IN THE ENVIRONMENT COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE

UNDER	cl 14 of Schedule 1 to the Resource Management Act 1991 ("**RMA**")
IN THE MATTER OF	an appeal against decisions on the non-freshwater planning instrument related parts of the Proposed Otago Regional Policy Statement 2021
BETWEEN	**TE RŪNANGA O MOERAKI, KĀTI HUIRAPA RŪNAKA KI PUKETERAKI, TE RŪNANGA O ŌTĀKOU AND HOKONUI RŪNANGA** First Appellants
AND	**TE AO MARAMA INCORPORATED ON BEHALF OF WAIHOPAI RŪNAKA, TE RŪNANGA O ŌRAKA APARIMA, AND TE RŪNANGA O AWARUA** Second Appellants

(continued overleaf)

NOTICE OF APPEAL

Dated 15 May 2024

Solicitor instructing:
Chris Ford
Te Rūnanga o NGĀI TAHU
15 Show Place
Christchurch 8024
PO Box 13 046,
Christchurch 8042
P: 03 363 8958
E: ttw@ngaitahu.iwi.nz

Counsel acting:
Aidan Cameron
BANKSIDE CHAMBERS
Level 22, 88 Shortland St
Auckland 1010
PO Box 1571, Shortland St
Auckland 1140
P: +64 9 307 9955
E: aidan@bankside.co.nz

AND **TE RŪNANGA O NGĀI TAHU**

Third Appellants

AND **OTAGO REGIONAL COUNCIL**

Respondent

NOTICE OF APPEAL

To: the Registrar
Environment Court
Auckland, Wellington and Christchurch

This document notifies you that the appellants, Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively, "**Kāi Tahu ki Otago**" or "**Kā Rūnaka**"); Te Ao Marama Incorporated on behalf of Waihopai Rūnaka, Te Rūnanga o Ōraka Aparima, and Te Rūnanga o Awarua (collectively, "**Ngāi Tahu ki Murihiku**"); and Te Rūnanga o Ngāi Tahu ("**TRONT**"); together referred to as "**Kāi Tahu**", appeal against parts of the decisions of the Otago Regional Council ("**ORC**") on the non-freshwater planning instrument parts of the Proposed Otago Regional Policy Statement 2021 ("**PORPS**"), which were made on 27 March 2024 and publicly notified on 30 March 2024 ("**Decisions**"), pursuant to cl 14 of Schedule 1 to the Resource Management Act 1991 ("**RMA**").

1. Kāi Tahu ki Otago, Ngāi Tahu ki Murihiku and TRONT all lodged submissions on the non-freshwater planning instrument parts of the PORPS.

2. Neither Kāi Tahu ki Otago, Ngāi Tahu ki Murihiku, nor TRONT are trade competitors for the purposes of section 308D of the RMA.

3. TRONT received notice of the Decisions on 30 March 2024 (the first working day thereafter being 2 April 2024).

4. The Decisions were made by ORC.

5. Kāi Tahu hold and exercise rakatirataka within the Kāi Tahu Takiwā and have done so since before the arrival of the Crown. The rakatirataka of Kāi Tahu resides within the papatipu rūnaka. The Crown and Parliament have recognised the enduring nature of that rakatirataka through Article II of Te Tiriti o Waitangi, the 1997 Deed of Settlement between Ngāi Tahu and the Crown, and the 1998 Ngāi Tahu Claims Settlement Act ("**NTCSA**") in which Parliament endorsed and implemented the Deed of Settlement.

6. Accordingly, Kāi Tahu have a unique and abiding interest in the sustainable management of te taiao – the environment – within the Otago region. Whilst the takiwā of Kāi Tahu Whānui extends over the

vast majority of Te Waipounamu, and as acknowledged in the text of the PORPS itself, three Kāi Tahu ki Otago papatipu rūnaka have marae based in Otago. These are Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, and Te Rūnanga o Ōtākou, whilst the fourth, Hokonui Rūnanga, is based in neighbouring Southland.

7. Three Ngāi Tahu ki Murihiku rūnaka – Awarua Rūnanga, Waihopai Rūnanga and Ōraka-Aparima Rūnanga – are based in Southland but also share interests with Kāi Tahu ki Otago in South Otago, the Mata-au Clutha River, and the inland lakes and mountains.

8. Through their submissions on the PORPS, Kāi Tahu sought the adoption of a "ki uta, ki tai" approach, a resource management approach which emphasises the holistic management of integrated elements within the natural environment, demonstrating the interconnectedness of environmental systems and forming a basic tenet of Kāi Tahu resource management practises and perspectives. The approach recognises that what occurs on land will have a direct consequence for its neighbouring rivers, lakes and the coastal environment; and when this interconnectivity is not recognised or managed well, land-based activities can have a direct detrimental effect on those other environments, including their mauri.

9. Kāi Tahu see the adoption of a "ki uta, ki tai" approach as being pivotal to achieving the integrated management of natural and physical resources of the Otago region. Kāi Tahu participated, with their objections noted, in the split hearing of the freshwater and non-freshwater parts of the PORPS, following the High Court's decision in *Otago Regional Council v Royal Forest & Bird Protection Society of New Zealand Inc* [2022] NZHC 1777, and the division of the policy statement into "freshwater" and "non-freshwater" parts.[1]

10. Kāi Tahu supports, and does not appeal against, the vast majority of ORC's Decisions on the PORPS, which support the outcomes sought

[1] It is noted that the effect of the High Court's decision in *ORC* has since been nullified by a legislative amendment introduced as part of the previous Government's resource management reforms, through amendments to s 80A of the RMA: Natural and Built Environments Act 2023, sch 16, Part 4.

in the Kāi Tahu ki Otago, Ngāi Tahu ki Murihuku and TRONT submissions.[2]

11. The parts of the decision that Kāi Tahu are appealing against are:

(a) the definition of Māori land, papakāika and the approach to the expression of rakatirataka in MW-P4, the Coastal Environment policies, UFD-O4 (now located in the LF-LS section) and the UFD objectives, policies and methods;

(b) the approach to integrated management, including IM-O3, IM-P1, IM-P2, IM-P6 and IM-P14;

(c) the approach to climate change mitigation and adaptation in IM-P12, as well as IM-P10;

(d) the absence of policy direction in the infrastructure provisions with respect to considering the effects of climate change;

(e) coastal water quality and CE-P3(1A);

(f) the approach to managing adverse effects on customary fisheries in the Coastal Environment chapter;;

(g) the approach to aquaculture and providing for settlement outcomes under Te Tiriti o Waitangi and the Māori Commercial Claims Aquaculture Settlement Act 2004 in CE-P11;

(h) the approach to managing the effects of reclamation and the wording of CE-P12;

(i) the approach to coastal discharges and the lack of a specific policy to give effect to policies 22 and 23 of the New Zealand Coastal Policy Statement 2010 ("**NZCPS**");

(j) the definition of regionally significant infrastructure;

(k) the effects management framework applying to infrastructure in EIT-EN-P6, EIT-EN-P9A, and EIT-INF-P13A;

---

[2] For the avoidance of doubt, failure to appeal against the acceptance of a particular recommendation of the Panel should not be taken as Kāi Tahu having accepted that recommendation, or the Panel's reasoning, for all purposes.

(l) the management of natural hazards and the approach to coastal hazards, with particular reference to HAZ-NH-P1A, HAZ-NH-P1, HAZ-NH-P2, and HAZ-NH-P10;

(m) the management of effects on wāhi tūpuna, and in particular, HCV-WT-M2(1) and HAZ-CL-P18; and

(n) the effects of urban expansion on water demand and water quality in UFD-P4.

General reasons for appeal

12. The general reasons for the appeal are that the parts of the Decisions appealed against:

(a) do not promote the sustainable management of resources in accordance with section 5 of the RMA in that they:

(i) do not manage the use, development, and protection of natural and physical resources which enable people and communities to provide for their social, economic, and cultural well-being and for their health and safety, as required by section 5 of the RMA;

(ii) fail to sustain the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;

(iii) does not safeguard the life-supporting capacity of air, water, soil, and ecosystems;

(iv) fails to appropriately avoid, remedy, or mitigate adverse effects of activities on the environment;

(b) have not been prepared and changed in accordance with the provisions of Part 2, including (in particular) ss 6(e), 7 and 8 of the RMA;

(c) fail to give effect to relevant national policy statements, including the NZCPS, the NPSUD and the NPSFM; and

(d) do not represent the most appropriate way to achieve the objectives of the PORPS and/or the purpose of the RMA, as required by section 32 of the RMA and further,

(e) do not sufficiently enable the outcomes of the Māori Commercial Aquaculture Claims Settlement Act 2004.

Specific reasons for the appeal

13. Without limiting the generality of the above, the reasons for the Kāi Tahu appeal against the parts of the Decision identified above are set out below.

Rakatirataka – Māori land

14. The rakatirataka of Kāi Tahu over their ancestral lands, water, sites, wāhi tapu and other taonga is a key matter which is required to be recognised and provided for pursuant to s 6(e) of the RMA. The expression of rakatirataka through kaitiakitaka is a matter to which particular regard is required to be had pursuant to s 7 of the RMA. It is also enshrined through the requirement for local authorities to take into account the principles of Te Tiriti o Waitangi pursuant to s 8 of the RMA.

15. Through its submission and evidence, Kāi Tahu sought a definition of Māori land which sought to properly recognise its ancestral land base.

16. It was also intended to provide sufficient flexibility for hapū and whānau to meet their aspirations for reconnection to this land base, and to respond to the challenges of natural hazards likely to be exacerbated by the effects of climate change.[3] The intention being that the definition would apply to all policies relating to the use of ancestral land, to address the historical constraints which have been placed upon development of this land by successive planning regimes, and to address the challenges of the future.

17. The definition Kāi Tahu sought to include incorporates various categories of land that are regarded by mana whenua as having an

[3] Supplementary evidence of James Adams for ORC, [37]-[40].

equivalent purpose to Native Reserves,[4] including land that may be purchased by papatipu rūnaka in the vicinity of existing Native Reserves to offset land that has been lost.

18. In its Decisions, ORC has accepted the vast bulk of the relief sought in relation to the proposed definition of Māori land, save in one important sense. The Decisions includes a definition which includes, at sub-clause (1), land owned by TRONT or its constituent papatipu rūnaka, but only to the extent that land is to be used for locating papakāika development away from land at risk of natural hazards (or is otherwise unsuitable) or to extend an existing papakāika development.

19. No other part of the definition, including land owned by Kāi Tahu who are able to demonstrate a whakapapa connection to the land, is subject to such a limitation. The limitation is incongruous and appears to be an anomaly, which is not necessary to respond to any particular environmental effect or policy issue directed at ownership of land by TRONT or papatipu rūnaka.

Rakatirataka – amendments to the definition of papakāika and MW-P4

20. The Decisions version of the PORPS also includes a definition of papakāika, and a policy, MW-P4, which differentiates between cultural and traditional purposes and economic activities.

21. Kāi Tahu say that the definition and policy, which are key to enabling mana whenua to make decisions in relation to the management of Māori land (and, therefore, exercise their rakatirataka), are not the most appropriate means of achieving the purpose of the RMA, including the matters in s 6(e), 7(a) and 8 of the RMA, or the objectives of the PORPS.

22. By limiting the type of economic activity which can form part of the definition of papakāika to home occupation only, ORC has also failed to appropriately enable the ability of Kāi Tahu to provide for their own social, economic and cultural wellbeing. The Panel's desire in limiting the definition and policy was to protect Kāi Tahu from unscrupulous developers who may seek to take advantage of the broader scope for

[4] Being land that was excluded from land purchases, granted by the Native Land Court, or otherwise set aside as described in the introduction to the MW chapter. See also BoE of Sandra McIntyre, [33].

economic activity sought by Kāi Tahu. However, those matters will be controlled through the application of tikaka and mātauraka (as the provisions already provide for), and so the concern is illusory.

Rakatirataka – other provisions

23. The final matter under this heading is the lack of appropriate cross-referencing and/or the enabling approach to be taken in the Coastal Environment ("**CE**"), Land and Freshwater – Land and Soils ("**LF-LS**"), and Urban Form and Development ("**UFD**") provisions of the PORPS to provide for the expression of rakatirataka.

24. In relation to the UFD provisions, by failing to include outcomes relating to Kāi Tahu aspirations and values for urban development, the UFD provisions do not give effect to Objective 5 and Policy 9 of the National Policy Statement for Urban Development ("**NPS-UD**"). Kāi Tahu seek reinstatement of the provisions notified in UFD-O3(3), UFD-P9, and UFD-M2(10).

Integrated management – from prioritisation to "all things to all people"

25. In the PORPS as notified, the Integrated Management ("**IM**") chapter included direction which prioritised the life-supporting capacity and mauri of air, water, soil and ecosystems and the health and safety of people of communities. The approach taken was broadly consistent with the approach to the hierarchy of obligations in the National Policy Statement for Freshwater Management ("**NPSFM**").

26. In the Decisions version, references to prioritisation have been removed, and replaced with reference to a "structured analysis" approach. Kāi Tahu say that these amendments are based on a misinterpretation of the underlying case law, are unclear, and are likely to lead to ongoing debate as to how the PORPS should be interpreted and applied. The "structured analysis" promoted in *Port Otago* was not directed at achieving integrated management of natural and physical resources, but instead an approach for how conflicting policies should be reconciled at the resource consent level on a particular application. The changes to IM-P1 result in the policy losing all meaning, and becoming "all things to all people".

27. The shift away from a prioritisation approach towards "sustainable management" writ large has also resulted in amendments to IM-O3, IM-P2 and IM-P14 which are not in accordance with the purpose of sustainable management itself, and therefore are not the most appropriate way to achieve the purpose of the RMA and/or the objectives of the PORPS. Section 5(b) of the RMA requires that the life-supporting capacity of air, water, soils and ecosystems is safeguarded, not sustainably managed.

Integrated management – adaptive management

28. In the Decisions version, an amendment was made to IM-P6(2) to refer to adaptive management as part of the directive to take a precautionary approach to manage uncertainty.

29. The drafting of IM-P6 infers that an adaptive management approach is appropriate in all circumstances to manage risk. However, that is inconsistent with case law, including the Supreme Court's decision in *Sustain our Sounds,* which requires thresholds to be met before adaptive management can be considered as part of a precautionary approach. Kāi Tahu seeks an amendment to IM-P6 to reflect that requirement, ensuring that adaptive management is only used where appropriate.

Climate change – provision for contravention of environmental limits

30. As notified, Policy IM-P12 provided policy direction supporting a pathway for regionally or nationally significant climate change mitigation activities to breach limits set in relation to any policy or method of the PORPS. Climate change mitigation was not defined at the time, but has subsequently been defined to mean "a human intervention to reduce the sources of, or enhance the sinks of greenhouse gases" ("**GHGs**"). One such intervention may be the construction, operation and maintenance of renewable electricity generation, which reduces reliance on other forms of energy that emit GHGs.

31. The Decisions version of the PORPS broadened the scope of IM-P12 to apply not only to climate change mitigation, but also to climate change adaptation and included a new definition of climate change

adaptation which refers to "the process of adjustment to actual or expected climate change and its effects". The Decisions version also deletes requirements for any regionally or nationally significant climate change mitigation to be consistent and co-ordinated with other regional and national climate change mitigation activities, and to not impede the achievement of other objectives within the PORPS.

32. The policy, as amended, has significant potential to undermine the objectives of the PORPS. It is not the most appropriate means of giving effect to those objectives, or the requirements of other national policy statements, including the National Policy Statement for Renewable Electricity Generation ("**NPS-REG**"). Kāi Tahu seek amendments to the policy to achieve its original intention, as set out in more detail below.

Climate change – IM-P10 and existing activities

33. In the Decisions version of the PORPS, IM-P10 refers to identifying climate change adaptation and mitigation methods which minimise the effects of climate change on existing activities and the wider environment.

34. Kāi Tahu are concerned that this policy, as currently drafted, could be used to "lock in" existing activities which may no longer be appropriate in a given area and which will have adverse effects on mana whenua values and, more broadly, outcomes for te taiao. While Kāi Tahu accept that the effects of climate change on existing activities need to be managed, it will not always be appropriate to minimise such effects – which could be seen as affording priority to the protection of existing activities.

35. Kāi Tahu seek an amendment to IM-P10 to remove the reference to "minimis[ing]" adverse effects of climate change to existing activities.

Climate change – integration across other policies – EIT-INF-P12 and P14

36. In their submissions, Kāi Tahu included a concern that consideration of climate change effects had not been adequately integrated across the PORPS. By the time they presented their evidence, they noted that, while some gaps had been filed, there was still no reference to climate change in the EIT-INF section. Kāi Tahu sought inclusion of

references to climate change in these policies, but they were not included and were not discussed in the decision report.

37. The failure of infrastructure providers to adequately consider the implications of climate change in planning for the future is a significant concern to kā rūnaka, and do not reflect the requires in s 7(i) of the RMA to have particular regard to the effects of climate change. Kāi Tahu seeks amendments to those policies to better reflect the current and future effects of sea level rise and climate change.

Coastal water quality and CE-P3

38. Linked to the above discussion on prioritisation, Kāi Tahu seek an amendment to CE-P3(1A) to refer to the need to give priority to the restoration of deteriorated coastal water.

39. This amendment would better give effect to Policy 21 of the NZCPS. It would also result in a policy which is a more appropriate means of achieving the direction in CE-O1A, CE-O1, and CE-O4.

Customary fisheries – avoiding adverse effects on fisheries, mātaitai and taiāpure

40. Kāi Tahu seek amendment to CE-O5 to ensure, at an outcome level, that development in the coastal environment also enables takata whenua to provide for their own cultural wellbeing. At present, there is no link between the activities policies (CE-P9 and CE-P10) and any outcome in relation to effects on customary fisheries.

41. The proposed amendment sought is necessary to better give effect to Objectives 3 and 6 of the NZCPS, to provide for the outcomes of Fisheries Settlements,[5] as well as to better recognise and provide for the takata whenua relationship with their fisheries under ss 6(e), s 7(a) and 8 of the RMA.

---

5 Māori Fisheries Act 1989, and Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

Aquaculture – outcomes under Te Tiriti and the Māori Commercial Claims Aquaculture Settlement Act 2004

42. Kāi Tahu seek amendment to the aquaculture policy (CE-P11) to provide for settlement outcomes under Te Tiriti o Waitangi and the Māori Commercial Claims Aquaculture Settlement Act 2004.

43. While MW-P2 and MW-M5(4) require regional and district plans to provide for the outcome of aquaculture settlements, providing comprehensive policy direction for aquaculture in the CE chapter will aid integrated management of coastal matters and promote clarity and effectiveness of aquaculture provisions. This is especially so, given that the role of the NZCPS as an expression of Part 2 in the coastal environment often means that all matters relevant to coastal issues are considered (on occasions, wrongly) by decision-makers to be "hermetically sealed" within chapters of a planning instrument applying to the coastal environment.

44. The change sought by Kāi Tahu is necessary to ensure that the policies of the CE chapter are necessary to properly take into account (and act in accordance with) s 8 of the RMA, to better give effect to Objective 3, Policies 2 and 8 of the NZCPS, and to better achieve MW-O1 and CE-O4 of the PORPS.

Coastal environment – reclamation

45. Kāi Tahu oppose the wording of CE-P12 in the Decisions version of the PORPS.

46. Kāi Tahu consider some areas such as Otago Harbour to have had a surfeit of reclamation to the point where natural functioning, ecosystems and mahika kai habitats have been severely degraded. This has detrimentally affected the Kāi Tahu relationship to the moana, contrary to the requirements of s 6(e) of the RMA. Kāi Tahu consider that merely restating New Zealand Coastal Policy Statement Policy 10, as CE-P12 does, provides no regional guidance for when reclamation is appropriate, nor where the cumulative effects should preclude further reclamation.

47. There is also no policy guidance as to the meaning of 'significant regional benefit'. Kāi Tahu are concerned that this could be applied too liberally.

48. The removal of the conjunctive 'and' after clause (1A)(c) lessens clarity as to whether all clauses under (1A) must be fulfilled for reclamation to be contemplated.

49. Kāi Tahu considers that the current policy is not appropriately drafted to achieve the CE objectives, and seeks amendments to better achieve those objectives.

Coastal environment – coastal discharges

50. In the Decisions version of the PORPS, no policy was incorporated to manage the discharge of contaminants and sediments to water in the coastal environment. This lacuna needs to be addressed through regional policy-level guidance to give effect to Policies 22 and 23 of the NZCPS. A coastal discharges policy is also required to achieve the objectives in CE-O1A, CE-O1 and CE-O4 of the PORPS.

51. The lack of a policy addressing coastal discharges, in circumstances where there are policies which address discharges to freshwater in LF-FW-P15 and LF-FW-P16, both detracts from integrated management and risks inconsistent approaches in different domains.

52. Kāi Tahu seek a policy to ensure the appropriate management of discharges into the coastal environment, ki uta ki tai, consistent with policies LF-FW-P15 and LF-FW-P16.

Infrastructure – definition of regionally significant infrastructure

53. In the EIT provisions, infrastructure defined as regionally or nationally significant is given greater weight / priority than other infrastructure when assessing the extent to which adverse effects must be addressed.

54. For example, EIT-INF-P10 directs: "*Decision making on the allocation or use of natural and physical resources must take into account the functional needs and operational needs of nationally significant and regionally significant infrastructure".*

55. The definition of "regionally significant infrastructure" attracted a number of submissions, which were opposed by Kāi Tahu on the basis that a more narrow list, more closely proscribed by reference to lifeline utilities, was a more appropriate approach to the management of the effects of infrastructure.

56. The definition in the Decisions version has been expanded to include:

    (a) established community-scale irrigation and stockwater infrastructure;

    (b) local authority landfills (and associated waste sorting and transfer facilities); and

    (c) ski area infrastructure.

57. Kāi Tahu consider that it is inappropriate to expand the definition of regionally significant infrastructure because:

    (a) inclusion of established community-scale irrigation infrastructure gives priority to development which conflicts with the achievement of freshwater objectives in the PORPS and the requirements in the NPSFM to improve degraded water bodies;

    (b) inclusion of ski area infrastructure would give priority to what is, in essence, a commercial activity which takes place in areas with highly vulnerable ecosystems, an approach which Kāi Tahu considers is not appropriate; and

    (c) in relation to landfills and waste facilities, those activities do not fall within the definition of "infrastructure" in s 2 of the RMA and therefore cannot be regionally significant infrastructure. They are better classified as industrial and trade premises, which are separately defined in s 2 of the RMA.

Infrastructure – effects management framework

58. EIT-INF-P13 is the central policy guiding management of the effects of infrastructure, and other policies cross-refer to it. However there are some inconsistencies in the effects management approach in related policies that are of concern to Kāi Tahu:

(a) EIT-EN-P6(3), regarding the management of the effects of renewable electricity generation activities, refers to the need to consider the degree to which unavoidable adverse effects can be remedied or mitigated adverse effects, or any significant residual effects can be offset or compensated. The use of 'significant' as a threshold is inconsistent with the 'more than minor' threshold used in EIT-INF-P13 and in the effects management hierarchies in the NPSFM and National Policy Statement on Indigenous Biodiversity ("**NPSIB**").

(b) EIT-EN-P9A, which provides for management of effects of electricity distribution infrastructure, does not refer to the effects management framework in EIT-INF-P13, unlike EIT-EN-P16 which provides for the National Grid as nationally significant infrastructure. The only adverse effects that EIT-EN-P9A require to be managed are effects on existing land uses. It is incongruous for distribution infrastructure to have a more flexible approach to effects management than the National Grid.

(c) EIT-INF-P13A identifies that infrastructure in the coastal environment will be managed under the CE provisions rather than EIT-INF-P13. While the CE chapter includes provisions that would manage effects of infrastructure on most of the sensitive areas that are identified in EIT-INF-P13, it does not refer to HCV-WT-P2 for management of effects on wāhi tūpuna. A cross-reference is required to achieve this.

59. Amendments are sought to EIT-EN-P6, EIT-EN-P9A, and EIT-INF-P13A to address these concerns.

Natural hazards – approach to coastal hazards

60. In the Decisions version of the PORPS, the risk assessment matters in HAZ-NH-P1, HAZ-NH-P2 and APP6 do not apply to coastal hazards. The effect of this is that there is no direction in the PORPS as to how the significance of coastal hazard risks will be assessed. This means there is uncertainty, for residents of coastal settlements, as to how the hazard management framework will affect them.

61. This was an area identified through submissions and the evidence which required significant further work. The particular provisions appealed against are HAZ-NH-P1A, HAZ-NH-P1, HAZ-NH-P2 and HAZ-NH-P10 to the extent that they fail to address the methodology for assessment of the significance of coastal hazard risks.

62. Kāi Tahu suggests that this area requires further consideration, and seeks broad relief to give effect to that suggestion.

Wāhi tūpuna – effects of other activities on wāhi tūpuna – HCV-WT-M2 and HAZ-NH-P10

63. Wāhi tūpuna is a defined term under the PORPS, meaning landscapes and places that embody the relationship of mana whenua and their culture and traditions with their ancestral lands, water, sites. wāhi tapu and other taoka. Provisions applying to wāhi tūpuna are, therefore, of significant importance to Kāi Tahu.

64. In the Decisions version of the PORPS, HCV-WT-M2(1) proposed that local authorities should seek to control activities in, or adjacent to, wāhi tūpuna sites. It is perhaps trite that activities which are not adjacent to (in the sense of being adjoining or neighbouring land) wāhi tūpuna will still have effects on landscape and places. These may include activities at some distance which nonetheless have an effect on the relationship of takata whenua with their ancestral lands, water, sites. wāhi tapu and other taoka.

65. Also in the Decisions version, HAZ-CL-P18 addresses the effects of waste treatment and disposal facilities. Kāi Tahu seeks an amendment to ensure that adverse effects of waste treatment and disposal on wāhi tūpuna values are avoided.

Effects on urban expansion on water demand and water quality – UFD-P4

66. UFD-P4 in the Decisions version of the PROPS provides for the expansion of existing urban areas in particular circumstances.

67. Kāi Tahu seeks an amendment to ensure that planning for urban expansion takes into account the implications of increased water supply, wastewater and stormwater demand on water bodies that are degraded. This would be consistent with recognition of the role of

territorial authorities in the integrated management of freshwater in clause 3.5(4) of the NPSFM 3.5(4) and with Policies 6(b) and 7 of the NZCPS.

Relief sought

68. Kāi Tahu seeks:

(a) the relief set out in **Appendix A** to this notice of appeal;

(b) any such further, alternative or consequential amendments required to give effect to this relief.

Attachments

69. The following documents are attached to this notice:

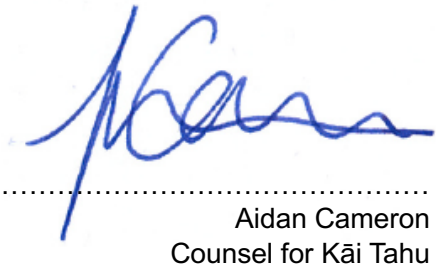
(a) Appendix A as referred to herein.

(b) A copy of the Decision appealed against.

(c) A copy of the Kāi Tahu submissions and further submissions.

(d) A list of relevant names and address of persons who lodged submissions who are to be served with a copy of this notice.

KĀI TAHU by its duly authorised agents:



……

Aidan Cameron
Counsel for Kāi Tahu

Date: 15 May 2024

Address for service:

c/- Lisa MacKenzie
Te Rūnanga o Ngāi Tahu
15 Show Place
PO Box 13 046
CHRISTCHURCH 8042
P: +64 21 387 967
E: ttw@ngaitahu.iwi.nz

To: the Registrar of the Environment Court at Christchurch

And to: Otago Regional Council

And to: The relevant submitters on the provisions appealed against

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

1. You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

2. To become a party to the appeal, you must:

   (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and

   (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

3. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

4. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

5. If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

APPENDIX ONE

Theme	Relief Sought
Rakatirataka	Amend clause 1 of the definition of Māori land as follows: *(1) owned by Te Runanga o Ngāi Tahu or its constituent papatipu rūnaka ~~and to be used for the purpose of:~~* *~~(a) locating papakaika 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 papakaika development~~, …* Amend the definition of papakāika as follows: *means subdivision, use and development by mana whenua of native reserves and 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~~ economic purposes.* Amend MW-P4 as follows: *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, 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.*~~ Amend CE policies to reflect the above approach to use of native reserves and Māori land, and to provide for recognition of rakatirataka in managing the effects of use of the land. Amend UFD-O4 (in the LF-LS section) to include an outcome reflecting the above approach. Amend objectives, policies and methods in the UFD chapter to include outcomes relating to Kāi Tahu aspirations and values for urban development, and to reflect the above approach to use of native reserves and Māori land.
Integrated management	Amend IM-O3 as follows: *Otago's communities provide for their social, economic, and cultural well-being in ways that support or restore environmental integrity, form, functioning, and resilience, so that the life-supporting capacities of air, water, soil, and ecosystems are ~~sustainably managed,~~ safeguarded for future generations.* Delete IM-P1 and replace with the policy recommended in the ORC reply version as follows: *Giving effect to the integrated package of objectives and policies in this RPS requires decision-makers to consider all provisions relevant to an issue or decision and apply them according to the terms in which they are expressed, and if there is a conflict between provisions that cannot be resolved by the application of higher order documents, prioritise:* *(1) the life-supporting capacity and mauri of air, water, soil, and ecosystems, and then* *(2) the health and safety of people and communities, and their ability to provide for their social, economic, and cultural well-being, now and in the future.* Amend IM-P14 as follows:

	When preparing regional plans and district plans, ~~sustainably manage~~ safeguard opportunities for future generations … Amend IM-P6 to ensure adaptive management is only used in appropriate circumstances.
Climate change	Amend IM-P12 as follows: ***IM–P12 – Contravening limits for climate change mitigation ~~and climate change adaptation~~*** *If a proposed activity provides or will provide enduring regionally or nationally significant climate change mitigation ~~or climate change adaptation~~ with commensurate benefits for the well-being of people and communities and the wider environment, decision makers may allow non-compliance with limits set in, or resulting from, any policy or method of this RPS if they are satisfied that:* *(2) the activity is consistent and coordinated with other regional and national climate change mitigation activities,* *(3) adverse effects on the environment are avoided, remedied, or mitigated so that they are minimised to the extent reasonably practicable, and any ~~significant~~ more than minor residual adverse effects are offset, or compensated for, and* *(4) the activity will not impede the achievement of the objectives of this RPS, and* *(5) the activity will not contravene a national policy statement or national environmental standard.* Amend IM-P10 as follows: Identify and implement climate change adaptation and climate change mitigation methods for Otago that: *(1) ~~minimise~~ manage the effects of climate change ~~to~~ on existing activities and the wider environment, …* Amend EIT-INF-P12 by adding a new clause as follows: *Provide for upgrades to existing, and development of new infrastructure, while ensuring that:* *…*

	(1A) it is resilient to the current and future effects of sea level rise and climate change. Amend EIT-INF-P142 by adding a new clause as follows: *When considering proposals to develop or upgrade infrastructure:* … *(1A) require consideration of the current and future effects of sea level rise and climate change; and …*
Coastal water quality	Amend clause (1A) of CE-P3 as follows: *giving priority to restoring coastal water quality where it is considered to have deteriorated to the extent described within CE-P2(2),*
Customary fisheries	Add a new clause to CE-O5 as follows: *avoid adverse environmental and cultural effects as a priority and avoid adverse effects on customary fisheries, including management areas such as mātaitai reserves and taiāpure,*
Aquaculture	Add a new clause to CE-P11 as follows: *whether the aquaculture development sought is being carried out by Kāi Tahu and has been identified as an outcome of settlements under the Māori Commercial Claims Aquaculture Settlement Act 2004,*
Reclamation	Amend CE-P12 as follows: *(1A)(d) the reclamation will provide significant regional or national benefit, and*

	(e) There will be no adverse effects on: *i. the natural and ecological functioning of the coastal environment,* *ii. coastal water quality, and* *iii. customary fisheries, mahika kai areas, wāhi tūpuna or areas of coastal water where mana whenua have a particular interest.* Further relief is sought to clarify the meaning of significant regional or national benefit.
Coastal discharges	Ngāi Tahu seek a policy to ensure the appropriate management of discharges into the coastal environment, ki uta ki tai, consistent with policies LF-FW-P15 and LF-FW-P16.
Infrastructure provision	Amend definition of Regionally significant infrastructure by deleting the following clauses that were added by Panel recommendations: ~~*(8A) established community-scale irrigation and stockwater infrastructure*~~ ~~*(13) landfills and associated solid waste sorting and transfer facilities which are designated by, or are owned or operated by a local authority*~~ ~~*(14) ski area infrastructure*~~ Amend EIT–EN–P6 as follows: *Manage the adverse effects of renewable electricity generation activities by:* *…*

	(3) having regard to the extent and magnitude of adverse effects on the environment and the degree to which unavoidable adverse effects can be remedied or mitigated, or ~~significant~~ more than minor residual adverse effects are offset or compensated for; and… Amend EIT-EN-P9A as follows: *Recognise and provide for electricity distribution infrastructure, by all of the following: …* *(4) ~~minimising~~ managing adverse effects of new and upgraded electricity distribution infrastructure in accordance with EIT-INF-P13 ~~on existing land uses~~, and …* Amend EIT-INF-P13A as follows: *When managing the effects of infrastructure, nationally significant infrastructure and regionally significant infrastructure within the coastal environment:* *(1) the provisions of the CE – Coastal environment chapter apply; and* *(2) in relation to wāhi tūpuna, HCV-WT-P2 applies.*
Natural hazards	Amend the HAZ-NH provisions to provide clear direction as to the assessment of coastal hazard risk.
Wāhi tūpuna	Amend HCV-WT-M2(1) as follows: *control activities in, or ~~adjacent to~~ affecting, wāhi tūpuna sites and areas,* Amend HAZ-CL-P18 by including a new clause as follows: *(X) avoid location of new waste treatment and disposal facilities in or near wāhi tūpuna, …*
Effects of urban expansion on water demand and water quality	Amend UFD-P4 by adding a new clause as follows:

	Expansion of existing urban areas may occur where, at a minimum, the expansion: … *(X) is located and designed to avoid increasing demand on water supply in water-short areas and cumulative impacts of wastewater and stormwater on water bodies and coastal waters …*