

**UNDER** The Resource Management Act 1991  
(the RMA)

**IN THE MATTER** of an application for resource consents for Project  
Next Generation by Port Otago Limited

---

**AND**

**IN THE MATTER** of the submissions lodged by Kāti Huirapa Rūnaka  
Ki Puketeraki and Te Rūnanga o Ōtākou

---

**EVIDENCE OF TIM VIAL  
ON BEHALF OF  
KĀTI HUIRAPA RŪNAKA KI PUKETERAKI  
AND TE RŪNANGA O ŌTĀKOU**

---

---

**EVIDENCE OF  
TIM VIAL**

---

**1.0 INTRODUCTION**

**Qualifications and Experience**

- 1.1 Kia ora koutou katoa. My name is Tim Vial. I whakapapa to Kāi Tahu and to the hapu of Ngāi te Ruahikihiki. I am a member of Te Rūnanga o Ōtākou.
- 1.2 I hold a Bachelor of Arts and Bachelor of Laws from the University of Otago, a Certificate in Professional Legal Studies from Victoria University of Wellington, a Postgraduate Diploma in Museum Studies from Massey University, and a Master of Regional and Resource Planning from the University of Otago.
- 1.3 I am a Graduate Member of the New Zealand Planning Institute and a member of the New Zealand Association for Impact Assessment.
- 1.4 I was employed by the Dunedin City Council as a Planner from 2002 to 2007. Since 2007 I have been employed by KTKO Ltd as a Resource Management Planner. KTKO Ltd is a consultancy that is jointly owned by the four Otago Papatipu Rūnanga, respectively Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga.
- 1.5 I have been engaged by Kāti Huirapa Rūnaka ki Puketeraki and Te Rūnanga o Ōtākou to provide resource management advice in respect of Port Otago's capital dredging project, 'Project Next Generation'. I was the lead author for the Cultural Impact Assessment of Project Next Generation undertaken by KTKO Ltd for Port Otago.

**Witness Code of Conduct**

- 1.6 I confirm that I have read the Environment Court code of conduct for expert witnesses and have prepared my evidence in accordance with this code. This evidence is within my area of expertise, except where I state that I am relying on other evidence. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

**Scope of Evidence**

- 1.7 In my evidence I will:

- Discuss the statutory considerations relating to Tikanga Māori that must be taken into account in assessing these resource consent applications;
- Discuss the submissions of Kāti Huirapa Rūnaka ki Puketeraki and Te Rūnanga o Ōtākou; and
- Respond to the Section 42A Officer's Report, and the proposed conditions of consent.

1.8 I adopt for the purpose of my evidence the cultural evidence presented on behalf of Kāti Huirapa Rūnaka ki Puketeraki and Te Rūnanga o Ōtākou.

1.9 Finally, I have not repeated the description of the capital dredging project, as this information has already been provided to the Hearings Panel.

## **2.0 RESOURCE MANAGEMENT ACT, SECTION 104**

2.1 The matters that must be considered in making a decision on an application for resource consent include:

- Any actual and potential effects on the environment;
- Any relevant provisions of a New Zealand coastal policy statement, a regional policy statement, or a plan; and
- Any other matter that is relevant and reasonably necessary to determine the application.<sup>1</sup>

2.2 I discuss these matters below.

### **Actual and Potential Effects on the Environment**

2.3 The actual and potential effects of this capital dredging project are addressed in the Assessment of Environmental Effects submitted with the application, and in the Officer's Report.

2.4 The definition of effect in the Resource Management Act (the Act) includes any cumulative effect which arises over time in combination with other effects, and any potential effect of low probability which has a high potential impact.<sup>2</sup>

2.5 The natural character of the Otago Harbour has been progressively reduced since the 19th Century through reclamation, dredging, and the occupation of the water and foreshore by structures, including wharves, mooring areas, sea walls, boat sheds and

---

<sup>1</sup> Resource Management Act, Section 104(1)

roads. This reclamation, dredging and development has had cumulative effects on the once extensive mahika kai resources of the Harbour.

- 2.6 Similarly, changes in land use and development within the Blueskin Bay, Karitane, and Waikouaiti area have had cumulative effects on the traditional mahika kai resources of the northern coastal marine area.
- 2.7 In my opinion, the effects of the current proposal must be assessed in combination with the effects of previous development within the Otago Harbour and the northern coastal marine area.
- 2.8 Finally, I note that the potential effects of capital dredging, while of low probability, would have a high potential impact on a way of life that has sustained Kāi Tahu whānau for generations. Kāi Tahu whānau rely on mahika kai resources from the Otago Harbour and the northern coastal marine area to provide for their social, economic, and cultural well-being.

### **New Zealand Coastal Policy Statement (NZCPS)**

- 2.9 The purpose of the NZCPS is to state policies in order to achieve the purpose of the Act in relation to the coastal environment of New Zealand. In the following section I have addressed those provisions of the NZCPS that provide for tangata whenua values.

#### Tangata Whenua Values and the Treaty of Waitangi

- 2.10 Objective 3 and Policy 2 require those exercising functions and powers under the Act to take account of the principles of the Treaty of Waitangi; recognise the role of tangata whenua as kaitiaki; and provide for tangata whenua involvement in the management of the coastal environment by:
- Recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;
  - Incorporating mātauranga Māori into sustainable management practices; and
  - Recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.<sup>3</sup>
- 2.11 Policy 2 requires the provision of opportunities for tangata to exercise kaitiakitanga over waters and fisheries in the coastal environment through such measures as:

---

<sup>2</sup> Resource Management Act, Section 3.

<sup>3</sup> New Zealand Coastal Policy Statement 2010, Objective 3

- Bringing cultural understanding to (the) monitoring of natural resources; and
- Providing appropriate methods for the management, maintenance and protection of the taonga of tangata whenua.

2.12 Port Otago Ltd commissioned a Cultural Impact Assessment (CIA) on Project Next Generation and provided further information on key species of importance to Kāi Tahu.<sup>4</sup> The key recommendations of the CIA were adopted by Port Otago in its AEE. Finally, Port Otago proposes the establishment of a Manawhenua Consultative Group as a condition of consent (discussed below at Paragraph 5.2).

2.13 In my opinion, the collaborative engagement between Manawhenua and Port Otago in assessing the effects of capital dredging on cultural values and developing conditions of consent is consistent with Policy 2 of the NZCPS.

#### Precautionary Approach

2.14 Policy 3 promotes the adoption of a precautionary approach towards proposed activities, where effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.

2.15 I note that the adoption of a precautionary approach to this capital dredging project is a consistent theme threaded through the cultural evidence presented today.

#### **Otago Regional Policy Statement (RPS)**

2.16 The RPS provides an overview of the Otago Region's resource management issues and contains the objectives, policies and methods to achieve the integrated management of the Region's natural and physical resources.

2.17 Manawhenua perspectives are addressed in Chapter 4 of the RPS. The following objectives are relevant to the current proposal:

- Objective 4.4.4 Mahika Kai (Places where food is produced or procured): To maintain and enhance mahika kai and access to those traditional resources;
- Objective 4.4.5 Kaitiakitanga (Guardianship): To incorporate the concept and spirit of kaitiakitanga in the management of Otago's natural and physical resources in a way consistent with the values of Kāi Tahu.

<sup>4</sup> Mark James, Rick Boyd and Keith Probert, *Information on key species of interest to Ngai Tahu – Supplementary Paper for Next Generation Project*

- 2.18 The maintenance and enhancement of mahika kai resources within the Otago Harbour and the northern coastal marine area is a pivotal issue raised in the cultural evidence.
- 2.19 In my opinion, the involvement of Manawhenua in the design of the monitoring programme, including the development of cultural health indicators, is a pragmatic way of incorporating Kāi Tahu values into the management of this project.

#### **The Regional Plan: Coast for Otago**

- 2.20 The Coastal Plan sets out the policy framework for managing the Coastal Marine Area (CMA) in Otago.
- 2.21 Policy 9.4.1 promotes the use of consultation to address Kāi Tahu values in the CMA. In my opinion, the consultation that Port Otago has undertaken is consistent with this policy.

#### **Other Matters**

- 2.22 The Kāi Tahu ki Otago Natural Resource Management Plan is, as noted in the Officer's Report, a relevant consideration.
- 2.23 The Kāi Tahu ki Otago Natural Resource Management Plan expresses Kāi Tahu Whānui values, knowledge and perspectives on natural resource and environmental management issues.
- 2.24 Specifically, the objectives and policies of the Plans require that dredging avoid physical damage to kai moana sites, habitat and the integrity of the seabed. Further, the monitoring of the effects of dredging is promoted. [refer to Appendix 1]

### **3.0 RESOURCE MANAGEMENT ACT PART 2**

- 3.1 The Section 104 matters are subject to Part 2 of the Act

#### **Section 5**

- 3.2 The broad purpose of the Act is to promote the sustainable management of natural and physical resources in a way which enables people and communities to provide for their social, economic and cultural wellbeing, while safeguarding environmental bottom lines.
- 3.3 The mahika kai resources of the Otago Harbour and the northern coastal marine area have enabled Kāi Tahu whānau to provide for their social, economic and cultural wellbeing for generations.

- 3.4 In my opinion, the deepening of the channel must not compromise the ability of Kāi Tahu whānau to provide for their reasonably foreseeable needs now and in the future.

### **Sections 6 and 7**

- 3.5 In achieving the broad purpose of the Act Council is bound by certain requirements, which include a particular sensitivity to Māori issues. Specifically sections 6(e) and 7(a) must be borne in mind at every stage of the planning process.<sup>5</sup>
- 3.6 The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga must be recognised and provided for in your decision making.<sup>6</sup>
- 3.7 I note that Kāi Tahu Whānui have a cultural, spiritual, historic, and traditional relationship with the Otago Harbour and Te Tai O Arai Te Uru (the Otago Coastal Marine Area), which was acknowledged by the Crown in the Ngāi Tahu Claims Settlement Act.
- 3.8 Finally, particular regard must be had to kaitiakitanga.<sup>7</sup> Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou are kaitiaki of the Otago Harbour and the Otago Coastal Marine Area, and have a fundamental duty to protect the natural world of which they are a part.

## **4.0 THE SUBMISSIONS OF KĀTI HUIRAPA RŪNAKA KI PUKETERAKI TE RŪNANGA O ŌTĀKOU**

- 4.1 The submissions of the Papatipu Rūnanga on the proposed capital dredging project address the following matters:
- Effects on key species and ecosystems;
  - Development of a monitoring programme in partnership with Manawhenua to avoid, remedy or mitigate adverse effects;
  - Changes to the tidal range, tidal currents and the navigational depth of the Ōtākou channel;
  - Potential for increased erosion; and the
  - Potential for changes to beach profiles and the benthic environment;

<sup>5</sup> McGuire & Anor v. Hastings District Council & Anor, Court of Appeal - Privy Council, November 01, 2001, [2001] UKPC 43, paragraph 21.

<sup>6</sup> Resource Management Act 1991, s6(e)

<sup>7</sup> Resource Management Act, s.7(a)

4.2 The matters raised in the submissions of the Papatipu Rūnanga are substantially addressed through the proposed conditions of consent.

## **5.0 OFFICER'S REPORT AND CONDITIONS**

5.1 The Officer's Report and draft conditions do not identify a role for Manawhenua in the monitoring and management of the effects of capital dredging. In my opinion, an active role for Manawhenua should be a prerequisite for these consents given the significant relationship Manawhenua have with the Otago Harbour and the Otago Coastal Marine Area.

5.2 In the evidence presented by Mr Mitchell for Port Otago, at paragraph 6.11, a draft condition is proposed that provides for Kāi Tahu engagement in a Manawhenua Consultation Group (MCG). It is my understanding that the formation of the MCG, as a condition of consent, is supported by the Papatipu Rūnanga.

## **6.0 CONCLUSION**

6.1 In conclusion, it is my opinion that the granting of the consents sought by Port Otago should be subject to appropriate conditions of consent that provide for the cultural, spiritual and environmental outcomes sought by Kāti Huirapa Rūnaka Ki Puketeraki and Te Rūnanga o Ōtākou within the Otago Harbour and the Otago Coastal Marine Area, including:

- Ensuring that Kāi Tahu whānau are able to undertake their customary practices;
- Ensuring that an abundant supply of mahika kai resources are available for the current and future generations; and
- Preventing further degradation of the mauri and wairua of the Otago Harbour and the Otago Coastal Marine Area.

**Thank You**



**Tim Vial**  
**Resource Management Planner**



## Appendix 1: Kāi Tahu ki Otago Natural Resource Management Plan 2005

### Otago Region: Coastal Environment: Taku Tai Moana Me Wai Māori

OBJECTIVES [5.8.3]	
<b>General</b>	The spiritual and cultural significance of taku tai moana me te wai māori is recognised in all management of the coastal environment.
	Te Tai o Arai Te Uru is healthy and supports Kāi Tahu ki Otago customs.

### Otago Region: Coastal Environment: Mahika Kai (Kai Moana) & Biodiversity

OBJECTIVES [5.8.11]	
<b>General</b>	Te Tai o Arai Te Uru supports the full range of healthy ecosystems and species.
	There is an abundance of healthy kai moana.

POLICIES [5.8.12]	
<b>General</b>	To require that dredging and reclamation works avoid physical damage to kai moana sites, habitat and the integrity of the seabed.

### Otago Region: Coastal Environment: Cultural Landscapes

POLICIES [5.8.16]	
<b>General</b>	To require the protection of fragile sand dunes and sand flat ecosystems through: <ul style="list-style-type: none"><li>• Monitoring erosion rates and any flooding that occurs;</li><li>• Monitoring and controlling the effects of harbour dredging and reclamation; and</li><li>• Monitoring and ensuring the sustainable use of sand.</li></ul>

Otago Harbour Catchment: Wai Māori and Wai Tai

<b>POLICIES [8.2.3]</b>	
<b>Monitoring and Research</b>	To encourage research and monitoring into sediment deposition at Blueskin Bay and Pūrākaunui.
	To promote research and monitoring of ship movements and impacts from wash within the Harbour.
<b>Dredging</b>	To encourage the dumping of all dredging material beyond the continental shelf.
	Dredging activity should not impact on tuaki and other marine life.