

**BEFORE INDEPENDENT HEARING COMMISSIONERS
AT DUNEDIN**

**MAI I KĀ KAIKŌMIHANA MOTUHAKE
KI ŌTEPOTI**

UNDER

the Resource Management Act
1991 (“**RMA**”)

AND

IN THE MATTER OF

the Proposed Otago Regional
Policy Statement 2021 (non-
freshwater parts) (“**PORPS**”)

MEMORANDUM OF COUNSEL ON BEHALF OF KĀI TAHU

Dated 25 July 2023

Solicitor instructing:
Jessica Riddell



Te Rūnanga o **NGĀI TAHU**

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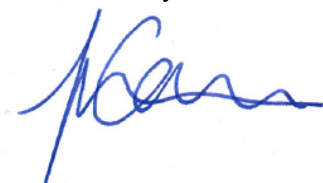
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MEMORANDUM OF COUNSEL ON BEHALF OF KĀI TAHU

May it please the Commissioners | Ki kā Kaikōmihana

1. Counsel refer to the memorandum filed by the Otago Regional Council (“**ORC**”) dated 21 July 2023, in relation to the impact of the recent appellate decisions in *Te Whānau a Kai Trust v Gisborne District Council*.¹
2. Counsel for Kāi Tahu had previously brought the decision of the Environment Court in *Te Whānau a Kai* to the attention of the Panel in supplementary submissions filed following the hearings of submissions on the MW/RMIA provisions of the PORPS. Those submissions sought to distinguish the Environment Court’s decision from the present circumstances.
3. However, in light of the findings of the senior Courts, counsel accepts those submissions can no longer stand and agrees with both the summary of the case law in ORC’s memorandum at paragraphs 12-23, and counsel’s submissions on the implications for the relief the Panel can grant (insofar as they relate to matters raised in the Kāi Tahu submissions).
4. **Attached** to this memorandum as Appendix A are proposed amendments to two provisions (MW-M4(2) and CE-M1A) to take into account the implications of the appellate Courts’ findings in *Te Whānau a Kai*.
5. Kāi Tahu seek the amendments in Appendix A as alternative or consequential relief in support of the submissions made.

Dated 25 July 2023



A M Cameron
Counsel for Kāi Tahu

¹ *Te Whānau a Kai Trust v Gisborne District Council* [2022] NZHC 1462; [2023] NZCA 55 (declining leave to appeal); [2023] NZSC 77 (declining special leave).

APPENDIX A

MW-M4(2)

Local authorities must facilitate Kāi Tahu involvement in resource management (including decision making), to the extent mana whenua consider themselves able to accommodate by:

... (2) ~~resourcing Kāi Tahu participation~~ implementing actions to foster the development of mana whenua capacity to participate in resource management decision making, including funding, ...

CE-M1A

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

... (2) implementing actions to foster the development of mana whenua capacity to contribute to the Council's decision-making processes, ~~including resourcing,~~ ...