BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE **ENV-2024-CHC-000030 / 000025 / 000036**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under Clause 14(1) of the First Schedule of the Act on the Proposed Otago Regional Policy Statement

BETWEEN **CAIN WHĀNAU** (ENV-2024-CHC-30)

TE RŪNANGA O MOERAKI, KĀTI HUIRAPA RŪNAKA KI PUKETERAKI, TE RŪNANGA O ŌTĀKOU AND HOKONUI RŪNANGA, TE AO MARAMA INCORPORATED ON BEHALF OF WAIHOPAI RŪNAKA, TE RŪNANGA O ŌRAKA APARIMA, AND TE RŪNANGA O AWARUA and TE RŪNANGA O NGĀI TAHU (ENV-2024-CHC-36)

DUNEDIN CITY COUNCIL (ENV-2024-CHC-25)

Appellants

AND **OTAGO REGIONAL COUNCIL**

Respondent

CONSENT MEMORANDUM: PART 1: MW – MANA WHENUA
Dated: 14 March 2025

ROSS DOWLING MARQUET GRIFFIN
SOLICITORS
DUNEDIN

Telephone: (03) 477 8046
Facsimile: (03) 477 6998
PO Box 1144, DX YP80015

Solicitor: S J Anderson / T M Sefton

CONSENT MEMORANDUM: PART 1: MW – MANA WHENUA

May it Please the Court:

Introduction

1. 'MW - Mana whenua' is located in Part 1 – Introduction and general themes of the Proposed Otago Regional Policy Statement 2021 ("PORPS 21").

2. At a high level, the 'MW – Mana whenua' chapter includes:

    2.1 Recognition of hapū and iwi.

    2.2 Mana whenua – local authority relationships.

    2.3 Hapū and iwi planning documents.

    2.4 Involvement and participation with mana whenua.[1]

References to Mana Whenua Throughout the PORPS 21

Cain Whānau[2]

3. In their appeal,[3] Cain Whānau sought to insert the text "*and owners of Māori freehold land*" alongside all instances of 'mana whenua' throughout the PORPS 21.

4. The relief was sought on the basis that it is owners of Māori freehold land who have and exercise rakatirataka over their land.

5. The following persons gave notice of an interest in the Cain Whānau appeal on the inclusion of "*and owners of Māori freehold land*" throughout the PORPS 21 under Section 274 of the Resource Management Act 1991 ("the Act"):

    5.1 Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga, Te Ao Marama Incorporated on behalf of Waihopai Rūnaka, Te Rūnanga o Ōraka

1 National Planning Standards 2019, pages 30 -31 at paragraph [28].
2 ENV-2024-CHC-30.
3 At page 16.

Aparima, and Te Rūnanga o Awarua and Te Rūnanga o Ngāi Tahu ("Kāi Tahu").

5.2 Aurora Energy Limited, Network Waitaki Limited and PowerNet Limited ("EDBs").

5.3 Dunedin City Council ("DCC").

5.4 Queenstown Lakes District Council ("QLDC").

5.5 Transpower New Zealand Limited ("Transpower").

5.6 OceanaGold (New Zealand) Limited ("OGL").

6. The parties to this appeal point by Cain Whānau agreed that the rights and interests of owners of Māori freehold land, in respect to their land, should be recognised, in specific circumstances alongside Kāi Tahu. This approach matures the understanding of Māori interests and who are asserting mana whenua and how.

7. The meaning or use of 'mana whenua' in the PORPS 21 is variable and contextual. By definition,[4] the exercise of mana whenua does not include authority exercised by those who are not iwi or hapū. For this reason, it would not be appropriate to include reference to "*and owners of Māori freehold land*" in every instance.

8. The parties to this appeal point identified instances within the 'MW – Mana whenua' chapter where context required amendments to recognise the rakatirataka of owners of Māori freehold land. Those instances and amendments sought are set out below. Other instances within other chapters of the PORPS where amendments are required to give effect to this relief will be confirmed in further consent memoranda.

<u>Resolution</u>

9. It is proposed that 'MW-M5 – Regional and district plans' and the introductory text under the heading '*Involvement and participation of mana*

[4] Defined in section 2 of Resource Management Act 1990 and having the same meaning in PORPS 21 – Interpretation section.

whenua' be amended as follows (amendments henceforth shown in underline and ~~strikethrough~~):

"Involvement and participation with mana whenua

ORC and the local authorities will establish and maintain effective resource management relationships with Kāi Tahu based on a mutual obligation to act reasonably and in good faith. The local authorities and Otago Regional Council will consult Kāi Tahu at an early stage in resource management processes and implementation, and facilitate efficient and effective processes for applicants to consult Kāi Tahu on resource consent applications and private plan change requests.

Local authorities are also expected to consult with owners of Māori freehold land on resource management processes and implementation where decisions may affect the ability of owners of Māori freehold land to use or develop their land."

*"**MW-M5 – Regional and district plans**[5]*

Local authorities must amend their regional and district plans to:

….

(2) provide for the use of native reserves and Māori land in accordance with MW–P4 and recognise Kāi Tahu rakatirataka over this land by enabling mana whenua and owners of Māori freehold land in relation to their land, to lead approaches to manage any adverse effects of such use on the environment~~.~~, and

…"

10. The amendments to the provisions 'MW-M5 – Regional and district plans' and the introductory text under the heading '*Involvement and participation of mana whenua*' more accurately reflect the context in which 'mana whenua' is used in those provisions.

11. The parties consider that the amendments are within the jurisdiction of the Court and give effect to the relevant parts of the Act, including ss 6(e), 7(a) and 8 of the Act.

[5] Further substantive amendments have been agreed between interested parties in relation to MW–M5 and are set out at paragraphs [42] to [48].

Introductory Text - Relationship of Kāi Tahu with their rohe

12. In the decisions version of the PORPS 21, the first paragraph of the introductory text under the heading 'Relationship of Kāi Tahu with their rohe' reads:

"Te Rūnanga o Ngāi Tahu (the iwi authority) is made up of 18 papatipu rūnaka, of which seven have interests in the Otago region. Papatipu rūnaka are a focus for whānau and hapū (extended family groups) who have mana whenua status within their area. Mana whenua hold traditional customary authority and maintain contemporary relationships within an area determined by whakapapa (genealogical ties), resource use and ahikāroa (the long burning fires of occupation). Te Rūnanga o Ngāi Tahu encourages consultation with the papatipu rūnaka and takes into account the views of kā Rūnaka when determining its own position."

13. This paragraph is the subject of an appeal by Cain Whānau.

Cain Whānau Appeal[6]

14. In their appeal, Cain Whānau sought acknowledgment in this section of the introductory text of the status of owners of Māori land in respect to their Māori land.

15. The following persons gave notice of an interest in the Cain Whānau appeal on the introductory text under Section 274 of the Act:

15.1 Kāi Tahu.

15.2 EDBs.

15.3 DCC.

15.4 QLDC.

15.5 Transpower.

Resolution

16. It is proposed to amend the first paragraph of the introductory text under the heading 'Relationship of Kāi Tahu with their rohe' as follows:

"Te Rūnanga o Ngāi Tahu (the iwi authority) is made up of 18 papatipu rūnaka, of which seven have interests in the Otago region. Papatipu rūnaka are a focus for whānau and hapū (extended family groups) who have mana whenua status within their area. In addition, the rakatirataka of owners of

[6] ENV-2024-CHC-30.

Māori freehold land over their land and resources is acknowledged. Mana whenua hold traditional customary authority and maintain contemporary relationships within an area determined by whakapapa (genealogical ties), resource use and ahikāroa (the long burning fires of occupation). Te Rūnanga o Ngāi Tahu encourages consultation with the papatipu rūnaka and takes into account the views of kā Rūnaka when determining its own position".

17. The changes give express acknowledgement of the rakatirataka of owners of Māori freehold land over their land and resources.

18. The parties consider that the amendments are within the jurisdiction of the Court and give effect to the relevant parts of the Act, including ss 6(e), 7(a) and 8 of the Act.

MW-P2 – Treaty Principles

19. In the Decision Version of the PORPS 21, 'MW-P2 – Treaty principles' reads:

"MW-P2 – Treaty principles

Local authorities exercise their functions and powers in accordance with the principles of Te Tiriti o Waitangi, by:

(1) recognising the status of Kāi Tahu as mana whenua and facilitating Kāi Tahu involvement in decision-making as a partner under Te Tiriti o Waitangi,

(2) including Kāi Tahu in resource management processes, implementation and decision-making to the extent desired by mana whenua,

(3) recognising and providing for Kāi Tahu values and addressing resource management issues of significance to Kāi Tahu, as identified by mana whenua, in resource management decision-making processes and plan implementation,

(4) recognising and providing for the relationship of Kāi Tahu culture and traditions with their ancestral lands, and waters, encompassing wai māori and wai tai, significant sites, wāhi tūpuna, wāhi tapu and wāhi taoka, and other taoka by ensuring that Kāi Tahu have the ability to identify these relationships and determine how best to express them,

(5) ensuring that regional plans and district plans recognise and provide for Kāi Tahu relationships with Statutory Acknowledgement Areas, tōpuni, nohoaka and customary fisheries identified in the NTCSA, including by actively protecting the mauri of these areas,

(6) having particular regard to the responsibility of Kāi Tahu to exercise their role as kaitiaki, as an expression of mana and rakatirataka,

(7) actively pursuing opportunities for:

(a) delegation or transfer of functions to Kāi Tahu, and

(b) partnership or joint management arrangements,

(c) taking into account iwi management plans when making resource management decisions,

(8A) regional plans and district plans recognising and providing for aquaculture settlement outcomes identified under the Māori Commercial Aquaculture Claims Settlement Act 2004, and

(8B) recognising and providing for mātauraka and tikaka in environmental and resource management."

20. This policy is the subject of an appeal by Cain Whānau.

Cain Whānau

21. In their appeal,[7] Cain Whānau sought a new clause requiring regional and district plans to recognise and provide for rights and interests of Māori landowners.

22. The following persons gave notice of an interest in the Cain Whānau appeal on 'MW-P2 – Treaty principles' under Section 274 of the Resource Management Act 1991 ("the Act"):

22.1 Kāi Tahu.

22.2 EDBs.

22.3 DCC.

22.4 QLDC.

Resolution

23. It is proposed to amend the policy by the addition of a new clause 9 which reads:

"(9) recognising and providing for rights and interests of owners of Māori land."

24. The addition of the new clause recognises and provides for rights and interests of Māori landowners as sought by the Cain Whānau.

[7] At page 18.

25. The parties consider that the amendments are within the jurisdiction of the Court and give effect to the relevant parts of the Act, including ss 6(e), 7(a) and 8 of the Act.

MW-P4 – Sustainable Use of Native Reserves and Māori Land

26. In the Decisions Version of the PORPS 21, 'MW-P4 – Sustainable use of Native Reserves and Māori land' reads:

> ***"MW-P4 – Sustainable use of Native Reserves and Māori land***
>
> *Kāi Tahu are able to:*
>
> *(1) develop and use land and resources within native reserves and Māori land, including within land affected by an ONFL overlay, in accordance with mātauraka and tikaka, to provide for their cultural and social aspirations, including for papakāika, marae related activities.*
>
> *(2) provide for the economic use of their Māori land or native reserves resources subject to the provisions of the RMA, this regional policy statement and any relevant plan, while:*
>
> *(a) avoiding adverse effects on the health and safety of people,*
>
> *(b) avoiding significant adverse effects on matters of national importance, and*
>
> *(c) avoiding, remedying or mitigating other adverse effects".*

27. This policy is the subject of an appeal by Cain Whānau and Kāi Tahu.

<u>Cain Whānau</u>[8]

28. In their appeal,[9] Cain Whānau sought amendments to 'MW-P4 – Sustainable use of Native Reserves and Māori land' to give it primacy over all other provisions in the PORPS 21 if a conflict arises between provisions.

29. The following persons gave notice of an interest in the Cain Whānau appeal on 'MW-P4 – Sustainable use of Native Reserves and Māori land' under Section 274 of the Act:

29.1 Kāi Tahu.

29.2 EDBs.

---

8 ENV-2024-CHC-30.

9 At pages 18 – 19.

29.3 DCC.

29.4 Royal Forest and Bird Protection Society of New Zealand Incorporated ("Forest and Bird")

29.5 Rayonier Matariki Forests, City Forests Limited, Ernslaw One Limited and Port Blakely NZ Limited ("Forestry Appellants"),

29.6 Meridian Energy Limited ("Meridian Energy").

29.7 OGL.

29.8 Otago Water Resource Users Group ("OWRUG").

29.9 Port Otago Limited ("POL").

29.10 QLDC.

29.11 Transpower.

Kāi Tahu[10]

30. In their appeal, Kāi Tahu sought amendments to 'MW-P4 – Sustainable use of Native Reserves and Māori land' to enable Kāi Tahu to better provide for their social, economic and cultural wellbeing.

31. The following persons gave notice of an interest in the Kāi Tahu appeal on 'MW-P4 – Sustainable use of Native Reserves and Māori land' under Section 274 of the Act:

31.1 Cain Whānau.

31.2 Otago and Central South Island Fish and Game Councils ("Fish and Game").

31.3 Forest and Bird.

31.4 OGL.

31.5 Queenstown Airport Corporation ("QAC").

31.6 QLDC.

31.7 EDBs.

31.8 DCC.

31.9 Forestry Appellants.

31.10 Transpower.

[10] ENV-2024-CHC-36.

Resolution

32. It is proposed to amend the 'MW-P4 – Sustainable use of Native Reserves and Māori land' as follows:

MW-P4 – ~~Sustainable u~~Use of Native Reserves and Māori land

Kāi Tahu are able to:

(1) develop and use land and resources within native reserves and Māori land~~,~~ ~~including within land affected by an ONFL overlay,~~ in accordance with mātauraka and tikaka, to provide for their economic, cultural and social aspirations, including for papakāika~~,~~ and marae related activities.

~~(2) provide for the economic use of their Māori land or native reserves resources subject to the provisions of the RMA, this regional policy statement and any relevant plan, while:~~

~~(a) avoiding adverse effects on the health and safety of people,~~

~~(b) avoiding significant adverse effects on matters of national importance, and~~

~~(c) avoiding, remedying or mitigating other adverse effects.~~

33. The deletion of clause (2) removes unnecessary restrictions on Kāi Tahu economic use of native reserves and Māori land. Instead, the effects of the use and development of Māori land on other values will be managed by the effects management approaches elsewhere in the PORPS. The addition of "economic" in clause (1) makes clear that "use and development" includes for Kāi Tahu economic wellbeing, which is not limited to cultural or social aspirations which are often read down to refer to a limited range of activities. The text in (1) referring to ONLF overlays was removed because it was considered unnecessary, because it appeared to treat effects on ONFLs differently from other matters of national importance which need to be reconciled against the directions in ss 6(e), 7(a) and 8, and because ONFL matters will be addressed in the 'NFL – Natural features and landscapes' chapter.

34. The parties consider that the amendments are within the jurisdiction of the Court and give effect to the relevant parts of the Act, including ss 6(e), 7 and 8 of the Act.

MW-M1 – Collaboration with Kāi Tahu

35. In the Decisions Version of the PORPS 21, 'MW-M1 – Collaboration with Kāi Tahu' reads:

> ***"MW-M1 – Collaboration with Kāi Tahu***
>
> *Local authorities must collaborate with Kāi Tahu to:*
>
> *(1) manage, in accordance with tikaka, kawa, and mātauraka, those places, areas, landscapes, waters, taoka and other elements of cultural, spiritual or traditional significance to mana whenua by:*
>
> *(a) identifying, recording, and assessing these elements using methods determined by mana whenua (which may include mapping), and*
>
> *(b) protecting the values of, and mana whenua relationships to, these elements,*
>
> *(3) identify indigenous species and ecosystems that are taoka in accordance with ECO-M3,*
>
> *(4A) determine appropriate naming for places of significance in Otago, and*
>
> *(4B) share information relevant to Kāi Tahu interests"*.

36. This method is the subject of an appeal by Cain Whānau.

Cain Whānau[11]

37. In their appeal, Cain Whānau sought amendments to 'MW-M1 – Collaboration with Kāi Tahu' to make clear that when identifying matters of significance to Kāi Tahu, Te Ao Kāi Tahu methodologies, paradigms and mātauraka are used. As an example, Cain Whānau referred to the 'NFL - Natural features and landscapes' chapter, where outstanding natural features and landscapes are identified using Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines. Cain Whānau submitted that use of Te Tangi a te Manu may not provide for nor encapsulate Kāi Tahu methodologies, paradigms and mātauraka, or require assessments by experts who are fluent in those matters.

38. The following persons gave notice of an interest in the Cain Whānau appeal on 'MW-M1 – Collaboration with Kāi Tahu' under Section 274 of the Act:

38.1 Kāi Tahu.

[11] ENV-2024-CHC-30.

38.2 EDBs.

38.3 DCC.

38.4 Forestry Appellants.

38.5 Meridian Energy.

38.6 QLDC.

38.7 Transpower.

Resolution

39. It is proposed to amend 'MW-M1 – Collaboration with Kāi Tahu' as follows:

MW-M1 – Collaboration with Kāi Tahu

Local authorities must collaborate with Kāi Tahu to:

(1) manage, in accordance with tikaka, kawa, and mātauraka, those places, areas, landscapes, waters, taoka and other elements of cultural, spiritual or traditional significance to mana whenua by:

(a) identifying, recording, and assessing these elements using methods determined by mana whenua (which may include mapping), and

(b) protecting the values of, and mana whenua relationships to, these elements,

(3) identify indigenous species and ecosystems that are taoka in accordance with ECO-M3,

(4A) determine appropriate naming for places of significance in Otago, ~~and~~

(4B) share information relevant to Kāi Tahu interests, and

(5) ensure assessments under (1) and (3) above expertly employ Te Ao Kāi Tahu methodologies, paradigms and mātauraka in setting the context, considering and evaluating issues as they relate to Kāi Tahu values and paradigms, and the manner in which they guide decision-making.

40. The addition of clause (5) articulates the type of assessment that is appropriate when identifying and protecting matters of significance to Kāi Tahu under clauses (1) and (3).

41. The parties consider that the amendments are within the jurisdiction of the Court and give effect to the relevant parts of the Act, including ss 6(e), 7(a) and 8 of the Act.

MW-M5 – Regional Plans and District Plans

42. In the Decisions Version of the PORPS 21, 'MW-M5 – Regional plans and District Plans' reads:

> ***MW–M5 – Regional plans and district plans***
>
> *Local authorities must amend their regional plans and district plans to:*
>
> *(1) take into account iwi management plans and address resource management issues of significance to Kāi Tahu,*
>
> *(2) provide for the use of native reserves and Māori land in accordance with MW–P4 and recognise Kāi Tahu rakatirataka over this land by enabling mana whenua to lead approaches to manage any adverse effects of such use on the environment.*
>
> *(3) incorporate active protection of areas and resources recognised in the NTCSA, and*
>
> *(4) provide for the outcomes of settlements under the Māori Commercial Claims Aquaculture Settlement Act 2004.*

43. This method is the subject of an appeal by Cain Whānau.

44. In their appeal, Cain Whānau sought amendments to 'MW-M5 – Regional plans and District Plans' to ensure landowners are not restricted from protecting, subdividing, utilising and developing their land for a range of uses.

45. The following persons gave notice of an interest in the Cain Whānau appeal on 'MW-M5 – Regional plans and District Plans' under Section 274 of the Act:

45.1 Kāi Tahu.

45.2 EDBs.

45.3 DCC.

45.4 Forest and Bird.

45.5 Forestry Appellants.

45.6 QLDC.

45.7 Transpower.

Resolution

46. It is proposed to amend 'MW-M5 – Regional plans and District Plans' as follows:

MW–M5 – Regional plans and district plans

Local authorities must amend their regional plans and district plans to:

(1) take into account iwi management plans and address resource management issues of significance to Kāi Tahu,

(1A) identify the location of native reserves and Māori land in district plans,

(2) provide for the use and development of native reserves and Māori land in accordance with MW–P4 and recognise ~~Kāi Tahu~~ rakatirataka over this land by enabling mana whenua, and owners of Māori freehold land in relation to their land, to lead approaches to manage any adverse effects of such use on the environment~~.~~.

(3) incorporate active protection of areas and resources recognised in the NTCSA, and

(3A) enable the purpose of the redress provided for in the NTCSA, including those arising from the Ancillary Claims and SILNA, and

(4) provide for the outcomes of settlements under the Māori Commercial Claims Aquaculture Settlement Act 2004.

47. The addition of "and development" in clause (2) is more consistent with 'MW-P4 – Use of Native Reserves and Māori land'[12], including the proposed amendments.

48. The addition of clauses (1A) and (3A) create a positive obligation on plan makers to identify native reserves and Māori land and enable them to be used and developed for the purposes for which they provided, and to have particular regard for, and enable the redress provided under settlement legislation. The evidence before the Panel demonstrated that, particularly in the case of the SILNA lands in the Catlins and elsewhere, restrictions were placed on the development of land intended to be provided as redress for historical breaches of Te Tiriti, which made it very difficult, if not impossible to realise the purpose for which land was provided or set aside. The inclusion of clause (3A), in particular, is intended to address this.

[12] Title shown as sought to be amended.

49. The parties consider that the amendments are within the jurisdiction of the Court and give effect to the relevant parts of the Act, including s 6(e), 7(a) and 8 of the Act.

Definitions of Papakāika

50. In the Decisions Version of the PORPS 21, the definition of "*Papakāika*" reads:

> ***Papakāika***
> *means subdivision, use and development by mana whenua of Māori land and associated resources to provide for themselves in general accordance with tikaka Māori for their cultural and traditional purposes, which may include cultural, social, housing, educational, recreational, environmental or home occupation purposes.*

51. This definition is the subject of an appeal by Cain Whānau and Kāi Tahu.

Cain Whānau[13]

52. In their appeal, Cain Whānau sought amendments to the definition of "*Papakāika*" to clarify the term captures commercial or economic purposes and that "use and development" is not restricted to mana whenua or owners of Māori land

53. The following persons gave notice of an interest in the Cain Whānau appeal on the definition of "*Papakāika*" under Section 274 of the Act:

53.1 Kāi Tahu.

53.2 EDBs.

53.3 DCC.

53.4 Forest and Bird.

53.5 Forestry Appellants.

53.6 QLDC.

53.7 OGL.

[13] ENV-2024-CHC-30.

Kāi Tahu[14]

54. In their appeal, Kāi Tahu sought amendments to the definition of "*Papakāika*" to enable Kāi Tahu to properly provide for their social, economic and cultural wellbeing.

55. The following persons gave notice of an interest in the Kāi Tahu appeal on the definition of "*Papakāika*" under Section 274 of the Act:

55.1 Cain Whānau.

55.2 Fish and Game.

55.3 QAC.

55.4 EDBs.

55.5 DCC.

55.6 Forest and Bird.

55.7 Forestry Appellants.

55.8 QLDC.

55.9 OGL.

Resolution

56. It is proposed to amend the definition of "*Papakāika*" as follows:

> ***Papakāika***
> *means subdivision, use and development ~~by mana whenua~~ of native reserves, Māori land and associated resources by mana whenua or owners of Māori land to provide for their communal living ~~themselves~~ in ~~general~~ accordance with Kāi Tahu tikaka ~~for their cultural and traditional purposes,~~ which may include cultural, social, housing, educational, recreational, environmental or commercial ~~home occupation~~ purposes.*

57. The amendments sought to the definition of "*Papakāika*" better enable Kāi Tahu to properly provide for their social, economic and cultural wellbeing, which includes commercial and economic purposes, and is not limited by references to cultural and traditional purposes, which historically have been read down by plan-makers to reflect a narrow subset of activities. The

[14] ENV-2024-CHC-36.

amendment reflects the intended purpose of the land as including means of support as well as a place to live, and to ensure that there are opportunities for those living on papakāika to be able to access employment opportunities within their existing communities.

58. The parties consider that the amendments are within the jurisdiction of the Court and give effect to the relevant parts of the Act, including ss 6(e), 7(A) and 8 of the Act.

Definition of Māori Land

59. In the Decisions Version of the PORPS 21, the definition of "*Māori Land*" reads:

> *"for the purposes of this RPS, means land within the region that is:*
>
> *(1) owned by Te Rūnanga o Ngāi Tahu or its constituent papatipu rūnaka and to be used for the purpose of:*
>
> *(a) locating papakāika development away from land that is either at risk from natural hazards, including climate change effects such as sea level rise, or is otherwise unsuitable for papakāika development,*
>
> *(b) extending the area of an existing papakāika development,*
>
> *(2) Māori communal land gazetted as Māori reservation under s338 Te Ture Whenua Māori Act 1993,*
>
> *(3) Māori customary land and Māori freehold land as defined in s4 and s129 Te Ture Whenua Māori Act 1993,*
>
> *(4) former Māori land or general land owned by Māori (as those terms are defined in Te Ture Whenua Māori Act 1993) that has at any time been acquired by the Crown or any local or public body for a public work or other public purpose, and has been subsequently returned to its former Kāi Tahu owners or their successors and remains in their ownership,*
>
> *(5) general land owned by Māori (as defined in Te Ture Whenua Māori Act 1993) that was previously Māori freehold land, has ceased to have that status under an order of the Māori Land Court made on or after 1 July 1993 or under Part 1 of the Māori Affairs Amendment Act 1967 on or after 1 April 1968, that is in the ownership of Kāi Tahu whānui,*
>
> *(6) vested in a Trust or Māori incorporation under Te Ture Whenua Māori Act 1993,*
>
> *(7) held or claimed (whether as an entitlement, part of an ancillary claim, or because it was transferred or vested) either,*

(a) as part of redress for the settlement of Treaty of Waitangi claims, or

(b) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed (as those terms are defined under the Urban Development Act 2020), or

(c) as SILNA lands,

(8) owned by a person or persons with documentary evidence of Kāi Tahu whakapapa connection to the land, where that evidence is provided by either the Māori Land Court or the Te Rūnanga o Ngāi Tahu Whakapapa Unit."

60. This definition is the subject of an appeal by DCC and Kāi Tahu.

Dunedin City Council[15]

61. In its appeal, DCC sought amendments to the definition of "*Māori Land*" by deleting clauses (1) and (8) as it was concerned that the definition as drafted meant that Māori land could change over time through sale and purchases of land which may have the potential to create natural justice issues for adjoining landowners.

62. The following persons gave notice of an interest in the DCC appeal on the definition of "*Māori Land*" under Section 274 of the Act:

62.1 Kāi Tahu.

62.2 EDBs.

62.3 Forestry Appellants.

62.4 QAC.

62.5 Transpower.

Kāi Tahu

63. In their appeal Kāi Tahu sought amendments to clause (1) of the definition of "*Māori Land*" to remove limitations on the circumstances in which land could be classified as Māori land under this clause by reference to its proposed use. (This was limited to land acquired to extend existing papakāika development or to locate such development away from natural hazards and similar constraints). This was sought on the basis that there was no logical reason to limit land owned by TRONT or papatipu rūnaka in

[15] ENV-2024-CHC-25.

that way, where the same restrictions did not apply to other categories of Māori land.

64. The following persons gave notice of an interest in the Kāi Tahu appeal on the definition of "*Māori Land*" under Section 274 of the Act:

64.1 DCC.

64.2 Cain Whānau.

64.3 Fish and Game.

64.4 Forest and Bird.

64.5 OGL.

64.6 EDBs.

64.7 Forestry Appellants.

64.8 QAC.

64.9 Transpower.

64.10 QLDC.

Resolution

65. It is proposed to amend the definition of "*Māori Land*" as follows:

for the purposes of this RPS, means land within the region that is:

(1) owned by Te Rūnanga o Ngāi Tahu or its constituent papatipu rūnaka ~~and to be used for the purpose of:~~

~~(a) locating papakāika development away from land that is either at risk from natural hazards, including climate change effects such as sea level rise, or is otherwise unsuitable for papakāika development,~~

~~(b) extending the area of an existing papakāika development,~~

(2) Māori communal land gazetted as Māori reservation under s338 Te Ture Whenua Māori Act 1993,

(3) Māori customary land and Māori freehold land as defined in s4 and s129 Te Ture Whenua Māori Act 1993,

(4) former Māori land or general land owned by Māori (as those terms are defined in Te Ture Whenua Māori Act 1993) that has at any time been acquired by the Crown or any local or public body for a public work or other public purpose, and has been subsequently returned to its former

Kāi Tahu owners or their successors and remains in their ownership,

(5) general land owned by Māori (as defined in Te Ture Whenua Māori Act 1993) that was previously Māori freehold land, has ceased to have that status under an order of the Māori Land Court made on or after 1 July 1993 or under Part 1 of the Māori Affairs Amendment Act 1967 on or after 1 April 1968, that is in the ownership of Kāi Tahu whānui,

(6) vested in a Trust or Māori incorporation under Te Ture Whenua Māori Act 1993,

(7) held or claimed (whether as an entitlement, part of an ancillary claim, or because it was transferred or vested) either,

(a) as part of redress for the settlement of Treaty of Waitangi claims, or

(b) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed (as those terms are defined under the Urban Development Act 2020), or

(c) as SILNA lands,

(8) owned by a person or persons with documentary evidence of Kāi Tahu whakapapa connection to the land (not simply being evidence of whakapapa to Kāi Tahu whānui), where ~~that~~ evidence of that connection is provided to, and confirmed by either:

(a) the Māori Land Court (under its jurisdiction over General land owned by Māori); or

(b) the Te Rūnanga o Ngāi Tahu Whakapapa Unit.

66. The amendments sought to clause (1) the definition of "*Māori Land*" remove the unnecessary limitations on Kāi Tahu use of that land which lack a proper foundation, particularly when viewed alongside other categories that were not so restricted.

67. The amendments sought to clause (8) provide more clarity around the limited circumstances in which general land owned by a person with Kāi Tahu whakapapa can fall within the definition of Māori land; and by introducing the concept of confirmation, to resolve the potential concerns raised by DCC and other territorial authorities as to how it might receive and assess that information (acknowledging that both the Māori Land Court and Kāi Tahu whakapapa unit already provide such confirmation).

68. The parties consider that the amendments are within the jurisdiction of the Court and give effect to the relevant parts of the Act., including ss 6(e), 7(a) and 8 of the RMA.

General

69. This consent memorandum resolves all appeals on and relating to the 'MW - Mana whenua' chapter of the Proposed Otago Regional Policy Statement 2021.

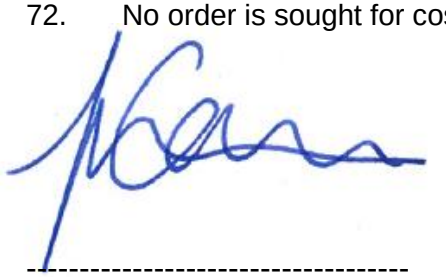
70. All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction and conform to the relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

Draft Order

71. A draft order is filed with this memorandum.

Costs

72. No order is sought for costs.



Aidan Cameron

For the Appellant / s 274 party
(Kāi Tahu)

Ailsa Cain

For the Appellant / s 274 party
(Cain Whānau)

Michael Garbett

For the Appellant / s 274 party
(Dunedin City Council)

Phil Page

For s 274 party
(Forestry Appellants)

Peter Anderson

For s 274 party
(Forest and Bird)

Sarah Scott

For the Appellant / s 274 party
(Transpower)

Pip Walker

For s 274 party
(Oceana Gold (New Zealand) Limited)

Cordelia Woodhouse

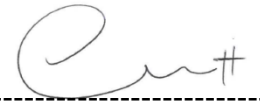
For s 274 party
(QLDC)

Hannah Perkin

For s 274 party
(OWRUG)

Simon Peirce

For s 274 party
(Aurora et al)



Sarah Scott

For s 274 party
(Port Otago)

Fleur Matthews
For the Respondent
(Otago Regional Council)