IN THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHI

Decision No. [2025] NZEnvC 107

IN THE MATTER	of the Resource Management Act 1991
AND	appeals under clause 14 of the First Schedule of the Act
BETWEEN	DUNEDIN CITY COUNCIL
	(ENV-2024-CHC-25)
	CAIN WHĀNAU
	(ENV-2024-CHC-30)
	TE RŪNANGA O MOERAKI & ORS
	(ENV-2024-CHC-36)
	Appellants
AND	OTAGO REGIONAL COUNCIL
	Respondent

Environment Judge P A Steven – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 3 April 2025

CONSENT ORDER

A: Under s279(1)(b) RMA,[1] the Environment Court, by consent, orders that:

(1) the appeals are allowed subject to the amended provisions marked in Annexure 1, attached to and forming part of this consent order; and

(2) the appeals are otherwise dismissed.

B: Under s285 RMA, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns appeals 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).

[2] Appeals were filed by Cain Whānau, Dunedin City Council (DCC), and 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 ('Kāi Tahu') relating to provisions in the 'MW – Mana whenua' chapter located in Part 1 – Introduction and general themes of the PORPS (MW chapter).

[3] At a high level, the MW chapter includes:

(a) recognition of hapū and iwi;
(b) mana whenua – local authority relationships;
(c) hapū and iwi planning documents; and
(d) involvement and participation with mana whenua.[2]

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1 Resource Management Act 1991.

2 National Planning Standards 2019, pp 30-31 at [28].

[4] The following parties gave notice of an intention to join the appeals pursuant to s274 of the Act:

(a) Aurora Energy Limited, Network Waitaki Limited and PowerNet Limited (EDBs);
(b) Meridian Energy Limited (Meridian Energy);
(c) OceanaGold Limited (OGL);
(d) Otago and Central South Island Fish and Game Council (Fish & Game);
(e) Otago Water Resources Users Group (OWRUG);
(f) Port Otago Limited (POL);
(g) Queenstown Lake District Council (QLDC);
(h) Queenstown Airport Corporation (QAC);
(i) Rayonier Matariki Forests, City Forests Limited, Ernslaw One Limited and Port Blakely NZ Limited (Forestry Appellants);
(j) Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest & Bird); and
(k) Transpower New Zealand Limited (Transpower).

[5] I note that Meridian Energy, Fish & Game and QAC have not signed the joint memorandum requesting this order. On 21 October 2024, Meridian Energy filed a memorandum confirming that it will abide by the outcome of mediation. The court has also subsequently received confirmation from Fish & Game and QAC that they have no interest in these appeals.[3]

[6] I have read and considered the consent memorandum of the parties dated 14 March 2025 which proposes to resolve the appeal. The agreement reached involves:

(a) amendment to the provisions MW-M5 and the introductory text

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3 Email from counsel for Fish & Game dated 21 March 2025; email from counsel for QAC dated 20 March 2025.

under the heading 'Involvement and participation of mana whenua' to more accurately reflect the context in which 'mana whenua' is used in those provisions;

(b) amendment to the introductory text under the heading 'Relationship of Kāi Tahu with their rohe' to give express acknowledgement of the rakatirataka of owners of Māori freehold land over their land and resources;

(c) amendment to Policy MW-P2 requiring regional and district plans to recognise and provide for rights and interests of Māori landowners;

(d) amendment to Policy MW-P4 to:

(i) remove unnecessary restrictions on Kāi Tahu economic use of native reserves and Māori land, the effects of which will be managed by the effects management approaches elsewhere in the PORPS; and

(ii) make clear that "use and development" includes for Kāi Tahu economic wellbeing;

(e) amendment to Method MW-M1 to articulate the type of assessment that is appropriate when identifying and protecting matters of significance to Kāi Tahu under clauses (1) and (3);

(f) amendment to Method MW-M5 to:

(i) improve consistency with MW-P4;

(ii) 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 are provided; and

(iii) to enable redress provided under settlement legislation.

(g) amendment to the definition of "Papakāika" to:

(i) better enable Kāi Tahu to properly provide for their social, economic and cultural wellbeing, which includes commercial and economic purposes; and

(ii) reflect 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; and

(h) amendment to the definition of "Māori Land" to:

(i) 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;

(ii) 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

(iii) resolve the potential concerns raised by DCC and other territorial authorities as to how it might receive and assess that information.

Other relevant matters

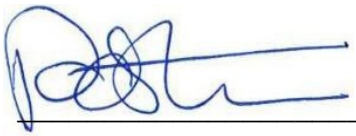
[7] The parties agree that no order for costs is sought.

[8] The parties advise 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 Act including, in particular, Pt 2. The parties consider that the amendments give effect to the relevant parts of the Act, including ss 6(e), 7(a) and 8 RMA.

Outcome

[9] This consent order resolves all appeals as they relate to the MW chapter of the PORPS. Other elements of the DCC, Cain Whānau and Kāi Tahu appeals remain extant.

[10] All parties to the proceeding have executed the memorandum requesting the orders or otherwise consent to the orders being made. On the information provided to the court, I am satisfied that the orders will promote the purpose of the Act so I will make the orders sought.



P A Steven
Environment Judge

Annexure 1

The amendments are as follows:

Amend introductory text:

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*.

Local authorities may also transfer and delegate any one or more of their functions, powers or duties to an iwi authority in accordance with section 33 (transfer) and 34A (delegation) of the RMA, and where this provides an effective service.

Relationship of Kāi Tahu with their rohe

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 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.

Three Kāi Tahu ki Otago papatipu rūnaka have marae based in Otago, Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki and Te Rūnanga o Ōtākou, whilst the fourth, Hokonui Rūnanga, is based in neighbouring Southland. 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. The areas of shared interest originate from the seasonal hunting and gathering economy that was a distinctive feature of the southern Kāi Tahu lifestyle. Seasonal mobility was an important means by which hāpu and whānau maintained customary rights to the resources of the interior and ahi kā.

Amend policies:

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.

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

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*.~~

Amend methods

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.

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, and

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

(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,

(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.

Amend definition of Māori Land

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.

Amend definition of 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 in ~~general~~ accordance with Kāi Tahu tikaka ~~Māori for their cultural and traditional purposes,~~ which may include cultural, social, housing, educational, recreational, environmental or commercial ~~home occupation~~ purposes.