis

- 61. As set out in my Section 42A report<sup>75</sup>, Standard 2, direction (7) of the National Planning Standards states that any specific provisions relating to the coastal environment which are located in other topic chapters must be cross-referenced in the CE chapter. As such,

<sup>69</sup> 00301.018 Port Otago

<sup>70</sup> 00301.018 Port Otago

<sup>71</sup> 00137.0048 DOC

<sup>72</sup> 00137.052 DOC

<sup>73</sup> 00137.052 DOC

<sup>74</sup> Michael Bathgate for Kāi Tahu, para [45]; Murray Brass for DOC, paras [71]-[74], Ainsley McLeod for Transpower, paras [8.2]-[8.4].

<sup>75</sup> Paragraph 113.

I consider that cross referencing to other chapters of the pORPS in the CE chapter is essential.

62. Commissioner Sullivan raised the example of policy ECO-P8, and whether it was clear to users of the plan that this policy would apply to biodiversity in the coastal environment. In my view, Policy CE-P1(4) is clear that, where relevant, the provisions within the ECO – Ecosystems and indigenous biodiversity chapter will apply within the coastal environment, unless expressly excluded. Turning to the ECO chapter, I note that ECO-P7 states:

*Indigenous biodiversity and taoka species and ecosystems in the coastal environment are managed by CE-P5 in addition to all objectives, policies, and methods of the ECO chapter except ECO-P3, ECO-P4, ECO-P5*

63. In my view, this makes it clear that ECO-P8 will apply in the coastal environment.
64. However, the example raised Commissioner Sullivan highlights the inconsistent nature of the structure of the pORPS. In my view there are three categories of cross-reference in the pORPS21:

(a) Chapters that apply in the coastal environment ‘in addition’ to the CE provisions are MW, IM, AIR, LF, HCV, and UFD.

(b) Chapters that partly apply in the coastal environment ‘in addition’ to the CE provisions, but some specific provisions do not apply. These are ECO, EIT, and HAZ. In these chapters the following provisions do not apply in the coastal environment:

- ECO-P3 to ECO-P6 and associated methods,
- EIT-INF-P13 and associated methods,
- HAZ-NH-P1 to HAZ-NH-P4 and associated methods.

(c) Chapters that do not apply in the coastal environment, which is the NFL chapter.

65. I consider amendments are required to CE-P1 to make it clear this is how the pORPS is to be read.

66. In response to the suggested cross reference to Policy EIT-INF-P13A, given the EIT chapter and specifically EIT-INF-P13A, does not provide direction on nationally significant infrastructure in the coastal environment, I disagree this amendment is necessary.

67. In addition to the recommended amendments to CE-P1, I also note that the location of provisions that relate to the coastal environment is not consistent throughout the pORPS which may also affect the readability of the document. For example:

- within the HAZ-NH chapter, all of the provisions related to hazards are located in the HAZ chapter including for coastal hazards and non-coastal hazards,
- within the ECO chapter some of the provisions apply to biodiversity in the coastal environment (ECO-O1 to ECO-O3, ECO-P1, ECO-P2, ECO-P8 – ECO-P10) and some do not (ECO-P3 to ECO-P6). The rest of the provisions that relate to coastal biodiversity are location the CE chapter (CE-P5).

68. To align the drafting style of the HAZ and ECO chapters, I recommend that the provisions related to biodiversity are included within the ECO chapter. This would result in CE-P5 being moved to the ECO chapter and replace ECO-P7 (which is the policy that cross-references to the CE chapter). In addition, CE-M2(3) which requires that identification and mapping of areas and values of indigenous biodiversity will also be moved to the ECO chapter. Finally, consequential amendments will be required to CE-M3(5)(a) and M3(12) to refer to ECO-P7 rather than CE-P5.

#### 9.4. Final recommendation

69. My final recommended amendments to the notified version of the pORPS are:

##### **CE-P1 – Links with other chapters**

Recognises that:

- ~~(1) coastal hazards must be identified in accordance with CE-P2(4) and managed in accordance with the HAZ-NH – Natural hazards section of this RPS;~~
- ~~(2) port activities must be managed in accordance with the TRAN – Transport section of this RPS; and~~
- ~~(3) historic heritage must be managed in accordance with the HCV – Historical and cultural values section of this RPS.<sup>76</sup>~~
- (1) the provisions of the ECO, EIT, and HAZ chapters apply within the coastal environment, except for the following provisions:
  - (a) ECO-P3 to ECO-P6 and associated methods,
  - (b) EIT-INF-P13 and associated methods,
  - (c) HAZ-NH-P1 to HAZ-NH-P4 and associated methods, and
- (2) the provisions within the following chapters of this RPS apply in addition to the provisions within this chapter:
  - (a) MW – Mana whenua
  - (b) IM – Integrated management,
  - (c) AIR – Air,
  - (d) LF – Land and freshwater,
  - (e) HCV – Heritage and historical values, and
  - (f) UFD – Urban form and development, and
- (3) the provisions of the NFL – Natural features and landscapes chapter do not apply in the coastal environment.<sup>77</sup>

70. I recommend that CE-P5 and CE-M2(3) be moved to the ECO chapter. I also recommend the following consequential amendments:

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<sup>76</sup> 00301.018 Port of Otago

<sup>77</sup> 00301.018 Port of Otago

### ECO-E1 – Explanation

The first policy in this chapter outlines how the kaitiaki role of Kāi Tahu will be recognised in Otago. The policies which follow then set out a management regime for identifying *significant natural areas* and *indigenous species* and ecosystems that are taoka and protecting them by avoiding particular adverse *effects* on them. The policies recognise that these restrictions may be unduly restrictive for some activities within *significant natural areas*, including existing activities already established. To maintain ecosystems and indigenous *biodiversity*, the policies set out mandatory and sequential steps in an *effects management hierarchy* to be implemented through decision making, including providing for *biodiversity* offsetting and compensation if certain criteria are met. The policies also require protecting coastal indigenous biodiversity in accordance with the NZCPS.<sup>78</sup>

~~Although the objectives of this chapter apply within the coastal environment, the specific management approach for *biodiversity* is contained in the CE – Coastal environment chapter.~~<sup>79</sup> Given the *biodiversity* loss that has occurred in Otago historically, restoration or enhancement will play a part in achieving the objectives of this chapter and these activities are promoted.

### ECO-PR1 – Principal reasons

...

The provisions in this chapter assist in maintaining, protecting and restoring indigenous *biodiversity* by:

- stating the outcomes sought for ecosystems and indigenous *biodiversity* in Otago,
- requiring identification and protection of *significant natural areas*, ~~and~~ *indigenous species* and ecosystems that are taoka, and coastal indigenous biodiversity, and<sup>80</sup>

...

71. In terms of s32AA, I consider the change is minor, but helps to articulate how the pORPS is to be implemented and is therefore more effective in achieving the integration sought within IM-O2.

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<sup>78</sup> Clause 10(2)(b)(i), schedule 1, RMA – CE-M2(3) moved to ECO-M2(3A) as a consequential amendment arising from moving coastal biodiversity provisions from CE to ECO in response to 00301.028 Port Otago

<sup>79</sup> Clause 10(2)(b)(i), schedule 1, RMA – CE-M2(3) moved to ECO-M2(3A) as a consequential amendment arising from moving coastal biodiversity provisions from CE to ECO in response to 00301.028 Port Otago

<sup>80</sup> Clause 10(2)(b)(i), schedule 1, RMA – CE-M2(3) moved to ECO-M2(3A) as a consequential amendment arising from moving coastal biodiversity provisions from CE to ECO in response to 00301.028 Port Otago

## 10. CE-P2 – Identification and CE-M1 Identifying the coastal environment

### 10.1. Introduction

72. CE-P2 is discussed in section 8.11 of the section 42A report, with my analysis in paragraphs [135] to [151].

73. The recommended version of this provision currently reads:<sup>81</sup>

#### **CE-P2 – Identification**

Identify the following in the coastal environment:

- (1) the landward extent of the coastal environment, recognising that the coastal environment includes:
  - (a) the *coastal marine area*,
  - (b) islands within the *coastal marine area*,
  - (c) areas where coastal processes, influences or qualities are significant, including coastal *lakes*, lagoons, tidal estuaries, saltmarshes, coastal *wetlands*, and the margins of these,
  - (d) areas at risk from coastal hazards as identified in ~~CE-P2(4)~~ HAZ-NH-P1A,<sup>82</sup>
  - (e) coastal vegetation and the habitat of indigenous coastal species including migratory birds,
  - (f) elements and features that contribute to the natural character, landscape, visual qualities or *amenity values*,
  - (g) items of Kāi Tahu<sup>83</sup> cultural association<sup>84</sup> and *historic heritage* in the *coastal marine area* or on the coast,
  - (h) inter-related coastal marine and terrestrial systems, including the intertidal zone, and
  - (i) physical resources and built facilities, including *infrastructure*, that have modified the coastal environment.
- (2) areas of *water* quality in the *coastal marine area* that are considered to have deteriorated so that it is having a significant adverse *effect* on:
  - (a) the mauri of coastal water,
  - (b) ecosystems, and natural habitats, or

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<sup>81</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>82</sup> Clause 10(2)(b)(i) of Schedule 1 of the RMA – consequential amendment arising from 00301.047 Port Otago

<sup>83</sup> 00226.137 Kāi Tahu ki Otago

<sup>84</sup> 00226.137 Kāi Tahu ki Otago

- (c) water-based recreational activities,  
or is restricting existing uses, such as:
- (a) customary fisheries, including mātaihai reserves and taiāpure,  
(b) cultural activities such as mahika kai, including harvesting of kaimoana, or  
(c) aquaculture, shellfish gathering, and cultural activities such as mahika kai ~~mahika kai~~<sup>85</sup> and harvesting of kaimoana,<sup>86</sup>
- (3) areas of *coastal water* where ~~takatamano~~<sup>87</sup> *whenua* have a particular interest, including Mātaihai and Taiapure,<sup>88</sup> and any aquaculture settlement areas gazetted under the Māori Commercial Aquaculture Claims Settlement Act 2004, and<sup>89</sup>
- ~~(4) — areas that are potentially affected by coastal hazards (including tsunami), giving priority to the identification of areas at high risk of being affected, and~~
- (5) the nationally significant *surf breaks* at Karitane, Papatowai, The Spit, and Whareakeake and any regionally significant *surf breaks*.

## 10.2. Submissions and evidence

74. As the hearing Mr Bathgate for Kāi Tahu ki Otago<sup>90</sup> generally supported the drafting I proposed in Appendix 1 of my opening statement. However, he suggested a slight addition to subclause (3) to include wāhi tūpuna.
75. Ms O’Callahan supports the Port Otago<sup>91</sup> submission seeking an amendment to CE-P2(5) to remove reference to regionally significant surf breaks. This is considered within Section 15 – Surf breaks, below.

## 10.3. Analysis

76. I agree with the addition supported by Mr Bathgate. I agree that wāhi tūpuna areas should be included in the policy as an area of particular interest to mana whenua.
77. At the hearing there were several questions from the Hearing Panel as to how the landward extent of the coastal environment is to be determined. In addition, it was noted in the opening legal submissions for the ORC that the CE-M1(1) states the ‘no later than 31 May 2023’ local authorities must identify and map the landward extent of the coastal environment area. This date will need to be amended to reflect the alternative timeframe that the pORPS is now working towards.

<sup>85</sup> Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

<sup>86</sup> 00226.138 Kāi Tahu ki Otago

<sup>87</sup> 00226.154 Kāi Tahu ki Otago

<sup>88</sup> 00234.018 Te Runanga o Ngāi Tahu

<sup>89</sup> 00234.018 Te Rūnanga o Ngāi Tahu

<sup>90</sup> Michael Bathgate for Kāi Tahu, paras [24]-[26]

<sup>91</sup> Mary O’Callahan for port Otago, paras [77]-[83]

78. In response to the questions from the Hearing Panel about how the assessment of the landward extent of the coastal environment will be determined, I note that this identification process is commonly undertaken by district councils throughout the country with assistance from landscape architects and often in consultation with iwi and communities. In the Otago region this coastal environment mapping has been completed by the Dunedin City Council within the 2GP and has been derived from a report by Mike Moore and others 2015<sup>92</sup> which appears to have identified a coastal environment area along with identifying and describing areas of natural character, outstanding natural features and outstanding natural landscapes.
79. Similarly, as part of the Waikaki District Plan review, a ‘Coastal Environment’ overlay has been mapped in accordance with Policy 1 of the NZCPS. Finally, Clutha District Council has begun the review of its District Plan and as part of this review process they have identify the coastal environment area in accordance with Policy 1 of the NZCPS.<sup>93</sup> Given this identification process has been completed, I consider no date within the pORPS is required.
80. When considering this policy, I noted that the format of my recommended amendments to clause (2) were inconsistent with the drafting style in the pORPS. I recommend minor amendments to restructure that clause and consider this does not alter the application of the clause.

#### 10.4. Final recommendation

81. My final recommended amendments to the notified version of the pORPS are:

##### **CE-P2 – Identification**

Identify the following in the coastal environment:

...

- (2) areas of *water* quality in the *coastal marine area* that are considered to have deteriorated so that:
- (a) \_\_\_ it is having a significant adverse *effect* on:
- (i) \_\_\_ the mauri of *coastal water*,
- (ii) \_\_\_ ecosystems, and natural habitats, or
- (iii) \_\_\_ *water*-based recreational activities, or
- (b) \_\_\_ is restricting existing uses, such as:
- (i) \_\_\_ customary fisheries, including mātaimai reserves and taiāpure,
- (ii) \_\_\_ cultural activities such as *mahika kai*, including harvesting of

<sup>92</sup> Dunedin City Section Report 28 April 2015 “Coastal Environment of Otago, Natural Character and Outstanding Natural Features and Landscapes Assessment” prepared by Mike Moore and Others.

<sup>93</sup> <https://www.cluthadc.govt.nz/property-rates-and-building/planning-and-resource-consents/outstanding-natural-landscapes-review?ed-step=1>

kaimoana, or

(iii) aquaculture, and shellfish gathering, and cultural activities such as mahika kai and harvesting of kaimoana,<sup>94</sup>

- (3) areas of *coastal water* where *mana takata*<sup>95</sup> *whenua* have a particular interest, including *wāhi tūpuna*,<sup>96</sup> *mātaimai* and *taiapure*,<sup>97</sup> and any aquaculture settlement areas gazetted under the Māori Commercial Aquaculture Claims Settlement Act 2004, and<sup>98</sup>

...

### **CE-M1 – Identifying the coastal environment**

*Local authorities* must:

- (1) ~~no later than 31 May 2023,~~<sup>99</sup> work collaboratively, including with *local authorities* in neighbouring regions,<sup>100</sup> to:

(a) ...

82. In terms of s32AA, I consider the change is minor, but provides a more accurate statement as to when authorities will complete this mapping task.

## 11. CE-P3 – Coastal water quality

### 11.1. Introduction

83. CE-P3 is discussed in section 8.12 of the section 42A report, with my analysis in paragraphs [176] to [189].

84. The recommended version of this provision currently reads:<sup>101</sup>

#### **CE-P3 – Coastal water quality**

Manage water quality in the coastal environment by improve coastal water quality  
Coastal water quality is improved,<sup>102</sup> ~~where it is considered to have deteriorated to the extent described within CE-P12(2),~~<sup>103</sup> and otherwise managed water quality<sup>104</sup> ~~by so that.~~<sup>105</sup>

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<sup>94</sup> 00226.138 Kāi Tahu ki Otago

<sup>95</sup> 00226.154 Kāi Tahu ki Otago

<sup>96</sup> 00234.018 Te Runanga o Ngāi Tahu

<sup>97</sup> 00234.018 Te Runanga o Ngāi Tahu

<sup>98</sup> 00234.018 Te Rūnanga o Ngāi Tahu

<sup>99</sup> Clause 16(2), Schedule 1, RMA

<sup>100</sup> 00013.009 ECan

<sup>101</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>102</sup> 00139.064 DCC, 00226.138 Kāi Tahu Ki Otago, 00223.070 Ngāi Tahu ki Murihiku

<sup>103</sup> 00226.138 Kāi Tahu Ki Otago, 00137.054 DOC, 00301.020 Port Otago, 00121.043 Ravensdown, 00223.070 Ngāi Tahu ki Murihiku, 00234.019 Te Runanga o Ngāi Tahu

<sup>104</sup> 00139.064 DCC, 00226.138 Kāi Tahu Ki Otago, 00223.070 Ngāi Tahu ki Murihiku

<sup>105</sup> 00226.138 Kāi Tahu Ki Otago, 00234.019 Te Rūnanga o Ngāi Tahu



- (x) prioritising the restoration of *coastal water* quality where it is considered to have deteriorated to the extent described within CE-P2(2),<sup>106</sup>
- (1) maintaining or enhancing<sup>107</sup> healthy coastal ecosystems, indigenous habitats provided by the coastal environment, and the migratory patterns of indigenous *coastal water* species are maintained or enhanced,<sup>108</sup>
- (2) sustaining<sup>109</sup> Kāi Tahu relationships with and customary uses of *coastal water* are sustained,<sup>110</sup>
- (3) maintaining or enhancing<sup>111</sup> recreation opportunities and existing uses of *coastal water* are maintained or enhanced<sup>112</sup>, and
- ~~(4) within identified areas where *takata whenua* have a particular interest, adverse effects on these areas and values are remedied or where remediation is not practicable, are mitigated.<sup>113</sup>~~
- (5) managing/controlling<sup>114</sup> activities outside the *coastal marine area* that have an effect on *coastal water* quality,<sup>115</sup>
- (6) maintaining or enhancing *water* quality within areas of *coastal water* identified in CE-P2(3) where *mana whenua* have a particular cultural interest, and<sup>116</sup>
- (7) setting appropriate *environmental* limits<sup>117</sup> and targets<sup>118</sup> for *coastal water* quality, including ecosystem health, sediment, kaimoana gathering, contact recreation and habitats of taoka species.<sup>119</sup>

## 11.2. Submissions and evidence

85. In my opening statement<sup>120</sup>, I support a number of amendments suggested by Mr Bathgate to provide a more holistic and active approach to managing effects on coastal water from all activities. Within the evidence of Mr Bathgate<sup>121</sup> there are several other additions that he has sought that I did not support within my opening statement. These are:

- amending the chapeau from ‘Manage water quality’ to ‘Improve water quality’,

<sup>106</sup> 00226.014, 00226.138 Kāi Tahu Ki Otago, 00234.019 Te Rūnanga o Ngāi Tahu

<sup>107</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>108</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>109</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>110</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>111</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>112</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>113</sup> 00226.138 Kāi Tahu Ki Otago, 00234.019 Te Rūnanga o Ngāi Tahu

<sup>114</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>115</sup> 00230.053 Forest and Bird

<sup>116</sup> 00226.138 Kāi Tahu Ki Otago, 00234.019 Te Rūnanga o Ngāi Tahu

<sup>117</sup> 00231.009 Fish and Game

<sup>118</sup> 00226.138 Kāi Tahu ki Otago

<sup>119</sup> 00226.138 Kāi Tahu Ki Otago, 00234.019 Te Rūnanga o Ngāi Tahu

<sup>120</sup> Paragraphs 22 and 23

<sup>121</sup> Michael Bathgate for Kāi Tahu, paras [27]-[31]

- adding a new subclause prioritising the health and well-being of coastal water and coastal ecosystems in all decision-making, and
- deleting clauses (2), (3), and (5) as they are not driving water quality improvement.

86. In his evidence Mr Brass for DOC<sup>122</sup> seeks an amendment to CE-P3(1) to include 'indigenous vegetation and fauna'. To support this inclusion, he notes in his evidence that vegetation and fauna can have value in their own right, not just as parts of ecosystems.

### 11.3. Analysis

87. I disagree with the proposed amendment to the chapeau and the deletion of clauses (2), (3), and (5). In my view the policy needs to be broader than just focusing on the improvement of water quality. I consider it is important to recognise that water quality in the coastal environment needs to be maintained or enhanced for customary uses (subclause 2), recreation opportunities and existing uses (subclause 3) of coastal water. Additionally, I consider subclause (5) is important to strengthen the ki uta ki tai approach in the context of coastal water.

88. In relation to the suggested new clause, related to prioritising the health and well-being of coastal water and coastal ecosystems in all decision-making, I consider a more targeted approach is to 'prioritise' the restoration of degraded coastal water is important as set out in clause (x) and maintain or enhance the attributes in clause (1).

89. In addition, I have re-considered my view on whether subclause (7) should require setting appropriate water quality limits, or whether it should also require that appropriate water quality 'targets' be set. In my view, managing water quality requires setting water quality 'limits' (a point or level beyond which something does not or may not extend or pass) and 'improving' water quality requires setting water quality 'targets' (where efforts are directed to achieving something). Given I have supported the addition of CE-O1A which includes the goal of restoring the mauri of Otago's coastal waters and their health and well-being where it is degraded, I consider the reference to setting water quality targets would assist in achieving this objective. I have also suggested a consequential amendment to subclause (5) replacing 'managing' with 'controlling' to improve the readability with the chapeau.

90. Finally, within my opening statement I included reference within CE-P3(7) to:

*'setting appropriate environmental limits and targets for coastal water quality, including .... kaimoana gathering...'*

as supported by the evidence of Mr Bathgate.<sup>123</sup> I now consider reference to a limit on 'kaimoana gathering' may be read as a quota management limit style limit, which is not the intention of the reference within this policy. As such, I have recommended the addition of 'safe kaimoana gathering' to make it clear that it is not intended to require a

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<sup>122</sup> Murray Brass for DOC, paras [82]-[84]

<sup>123</sup> Michael Bathgate for Kāi Tahu, page 7 of Appendix 1  
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limit for kaimoana gathering. For clarity, the reference to safe kaimoana gathering is to be used a proxy for ecosystem health.

91. In relation to the amendment sought by Mr Brass, I agree that subclause (1) could be amended to include 'indigenous vegetation and fauna' in their own right.

#### 11.4. Final recommendation

92. My final recommended amendments to the notified version of the pORPS are:

##### **CE-P3 – Coastal water quality**

~~Manage water quality in the coastal environment by: Coastal water quality is improved, where it is considered to have deteriorated to the extent described within CE-P1(2), and otherwise managed so that:~~<sup>124</sup>

~~(1A) prioritising the restoration of coastal water quality where it is considered to have deteriorated to the extent described within CE-P2(2),~~<sup>125</sup>

~~(1) maintaining or enhancing~~<sup>126</sup> healthy coastal ecosystems, indigenous habitats provided by the coastal environment, *indigenous vegetation* and fauna,<sup>127</sup> and the migratory patterns of indigenous coastal water species ~~are maintained or enhanced,~~<sup>128</sup>

~~(2) sustaining~~<sup>129</sup> Kāi Tahu relationships with and customary uses of coastal water ~~are sustained,~~<sup>130</sup>

~~(3) maintaining or enhancing~~<sup>131</sup> recreation opportunities and existing uses of coastal water, ~~are maintained or enhanced, and~~<sup>132</sup>

~~(4) within identified areas where takata whenua have a particular interest, adverse effects on these areas and values are remedied or where remediation is not practicable, are mitigated.~~<sup>133</sup>

~~(5) controlling~~<sup>134</sup> activities outside the coastal marine area that have an effect on coastal water quality,<sup>135</sup>

~~(6) maintaining or enhancing water quality within areas of coastal water identified in CE-P2(3) where mana whenua have a particular cultural interest, and~~<sup>136</sup>

<sup>124</sup> 00226.138 Kāi Tahu Ki Otago, 00234.019 Te Rūnanga o Ngāi Tahu

<sup>125</sup> 00226.014, 00226.138 Kāi Tahu Ki Otago, 00234.019 Te Rūnanga o Ngāi Tahu

<sup>126</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>127</sup> DOC 00137.054

<sup>128</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>129</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>130</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>131</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>132</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>133</sup> 00226.138 Kāi Tahu Ki Otago, 00234.019 Te Rūnanga o Ngāi Tahu

<sup>134</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.138 Kāi Tahu Ki Otago

<sup>135</sup> 00230.053 Forest and Bird

<sup>136</sup> 00226.138 Kāi Tahu Ki Otago, 00234.019 Te Rūnanga o Ngāi Tahu

(7) setting appropriate limits and targets<sup>137</sup> for coastal water quality, including for ecosystem health, habitats of taoka species, sediment, contact recreation and safe kaimoana gathering.<sup>138</sup>

93. In terms of s32AA, I consider the additional direction detailing how coastal water quality will be managed will be more efficient effective in achieving CE-AO1, CE-O1 and CE-O4. While there are likely to be additional costs associated with setting limits and targets for coastal water quality, I consider that they are outweighed by the environmental benefits of ensuring appropriate management of coastal water quality.

## 12. CE-P4 – Natural character

### 12.1. Introduction

94. CE-P4 is discussed in section 8.13 of the section 42A report, with my analysis in paragraphs [225] to [232].
95. The recommended version of this provision currently reads:<sup>139</sup>

#### **CE-P4 – Natural character**

Identify, preserve and restore the natural character of the coastal environment by:

- (1) identifying areas and values of high and outstanding natural character which may include matters such as:
  - (a) natural elements, processes and patterns,
  - (b) biophysical, ecological, geological and geomorphological aspects,
  - (c) natural landforms such as headlands, peninsulas, cliffs, dunes, *wetlands*, estuaries, reefs, *freshwater* springs and *surf breaks*,
  - (d) the natural movement of *water* and sediment,
  - (e) the natural darkness of the night sky,
  - (f) places or areas that are wild or scenic,
  - (g) a range of natural character from pristine to modified,
  - (h) experiential attributes, including the sounds and smell of the sea, and their context or setting,
- (2) avoiding adverse *effects* on natural character in areas identified as having outstanding natural character,
- (3) avoiding significant adverse *effects* and avoiding, remedying or mitigating other adverse *effects* on natural character outside the areas in (2) above,

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<sup>137</sup> 00226.138 Kāi Tahu ki Otago

<sup>138</sup> 00226.138 Kāi Tahu Ki Otago, 00234.019 Te Rūnanga o Ngāi Tahu

<sup>139</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

- (4) ~~encouraging de-reclamation of redundant reclaimed land where it would restore the natural character and resources of the coastal marine area and provide for more public open space, and~~<sup>140</sup>
- (5) promoting *activities* and ~~restoration~~<sup>141</sup> projects that will restore or rehabilitate<sup>142</sup> natural character in the coastal environment where it has been reduced or lost.

## 12.2. Submissions and evidence

96. Mr Taylor supports the submission of DCC<sup>143</sup> seeking amendments to CE-P4 to ensure that the assessment of high natural character and outstanding natural character are separate assessments, and also to limit clause CE-P4(3) to areas of high natural character.
97. Ms Justice supports the submission of Aurora<sup>144</sup> seeking amendments to CE-P4 to recognise and provide for existing uses in areas of natural character within the coastal environment.

## 12.3. Analysis

98. Regarding the amendment to CE-P4(1) supported by Mr Taylor, I disagree an amendment is required. I consider the policy is clear that the identification process needs to identify both areas of high and outstanding natural character in the coastal environment and the additional text proposed by him does not add to the policy.
99. In relation to the suggested amendment to CE-P4(3), I disagree this amendment is required. I consider the change does not give effect to NZCPS. Policy 13(1)(b) requires the avoidance of significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment. This suggested amendment would limit the scope of the policy to just those areas identified as having high value.
100. Regarding the amendment supported by Ms Justice, I disagree these suggested amendments will give effect to Policy 13 of the NZCPS. Policy 13(1)(a) of the NZCPS states:
1. *To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:*
    - a. *avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character;*
    - b. *avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment; including by:*

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<sup>140</sup> 00226.139 Kāi Tahu ki Otago

<sup>141</sup> 00226.139 Kāi Tahu ki Otago

<sup>142</sup> 00226.139 Kāi Tahu ki Otago

<sup>143</sup> James Taylor for DCC, paras [32]-[35]

<sup>144</sup> Megan Justice for Aurora Energy, para [10.5]

101. In my view, all new activities need achieve the requirements of Policy 13. If existing activities require re-consenting, I consider they will also need to meet the tests in (1)(a) and (1)(b).

12.4. Final recommendation

102. I do not recommend any further amendments.

## 13. CE-P5 – Coastal indigenous biodiversity

13.1. Introduction

103. CE-P5 is discussed in section 8.14 of the section 42A report, with my analysis in paragraphs [251] to [258].

104. The recommended version of this provision currently reads:<sup>145</sup>

### **CE-P5 – Coastal indigenous *biodiversity***

Protect indigenous *biodiversity* in the coastal environment by:

- (1) identifying and avoiding adverse *effects* on the following ecosystems, vegetation types and areas:
  - (a) indigenous *taxa* that are listed as threatened or at risk in the New Zealand Threat Classification System lists,
  - (b) *taxa* that are listed by the International Union for Conservation of Nature and Natural Resources as threatened,
  - (c) indigenous ecosystems and vegetation types in the coastal environment that are threatened or are naturally rare,
  - (d) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare,
  - (e) areas containing nationally significant examples of indigenous community types, ~~and~~
  - (f) areas set aside for full or partial protection of indigenous *biodiversity* under other legislation, ~~and~~
    - ~~(g) significant natural areas identified in accordance with APP2, and<sup>146147</sup>~~
    - ~~(h) indigenous species and ecosystems identified as taoka in accordance with ECO-M3, and<sup>148149</sup>~~

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<sup>145</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>146</sup> 00137.055 DOC, 00120.042 Yellow-eyed Penguin Society

<sup>147</sup> 00122.017 Sanford

<sup>148</sup> 00226.223 Kāi Tahu ki Otago

<sup>149</sup> 00122.017 Sanford

- (2) identifying and avoiding significant adverse *effects* and avoiding, remedying or mitigating other adverse *effects* on the following ecosystems, vegetation types and areas:
- (a) areas of predominantly *indigenous vegetation* in the coastal environment,
  - (b) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species,
  - (c) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable,
  - (d) areas sensitive to modification, including estuaries, lagoons, coastal *wetlands*, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh,
  - (e) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes,
  - (f) habitats, including areas and routes, important to migratory species, and
  - (g) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.
  - [\(h\) significant natural areas identified in accordance with APP2, not included in \(1\) above, and<sup>150</sup>](#)
  - [\(i\) indigenous species and ecosystems identified as taoka in accordance with ECO-M3, not included in \(1\) above.<sup>151</sup>](#)

## 13.2. Submissions and evidence

105. As set out in paragraphs 28 to 34 of my opening statement, Mr Low for Sanford and Ms O’Callahan for Port Otago suggest that the recommendations within the s42A report made to CE-P5 related to coastal biodiversity create a policy framework that is more restrictive than that required by Policy 11 of the NZCPS.
106. As drafted within the s42A report, Policy CE-P5 requires that areas of significant biodiversity in the coastal environment that meet the criteria in APP2 are required to meet the ‘avoid adverse effects’ test (Policy 11(a)) of the NZCPS.
107. Dr Giles for Sanford<sup>152</sup> considers that the broad nature of APP2 when compared to the criteria within Policy 11(a) of the NZCPS would result in large areas of the coastal biodiversity being subject to the ‘avoid adverse effects’ test within Policy 11(a) of the NZCPS, including areas that would be captured by Policy 11(b) which has a less restrictive ‘avoid significant adverse effects and avoid remedy or mitigate other adverse effects’ test.

<sup>150</sup> 00137.055 DOC, 00120.042 Yellow-eyed Penguin Society

<sup>151</sup> 00137.055 DOC, 00120.042 Yellow-eyed Penguin Society

<sup>152</sup> Hilke Giles for Sanford, para [52]

108. In addition, Mr Bathgate supports the submission of Kāi Tahu ki Otago<sup>153</sup> seeking amendments to CE-P5 to clarify that the policy requires, in the first instance, identification of the ecosystem types, vegetation and areas; and secondly, management of adverse effects. He also supports amendments to CE-P5(2) clarify that the effects management hierarchy for indigenous biodiversity should apply for less-than-significant adverse effects. He recognises that the drafting of CE-P5(2) reflects NZCPS Policy 11(b) but considers this is inconsistent with approaches in the rest of the pORPS. He suggests that the policy framework within CE-P5 for managing coastal biodiversity is more lenient than the policy approach for biodiversity outside the coast (ECO-P6), given the effects management hierarchy does not apply in the coastal environment. Finally, he has suggested that a new subclause be added to CE-P5 requiring that the assessment adverse effect have particular regard to the mahika kai and kaimoana practices of mana whenua.

### 13.3. Analysis

109. In relation to the amendments sought by Sanford and Port Otago, the question the Hearing Panel is being asked to consider is: should areas in the coastal environment that do not meet the identification criteria Policy 11(a) of the NZCPS, but do meet the criteria for an SNA in APP2 to the PORPS, be required to meet the 'avoid adverse effects' test (Policy 11(a) of the NZCPS), or the 'avoid significant adverse effects and avoid remedy or mitigate other adverse effects' test (Policy 11(b) of the NZCPS)?

110. I agree in principle with the evidence of Mr Low that the addition I have recommended within CE-P5 creates a policy framework that is more restrictive than Policy 11 of the NZCPS. In my view an amendment is required to CE-P5 to bring it into line with the NZCPS. I now recommend an amendment to CE-P5 that I consider would achieve the same outcome as that proposed by Mr Low.

111. In my view, this drafting will still implement section 6(c) of the RMA. The areas of significant indigenous vegetation and significant habitats of indigenous fauna that are captured by Policy 11(a) will have a strict avoidance test associated with them. As the most threatened areas of the coastal environment, this will ensure protection of these areas. For all other Section 6(c) areas in the coastal environment, the 'avoid significant adverse effects and avoid, remedy or mitigate other adverse effects' test within CE-P5(2) will ensure protection of these areas.

112. Related to this, Ms Giles has supported the submission of Sanford seeking amendments to the significance criteria for indigenous biodiversity listed in APP2 to narrow the scope of this criteria. The merits of these changes will be considered in the ECO chapter.

113. Regarding the amendment to CE-P5(1) supported by Mr Bathgate, I disagree an amendment is required. I consider drafting proposed by Mr Bathgate does not change the intent of the policy.

114. In relation to the amendment suggested to clause (2), I disagree an amendment is required. While I acknowledge that ECO-P6 includes an effects management hierarchy

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<sup>153</sup> Michael Bathgate for Kāi Tahu, paras [69]-[70]  
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for biodiversity outside of the coastal environment, in my view CE-P5 needs to be looked at as a whole. I note that CE-P5(1) includes a strict avoidance of adverse effects on areas that meet the criteria set out in CE-P5(1). This avoidance test is stronger than the requirement in ECO-P6(1) to avoid adverse effects as a first priority and gives effect to Policy 11(a) of the NZCPS. For the areas of biodiversity that meet the criteria within CE-P5(2) there is a requirement to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects. This is somewhat consistent with the effects management hierarchy within ECO-P6 albeit that there is not the requirement to offset or compensate. When read as a whole, I consider CE-P5 provides stronger protection to the most vulnerable areas of biodiversity in the coastal environment, when compared to ECO-P6. As such, I disagree an additional amendment is required.

115. At the hearing, Commissioner Crosby noted that Policy 11 of the NZCPS did not require the 'identification' of areas of biological diversity, in contrast to Policies 13 and 15 of the NZCPS which require the identification of areas of natural character and outstanding natural features and landscapes. Policy 11 requires that areas of biological diversity be 'protected' by 'avoiding adverse effects' or 'avoiding significant adverse effects and avoid, remedy or mitigate other adverse effects'. He questioned whether the Council officers had looked at the Board of Inquiry Report to ascertain why there was a difference between Policy 11 and Policies 13 and 15. Commissioner Crosby also questioned whether the requirement within CE-P5 and associated method CE-M2(3) to identify these areas across the whole of the CMA was achievable or too onerous.

116. The rationale for including a requirement to identify areas of indigenous biodiversity in the coastal environment was based on the premise that in order to avoid adverse effects, there must be an understanding as to which values exist where. Therefore, it was considered that the identification process was necessary to implement Policy 11 of the NZCPS at a regional level. Following the hearing I have reviewed the Board of Inquiry Report on the NZCPS, and in particular whether there was any discussion within these reports as to why identification was required within Policies 13 and 15 and not within Policy 11. There is no specific discussion on this matter. However, when responding to a submission point seeking greater focus on the effects on biodiversity, the Board of Inquiry stated:

*'We cannot see how there can be an understanding of effects on biodiversity without consideration of areas, such as those containing indigenous taxa for example'.<sup>154</sup>*

This suggested that the Board of Inquiry had envisaged that these areas of coastal biodiversity would need to be identified in some capacity.

117. I have also reviewed the NZCPS guidance note on Policy 11<sup>155</sup>. Page 34 of the guidance states:

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<sup>154</sup> <https://www.doc.govt.nz/globalassets/documents/getting-involved/consultations/closed-consultations/nzcps/nzcps-2008-board-of-inquiry-vol-2.pdf> Page 191.

<sup>155</sup> <https://www.doc.govt.nz/globalassets/documents/conservation/marine-and-coastal/coastal-management/guidance/policy-11.pdf>

‘While Policy 11 does not require identification (including mapping) of the location and extent of those areas in the coastal environment where indigenous biodiversity values of relevance to Policy 11 are present, it is recommended that such areas, where known, are mapped or otherwise identified. Such identification would assist in providing certainty for those wishing to undertake activities in those areas and for the management of the natural values of those areas.

*While mapping is appropriate for identifying localised Significant Ecological Areas, a different policy approach may be required for highly mobile threatened or at risk species, such as some species of whales, dolphins and seabirds that occupy large, dispersed habitat areas. For example, the Auckland Unitary Plan contains policies that recognise the national and international importance of much of the Auckland coastal marine area as habitat for certain threatened and at risk seabird and marine mammal species, but does not map these areas, while discrete Significant Ecological Areas are identified by mapping. Different values require different types of identification and different policy and management responses.’*

118. It was suggested by Commissioner Crosby that it may be more pragmatic and realistic that CE-M2(3) include an amendment that recognised that the identification of the areas and values of indigenous biodiversity in the coastal environment should be based on the best information that is available to the Council at the time, or something similar. In my view, this is likely to be the way the drafting of the current method will be implemented in the development of the Coastal Plan. I share the view of Mr Brass from DOC, who at the hearing noted that any amendments of this nature to the wording of the method would need to ensure that it did not limit the identification of these areas to only include existing information. I agree with Mr Brass that these types of identification processes largely draw on existing information, but additional work is often required to pull all these existing information sources together, fill in gaps where required, and if possible, undertake additional work to ground truth and refine the information.
119. Following the hearing, I have been in contact with Sam Thomas, a Coastal Scientist at ORC. He has advised that ORC has commissioned NIWA to undertake marine significant ecological area spatial mapping of the coastal environment using Policy 11(a) and (b) of the NZCPS and key ecological criteria. This has provided spatial maps of the significant marine ecological areas off the coast of Otago out to 12 nautical miles. This report was completed in June 2022, but has only been made publicly available following the Environmental Science and Policy Committee Meeting on the 26<sup>th</sup> of April 2023. A summary of the report can be found here:  
<https://www.orc.govt.nz/news-and-events/news-and-media-releases/2023/april/five-diverse-environmental-reports-tabled>
120. A link to this report can be found here:  
<https://www.orc.govt.nz/media/14137/esp-agenda-20230426.pdf>
121. Given this work is underway, I consider the direction within Policy CE-P5 and method CE-M2(3) is appropriate and not overly onerous.

## 13.4. Final recommendation

122. My final recommended amendments to the notified version of the pORPS are:

### **CE-P5 – Coastal indigenous *biodiversity***

Protect indigenous *biodiversity* in the coastal environment by:

...

(2) identifying and avoiding significant adverse *effects* and avoiding, remedying or mitigating other adverse *effects* on the following ecosystems, vegetation types and areas:

...

(h) significant natural areas identified in accordance with APP2 that are not included in (1) above, and<sup>156</sup>

(i) indigenous species and ecosystems identified as taoka in accordance with ECO-M3 that are not included in (1) above.<sup>157</sup>

123. In terms of s32AA, I consider the additional amendments to CE-P5 will be more efficient at achieving CE-O1. As highlighted within Mr Low's evidence,<sup>158</sup> the costs associated with the s42A version of the policy could prevent the use and development of large areas of the coastal marine area if criteria within APP2 is links to 'avoiding adverse effects', which is more stringent than the requirements of Policy 11 of the NZCPS. I consider the amendments recommended above provide a better balance between the costs and benefits, as it requires the protection of indigenous biodiversity in the coastal environment accordance with the NZCPS while not unnecessarily restricting activities in the coastal environment.

## 14. CE-P6 Natural features, and landscapes and (including seascapes)

### 14.1. Introduction

124. CE-P6 is discussed in section 8.15 of the section 42A report, with my analysis in paragraphs [271] to [280].

125. The recommended version of this provision currently reads:<sup>159</sup>

### **CE-P6 – Natural features, and landscapes ~~and~~ (including seascapes)**

Protect natural features; and landscapes ~~and~~ (including seascapes) in the coastal environment by:

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<sup>156</sup> 00137.055 DOC, 00120.042 Yellow-eyed Penguin Society

<sup>157</sup> 00137.055 DOC, 00120.042 Yellow-eyed Penguin Society

<sup>158</sup> Adrian Low for Sanford, paras [48]-[49]

<sup>159</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

- (1) identifying their areas and values, at minimum by land typing, soil characterisation and landscape characterisation,<sup>160</sup> in accordance with APP9,
- (2) avoiding adverse *effects* of activities on outstanding natural features, and landscapes ~~and~~ (including seascapes),
- (3) avoiding significant adverse *effects* and avoiding, remedying, or mitigating other adverse *effects* of activities on other natural features, and natural landscapes ~~and~~ (including seascapes), and
- (4) promoting restoration or enhancement of natural features, and landscapes ~~and~~ (including seascapes) where ~~they~~ the values of these areas<sup>161</sup> have been reduced or lost.

## 14.2. Submissions and evidence

126. As set out in my opening statement,<sup>162</sup> Ms Bartlett supports the submission of Ngāi Tahu ki Murihiku seeking that the intent of CE-P6(4) be clarified. She suggests that the subclause should be amended to focus on restoring or enhancing natural features and landscapes in the coastal environment where the ‘values’ of the natural features and landscapes are reduced or lost.

## 14.3. Analysis

127. I agree this amendment clarifies the purpose of the subclause.

## 14.4. Final recommendation

128. My final recommended amendments to the notified version of the pORPS are:

### **CE-P6 – Natural features, and landscapes ~~and~~ (including seascapes)**<sup>163</sup>

Protect natural features, and landscapes ~~and~~ (including seascapes)<sup>164</sup> in the coastal environment by:

...

- (4) promoting restoration or enhancement of natural features, and landscapes ~~and~~ (including seascapes)<sup>165</sup> where ~~they~~ the values of these areas<sup>166</sup> have been reduced or lost.

129. In terms of s32AA, I consider the change is minor, but provides greater clarity as to how CE-O3 will be achieved.

<sup>160</sup> 00230.056 Forest & Bird, 00122.018 Sanford

<sup>161</sup> 00223.071 Ngāi Tahu ki Murihiku

<sup>162</sup> Paragraph 24

<sup>163</sup> 00301.057 Port Otago

<sup>164</sup> 00301.057 Port Otago

<sup>165</sup> 00301.057 Port Otago

<sup>166</sup> 00223.071 Ngāi Tahu ki Murihiku

## 15. CE-P7 – Surf breaks

### 15.1. Introduction

130. CE-P7 is discussed in section 8.16 of the section 42A report, with my analysis in paragraphs [290] to [292].

131. The recommended version of this provision currently reads:<sup>167</sup>

#### **CE-P7 – Surf breaks**

Manage Otago’s nationally and regionally significant *surf breaks* so that:

- (1) nationally significant *surf breaks* are protected by avoiding adverse *effects* on the *surf breaks*, including on access to and use and enjoyment of them, and
- (2) the values of and access to regionally significant *surf breaks* are maintained.

### 15.2. Submissions and evidence

132. As set out in my opening statement,<sup>168</sup> Ms O’Callahan supports the submission of Port Otago<sup>169</sup> seeking the removal of references to ‘regionally significant surf breaks’. The key reasons for seeking the removal of references to ‘regionally significant surf breaks’ include:

- there is no explicit higher order policy direction that requires the identification and management of regionally significant surf breaks, and
- there is no methodology for identifying regionally significant surf within the pORPS.

133. In relation to regionally significant surf breaks, Mr Rennie for Wise Response notes in his oral submission to the Hearing Panel that the NZCPS addresses surf break at a national level. Mr Rennie states that the pORPS does not provide sufficient direction to promote the identification of regionally significant surf breaks and the integrated (land/sea) protection of such breaks. He suggests that the pORPS include a clear statement that regionally significant surf breaks be identified and appropriate provision for their protection from adverse effect be provided for in regional and district plans.

### 15.3. Analysis

134. My response to Ms O’Callahan’s concerns is set out within my s42A report.<sup>170</sup>

135. In relation to the evidence of Mr Rennie, I agree in part with his suggestions. I agree it is important to note that the four surf breaks identified in the Otago region as nationally significant were identified based on the quality of the wave produced in these locations.

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<sup>167</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>168</sup> Paragraph 45

<sup>169</sup> Mary O’Callahan for Port Otago, paras [77]-[83]

<sup>170</sup> Paras 290 – 292.

However, there are many other surf breaks within the region which produce a lesser quality wave that are very popular with surfers given the ease of access, or because a lesser quality wave is better suited to their skill level. These include surf breaks such as St Clair and St Kilda which are highly valued by the surfing community but not recognised as nationally significant surf breaks. As such, I retain the view that regionally significant surf breaks should be identified and their values maintained.

#### 15.4. Final recommendation

136. I do not recommend any further amendments.

## 16. CE-P8 – Public access

### 16.1. Introduction

137. CE-P8 is discussed in section 8.17 of the section 42A report, with my analysis in paragraphs [306] to [310].

138. The recommended version of this provision currently reads:<sup>171</sup>

#### **CE-P8 – Public access**

~~Maintain or enhance~~ Manage public walking and vehicle access to, and along and adjacent to the coastal marine area by unless restricting public access is necessary:

(1A) maintaining or enhancing public walking access,

(1B) controlling vehicle access, and

(1C) restricting public walking and vehicle access where necessary:

(a) to protect public health and safety,

(b) to protect *significant natural areas*,

(c) to protect dunes, estuaries and other sensitive natural areas or habitats,

(d) to protect areas or places of special or outstanding *historic heritage*,

(e) to protect places or areas of significance to *mana whenua*, including *wāhi tūpuna*, *wāhi tapu* and *wāhi taoka*,

(f) for defence purposes in accordance with the Defence Act 1990,

(g) for temporary activities or special events, or

(h) to ensure a level of security consistent with the operational requirements of a lawfully established activity.

~~(1) to protect public health and safety,~~

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<sup>171</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

- ~~(2) to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna,~~
- ~~(3) to protect dunes, estuaries and other sensitive natural areas or habitats,~~
- ~~(4) to protect places or areas containing *historic heritage* of regional or national significance,~~
- ~~(5) to protect places or areas of significance to *takata mana whenua*, including *wāhi tapua*, *wāhi tapu* and *wāhi tūpuna*,~~
- ~~(6) for defence purposes in accordance with the Defence Act 1990,~~
- ~~(7) for temporary activities or special events, or~~
- ~~(8) to ensure a level of security consistent with the operational requirements of a lawfully established activity.<sup>172</sup>~~

## 16.2. Submissions and evidence

139. Mr Bathgate supports the submission of Kāi Tahu ki Otago<sup>173</sup> seeking that the policy be amended to provide a broader range of circumstances for controlling vehicle access to and along the coastal marine area, in line with NZCPS Policy 20. He notes that the potential risks to flora, fauna and ecosystems are not sufficiently recognised in subclauses (b) and (c) of CE-P8, which are limited to significant or sensitive areas only and the effects on the peaceful enjoyment of the beach as per NZCPS Policy 20(1)(d) are not included.

## 16.3. Analysis

140. In my view, the drafting of CE-P8 in conjunction with Methods CE-M3(8) and (9) and CE-M4((7) and (8), give effect to Policies 19 and 20 of the NZCPS. The drafting of CE-P8 picks up the key elements within Policies 19 and 20 of the NZCPS without replicating them. Given the very detailed nature of Policies 19 and 20 of the NZCPS, the methods in the CE chapter include a cross reference to Policies 19 and 20 of the NZCPS to ensure the pORPS21 gives effect to the whole of these policies. As such I disagree additional amendments are required to CE-P8.
141. I note that there is a spelling error in clause 1(C)(e) above ‘*wāhi tapua*’ should read ‘*wāhi tūpuna*’. I recommended this error is corrected.

## 16.4. Final recommendation

142. My final recommended amendments to the notified version of the pORPS are:

### **CE-P8 – Public access**

~~Maintain or enhance~~ Manage public walking and vehicle access to, and along and adjacent to the coastal marine area by unless restricting public access is necessary:

(1A) maintaining or enhancing public walking access,

<sup>172</sup> 00226.143 Kāi Tahu Ki Otago, 00230.058 Forest and Bird

<sup>173</sup> Michael Bathgate for Kāi Tahu, paras [58]-[59]

(1B) controlling vehicle access, and

(1C) restricting public walking and vehicle access where necessary:

(a) to protect public health and safety,

(b) to protect areas of *significant natural areas*,

(c) to protect dunes, estuaries and other sensitive natural areas or habitats,

(d) to protect places or areas of special or outstanding *historic heritage*,

(e) to protect places or areas of significance to *mana whenua*, including *wāhi tūpuna*, *wāhi tapu* and *wāhi taoka*,

(f) for defence purposes in accordance with the Defence Act 1990,

(g) for temporary activities or special events, or

(h) to ensure a level of security consistent with the operational requirements of a lawfully established activity.

~~(1) to protect public health and safety,~~

~~(2) to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna,~~

~~(3) to protect dunes, estuaries and other sensitive natural areas or habitats,~~

~~(4) to protect places or areas containing *historic heritage* of regional or national significance,~~

~~(5) to protect places or areas of significance to *takata mana whenua*, including *wāhi tapua*, *wāhi tapu* and *wāhi tūpuna*,~~

~~(6) for defence purposes in accordance with the Defence Act 1990,~~

~~(7) for temporary activities or special events, or~~

~~(8) to ensure a level of security consistent with the operational requirements of a lawfully established activity.<sup>174</sup>~~

143. In terms of s32AA, I consider the changes suggested are minor in nature, but provide greater clarity as to how the policy is to be interpreted.

## 17. CE-P9 – Activities on land within the coastal environment

### 17.1. Introduction

144. CE-P9 is discussed in section 8.18 of the section 42A report, with my analysis in paragraphs [322] to [333]. It is also discussed within paragraphs [16] to [23] of the brief of supplementary evidence (11 October 2022).

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<sup>174</sup> 00226.143 Kāi Tahu Ki Otago, 00230.058 Forest and Bird  
Proposed Otago Regional Policy Statement 2021



145. The recommended version of this provision currently reads:<sup>175</sup>

**CE-P9 – Activities on *land* within the coastal environment**

The strategic and co-ordinated use of *land* within the coastal environment is achieved by:

- (1) ~~encouraging the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and urban growth; avoiding sprawling or sporadic patterns of subdivision, use and development,~~<sup>176</sup>
- (2) considering the rate at which built development should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the values of the coastal environment,
- (2A) ~~recognising and providing for the functional needs and operational needs of nationally significant infrastructure and regionally significant infrastructure where appropriate,~~<sup>177</sup>
- (3) recognising the importance of the provision of *infrastructure, and food production, and pastoral farming activities*<sup>178</sup> to the social, economic and cultural well-being of people and communities,
- (4) ~~requiring development be set back from the coastal marine area and other water bodies, where practicable and reasonable, to protect the natural character, open space, public access and amenity values of the coastal environment; maintaining or enhancing public access to the coastal environment, and~~<sup>179</sup>
- (5) considering where activities that maintain the character of the existing built environment should be encouraged, and where activities resulting in a change in character would be acceptable, ~~and,~~
- (6) ~~taking into account the risks of climate change and coastal hazards.~~<sup>180</sup>

## 17.2. Submissions and evidence

146. Within his evidence Mr Bathgate supports the submission of Kāi Tahu ki Otago<sup>181</sup> suggesting that the chapeau of the policy reads as an objective, so that it is unclear whether the policy intent is to manage activities on land more broadly or to achieve the strategic use of the coastal environment. He has also supports the inclusion of a number of additional clauses related to:

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<sup>175</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>176</sup> 00139.071 DCC

<sup>177</sup> 00305.013, 00305.014, 00305.015 Waka Kotahi

<sup>178</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential to 00021.002 Matakanui Gold Limited, 00016.009 Alluvium Limited and Stoney Creek Mining, 00017.007 Danny Walker and others, 00226.033 Kāi Tahu ki Otago

<sup>179</sup> 00139.071 DCC

<sup>180</sup> 00139.071 DCC

<sup>181</sup> Michael Bathgate for Kāi Tahu, para [64]

- controlling the location, density, scale and form of buildings, structures, earthworks, mining and other activities
- enabling mana whenua to meet their needs for papakāika, marae and associated developments within the coastal environment,
- avoiding the adverse visual impacts of development on sensitive areas, including headlands and prominent ridgelines.

147. Ms Justice provided evidence supporting the submission of Aurora<sup>182</sup> seeking an amendment to clause (2A) to broaden the scope to the subclause, so it applies to all infrastructure rather than being limited to nationally or regionally significant infrastructure.

148. Ms Ho provided evidence supporting the submission of Waka Kotahi<sup>183</sup>, seeking the removal of ‘where appropriate’ from subclause (2A).

### 17.3. Analysis

149. In relation the amendments supported by Mr Bathgate, I consider that the subclause related to controlling the location of activities is already included within CE-M3 and CE-M4 (1) – (3). Therefore, I disagree they need to be repeated in the policy. In relation to papakāika, marae and associated developments, I consider this is already provided for within CE-M4(9). Therefore, I disagree they need to be repeated in the policy. Finally in relation to the additional subclause related to avoiding adverse visual impacts of development on sensitive areas, I note that CE-P4(1)(c) requires the identification of:

*natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, estuaries, reefs, freshwater springs and surf breaks,*

150. In addition, CE-P4(2) requires adverse effect on these areas be avoided. Given this I consider CE-P4 already provides protection for these areas.

151. In relation to the amendments sought by Ms Justice, I agree that Policy 6(1)(a) of the NZCPS requires the recognition and provision of infrastructure and does not limit the scope of this to nationally or regionally significant infrastructure. Given this, I agree with Ms Justice that the scope of this subclause could be broadened to include all infrastructure. I also agree with Ms Ho that the phrase ‘where appropriate’ within subclause (2A) is not reflective of the direction within Policy 6(1)(a) of the NZCPS. As such, I agree this phrase could be deleted.

152. I also recommend a few minor wording changes to the version included within my opening statement. I recommend replacing ‘other water bodies’ with ‘coastal water’ within clause (4), as ‘water bodies’ as defined only applies to fresh and geothermal water. I recommend consequential amendments to CE-M3(11) for the same reason. I also recommend replacing ‘taking into account the risks of climate change and coastal hazards’ with ‘taking into account the on-going effects of climate change and coastal

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<sup>182</sup> Megan Justice for Aurora Energy, paras [10.7]-[10.8]

<sup>183</sup> Sarah Ho for Waka Kotahi, para [7.3]

hazard risk' which aligns with the drafting within CE-O1(7) and CE-P2(1)(d). I recommend consequential amendments to CE-M4(6)(c) for the same reason.

#### 17.4. Final recommendation

153. My final recommended amendments to the notified version of the pORPS are:

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

The strategic and co-ordinated use of *land* within the coastal environment is achieved by:

- (1) encouraging the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and urban growth; ~~avoiding sprawling or sporadic patterns of subdivision, use and development,~~<sup>184</sup>
- (2) considering the rate at which built development should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the values of the coastal environment,
- (2A) recognising and providing for the *functional needs* and *operational needs* of infrastructure,<sup>185</sup>
- (3) recognising the importance of the provision of *infrastructure, and food production, and pastoral farming activities*<sup>186</sup> to the social, economic and cultural well-being of people and communities,
- (4) requiring development be set back from the *coastal marine area* and other *coastal water* where practicable and reasonable, to protect the natural character, open space, public access and *amenity values* of the coastal environment; ~~maintaining or enhancing public access to the coastal environment, and~~<sup>187</sup>
- (5) considering where activities that maintain the character of the existing built environment should be encouraged, and where activities resulting in a change in character would be acceptable, ~~and.~~
- (6) taking into account the ongoing *effects* of *climate change* and *coastal hazard risk*.<sup>188</sup>

154. In terms of s32AA, I consider the additional clause recognising and providing for the functional needs and operational needs of infrastructure will be more efficient and effective and achieving EIT-INF-O4 which enables effective, efficient and resilient infrastructure. I consider the amendments to clauses (1) and (4)

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<sup>184</sup> 00139.071 DCC

<sup>185</sup> 00305.013, 00305.014, 00305.015 Waka Kotahi

<sup>186</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential to 00021.002 Matakanui Gold Limited, 00016.009 Alluvium Limited and Stoney Creek Mining, 00017.007 Danny Walker and others, 00226.033 Kāi Tahu ki Otago

<sup>187</sup> 00139.071 DCC

<sup>188</sup> 00139.071 DCC

## 18. CE-P10 – Activities within the coastal marine area

### 18.1. Introduction

155. CE-P10 is discussed in section 8.19 of the section 42A report, with my analysis in paragraphs [344] to [384].

156. The recommended version of this provision currently reads:<sup>189</sup>

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

Use and development in the *coastal marine area* must:

- (1) enable multiple uses of the *coastal marine area* wherever reasonable and practicable, and<sup>190</sup>
- (2) maintain or improve the health,<sup>191</sup> integrity, form, function and *resilience* of the *coastal marine area*, ~~or and~~<sup>192</sup>
- (3) have a *functional need*<sup>193</sup> or *operational need* to be located in the *coastal marine area*, or
- (4) have a public open space<sup>194</sup> benefit or opportunity for public recreation that cannot practicably be located outside the *coastal marine area*.

### 18.2. Submissions and evidence

157. Mr Bathgate provided evidence supporting the submission of Kāi Tahu ki Otago<sup>195</sup> seeking a number of amendments to the policy to:

- reframe the chapeau of the policy so that it ‘Only provides for’ development ‘in appropriate locations’,
- amend subclause (2) to have a greater focus on the health of coastal waters and ecosystems,
- amend to include ‘open space’ in subclause (4), and
- a new subclause requiring development provide for the cultural wellbeing of Kāi Tahu ki Otago as mana whenua.

158. Mr Bathgate also does not support removal of ‘and’ from clause (2) as he considers it is not unreasonable to expect activities to maintain the health, integrity, form, function and resilience of the coastal marine area.

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<sup>189</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>190</sup> 00226.145 Kāi Tahu ki Otago

<sup>191</sup> 00226.145 Kāi Tahu Ki Otago

<sup>192</sup> 00315.025 Aurora Energy

<sup>193</sup> Clause 16(2), Schedule 1, RMA

<sup>194</sup> 00226.145 Kāi Tahu ki Otago

<sup>195</sup> Michael Bathgate for Kāi Tahu, paras [65]-[68]

### 18.3. Analysis

159. As noted in paragraph 25 of my opening statement, I agree with Mr Bathgate that greater clarity could be provided on when ‘and’ is used between the clauses of the policy. As such, within my opening statement<sup>196</sup> I recommended including ‘and’ to subclause (1) to make it clear subclauses (1) and (2) are conjunctive and clause (3) and (4) are disjunctive. However, I disagree the additions to the chapeau and other subclauses are necessary. I consider Policy 6 of the NZCPS is more enabling than the drafting proposed by Mr Bathgate.

160. At paragraph 25 of my opening statement, I agreed with the addition of ‘open space’ within subclause (4) proposed by Mr Bathgate as I considered it aligned with the Policy 6(2)(b) and Objective 4 of the NZCPS. However, following questions from Commissioner Cubitt I have reconsidered my recommendation. I consider that the introduction of ‘open space’ will unnecessarily limit the scope of the subclause.

### 18.4. Final recommendation

161. My final recommended amendments to the notified version of the pORPS are:

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

Use and development in the *coastal marine area* must:

- (1) enable multiple uses of the *coastal marine area* wherever reasonable and practicable, and<sup>197</sup>
- (2) maintain or improve the health,<sup>198</sup> integrity, form, function and resilience of the *coastal marine area*, or and<sup>199</sup>
- (3) have a *functional need*<sup>200</sup> or *operational need* to be located in the *coastal marine area*, or
- (4) have a public benefit or opportunity for public recreation that cannot practicably be located outside the *coastal marine area*.

162. In terms of s32AA, I consider the changes suggested are minor in nature, but provide greater clarity as to how the policy is to be interpreted.

## 19. CE-P11 – Aquaculture

### 19.1. Introduction

163. CE-P11 is discussed in section 8.20 of the section 42A report, with my analysis in paragraphs [359] to [360].

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<sup>196</sup> Paragraph 25

<sup>197</sup> 00226.145 Kāi Tahu ki Otago

<sup>198</sup> 00226.145 Kāi Tahu Ki Otago

<sup>199</sup> 00315.025 Aurora Energy

<sup>200</sup> Clause 16(2), Schedule 1, RMA

164. The recommended version of this provision currently reads:<sup>201</sup>

**CE-P11 – Aquaculture**

Provide for the development and operation of *aquaculture activities* within appropriate locations and limits, taking into account:

~~(1A) risks to biosecurity from disease or introduced pest species,~~<sup>202</sup>

~~(1B) the effects of aquaculture on cultural values, including effects on *mahika kai* and *kaimoana* practices, and customary fisheries, including *mātaitai reserves* and *taiāpure*,~~<sup>203</sup>

- (1) the need for high quality *water* required for an *aquaculture activity*,
- (2) the need for *land*-based facilities and *infrastructure* required to support the operation of *aquaculture activities*, and
- (3) the potential social, economic and cultural benefits associated with the operation and development of *aquaculture activities*.

## 19.2. Submissions and evidence

165. A range of submitters seek amendments to CE-P11 to add or remove clauses from the policy.

166. Mr Bathgate<sup>204</sup> supports the Kāi Tahu ki Otago submission seeking amendments to the chapeau to remove the presumption of aquaculture by adding ‘Only allow’ to the start of the chapeau. He also seeks further guidance be added to clause 1A to expand on the types of environmental effects that are being managed within the policy.

167. In addition, Ms Stevens<sup>205</sup> has provided evidence supporting the Ngāi Tahu submission seeking an additional subclause that takes into account aquaculture development carried out by Kāi Tahu ki Otago as part of a settlement outcome.

168. Mr Brass for DOC<sup>206</sup> notes that CE-P11 largely repeats NZCPS Policy 8 and adds only two relevant matters for determining which places may be appropriate or inappropriate for aquaculture. He is of the view that this could be taken as indicating that those two matters are the only relevant considerations or have some priority over other considerations which are not specified in the policy.

169. In his rebuttal evidence<sup>207</sup> Mr Low for Sanford agrees with Mr Brass that including the two additional considerations in Policy CE-P11 as I have recommended could be construed as meaning they should be afforded priority when determining the appropriate locations and limits for aquaculture in Otago. He also notes that the pORPS contains a

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<sup>201</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>202</sup> 00226.146 Kai Tahu Ki Otago

<sup>203</sup> 00226.146 Kai Tahu Ki Otago

<sup>204</sup> Michael Bathgate for Kāi Tahu, paras [71]-[73]

<sup>205</sup> Tanya Stevens for Ngāi Tahu, paras [94]-[101]

<sup>206</sup> Murray Brass for DOC, paras [88]-[93]

<sup>207</sup> Rebuttal evidence of Adrian Low for Sanford, paras [6]-[9]

broad suite of provisions which specify objectives and policies for managing the effects of activities on other important values present within the coastal environment. Under the notified wording of Policy CE-P11, the direction in these provisions would all be considered when assessing the appropriate location and limits for aquaculture in Otago.

170. In response to the amendment supported by Mr Bathgate, in his rebuttal evidence Mr Low notes<sup>208</sup> that the chapeau in Policy CE-P11 directly reflects the direction in Policy 8 of the NZCPS that aquaculture be 'provided for'. He disagrees with Mr Bathgate that the chapeau in Policy CE-P11 needs to be changed to the more restrictive 'Only allow' because CE-P11 is 'presumptive of aquaculture'. Mr Low goes on to say that Policy CE-P11 should not be read in isolation, and the other RPS provisions which address how effects on other values are to be managed would be relevant when considering where and how aquaculture should be provided for in Otago. Policy CE-P11 does not suggest the requirements of those other provisions, which include many directive policies, be overridden.

### 19.3. Analysis

171. As set out in paragraphs 47 – 49 of my opening statement, in my view there are two live matters remaining in relation to these amendments:

- a. Should the policy include additional subclauses or policy direction that is not included within Policy 8 of the NZCPS, and if so, what?
- b. Is it clear that the other relevant provisions of the pORPS21 that relate to coastal water quality, biodiversity, landscape, natural character, etc also need to be considered?

172. In relation to the first question, I consider the policy can include direction on the management of aquaculture activities that is not otherwise included with the pORPS. However, I also acknowledge that only including an additional clause related to biosecurity does suggest that this particular effect requires additional attention over and above other effects. I acknowledge that there has not been evidence presented to suggest that an addition is necessary, and therefore I agree that it could potentially be misconstrued as being of greater importance. As such, I no longer recommend the inclusion of this (1A).

173. In relation to the other clauses sought by submitters, I consider that where direction is provided within other parts of the pORPS, it does not need to be repeated in CE-P1. Given this I agree that the management of cultural values in subclause (1B) within my s42A version of the policy is managed by CE-P13(2) and so is not required in CE-P11. In relation to the amendment sought by Ms Stevens, I note that within the MW-P2, and MW-M5(3A) there is a requirement that regional plans and district plans recognise and provide for the outcomes of settlements under the Māori Commercial Claims Aquaculture Settlement Act 2004 therefore I disagree an additional amendment is required within CE-P11.

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<sup>208</sup> Rebuttal evidence of Adrian Low for Sanford, paras [10]-[12]  
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174. In relation to the second question posed above, I retain the view that the provisions of the pORPS are to be read together. This means that when an aquaculture activity is proposed within, for example, an ONL/F or area of indigenous biodiversity, the provisions managing these areas would also apply. To provide more clarity on what is meant 'by within appropriate locations and limits', I have recommended an amendment to the chapeau to make it clear that the development of aquaculture is still subject to provisions in CE-P3 to CE-P12. I have also recommended a consequential amendment to CE-M3(7), as I consider the amendment recommended to CE-P11 now provides greater clarity as to what areas may be appropriate for aquaculture.

#### 19.4. Final recommendation

175. My final recommended amendments to the notified version of the pORPS are:

##### **CE-P11 – Aquaculture**

Provide for the development and operation of *aquaculture activities* within appropriate locations and limits where this is in accordance with CE-P3 to CE-P12<sup>209</sup>, taking into account:

- (1) the need for high quality *water* required for an *aquaculture activity*,
- (2) the need for *land*-based facilities and infrastructure required to support the operation of *aquaculture activities*, and
- (3) the potential social, economic and cultural benefits associated with the operation and development of *aquaculture activities*.

##### **CE-M3 – Regional plans**

Otago Regional Council must prepare or amend and maintain its *regional plans* no later than 31 December 2028 to:

....

- (7) identify areas that may be<sup>210</sup> appropriate for aquaculture ~~and the forms and limits associated with providing for aquaculture that will enable achievement of objectives CE-O1 to CE-O5,<sup>211</sup>~~

176. In terms of s32AA, I consider the changes suggested are minor in nature, but provide greater clarity as to how the policy is to be interpreted.

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<sup>209</sup> 00137.057 DOC

<sup>210</sup> 00226.153 Kāi Tahu ki Otago

<sup>211</sup> 00137.057 DOC



## 20. CE-P12 – Reclamation and de-reclamation

### 20.1. Introduction

177. CE-P12 is discussed in section 8.21 of the section 42A report, with my analysis in paragraph [369].

178. The recommended version of this provision currently reads:<sup>212</sup>

#### **CE-P12 – Reclamation and de-reclamation**<sup>213</sup>

##### Manage reclamation and de-reclamation by:<sup>214</sup>

(1A) Avoiding<sup>215</sup> reclamation in the coastal marine area, unless:

~~(1)(a)~~ land outside the coastal marine area is not available for the proposed activity,

~~(2)(b)~~ the activity to be established on the reclamation can only occur immediately adjacent to the coastal marine area,

~~(3)(c)~~ there are no practicable alternative methods of providing for the activity, and

~~(4)(d)~~ the reclamation will provide significant regional or national benefit, and

(1B) Encouraging de-reclamation of redundant reclaimed land where it would restore natural character, resources of the coastal marine area, and provide for more public open space.<sup>216</sup>

### 20.2. Submissions and evidence

179. Mr Bathgate support the submission of Kāi Tahu ki Otago<sup>217</sup> seeking an amendment to the policy to incorporate a more precautionary approach, give greater regard to NZCPS Policy 2(b) and apply a more stringent interpretation of Policy 10(1). He is supportive of the re-locating the de-reclamation subclause into CE-P12 but suggests an amendment restore the functioning of the coastal environment.

### 20.3. Analysis

180. In relation the amendments supported by Mr Bathgate, I retain the view set out in the s42A report. I disagree that reclamation needs to be avoided in all situations. I note that Policy 12 of the NZCPS provides for situations where reclamations can be considered. These situations are reflected in the proposed drafting of CE-P12.

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<sup>212</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>213</sup> 00226.147 Kāi Tahu ki Otago

<sup>214</sup> 00226.147 Kāi Tahu ki Otago

<sup>215</sup> 00226.147 Kāi Tahu ki Otago

<sup>216</sup> 00226.147 Kāi Tahu ki Otago

<sup>217</sup> Michael Bathgate for Kāi Tahu, paras [32]-[35]

## 20.4. Final recommendation

181. I do not recommend any further amendments.

# 21. CE-P13 – Rakatirataka and kaitiakitaka

## 21.1. Introduction

182. CE-P13 is discussed in section 8.22 of the section 42A report, with my analysis in paragraphs [376] to [379].

183. The recommended version of this provision currently reads:<sup>218</sup>

### **CE-P13 – Rakatirataka and kaitiakitaka ~~Kaitiakitaka~~**<sup>219</sup>

Recognise and give practical effect to Kāi Tahu rakatirataka and provide for<sup>220</sup> the role of Kāi Tahu as kaitiaki of the coastal environment by:

- (1) facilitating partnership with, and actively<sup>221</sup> involving *mana whenua* in decision making and management processes in respect of the coast,
- (2) identifying, protecting, and improving where degraded, sites, areas and values of importance to Kāi Tahu within the coastal environment, and managing these in accordance with tikaka,
- (3) providing for customary uses, including ~~māhika kai~~ māhika kai<sup>222</sup> and the harvesting of kaimoana,
- (4) incorporating the impact of activities on customary fisheries, mātaitai reserves and taiāpure<sup>223</sup> in decision making, and
- (5) incorporating mātauraka Maōri in the management and monitoring of activities in the coastal environment.

## 21.2. Submissions and evidence

184. Mr Bathgate supports the submission of Kāi Tahu ki Otago<sup>224</sup> seeking the drafting of this policy set out within my supplementally evidence. He also supports the supports the submission of Kāi Tahu ki Otago seeking that this policy be re-numbered CE-P1.

## 21.3. Analysis

185. As set out in paragraph 378 of my s42a report, in relation the amendment supported by Mr Bathgate to re-number this policy, I retain the view set out in the s42a report that re-

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<sup>218</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>219</sup> 00226.148 Kāi Tahu ki Otago

<sup>220</sup> 00226.148 Kāi Tahu Ki Otago

<sup>221</sup> 00226.148 Kāi Tahu Ki Otago

<sup>222</sup> Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

<sup>223</sup> 00226.148 Kāi Tahu Ki Otago

<sup>224</sup> Michael Bathgate for Kāi Tahu, para [39]

numbering of the policy is not required as the ordering of the policies within the chapter have no bearing on the weight given to a policy.

#### 21.4. Final recommendation

186. I do not recommend any further amendments.

## 22. New policies

### 22.1. Introduction

187. New policies are discussed in section 8.32 of the section 42A report, with my analysis in paragraphs [450] to [455].

### 22.2. Submissions and evidence

188. As set out in paragraph 41 of my opening statement, Mr Bathgate for Kāi Tahu ki Otago<sup>225</sup>, supported by the cultural evidence of Mr Ellison, Mr Flack, and Mr Higgins consider amendments are required the CE chapter to increase the level of integration between the CE chapter and other parts of the pORPS21 to achieve integrated management. Mr Bathgate supports the submission of Kai Tahu seeking the addition of several new policies within the CE chapter related to:

- the land/freshwater/sea interface to fill a policy gap to manage physical modification of the coastal environment at the interface of fresh and coastal waters.
- the requirement within NZCPS Policy 14(a) to identify areas for restoration or rehabilitation of natural character does not appear to be reflected in the CE methods.
- the requirement within NZCPS Policy 7(2) to identify coastal processes that are under threat or at significant risk from adverse cumulative effects
- replicating policy LF–FW–P15 – Stormwater and wastewater discharge in the CE chapter.<sup>226</sup>

189. I have suggested a number of changes to the CE chapter to increase the level of integration between the CE chapter and other parts of the pORPS21, namely the LF and ECO chapters. In addition, Mr Bathgate supported the submission of Kāi Tahu ki Otago seeking that a new policy be included within the CE Chapter to align LF–FW–P15 – Stormwater and wastewater discharge.

### 22.3. Analysis

190. In relation the amendments supported by Mr Bathgate, I agree that the CE chapter should provide greater direction on the land/freshwater/sea interface. As set out in CE-P1 above,

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<sup>225</sup> Michael Bathgate for Kāi Tahu, paras [47]-[50]

<sup>226</sup> Michael Bathgate for Kāi Tahu, paras [47]-[50]

I have revisited the idea of including new CE-P1A Integrated management/ki uta ki tai. Within this policy I have incorporated the drafting supported by Mr Bathgate.

191. In relation to the restoration of natural character, I note that CE-M3(12) provides for and encourages the restoration and enhancement of a range of values including natural character. Therefore, I disagree an additional policy is required.

192. In relation to a policy providing direction on coastal processes that are under threat or at significant risk from adverse cumulative effects, I note that the pORPS has identified areas of importance in the coastal environment<sup>227</sup> and has provided direction on managing the effects of activities in these areas. There are also specific methods that some specific provisions on the management of particular activities that:

- prohibits any new discharge of untreated human sewage directly to water in the coastal environment (CE-M3(4)(b),
- requires the implementation of methods to progressively reduce the volume and frequency of existing discharges of untreated human sewage from reticulated wastewater system (CE-M3(4)(bb),
- encourages methods and actions to reduce contaminant discharges at source (CE-M3(4)(bc),
- prohibits the discharge of treated human sewage directly to water in the coastal environment unless specific tests are met (CE-M3(4)(c),
- requires a reduction in the discharge of sediment (CE-M3(4)(d),
- require the new reticulated wastewater systems to avoid cross-contamination between sewage and stormwater systems and remedying cross-contamination where it currently exists (CE-M3(4)(e), and
- require stock to be excluded from the coastal marine area, adjoining intertidal areas and other water bodies and riparian margins in the coastal environment (CE-M3(11).

193. If I understand Mr Bathgate position currently, he is not suggesting that the CE chapter is deficient in its management of stormwater and wastewater discharges to coastal water. Instead, in his view, the direction within these methods should be elevated to a policy where it is more visible within the document.

194. In my view, the methods listed above require the management of discharges into coastal water in accordance with Policies 22 and 23 of the NZCPS. In my opening statement I noted that, if the Hearing Panel agree that additional policy direction on stormwater and wastewater and sediment discharges to coastal water was required, I consider some of the key content within CE-M3(4) could be re-drafted into a new policy. If this approach was preferred by the Hearing Panel, I suggest the following policy could be added to the CE chapter:

**CE-P14 – Discharges to water in the coastal environment**

Manage the discharge of contaminants to water in the coastal environment by:

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<sup>227</sup> CE -

- (1) prohibiting any new *discharge* of untreated human *sewage* directly to water in the coastal environment,
- (2) prohibiting the *discharge* of treated human *sewage* directly to water in the coastal environment unless:
  - (a) there has been adequate consideration of alternative methods, sites and routes for undertaking the *discharge*, and
  - (b) it can be demonstrated that the proposal has been informed by consultation with *tangata whenua* and the affected community, and
- (3) reducing the *discharge* of sediment by:
  - (a) requiring that *subdivision*, use, or development will not increase sedimentation of the *coastal marine area* or other *coastal water*,
  - (b) controlling the impacts of vegetation removal on sedimentation including the impacts of harvesting *plantation forestry*, and
- (c) reducing sediment loadings in runoff and in *stormwater* systems through controls on *land use* activities.<sup>228</sup>

195. The drafting of this policy adopts the requirements set out in CE-M3(4)(a), CE-M3(4)(b), CE-M3(4)(c)(i) and (ii), of the pORPS. As a consequential amendment, CE-M3(4)(a), CE-M3(4)(b), CE-M3(4)(c)(i) and (ii), would need to be removed to avoid duplication. I consider this policy gives effect to Policies 22 and 23 of the NZCPS.

196. I do not have a firm view as to whether the direction set out above should be included within the pORPS as a method or a policy. In my view these are the means by which CE-P3 – Coastal water quality would be implemented, which is why they were included as methods. However, I do accept the argument that they also direct a course of action to achieve CE-AO1 and CE-O1(1), which would suggest that they could be included as a policy.

#### 22.4. Final recommendation

197. I retain the view that CE-M3(4)(a), CE-M3(4)(b), CE-M3(4)(c)(i) and (ii) be retained in the pORPS as methods.

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

### 23.1. Introduction

198. CE-M1A is discussed in section 8.11 of the section 42A report, with my analysis in paragraph [379].

<sup>228</sup> 00234.021 Te Runanga o Ngāi Tahu  
Proposed Otago Regional Policy Statement 2021

199. The recommended version of this provision currently reads:<sup>229</sup>

**CE-M1A – Mana whenua/mana moana involvement**

~~Otago Regional Council must partner with Kāi Tahu in coastal management by actively identifying and pursuing opportunities for mana whenua to exercise their rakatirataka role, manaakitaka and their kaitiaki duty of care kaitiaki role within the coastal environment.~~<sup>230</sup>

Otago Regional Council must partner with Kāi Tahu in coastal management by:

- (1) actively identifying and pursuing opportunities for *mana whenua* to be involved in coastal governance, including through use of available mechanisms such as transfers of functions (under section 33 of the RMA 1991) and supporting the establishment of mātaimai reserves and taiāpure,
- (2) implementing actions to foster the development of *mana whenua* capacity to contribute to the Council’s decision-making processes, including resourcing,
- (3) supporting *mana whenua* initiatives that contribute to maintaining or improving the health and well-being of *coastal water* and ecosystems, and
- (4) providing relevant information to *mana whenua* for the purposes of (1), (2), and (3).<sup>231</sup>

23.2. Submissions and evidence

200. The evidence of Mr Bathgate<sup>232</sup> supported the submission of Kāi Tahu seeking a range of amendments to the methods in the CE Chapter. The most substantive change relates to CE-M1A. Mr Bathgate seeks that this method is amended to align with method LF-WAI-M1.

23.3. Analysis

201. In relation to the amendment sought to CE-M1A, as set out in my opening statement<sup>233</sup>, I agree in part with the amendment supported by Mr Bathgate. I agree with the concept that CE-M1A is aligned with method LF-WAI-M1. However, I consider the drafting of the of subclause (1) could be improved. In my view, a method implementing actions of another method (MW-M2, etc) is unnecessary as all the relevant methods are to be read together. As such, I have recommended duplicating LF-WAI-M1 with the exception of LF-WAI-M1(1).

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<sup>229</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>230</sup> 00226.156 Kāi Tahu Ki Otago

<sup>231</sup> 00226.156 Kāi Tahu ki Otago

<sup>232</sup> Michael Bathgate for Kāi Tahu, para [42]

<sup>233</sup> Paragraph 26

## 23.4. Final recommendation

202. My final recommended amendments to the notified version of the pORPS are:

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

Otago Regional Council must partner with Kāi Tahu in coastal management by:

- (1) actively identifying and pursuing opportunities for *mana whenua* to be involved in coastal governance, including through use of available mechanisms such as transfers of functions (under section 33 of the RMA 1991) and supporting the establishment of mātaihai reserves and taiāpure,
- (2) implementing actions to foster the development of *mana whenua* capacity to contribute to the Council’s decision-making processes, including resourcing,
- (3) supporting *mana whenua* initiatives that contribute to maintaining or improving the health and well-being of *coastal water* and ecosystems, and
- (4) providing relevant information to *mana whenua* for the purposes of (1), (2), and (3).<sup>234</sup>

203. In terms of s32AA, I consider the change will be more effective at achieving CE-O4 as it provides clear direction as to how the partnership approach between the Otago Regional Council and Kāi Tahu ki Otago will be strengthened. I consider there will be costs for both the Otago Regional Council and Kāi Tahu ki Otago to implement this method. However, I consider those costs will be outweighed by the social, cultural and environmental benefits of the Otago Regional Council and Kāi Tahu ki Otago working in partnership.

## 24. CE-M2 – Identifying other areas

### 24.1. Introduction

204. CE-M2 is discussed in section 8.11 of the section 42A report, with my analysis in paragraphs [139] to [151].

205. The recommended version of this provision currently reads:<sup>235</sup>

### **CE-M2 – Identifying other areas**

Local authorities must work collaboratively, with Kāi Tahu<sup>236</sup> and local authorities in neighbouring regions,<sup>237</sup> together to:

- (1) identify areas and values of high and outstanding natural character within their jurisdictions in accordance with CE-P4(1), map the areas and describe their values in the relevant *regional plans*<sup>238</sup> and *district plans*, and identify

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<sup>234</sup> 00226.156 Kāi Tahu Ki Otago

<sup>235</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>236</sup> 00226.149 Kāi Tahu ki Otago

<sup>237</sup> 00013.010 ECan

<sup>238</sup> Clause 16(2), Schedule 1, RMA

their capacity to accommodate change through use or development while protecting the values that contribute to the natural character of the area being considered high or outstanding,

- (2) identify, at an appropriate scale,<sup>239</sup> areas and values of outstanding natural features, and landscapes ~~and~~ (including seascapes) ~~(in the coastal environment)~~<sup>240</sup> within their jurisdictions in accordance with CE-P6(1), map the areas and describe their values in the relevant *regional plans*<sup>241</sup> and *district plans*, and identify their capacity to accommodate change through use or development while protecting the values that contribute to the natural features, and landscapes ~~and~~ (including seascapes)<sup>242</sup> being considered outstanding,
- (3) identify areas and values of indigenous *biodiversity* within their jurisdictions in accordance with CE-P5, map the areas and describe their values in the relevant *regional plans*<sup>243</sup> and *district plans*, and
- (4) prioritise identification under (1) – (3) in areas that are:
  - (a) likely to face development or growth pressure over the life of this RPS, or
  - (b) likely to contain outstanding natural character areas, outstanding natural features or landscapes, and areas of significant<sup>244</sup> indigenous *biodiversity*, including the areas in the table below.

**Table 1 – Areas likely to contain significant values**

Oamaru Harbour Breakwater	Te Whakarekaiwi
Moeraki Beach	Papanui Inlet
Moeraki Peninsula	Hoopers Inlet
Shag Point & Shag River Estuary	Kaikorai Estuary
Stony Creek Estuary	Brighton
Pleasant River Estuary	Akatore Creek Estuary
Hawksbury Inlet	Tokomairiro Estuary
Waikouaiti River Estuary	Wangaloa
Karitane Headland	Clutha River Mata-au, Matau Branch
Puketeraki	Nugget Point
Blueskin Bay	Surat Bay
Orokonui Inlet	Catlins Lake Estuary
Mapoutahi	Jacks Bay
Purakanui Inlet	Waiheke Beach
Aramoana	Tahakopa Estuary
Otago Harbour Historic Walls	Oyster Bay
Otakeu & Taiaroa Head	Tautuku Estuary
Pipikaretu Point	Waipati Estuary & Kinakina Island
Cape Wanbrow	Nugget Point
All Day Bay Lagoon	Sandy Bay
Te Hikapureirei Beach	False Islet

<sup>239</sup> 00122.018 Sanford

<sup>240</sup> 00301.057 Port Otago

<sup>241</sup> Clause 16(2), Schedule 1, RMA

<sup>242</sup> 00301.057 Port Otago

<sup>243</sup> Clause 16(2), Schedule 1, RMA

<sup>244</sup> 00226.152 Kāi Tahu ki Otago



<u>Moeraki Point and adjacent coast</u> <u>Kātiki Point</u> <u>Kātiki Beach</u> <u>Shag Point (incl. Shag River estuary &amp; Cliffs between Shag and Stoney Rivers)</u> <u>Cliffs south of Stoney Creek</u> <u>Bobbys Head</u> <u>Cliffs south of Tavora</u> <u>Pleasant River spit</u> <u>Pleasant River estuary</u> <u>Tumai</u> <u>Karitāne Headland</u> <u>Seacliff</u> <u>Māpoutahi</u> <u>Potato Point</u> <u>Heyward Point (incl. Long Beach &amp; Aramoana)</u> <u>Harbour Islands / Portobello Peninsula</u> <u>Taiaroa Head</u> <u>Harington Point</u> <u>Pipikāretu</u> <u>Okia (incl. Victory Beach &amp; Papanui Inlet)</u> <u>Allans Beach / Hoopers Inlet</u> <u>Seal Point</u> <u>Boulder Beach</u> <u>St Clair cliffs</u> <u>Kuri Bush</u> <u>Cape Saunders</u> <u>Sandfly Bay</u> <u>Sandymount</u> <u>Highcliff / Pudneys Cliff</u> <u>White Island</u> <u>Tunnel Beach</u> <u>Green Island</u> <u>Coutts Gully wetland</u> <u>Taieri Beach</u> <u>Akatore gorge</u> <u>Akatore wetland</u> <u>Quoin Point</u> <u>Measly Beach</u> <u>Cannibal / Surat Bay</u> <u>Caitlins Lake</u> <u>Caitlins Heads</u> <u>Pūrākaunui Bay</u> <u>Haywards Point</u> <u>Pillans Head</u> <u>Tahakopa River</u> <u>Tautuku (incl. Tautuku Peninsula (incl. Tautuku Bay &amp; Tautuku River))</u> <u>Lower Taieri River</u>	<u>Penguin Bay</u> <u>Cosgrove Island</u> <u>Long Point</u> <u>Tahakopa Bay</u> <u>Mahaka Point</u> <u>Frances Pillars / Cathedral Caves</u> <u>Makatī</u> <u>Waianakarua</u> <u>Goodwood</u> <u>Pūrākaunui</u> <u>Lower Otago Harbour</u> <u>Smaills / Tomahawk</u> <u>Brighton</u> <u>Taieri River Gorge</u> <u>Outer Otago Peninsula</u> <u>Southern Otago Peninsula</u> <u>Outer Otago Peninsula</u> <u>Taieri Mouth</u> <u>Akatore Coast</u> <u>Toko Mouth</u> <u>Wangaloa</u> <u>Clutha Mouth</u> <u>Kaka Point</u> <u>Jacks Bay / Penguin Bay</u> <u>Hinahina</u> <u>Waipāti (incl. Waipāti Beach &amp; Waipāti Estuary)</u> <u>Wallace Head</u> <u>Waitaki River mouth</u> <u>Cape Wanbrow wave cut notch and platform</u> <u>Bridge Point</u> <u>Moeraki Boulders</u> <u>Warrington Spit / Rabbit Island</u> <u>Matanaka</u> <u>Karitāne Peninsula</u> <u>Goat Island – Rakiriri</u> <u>Quarantine Island</u> <u>Pyramids</u> <u>Wharekākahu Island</u> <u>Lovers leap and the Chasm</u> <u>Blackhead organ pipes</u> <u>Chrystalls Beach</u> <u>Cooks Head Rock</u> <u>Jacks Blowhole</u> <u>Tuhawaiki Island</u> <u>Cosgrove Island</u> <u>Rainbow Isles</u> <u>Lake Wilkie</u> <u>Cathedral Caves</u>
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<p><u>Moturata</u></p>	<p><u>Kinakina Island</u><sup>245</sup></p>
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## 24.2. Submissions and evidence

206. Ms O’Callahan supported the submission of Port Otago<sup>246</sup> seeking the deletion of CE-M2(4). During the hearing the usefulness of *Table 2 – Areas likely to contain significant values* was questioned, given the list is extensive and does not necessarily refine the areas that may contain outstanding natural character areas, outstanding natural features or landscapes, and areas of significant indigenous biodiversity.

## 24.3. Analysis

207. CE-M2(4), including Table 2, was included in the notified version of the chapter to provide Otago-specific context to the chapter based on information within the current regional coastal plan. Within my s42A report I supported the submission from Kāi Tahu ki Otago, seeking that the table be replaced by a list of areas that had been identified as holding medium-high, high and outstanding values within the three natural character and natural landscape assessments undertaken in (Moore, 2015a), (Moore, 2015b), (Moore, 2015c).

208. Following the hearing I have re-considered the value of Table 2. I agree that it includes an extensive list of areas. I note that the intention of CE-M2(4) is to help to prioritise the identification of areas that may contain outstanding natural character areas, outstanding natural features or landscapes, and areas of significant indigenous biodiversity. Given the number of the areas listed within the table, this does not necessarily assist in prioritising this identification process, which was its only function. I consider the removal of this table will have little impact on the application of the pORPS as CE-M3(1)-(3) still require the identification of high and outstanding natural character areas, outstanding natural features, and landscapes and (including seascapes), and indigenous biodiversity. In addition CE-M3(4), requires the prioritisation of these assessments in areas that are likely

<sup>245</sup> 00226.151 Kāi Tahu ki Otago

<sup>246</sup> Mary O’Callahan for Port Otago, para [73]

to face development or growth pressure over the life of this RPS. As such, I recommend Table 2 be removed.

#### 24.4. Final recommendation

209. I support the removal of CE-M2(4)(b) and *Table 2 – Areas likely to contain significant values*.<sup>247</sup> As a consequential amendment, I recommend incorporating sub-clause (a) into clause (4).
210. In terms of s32AA, I consider the change minor and has little impact on the application of the pORPS. As noted above, the table includes a very broad list of areas which rendered it largely unhelpful at identifying areas likely to contain significant values.

## 25. CE-M3 – Regional plans

### 25.1. Introduction

211. CE-M3 is discussed in section 8.12 of the section 42A report, with my analysis in paragraphs [190] to [210].
212. The recommended version of this provision currently reads:<sup>248</sup>

#### **CE-M3 – Regional plans**

Otago Regional Council must prepare or amend and maintain its *regional plans* no later than 31 December 2028 to:

- (1) map areas of deteriorated *water* quality in the coastal environment, in accordance with CE- P2(2) and ~~CE-P2(3)~~,<sup>249</sup>
- (1A) identify, ~~protect~~manage<sup>250</sup>, and improve where degraded, areas of *coastal water* where *mana whenua* have a particular ~~cultural~~<sup>251</sup> interest, including *wāhi tūpuna*, *statutory acknowledgement areas*, *tōpuni* and *nohoaka* identified in the NTCSA, and customary fisheries,<sup>252</sup>
- (1B) set *water* quality targets for *coastal waters* in accordance with CE-P3,<sup>253</sup>
- (2) map the areas and characteristics of, and access to, ~~nationally~~ *surf breaks* of national significance<sup>254</sup> and regionally significant *surf breaks*,
- (3) require development to be set back from the *coastal marine area* where practicable to protect the natural character, open space, public access and *amenity values* of the coastal environment,

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<sup>247</sup> 00301.025 Port Otago

<sup>248</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

<sup>249</sup> 00226.153 Kāi Tahu ki Otago

<sup>250</sup> 00226.153 Kāi Tahu ki Otago

<sup>251</sup> 00226.153 Kāi Tahu ki Otago

<sup>252</sup> 00226.153 Kāi Tahu ki Otago

<sup>253</sup> 00226.153 Kāi Tahu ki Otago

<sup>254</sup> Clause 16(2), Schedule 1 RMA

- (4) manage the *discharge of contaminants into coastal water to achieve ~~environmental~~<sup>255</sup> limits for water quality<sup>256</sup>* by:
- (a) using the smallest mixing zone necessary to achieve the required water quality standards minimising the size of the mixing zone<sup>257</sup> only enabling the use of small mixing zones<sup>258</sup> before the water quality standards need to be met<sup>259</sup> in the *receiving environment* and minimising adverse *effects* on the life-supporting capacity of *water* within any mixing zone,
  - (b) prohibiting any new ~~the~~<sup>260</sup> *discharge* of untreated human *sewage* directly to *water* in the coastal environment,
  - (bb) requiring the implementation of methods to progressively reduce the volume and frequency of existing discharges of untreated human sewage from reticulated wastewater system in the event of a system failure or overloading the system, including by minimising stormwater inflows and infiltration into wastewater systems,<sup>261</sup>
  - (bc) encouraging methods and actions to reduce contaminant discharges at source,<sup>262</sup>
  - (c) prohibiting the *discharge* of treated human *sewage* directly to *water* in the coastal environment unless:
    - (i) there has been adequate consideration of alternative methods, sites and routes for undertaking the *discharge*, and
    - (ii) it can be demonstrated that the proposal has been informed by consultation with *tangata whenua* and the affected community, and
  - (d) reducing the *discharge* of sediment by:
    - (i) requiring that *subdivision*, use, or development will not increase sedimentation of the *coastal marine area* or other *coastal water*,
    - (ii) controlling the impacts of vegetation removal on sedimentation including the impacts of harvesting *plantation forestry*, and
    - (iii) reducing sediment loadings in runoff and in *stormwater* systems through controls on *land* use activities, and
  - (e) designing installing, operating and maintaining new reticulated wastewater systems to avoiding cross-contamination between sewage and stormwater systems where new systems are

<sup>255</sup> 00231.009 Fish and Game

<sup>256</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.153 Kāi Tahu ki Otago

<sup>257</sup> 00139.076 DCC

<sup>258</sup> 00139.076 DCC

<sup>259</sup> 00139.076 DCC

<sup>260</sup> 00139.076 DCC

<sup>261</sup> 00139.076 DCC

<sup>262</sup> 00510.020 Fuel Companies

~~proposed~~ and remedying cross-contamination where ~~they~~ it currently exists in established systems, and<sup>263</sup>

- (f) having particular regard to:
- (i) the sensitivity of the receiving *environment*,
  - (ii) the nature of the *contaminants* to be *discharged*, the *contaminant* concentration thresholds not to be exceeded to achieve the required *water* quality in the receiving environment, and the risks if that concentration of *contaminants* is exceeded,
  - (iii) the capacity of the receiving *environment* to assimilate the *contaminants*, and
  - (iv) avoiding significant adverse *effects* on ecosystems and habitats after reasonable mixing,
- (5) control the use and development of the *coastal marine area*, in order to:
- (a) preserve and restore the<sup>264</sup> *coastal water quality*; and natural character; and protect<sup>265</sup> natural features, and landscapes and (including seascapes); wāhi tūpuna and indigenous *biodiversity* of the *coastal marine area* in accordance with CE-P3, CE-P4, CE-P5, and CE-P6 and HCV-WT-P2<sup>266</sup>, and
  - (b) manage Otago's surf breaks of national significance nationally<sup>267</sup> and regionally significant *surf breaks* in accordance with CE-P7,
- (6) include provisions requiring the adoption of a precautionary approach to assessing the *effects* of activities in the coastal environment in accordance with IM-P156<sup>268</sup> where:
- (a) there is scientific uncertainty, or
  - (b) there are potentially significant or irreversible adverse *effects*, or
  - (c) coastal resources are potentially vulnerable to effects from climate change,<sup>269</sup>
- (7) identify areas that may be<sup>270</sup> appropriate for aquaculture and the forms and limits constraints limits<sup>271</sup> associated with providing for aquaculture that will enable achievement of objectives CE-O1 to CE-O5,

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<sup>263</sup> 00139.076 DCC

<sup>264</sup> 00226.153 Kāi Tahu ki Otago

<sup>265</sup> 00226.153 Kāi Tahu ki Otago

<sup>266</sup> 00226.153 Kāi Tahu ki Otago

<sup>267</sup> Clause 16(2), Schedule 1, RMA

<sup>268</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.042 DOC, 00014.022

John Highton

<sup>269</sup> 00230.063 Forest and Bird

<sup>270</sup> 00226.153 Kāi Tahu ki Otago

<sup>271</sup> 00231.009 Fish and Game

- (8) provide for walking access to ~~and~~ along and adjacent to<sup>272</sup> the coastal marine area in accordance with Policy 19 of the NZCPS,
- (9) control vehicle access to ~~and~~ along and adjacent to<sup>273</sup> the coastal marine area in accordance with Policy 20 of the NZCPS,
- (10) manage reclamation and de-reclamation<sup>274</sup> activities in accordance with CE-P12, and when *reclamation* is considered suitable in accordance with CE-P12, have particular regard to the matters listed in Policy 10(2) and (3) of the NZCPS,
- (11) require stock to be excluded from the *coastal marine area*, adjoining intertidal areas and other *water bodies* and riparian margins in the coastal environment, and
- (12) provide for and encourage activities undertaken for the primary purpose of enhancing coastal water quality, coastal habitats and ecosystems, customary fisheries, mahika kai and kaimoana activities, and<sup>275</sup> restoring natural features, or landscapes and (including seascapes) in accordance with CE-P3,<sup>276</sup> CE-P4, CE-P5, and<sup>277</sup> CE-P6, and CE-P13<sup>278</sup>, and
- (13) identify and aquaculture settlement areas gazetted under the Māori Commercial Aquaculture Claims Settlement Act 2004.<sup>279</sup>

## 25.2. Submissions and evidence

213. DCC has a general concern about the timeframes specified for implementation of methods in the pORPS which is relevant to CE-M3 because it requires ORC to prepare or amend its coastal plan to implement the CE chapter by 31 December 2028.
214. Mr Bathgate<sup>280</sup> supports the submission of Kāi Tahu ki Otago seeking a range of minor amendments to the methods in the CE-M3 to provide greater clarity and better align the methods with the direction within the policies.
215. Mr Taylor supports the submission of DCC<sup>281</sup> seeking amendments to the methods that manage discharges to coastal water. These amendments largely relate to:
  - the appropriate qualifier for the size of the mixing zone,
  - how the new discharges of untreated human sewage directly to water in the coastal environment should be managed, and
  - how progressively reducing the effects of existing discharges to the coastal environment should be managed.

<sup>272</sup> Consequential amendment to 00230.058 Forest and Bird

<sup>273</sup> Consequential amendment to 00230.058 Forest and Bird

<sup>274</sup> 00226.147 Kāi Tahu ki Otago

<sup>275</sup> 00226.153 Kāi Tahu ki Otago

<sup>276</sup> 00226.153 Kāi Tahu ki Otago

<sup>277</sup> 00226.153 Kāi Tahu ki Otago

<sup>278</sup> 00226.153 Kāi Tahu ki Otago

<sup>279</sup> 00234.022 Te Rūnanga o Ngāi Tahu

<sup>280</sup> Michael Bathgate for Kāi Tahu, paras [76]-[82]

<sup>281</sup> James Taylor for DCC, paras [37]-[44]

### 25.3. Analysis

216. ORC's Long-term Plan 2021-31 states that a new Coastal Plan is expected to be notified by 2025-2026.<sup>282</sup> That is earlier than CE-M3 expects, but I do not consider that is a problem. In my experience, it is not uncommon for long-term work programmes to be rescheduled through annual plan processes. I consider the date as notified provides flexibility for this to occur.
217. In relation to the minor amendments to the methods supported by Mr Bathgate, I agree that the amendments to: CE-M3(1A), CE-M3(5)(a), CE-M3(7) add clarity and better align the methods with the direction within the policies.
218. In relation to the amendment supported by Mr Taylor, as set out in my opening statement, I have suggested an amendment to CE-M3(4)(a) to align the mixing zone requirement within that set out in Policy 23(1)(e) of the NZCPS. Notwithstanding the amendment discussed above, at this stage my response to these suggested amendments remains as set out within my s42A report.<sup>283</sup>

### 25.4. Final recommendation

219. My final recommended amendments to the notified version of the pORPS are:

#### **CE-M3 – Regional plans**

Otago Regional Council must prepare or amend and maintain its *regional plans* no later than 31 December 2028 to:

- (1) map areas of deteriorated *water* quality in the coastal environment, in accordance with CE- P2(2) and ~~CE-P2(3)~~,<sup>284</sup>
- (1A) identify, manage, and improve where degraded, areas of coastal water where *mana whenua* have a particular interest, including *wāhi tupuna*, statutory acknowledgement areas, *tōpuni* and *nohoaka* identified in the NTCSA, and customary fisheries.<sup>285</sup>
- (1B) set *water* quality limits and targets for *coastal waters* in accordance with CE-P3,<sup>286</sup>
- (2) map the areas and characteristics of, and access to, ~~nationally~~ *surf breaks* of national significance<sup>287</sup> and regionally significant *surf breaks*,
- (3) require development to be set back from the *coastal marine area* and other *coastal water*<sup>288</sup> where practicable to protect the natural character, open space, public access and *amenity values* of the coastal environment,

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<sup>282</sup> Orc Long-term Plan 2021-31, p.23.

<sup>283</sup> Paragraphs [213] – [214]

<sup>284</sup> 00226.153 Kāi Tahu ki Otago

<sup>285</sup> 00226.153 Kāi Tahu ki Otago

<sup>286</sup> 00226.153 Kāi Tahu ki Otago

<sup>287</sup> Clause 16(2), Schedule 1 RMA

<sup>288</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00139.071 DCC

- (4) manage the *discharge of contaminants into coastal water to achieve limits or targets for water quality*<sup>289</sup> by:
- (a) using the smallest mixing zone necessary to achieve the required water quality standards only enabling the use of small mixing zones<sup>290</sup> ~~before the water quality standards need to be met~~<sup>291</sup> in the receiving environment; and minimising<sup>292</sup> adverse effects on the life-supporting capacity of water within any mixing zone,
  - (b) prohibiting any new ~~the~~<sup>293</sup> discharge of untreated human sewage directly to water in the coastal environment,
  - (bb) requiring the implementation of methods to progressively reduce the volume and frequency of existing discharges of untreated human sewage from reticulated wastewater systems in the event of a system failure or overloading the system, including by minimising stormwater inflows and infiltration into wastewater systems,<sup>294</sup>
  - (bc) encouraging methods and actions to reduce contaminant discharges at source,<sup>295</sup>
  - (c) prohibiting the discharge of treated human sewage directly to water in the coastal environment unless:
    - (i) there has been adequate consideration of alternative methods, sites and routes for undertaking the discharge, and
    - (ii) it can be demonstrated that the proposal has been informed by consultation with *tangata whenua* and the affected community, and
  - (d) reducing the discharge of sediment by:
    - (i) requiring that *subdivision, use, or development* will not increase sedimentation of the *coastal marine area* or other *coastal water*,
    - (ii) controlling the impacts of vegetation removal on sedimentation including the impacts of harvesting *plantation forestry*, and
    - (iii) reducing sediment loadings in runoff and in *stormwater* systems through controls on *land* use activities, and
  - (e) designing installing, operating and maintaining new reticulated wastewater systems to avoiding cross-contamination between wastewater sewage and *stormwater* systems ~~where new systems are~~

<sup>289</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00226.153 Kāi Tahu ki Otago

<sup>290</sup> 00139.076 DCC

<sup>291</sup> 00139.076 DCC

<sup>292</sup> Clause 16(2), Schedule 1, RMA

<sup>293</sup> 00139.076 DCC

<sup>294</sup> 00139.076 DCC

<sup>295</sup> 00510.020 Fuel Companies



proposed and remedying cross-contamination where ~~they~~ it currently exists in established systems, and<sup>296</sup>

- (f) having particular regard to:
- (i) the sensitivity of the receiving *environment*,
  - (ii) the nature of the *contaminants* to be *discharged*, the *contaminant* concentration thresholds not to be exceeded to achieve the required *water* quality in the receiving *environment*, and the risks if that concentration of *contaminants* is exceeded,
  - (iii) the capacity of the receiving *environment* to assimilate the *contaminants*, and
  - (iv) avoiding significant adverse *effects* on ecosystems and habitats after reasonable mixing,
- (5) control the use and development of the *coastal marine area*, in order to:
- (a) manage *coastal water* quality; preserve and restore the<sup>297</sup> natural character; and protect<sup>298</sup> natural landscapes, features, and landscapes and (including seascapes)<sup>299</sup> *wāhi tūpuna* and indigenous *biodiversity* of the *coastal marine area* in accordance with CE-P3, CE-P4, CE-P5, and CE-P6 and HCV-WT-P2<sup>300</sup>, and
  - (b) manage Otago's *surf breaks* of national significance nationally<sup>301</sup> and regionally significant *surf breaks* in accordance with CE-P7,
- (6) include provisions requiring the adoption of a precautionary approach to assessing the *effects* of activities in the coastal environment in accordance with IM-P156<sup>302</sup> where:
- (a) there is scientific uncertainty, or
  - (b) there are potentially significant or irreversible adverse *effects*, or
  - (c) coastal resources are potentially vulnerable to *effects* from *climate change*,<sup>303</sup>
- (7) identify areas that may be<sup>304</sup> appropriate for aquaculture and the forms and limits associated with providing for aquaculture that will enable achievement of objectives CE-O1 to CE-O5,<sup>305</sup>

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<sup>296</sup> 00139.076 DCC

<sup>297</sup> 00226.153 Kāi Tahu ki Otago

<sup>298</sup> 00226.153 Kāi Tahu ki Otago

<sup>299</sup> 00301.057 Port Otago

<sup>300</sup> 00226.153 Kāi Tahu ki Otago

<sup>301</sup> Clause 16(2), Schedule 1, RMA

<sup>302</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.042 DOC, 00014.022

John Highton

<sup>303</sup> 00230.063 Forest and Bird

<sup>304</sup> 00226.153 Kāi Tahu ki Otago

<sup>305</sup> 00226.153 Kāi Tahu ki Otago

- (8) provide for walking access to, ~~and~~ along, and adjacent to<sup>306</sup> the *coastal marine area* in accordance with Policy 19 of the NZCPS,
- (9) control vehicle access to, ~~and~~ along, and adjacent to<sup>307</sup> the *coastal marine area* in accordance with Policy 20 of the NZCPS,
- (10) manage reclamation and de-reclamation<sup>308</sup> activities in accordance with CE-P12, and when *reclamation* is considered suitable in accordance with CE-P12, have particular regard to the matters listed in Policy 10(2) and (3) of the NZCPS,
- (11) require stock to be excluded from the *coastal marine area*, adjoining intertidal areas and ~~other~~ coastal water bodies<sup>309</sup> and riparian margins in the coastal environment, ~~and~~<sup>310</sup>
- (12) provide for and encourage activities undertaken for the primary purpose of enhancing coastal water quality, coastal habitats and ecosystems, customary fisheries, mahika kai and kaimoana activities, and<sup>311</sup> restoring natural character, features, and landscapes ~~and~~ (including seascapes)<sup>312</sup> in accordance with CE-P3,<sup>313</sup> CE-P4, CE-P5, and<sup>314</sup> CE-P6, and CE-P13<sup>315</sup>, and
- (13) identify any aquaculture settlement areas gazetted under the Māori Commercial Aquaculture Claims Settlement Act 2004.<sup>316</sup>

220. In terms of s32AA, I consider the change to CE-M3 are consequential to changes made to the policies in the CE chapter. As such, in my view no additional section 32AA assessment is required.

## 26. CE-M4 – District plans

### 26.1. Introduction

221. CE-M4 is discussed in section 8.18 of the section 42A report, with my analysis in paragraphs [322] to [333].

222. The recommended version of this provision currently reads:<sup>317</sup>

#### **CE-M4 – District plans**

<sup>306</sup> Consequential amendment to 00230.058 Forest and Bird

<sup>307</sup> Consequential amendment to 00230.058 Forest and Bird

<sup>308</sup> 00226.147 Kāi Tahu ki Otago

<sup>309</sup> Clause 16(2), Schedule 1, RMA

<sup>310</sup> 00234.022 Te Rūnanga o Ngāi Tahu

<sup>311</sup> 00226.153 Kāi Tahu ki Otago

<sup>312</sup> 00301.057 Port Otago

<sup>313</sup> 00226.153 Kāi Tahu ki Otago

<sup>314</sup> 00226.153 Kāi Tahu ki Otago

<sup>315</sup> 00226.153 Kāi Tahu ki Otago

<sup>316</sup> 00234.022 Te Rūnanga o Ngāi Tahu

<sup>317</sup> This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

*Territorial authorities* must prepare or amend and maintain their *district plans* to:

- (1) control the location, density and form of *subdivision* in the coastal environment (outside the *coastal marine area*),
- (2) control the location, scale and form of *buildings* and *structures* in the coastal environment (outside the *coastal marine area*),
- (3) control the location and scale of *earthworks*, mining<sup>318</sup> and vegetation planting, modification and removal in the coastal environment (outside the *coastal marine area*),
- (3A) achieve the integrated management of, and control over, land use activities which could cause direct or indirect effects on the *coastal marine area*,<sup>319</sup> in accordance with CE-P1,<sup>320</sup>
- (4) require *resource consent* for uses of *land* on reclamations that have occurred after the date this RPS becomes operative,
- (5) provide for the establishment of *esplanade reserves* and *esplanade strips*,
- (6) include provisions requiring the adoption of a precautionary approach to assessing the *effects* of activities in the coastal environment in accordance with IM-P6~~15~~<sup>321</sup> where:
  - (a) there is scientific uncertainty, or
  - (b) there are potentially significant or irreversible adverse *effects*, or
  - (c) coastal resources are potentially vulnerable to the *effects* of *climate change*.<sup>322</sup>
- (7) provide for walking access to, ~~and along~~ and adjacent to<sup>323</sup> the coastal marine area in accordance with Policy 19 of the NZCPS,
- (8) control vehicle access to, ~~and along~~ and adjacent to<sup>324</sup> the coastal marine area in accordance with Policy 20 of the NZCPS,
- (9) recognise ~~takatamana~~<sup>325</sup> *whenua* needs for *papakāika*, marae and associated developments within the coastal environment and make appropriate provision for them,
- (10) provide access to surf breaks of national significance nationally<sup>326</sup> and regionally significant *surf breaks*, and
- (11) provide for and encourage activities undertaken for the primary purpose of enhancing coastal water quality, coastal habitats and ecosystems,

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<sup>318</sup> 00226.154 Kāi Tahu ki Otago

<sup>319</sup> 00137.059 DOC, 00226.154 Kāi Tahu ki Otago

<sup>320</sup> 00226.154 Kāi Tahu ki Otago

<sup>321</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.042 DOC, 00014.022 John Highton

<sup>322</sup> 00230.064 Forest and Bird

<sup>323</sup> Consequential amendment to 00230.058 Forest and Bird

<sup>324</sup> Consequential amendment to 00230.058 Forest and Bird

<sup>325</sup> 00226.154 Kāi Tahu ki Otago

<sup>326</sup> Clause 16(2), Schedule 1, RMA

customary fisheries and other mahika kai activities restoring natural character, features, or landscapes in accordance with CE-P1, CE-P3, CE-P4, and CE-P6 and CE-P13<sup>327</sup>.

## 26.2. Submissions and evidence

223. The evidence of Mr Bathgate<sup>328</sup> supports the submission of Kāi Tahu ki Otago seeking a range of amendments to the methods in the CE-M4 to provide greater clarity and better align the methods with the direction within the policies.

## 26.3. Analysis

224. In relation to the minor amendments to the methods supported by Mr Bathgate, I agree that the amendments to: CE-M4(3), CE-M4(3A), CE-M4(9), and CE-M4(11) add clarity and better align the methods with the direction within the policies.

## 26.4. Final recommendation

225. My final recommended amendments to the notified version of the pORPS are:

### **CE-M4 – District plans**

*Territorial authorities* must prepare or amend and maintain their *district plans* to:

- (1) control the location, density and form of *subdivision* in the coastal environment (outside the *coastal marine area*),
- (2) control the location, scale and form of *buildings* and *structures* in the coastal environment (outside the *coastal marine area*),
- (3) control the location and scale of *earthworks, mining,*<sup>329</sup> and vegetation planting, modification and removal in the coastal environment (outside the *coastal marine area*),
- (3A) achieve the integrated management of, and control over, land use activities which could cause direct or indirect effects on the coastal marine area,<sup>330</sup> in accordance with CE-P1A,<sup>331</sup>
- (4) require *resource consent* for uses of *land on reclamations* that have occurred after the date this RPS becomes operative,
- (5) provide for the establishment of *esplanade reserves* and *esplanade strips*,
- (6) include provisions requiring the adoption of a precautionary approach to assessing the *effects* of activities in the coastal environment in accordance with IM-P6~~15~~<sup>332</sup> where:

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<sup>327</sup> 00226.155 Kāi Tahu ki Otago

<sup>328</sup> Michael Bathgate for Kāi Tahu, paras [83]-[85]

<sup>329</sup> 00226.154 Kāi Tahu ki Otago

<sup>330</sup> 00137.059 DOC, 00226.154 Kāi Tahu ki Otago

<sup>331</sup> 00226.154 Kāi Tahu ki Otago

<sup>332</sup> Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00137.042 DOC, 00014.022 John Highton

- (a) there is scientific uncertainty, or
  - (b) there are potentially significant or irreversible adverse *effects*, or
  - (c) coastal resources are potentially vulnerable to the effects of climate change.<sup>333</sup>
- (7) provide for walking access to, ~~and~~ along, and adjacent to<sup>334</sup> the *coastal marine area* in accordance with Policy 19 of the NZCPS,
  - (8) control vehicle access to, ~~and~~ along, and adjacent to<sup>335</sup> the *coastal marine area* in accordance with Policy 20 of the NZCPS,
  - (9) recognise ~~takata mana~~<sup>336</sup> *whenua* needs for *papakāika*, marae and associated developments within the coastal environment and make appropriate provision for them,
  - (10) provide access to surf breaks of national significance nationally<sup>337</sup> and regionally significant *surf breaks*, and
  - (11) provide for and encourage activities undertaken for the primary purpose of enhancing coastal water quality, coastal habitats and ecosystems, customary fisheries and other mahika kai activities restoring natural character, features, or landscapes in accordance with CE-P1, CE-P3, CE-P4, and CE-P6 and CE-P13<sup>338</sup>.

226. In terms of s32AA, I consider the change to CE-M4 are consequential to changes made to the policies in the CE chapter. As such, in my view no additional section 32AA assessment is required.

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<sup>333</sup> 00230.064 Forest and Bird

<sup>334</sup> Consequential amendment to 00230.058 Forest and Bird

<sup>335</sup> Consequential amendment to 00230.058 Forest and Bird

<sup>336</sup> 00226.154 Kāi Tahu ki Otago

<sup>337</sup> Clause 16(2), Schedule 1, RMA

<sup>338</sup> 00226.154 Kāi Tahu ki Otago