

BEFORE THE HEARINGS PANEL

UNDER the Resource Management Act 1991

IN THE MATTER of the Proposed Te Tai o Poutini
Plan – General District Wide Matters, Part 1,
earthworks, light and temporary activities

STATEMENT OF EVIDENCE OF PHILIPPA ALISON LYNCH

**ON BEHALF OF TE RŪNANGA O NGĀTI WAEWAE, TE RŪNANGA O MAKAAWHIO
AND TE RŪNANGA O NGĀI TAHU (Submitter 620 and Further Submission FS41)**

17 October 2023

INTRODUCTION

1. My name is Philippa Alison Lynch.
2. I hold the qualifications of Master of Applied Science in Environmental Management from Lincoln University and Bachelor of Science from the University of Canterbury. I am an Associate member of the New Zealand Planning Institute. I have completed the Making Good Decisions course.
3. I am employed by Arahura Holding Limited trading as Poutini Environmental as a General Manager for 2 years. Poutini Environmental is the environmental entity solely owned by Te Rūnanga o Ngāti Waewae.
4. I have 20 years' experience in resource management. Before working at Poutini Environmental, I was employed as a Senior Environmental Advisor by Te Rūnanga o Ngāi Tahu. I was an Environmental Advisor with Te Rūnanga o Ngāi Tahu for nine years. Before working at Te Rūnanga o Ngāi Tahu, I was employed by Environment Canterbury as a Senior Consents Planner. I was a Consents Planner at Environment Canterbury for nine years.
5. I have prepared and presented evidence in multiple council hearings on behalf of Te Rūnanga o Ngāi Tahu and Environment Canterbury covering a variety of topics.
6. I was a lead author on the drafting of the Mana Whakahono ā Rohe Iwi Participation Arrangement between Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio, Te Rūnanga o Ngāi Tahu and the West Coast Regional Council which was signed in October 2020 at Arahura Marae.
7. I was the planner appointed by Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (**Poutini Ngāi Tahu**) onto the Te Tai o Poutini Plan (**TTPP**) Technical Advisory Team which provided input and comment on draft TTPP provisions prior to recommendations being made to the TTPP Committee (which approved the version of the TTPP to be notified).

8. I supported Poutini Ngāi Tahu when they undertook their project to identify, map and categorise the Sites and Areas of Significance to Māori (**SASM**) for the proposed TTPP.
9. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and have complied with it in preparing this evidence. I confirm that the issues addressed in this evidence are within my area of expertise and I have not omitted material facts known to me that might alter or detract from my evidence. The issues addressed in this statement of evidence are within my area of expertise except where I state that I am relying on the evidence or advice of another person. The data, information, facts and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinions.
10. I note that that whilst I am employed by Poutini Environmental, I am bound by the Code of Conduct and the professional ethics of the New Zealand Planning Institute, and I am required to be impartial and unbiased in my professional opinions expressed.
11. My evidence primarily addresses the submissions of Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu (collectively submitter 620), together these groups are referred to in my evidence as **Ngāi Tahu** for readability purposes.
12. When referring to provisions within the TTPP relating to Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio, I have used the term of **Poutini Ngāi Tahu** for readability purposes.
13. I contributed to the primary submission on the TTPP on behalf of Ngāi Tahu.
14. The key documents I have referred to in drafting this brief of evidence are:
 - (a) The Resource Management Act 1991 (**RMA**);
 - (b) Ngāi Tahu Claims Settlement Act 1998 (**NTCSA**);

- (c) The Paetae Kotahitanga ki Te Tai Poutini - Partnership Protocol and Mana Whakahono ā Rohe Iwi Participation Agreement 2020 between Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio, Te Rūnanga o Ngāi Tahu and the West Coast Regional Council (**Mana Whakahono ā Rohe**);
- (d) National Policy Statement for Freshwater Management 2020 (**NPSFM**);
- (e) National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (**NESCS**);
- (f) West Coast Regional Policy Statement 2020 (**WCRPS**);
- (g) West Coast Land and Water Plan 2014 (**WCLWP**);
- (h) TTPP Section 42A Officer's Report for Topic 3: General District Wide Matters, prepared by Briar Belgrave (**s. 42A report**);
- (i) TTPP s. 42A Officer's Report for Topic 1: Introduction and General Provisions, prepared by Lois Easton;
- (j) Statement of Planning Evidence for Topic 1: Introduction and General Provisions and Topic 2: Strategic Directions, prepared by Rachael Pull;
- (k) Statement of Cultural Evidence for Topic 1: Introduction and General Provisions and Topic 2: Strategic Directions, prepared by Veronica Baldwin-Smith; and
- (l) Legal submission for Ngāi Tahu for Topic 1: Introduction and General Provisions and Topic 2: Strategic Directions, prepared by Katherine Viskovic.

SCOPE OF EVIDENCE

15. I have been asked by Poutini Ngāi Tahu and Te Rūnanga o Ngāi Tahu to prepare planning evidence for the topic 3 hearings for the TTPP on the General District Wide Matters, Part 1.
16. In my evidence I cover points from the Ngāi Tahu submission and further submission related to the provisions in the General District Wide Matters for:
 - (a) Earthworks – Te Huke Whenua (**EW**)
 - (b) Light – Ngā Rama (**LIGHT**); and
 - (c) Temporary Activities – Ngā Mahi Taupua (**TEMP**).

SUMMARY

17. Ngāi Tahu made a submission in general support of the notified version of the General District Wide Matters provisions of the TTPP for earthworks, light and temporary activities except where specific changes were requested. The submission generally sought to retain the notified version of the provisions, but it also offered refinement of identified provisions to better achieve their identified purposes and the purpose of the RMA, or to provide consistency with the NTCSA.
18. The two most common refinements sought in the Ngāi Tahu submission for matters covered within this hearing, related to ensuring recognition and provision for Poutini Ngāi Tahu values; and ensuring the provisions within the TTPP provided for their settlement rights.
19. The submission sought recognition and provision for Poutini Ngāi Tahu values as a matter of control within controlled activity rules and a matter of discretion for restricted discretionary activity rules. Recognition and provision of Poutini Ngāi Tahu values assists with ensuring the adverse effects of activities are managed to give effect to the purpose and principles of the RMA. This recognition and provision for Poutini Ngāi Tahu values is also consistent with the objectives and policies in the WCRPS (particularly those set out in

Attachment A of this evidence) and the implementation of objectives and policies in the proposed TTPP.

20. The Ngāi Tahu submission also sought consistency with the NTCSA, the Mana Whakahono ā Rohe and the RMA to ensure the provisions within the TTPP provide for their settlement rights particularly around enabling seasonal occupation of Nohoanga entitlements and recognising and enabling their rangatiratanga rights and responsibilities over their taonga species.
21. Overall, I agree with most of the s. 42A report and the proposed recommendations it makes on submissions. However, I have made comment on identified provisions where the hearings panel could consider other factors.

EARTHWORKS – TE HUKE WHENUA

General

Submission no. 415.009 G.E. and C.J. Coates on behalf of Nikau Deer Farm Limited

Further submission on submission 415.009 by Ngāi Tahu:

Referenced as FS41.70-107 in the s. 42A report and FS41.076 in Appendix 2 of the s. 42A report.

22. Nikau Deer Farm Limited submitted seeking that all references to overlays be removed from this chapter until an adequate analysis has been completed (submission 415.009). Ngāi Tahu opposed this submission as they considered overlays and rules were an appropriate way to consider the effects on the values of the overlays on a case-by-case basis. The spatial extent of the overlays, and the specific provisions that relate to those overlays, will be discussed in later hearings.
23. The s. 42A report does not respond specifically to the Nikau Deer Limited submission but advises in paragraph [60] that within the National Planning Standards mandatory direction, provisions relating to Earthworks, Light and Temporary Activities must be located in chapters within the General District Wide Matters section of the plan.

The report also advises that the proposed TTPP has been structured so that all overlay provisions are located within their respective District Wide topic chapters, whilst generic district wide matters are contained within the General District Wide Matters section. I consider this provides an explanation for the submitter as to why overlays must be referenced in the Earthworks chapter.

24. I note that the s. 42A report for the 'Introduction and General Provisions' hearing considered submissions which sought that the overlays/schedules throughout the entire plan be reviewed. I consider this is a similar type of request to the submission point by Nikau Deer Farm Limited which has submitted seeking that all overlays be removed from the General District Wide Matters chapter. In paragraph [195] of the s. 42A report for the 'Introduction and General Provisions' of the report, the Officer supported the spatial extent of overlays and schedules being reviewed in response to specific submissions but considered that a wholesale review of all schedules and overlays was not required.
25. This issue is discussed in the evidence of Ms Pull on behalf of Ngāi Tahu and I legal submissions for Ngāi Tahu for Topics 1 and 2.¹ I agree with Ms Pull, and Ms Viskovic's legal submissions, that there is no justification for a wholesale review of the overlays and support a more measured approach where the spatial extent of specific sites when the relevant overlays are considered later in the hearing process.
26. I support the recommendation in Appendix 2 of the s. 42A report for General District Wide Matters that the submission of Nikau Deer Limited is rejected, and the further submission of Ngāi Tahu is accepted.

¹ Evidence in Chief of Ms Pull dated 2 October 2023, paragraphs [60] – [61]. Legal submissions for Topics 1 and 2 on behalf of Ngāi Tahu, paragraphs [5.10] – [5.12].

Overview

Submission no. 608.083 Grey District Council

Further submission on submission 608.083 by Ngāi Tahu: FS41.022

27. Grey District Council submitted seeking that all references to SASM sites in the General District Wide Matters be removed from the earthworks chapter (submission 608.083). The further submission of Ngāi Tahu opposes this relief as it is important for clarity and plan usability that cross referencing within the TTPP is retained.
28. The s. 42A report for District Wide Matters does not respond explicitly to the Grey District Council submission. However at paragraph [60] it states that the proposed TTPP has been structured so that all overlay provisions are located within their respective District Wide topic chapters, whilst generic district matters are contained within the General District Wide Matters section.
29. Cross referencing, usually in the form of advice notes, is often used as a prompt to remind a plan user to check groups of rules in various sections of the plan which may apply depending on the activity. I consider the inclusion of these advice notes will help TTPP users, particularly given there is such a change in structure between the proposed TTPP and the operative plans of the three district councils on the West Coast/Te Tai o Poutini. In my view the structure of the TTPP is considerably more complex than the present operative district plans. I therefore consider that the inclusion of advice notes will ensure that it is clear to users of the TTPP that they are required to refer to all District Wide Rules as well as the relevant Zone provisions.
30. I support the recommendation in Appendix 2 of the s. 42A report that submission 608.983 is rejected and the further submission of Ngāi Tahu is accepted.

Earthworks – Policy 3 (EW – P3)

Submission no. 620.208 Ngāi Tahu

31. The Ngāi Tahu submission supported the retention of the notified version of policy EW-P3 because the use of an accidental discovery protocol ensures that tikanga is followed if earthworks disturb kōiwi or

taonga. The s. 42A report does not respond specifically to Ngāi Tahu submission 620.208 but the recommendation in Appendix 2 of the s. 42A report is to accept the submission.

32. In paragraph 91, the s. 42A report accepts submission point S441.027 by Silver Fern Farm Limited and submission point S602.169 by the Department of Conservation which seek to amend EW-P3 to amend a typographical error replacing 'to' with 'of'. I agree with these two submission points and the s. 42A report that this amendment will improve the readability of this policy.

33. Remedy Sought:

(a) That Policy EW-P3 be amended as follows:

Require the use of accidental discovery protocols to mitigate the potential risk ~~to~~ of earthworks to archaeological sites and sites and areas of significance to Māori and archaeological sites that are not scheduled in the Plan.

Earthworks – Rule 1 (EW - R1)

Submission no. 619.051 Snodgrass Road submitters

Further submissions on 619.051 by Ngāi Tahu: FS41.078; and

Submission no. 620.209 Ngāi Tahu

34. Snodgrass Road submitters submitted (submission no. 619.051), seeking to exempt earthworks associated with flood hazard protection works from needing to comply with rule EW-R1 condition 4. Ngāi Tahu opposed this submission point (FS41.078).

35. The s. 42A report does not support the relief sought by the Snodgrass Road submitters and notes that EW-R2 provides for natural hazard mitigation structures as a permitted activity.

36. I consider that the relief sought by the Snodgrass Road submitters is inappropriate, as I consider that flood hazard protection is an activity that needs to consider the impacts of any associated diverted stormwater or overland flow. Earthworks have the potential to divert stormwater or overland flow paths, including to divert water off a particular property and onto adjacent properties or the road. To

ensure these potential effects are either avoided or appropriately managed, I consider that Council should have the ability to consider proposed activity through a resource consent process. I therefore support Rule EW-R1 as notified, in particular that a restricted discretionary resource consent is required (in accordance with Rule EW-R8) where the permitted activity standards are not met.

37. For the reasons I have just explained, I support the recommendation in Appendix 2 of the s. 42A report that submission (619.051) is rejected. I support the recommendation that the further submission of Ngāi Tahu (FS41.078) is accepted.
38. The Ngāi Tahu submission (620.209) supports retention of Rule EW-R1 condition 7 as worded in the proposed TTPP because the use of an accidental discovery protocol ensures that tikanga is followed if earthworks disturb kōiwi or taonga. This request is also consistent with Policy EW-P3.
39. The s. 42A report does not respond specifically to Ngāi Tahu submission 620.209, but I note that the recommendation in Appendix 2 of the s. 42A report is to accept the submission point.
40. I support the recommendation in Appendix 2 of the s. 42A report that submission (619.051) is accepted.

Earthworks – Restricted Discretionary Activities (EW - R7 and EW - R8)

Submission no. 620.210 Ngāi Tahu

41. The Ngāi Tahu submission (620.210) seeks amendments to Rule EW-R7 restricted discretionary matter (e) and Rule EW-R8 restricted discretionary matter (h) to include an additional matter of discretion being 'Poutini Ngāi Tahu Values'. The restricted discretionary matters currently include adverse effects on cultural and heritage sites, but this is considered too narrow by Ngāi Tahu as earthworks could impact other Poutini Ngāi Tahu Values such as mahinga kai and mauri.
42. The s. 42A report officer considers that more clarity is needed with respect to what 'Poutini Ngāi Tahu values' are to ensure there is sufficient clarity for plan users when considering a restricted

discretionary application. The s. 42A report officer has invited the submitter to provide further information and evidence to provide this clarity, including proposing further drafting.

43. Through its submission, Ngāi Tahu (submission no. 620.015) has sought that consideration of Poutini Ngāi Tahu values be added as a matter of control or discretion on all controlled or restricted discretionary activities. Poutini Ngāi Tahu values are clearly identified and explained in the Tangata Whenua chapter of the TTPP and are consistent with the WCRPS and the WCLWP². Ms Pull has provided detail on each of the values in Table 3 in her evidence for Topic One: Introduction and General Provisions and Ms Baldwin-Smith refers to these values in her evidence for Topic One: Introduction and General Provisions. I consider the Poutini Ngāi Tahu values are clearly understood and are already explained by the TTPP.
44. There is a distinctive cultural context to the way that Poutini Ngāi Tahu think about and respond to resource management issues within their takiwā. This cultural context reflects the holistic nature of how Poutini Ngāi Tahu considers resource management. The individual values explained within the Tangata Whenua chapter, cannot be considered in isolation of each other. This is not consistent with the Poutini Ngāi Tahu world view. It would consequently be inappropriate to try to list only some of the values identified under the collective term 'Poutini Ngāi Tahu values' given the interconnectedness of these values.
45. I consider recognition of Poutini Ngāi Tahu values, as sought in submission point 620.210, gives effect to sections 6(e)³, 7(a)⁴ and 8⁵ of the RMA, and to the objectives and policies in the WCRPS

² Refer to the Resource Management Issues of Significance to Poutini Ngāi Tahu section in the West Coast Regional Policy Statement and the Poutini Ngāi Tahu / Ngāi Tahu Perspective discussion in the West Coast Land and Water Plan.

³ Recognition and provision for the relationship of Māori and their culture and traditions with their ancestral lands, waters, wāhi tapu and other taonga as a matter of national importance.

⁴ Particular regard for kaitiakitanga.

⁵ Taking into account the principles of the Treaty of Waitangi.

(particularly those set out in **Attachment A**), and it will assist with ensuring that the adverse effects of activities are managed to ensure they meet the purpose of the RMA⁶. I note that effects on 'Poutini Ngai Tahu values' is already referenced as a matter of discretion in multiple other rules within the TTPP e.g., within the infrastructure rules e.g., Rule INF-R21 and the subdivision rules e.g., Rule SUB-R10. Chapter 18.1 of the WCLWP includes rules related to activities on land. The two restricted discretionary activity rules (Rules 13 and 14) both contain the relationship of Ngāi Tahu with their ancestral lands, waters, sites, wāhi tapu and other taonga as a matter of discretion.

46. Specific reference to Poutini Ngāi Tahu values as matters of discretion in rules EW-R7 and EW-R8 will enable a decision maker to be able to consider those values when considering applications for resource consent under these rules. Not including reference to these values will mean that these values cannot be taken into account in decision making on these restricted discretionary activities.

47. Remedy Sought:

(a) That Rule EW-R7, restricted discretionary matter (e) be amended as follows:

Any adverse effects on landscape, amenity, natural features, Poutini Ngāi Tahu values, water quality, cultural and heritage sites, biodiversity and habitat of indigenous flora and fauna, and the quality of the environment.

(b) That Rule EW-R8, restricted discretionary matter (h) be amended as follows:

Any adverse effects on landscape, amenity, natural features, Poutini Ngāi Tahu values, water quality, cultural and heritage sites, biodiversity and habitat of indigenous flora and fauna, and the quality of the environment.

⁶ Refer Objective 2 and Policy 2 of the WCRPS in particular (Chapter 3 Resource Management Issues of Significance to Poutini Ngāi Tahu).

LIGHT – NGĀ RAMA**Light – Restricted Discretionary Activities (LIGHT – R5)**

Submission no. 620.215 Ngāi Tahu

48. As discussed earlier in these submissions, Ngāi Tahu has sought that consideration of Poutini Ngāi Tahu values be added as a matter of control or discretion on all controlled or restricted discretionary activities (submission no. 620.015). Ms Pull has provided planning evidence around submission point 620.015 in her evidence for Topic One: Introduction and General Provisions. I agree with the planning evidence provided by Ms Pull for Topic One: Introduction and General Provisions regarding submission point 620.015.
49. In relation specifically to Rule LIGHT-R5, it is important to consider the effects that lighting could have on some Ngāi Tahu taonga species. The Crown has acknowledged the special association of Ngāi Tahu with taonga species in section 288 of the NTCSA. The list of taonga species is included in Schedule 97 of the NTCSA. I consider it is appropriate for 'Poutini Ngāi Tahu' to be a matter of discretion within Rule LIGHT-R5.
50. I note that Policy LIGHT - P3(d) relates to minimising adverse effects on the significant habitats of light sensitive native fauna and the species themselves, but there is no specific reference to Poutini Ngāi Tahu values within any of the LIGHT policies. While there is no specific Ngāi Tahu submission on LIGHT-P3, the Ngāi Tahu submission sought consistency with the NTCSA, the Mana Whakahono ā Rohe⁷ and provisions within the RMA to reflect settlement provisions. I propose that a consequential amendment be made to Policy LIGHT-P3 to ensure the TTPP complies with the RMA and considers the relevant settlement provisions.

⁷ Section 3.1(b) of Mana Whakahono ā Rohe states that "*The Ngāi Tahu Claims Settlement Act 1998, and Treaty principles as expressed by the Courts and the Waitangi Tribunal ... will be... incorporated in Council planning instruments and referenced in the development of their content.*"

51. The s. 42A report for District Wide Matters does not specifically consider the submission point in relation to Rule LIGHT-R5.

52. Remedies Sought:

(a) That Policy LIGHT-P3, includes an additional matter as follows:

Minimise adverse effects on Poutini Ngāi Tahu values.

(b) That Rule LIGHT-R5, includes the following as a matter of discretion:

Effects on Poutini Ngāi Tahu values.

TEMPORARY ACTIVITIES – NGĀ MAHI TAUPUA

General - Interpretation

Submission no. 620.030 Ngāi Tahu

Further submission on submission 620.030: FS1.320 Grey District Council

53. Ngāi Tahu has made submissions seeking appropriate recognition of Nohoanga Entitlement sites (**Nohoanga sites**) (submission 620.025 and 620.057). To ensure clarity, Ngāi Tahu seeks that the definition of freedom camping be modified to exclude Nohoanga sites (submission 620.030). Freedom camping is referenced in Policy TEMP-P3 and in Rule TEMP-R5.

54. The s. 42A report does not appear to specifically consider Ngāi Tahu submission number 620.030. Within paragraphs 261 and 262 the s. 42A report states:

"...Other submitters seek amendments to or the deletion of the definition of 'freedom camping'.

In my opinion, camping is sufficiently managed as a temporary event under TEMP-P3 such that further amendments are not necessary."

55. Nohoanga sites, as detailed in the Tangata Whenua section of the TTPP, provide a right of seasonal occupation and use for Ngāi Tahu whānui on specified areas of Crown-owned land near waterbodies for fishing and gathering of natural resources. Nohoanga Entitlements are provided for in the NTCSA (sections 255-268). There are

16 Nohoanga sites located on the West Coast/Te Tai o Poutini, and they are listed in Appendix Six of the TTPP.

56. The definition of Freedom Camping in the TTPP includes '*camping, other than in a camping ground*'. As Nohoanga entitlements are not 'for rent, hire, donation or otherwise for reward' as required by the definition of Camping Grounds in the TTPP, I do not consider that seasonal occupation of Nohoanga sites meets the definition of a 'camping ground' under the TTPP. Therefore, without amendment to the definition, camping on Nohoanga sites would fall within the Freedom Camping definition being "camping, other than in a camping ground".
57. The specified areas for camping included in the definition of Freedom Camping, includes areas '*within 200 m of a motor vehicle accessible area or the mean low-water springs line of any sea or harbour, or on or within 200 m of a formed road or a Great Walks track*'. I consider it is possible that a Nohoanga site could fall within one of these specified areas. Again, without an amendment to the definition, Nohoanga sites could be characterised as Freedom Camping in accordance with the TTPP as currently drafted.
58. The right to seasonal camping on Nohoanga sites comes from the Ngāi Tahu Settlement, as confirmed in sections 255-268 of the NTCSA. I therefore consider an amendment to the definition of 'freedom camping' to make it clear that Nohoanga sites are not meant to be unintentionally captured by the TTPP definition of Freedom Camping is required to meet the Councils' obligations to give effect to Part 2 of the RMA, and the direction from Objective 2 and Policies 2 and 3 of the WCRPS (as set out in **Attachment A**).
59. Grey District Council (FS1.320) made a further submission in opposition to the Ngāi Tahu submission point 620.030. The further submission sought that all references to freedom camping be removed from the TTPP and that freedom camping only needs to be regulated by national legislation and local council bylaws. The issue raised by Grey District Council's submission is broader than the specific relief

that Ngāi Tahu seeks to exclude Nohoanga sites from the definition of Freedom Camping.

60. Remedy sought:

- (a) That the definition of 'Freedom Camping' is amended to clarify it does not apply to seasonal occupation by Ngāi Tahu whānui on Nohoanga sites.

General - Overview

Submission no. 608.090 Grey District Council

Further submission on submission 608.090 by Ngāi Tahu: FS41.024

61. Grey District Council submitted seeking that all references to SASM sites in the General District Wide Matters be removed (submission 608.090). Ngāi Tahu opposed this submission as cross referencing within the TTPP is considered to be important for clarity.
62. The s. 42A report advises in paragraph [260] that the TEMP chapter overview lists other relevant plan provisions including SASM. While there are specific rules in relation to temporary events in the SASM Chapter, the s. 42A report notes there are no references to temporary activities. The s. 42A reporting officer therefore considers that it is appropriate to retain the reference within the TEMP chapter.
63. As discussed earlier in my evidence cross referencing, usually in the form of advice notes, is often used as a prompt to remind a plan user to check groups of rules in various sections of the plan which may apply depending on the activity. I consider the inclusion of these advice notes will help TTPP users, particularly given there is such a change in structure between the proposed TTPP and the operative plans of the three district councils on the West Coast/Te Tai o Poutini. In my view the structure of the TTPP is considerably more complex than the present operative district plans. I therefore consider that the inclusion of advice notes will ensure that it is clear to users of the TTPP that they are required to refer to all District Wide Rules as well as the relevant Zone provisions.

64. I support the recommendation in Appendix 2 of the s. 42A report that submission 608.990 is rejected and the further submission of Ngāi Tahu is accepted.

Temporary Activities – Temporary and Military Training Activities and Emergency Management Training (TEMP - R1)

Submission no. 519.020 New Zealand Defence Force

Further submission on submission 519.020: Ngāi Tahu

Referenced as FS41.56 in the s. 42A report and FS41.073 in Appendix 2 of the s. 42A report.

65. The New Zealand Defence Force submission (519.020) seeks amendment to Rule TEMP-R1 standard (4) to add in the clause that these activities cannot occur on SASM identified in Schedule Three unless written approval from the relevant Poutini Ngāi Tahu rūnanga is provided to the relevant District Council at least 10 working days prior to the activities commencing. The New Zealand Defence Force notes this standard wording is utilised in rules in the SASM chapter of the TTPP. Ngāi Tahu supported this submission point.
66. The s. 42A report officer rejects the proposed amendment as she considers it creates a third-party approval and the rule as notified does not preclude engagement and consultation with the relevant Poutini Ngāi Tahu rūnanga.
67. TEMP-R1 is a permitted activity rule. If the proposed activity does not comply with the rule then a resource consent is required. As the s.42A officer has stated, while the rule does not preclude engagement and consultation with the relevant Poutini Ngāi Tahu rūnanga, I note that the rule as currently worded does not negate the need for a resource consent irrespective of the outcome of this engagement or consultation. This rule as currently worded still requires a resource consent to be obtained for the activity even if the relevant rūnanga confirms that they are not opposed to the proposed temporary activity occurring on the SASM. The rule as currently worded would unnecessarily result in time and cost to the party seeking to undertake the activity.

68. The s. 42A officer also rejects the submission because they consider it creates a third-party approval. While it is not appropriate to require a third-party approval as a condition of a resource consent, I consider that it is consistent with the RMA to include such a standard within a permitted activity rule. I consider the relief sought by the New Zealand Defence Force is consistent with the approach provided for under section 87BA of the RMA for boundary activities which can become permitted activities if written approvals are obtained from neighbours on the infringed boundaries. If the consent authority is satisfied that the person proposing to undertake the activity meets the requirements in section 87BA(1)(a) and (1)(b), then the consent authority is required to give a notice under section 87BA(1)(c) to the person proposing to undertake the activity that the activity is a permitted activity.

69. Remedy Sought:

(a) That Rule TEMP-R1, standard (d) be amended as follows:

These do not occur on a Site or Area of Significance to Māori identified in Schedule Three unless written approval from the relevant Poutini Ngāi Tahu rūnanga is provided to the relevant District Council at least 10 working days prior to the activities commencing.

Temporary Activities – Other Temporary Activities and Buildings (TEMP – R6)

Submission no. 620.212 Ngai Tahu

Further submissions on submission 620.212:

FS30.3 Tony Michelle and FS83.17 New Zealand Helicopter Association

70. Ngāi Tahu in submission point 620.212 seeks an amendment to Rule TEMP-R6 to include an additional standard where the temporary activity is a Māori Purpose Activity within a Māori Purpose Zone.

71. The s. 42A report officer considers that this clarification is unnecessary as temporary activities and Māori Purpose Activities are separately

defined terms provided for within the plan. While I agree with the s. 42A report that these terms are defined within the TTPP, I think the point of the Ngāi Tahu submission is to enable temporary activities associated with a Māori Purpose Activity on a Māori Purpose Zone to occur without those activities needing to comply with the limits specified in Rule TEMP-R6 standards (2) and (3).

72. I note that there are no permitted activity rules within the Temporary Activities chapter that have been drafted specifically for temporary activities associated with a 'Māori Purpose Activity' on Māori Purpose Zoned land.
73. Section 6(e) of the RMA requires in relation to managing the use, development and protection of physical resources to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga as a matter of national importance. I note there are specific temporary activity rules for activities such as military training activities, emergency management training, motorsport activities and freedom camping and therefore I do not consider it is unreasonable for Poutini Ngāi Tahu to have specific enabling provisions for temporary activities associated with a 'Māori Purpose Activity' occurring on Māori Purpose Zone land.
74. I consider the amendment sought by Ngāi Tahu is consistent with the direction from Objective 2 and Policies 2 and 3 of the WCRPS (as set out in **Attachment A**). The amendment sought requires the activity to fall within the definitions of both a 'Māori Purpose Activity' and 'Temporary Activity' to be a permitted activity in accordance with this rule.
75. Remedy Sought:
- (a) That a new standard be inserted into Rule TEMP-R6 as follows:
- These are temporary activities associated with a Māori Purpose Activity on Māori Purpose Zoned land.*

Temporary Activities – Temporary Military Training Activities and Emergency Services Training not meeting Permitted Activity Standards (TEMP – R7)

Submission no. 519.022 New Zealand Defence Force

Further submissions on submission 529.022: Ngāi Tahu FS41.52

76. The New Zealand Defence Force submission (519.022) seeks to delete the matters of control from controlled activity rule TEMP-R7. The Ngāi Tahu further submission (FS41.52) opposes this submission.
77. The s. 42A report does not provide any analysis of submission point 519.022. The submission point looks to have been incorrectly summarised in Appendix 2 of the s. 42A report as being in support of the matters of control listed within Rule TEMP-R7.
78. Controlled activity rules must include matters of control to enable the Council to adequately address the likely effects of the activity through conditions. If there are no matters of control retained, then I consider that the rule should be deleted, and the activity will either need to comply with one of the permitted activity rules or it will default to being a restricted discretionary activity under rule TEMP-R8 or TEMP-R9.

I support the further submission of Ngāi Tahu that the matters of control should not be deleted from controlled activity rule TEMP-R7.

Temporary Activities – Controlled Activities and Restrict Discretionary Activities Rules TEMP-R7, TEMP-R8 and TEMP-R9

Submission no. 620.015 Ngāi Tahu

79. Through its submission, Ngāi Tahu (submission no. 620.015) has sought that consideration of Poutini Ngāi Tahu values be added as a matter of control or discretion on all controlled or restricted discretionary activities. Poutini Ngāi Tahu values are clearly identified and explained

in the Tangata Whenua chapter of the TTPP and are consistent with the WCRPS and the WCLWP⁸.

80. I consider recognition of Poutini Ngāi Tahu values, as sought in submission point 620.210, gives effect to sections 6(e)⁹, 7(a)¹⁰ and 8¹¹ of the RMA, and to the objectives and policies in the WCRPS (particularly those set out in **Attachment A**), and it will assist with ensuring that the adverse effects of activities are managed to ensure they meet the purpose of the RMA¹². I note that effects on 'Poutini Ngai Tahu values' is already referenced as a matter of discretion in multiple other rules within the TTPP e.g., within the infrastructure rules e.g., Rule INF-R21 and the subdivision rules e.g., Rule SUB-R10.
81. Chapter 18.1 of the WCLWP includes rules related to activities on land. The controlled activity rule (Rule 12) reserves as a matter of control, the relationship of Ngāi Tahu with their ancestral lands, waters, sites, wāhi tapu and other taonga. The two restricted discretionary activity rules (Rules 13 and 14) both contain the relationship of Ngāi Tahu with their ancestral lands, waters, sites, wāhi tapu and other taonga as a matter of discretion.
82. Specific reference to Poutini Ngāi Tahu values as a matter of control in rule TEMP-R7 and a matter of discretion in rules TEMP-R8 and TEMP-R9 will enable a decision maker to be able to consider those values when considering applications for resource consent under these rules. Not including reference to these values will mean that these values

⁸ Refer to the Resource Management Issues of Significance to Poutini Ngāi Tahu section in the West Coast Regional Policy Statement and the Poutini Ngāi Tahu / Ngāi Tahu Perspective discussion in the West Coast Land and Water Plan.

⁹ Recognition and provision for the relationship of Māori and their culture and traditions with their ancestral lands, waters, wāhi tapu and other taonga as a matter of national importance.

¹⁰ Regard for kaitiakitanga.

¹¹ Taking into account the principles of the Treaty of Waitangi.

¹² Refer Objective 2 and Policy 2 of the WCRPS in particular (Chapter 3 Resource Management Issues of Significance to Poutini Ngāi Tahu).

cannot be taken into account in decision making on these controlled or restricted discretionary activities.

83. Remedy Sought:

- (a) That Rule TEMP-R7 include an additional matter of control as follows:

Effects on Poutini Ngāi Tahu values in the location

- (b) That Rule TEMP-R8 include an additional restricted discretionary matter as follows:

Effects on Poutini Ngāi Tahu values

- (c) That Rule TEMP-R9 include an additional restricted discretionary matter as follows:

Effects on Poutini Ngāi Tahu values

SUMMARY OF RELIEF SOUGHT FOR HEARING TOPIC 3

84. The Ngāi Tahu submissions on General District Wide Matters relating to earthworks, lighting and temporary activities generally support the notified plan and seek minor amendments to provide for the values and future aspirations of Poutini Ngāi Tahu.

85. I consider the following relief is appropriate for the reasons documented earlier in my evidence and as set out in the submission by Ngāi Tahu (i.e., the submission points allocated to topic 3):

Definitions:

- That the definition of 'Freedom Camping' is amended to clarify it does not apply to seasonal occupation by Ngāi Tahu whānui on Nohoanga sites.

Earthworks chapter:

- *That Policy EW-P3 be amended as follows:*

Require the use of accidental discovery protocols to mitigate the potential risk ~~to~~ of earthworks to archaeological sites and sites and areas of significance to Māori and archaeological sites that are not scheduled in the Plan.

- *That Rule EW-R7 restricted discretionary matter (e) be amended as follows:*

Any adverse effects on landscape, amenity, natural features, Poutini Ngāi Tahu values, water quality, cultural and heritage sites, biodiversity and habitat of indigenous flora and fauna, and the quality of the environment.

- *That Rule EW-R8 restricted discretionary matter (h) be amended as follows:*

Any adverse effects on landscape, amenity, natural features, Poutini Ngāi Tahu values, water quality, cultural and heritage sites, biodiversity and habitat of indigenous flora and fauna, and the quality of the environment.

Light chapter:

- *That Policy LIGHT-P3 includes an additional matter as follows:
Minimise adverse effects on Poutini Ngāi Tahu values.*

- *That Rule LIGHT-R5, includes an additional restricted discretionary matter as follows:*

Effects on Poutini Ngāi Tahu values.

Temporary Activities chapter:

- *That Rule TEMP-R1, standard (d) be amended as follows:*

These do not occur on a Site or Area of Significance to Māori identified in Schedule Three unless written approval from the relevant Poutini Ngāi Tahu rūnanga is provided to the relevant District Council at least 10 working days prior to the activities commencing.

- *That new standard (4) is inserted into Rule TEMP-R6 as follows:
These are temporary activities associated with a Māori Purpose Activity on Māori Purpose Zoned land.*

- *That Rule TEMP-R7 include an additional matter of control as follows:
Effects on Poutini Ngāi Tahu values in the location*

- *That Rule TEMP-R8 include an additional restricted discretionary matter as follows:
Effects on Poutini Ngāi Tahu values*

- *That Rule TEMP-R9 include an additional restricted discretionary matter as follows:
Effects on Poutini Ngāi Tahu values*



Philippa Lynch
17 October 2023

Attachment A – Relevant Objectives and Policies from higher order planning documents

New Zealand Coastal Policy Statement 2010

Objective 3: 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 management of the coastal environment by:

- recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;
- promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act;
- incorporating mātauranga Māori into sustainable management practices; and
- recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.

Policy 2: The Treaty of Waitangi, tangata whenua and Māori heritage in taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment:

- (a) recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations;
- (b) involve iwi authorities or hapū on behalf of tangata whenua in the preparation of regional policy statements, and plans, by undertaking effective consultation with tangata whenua; with such consultation to be early, meaningful, and as far as practicable in accordance with tikanga Māori;
- (c) with the consent of tangata whenua and as far as practicable in accordance with tikanga Māori, incorporate mātauranga Māori in regional policy statements, in plans, and in the consideration of applications for resource consents, notices of requirement for designation and private plan changes;
- (d) provide opportunities in appropriate circumstances for Māori involvement in decision making, for example when a consent application or notice of requirement is dealing with cultural localities or issues of cultural significance, and Māori experts, including pūkenga, may have knowledge not otherwise available;

- (e) take into account any relevant iwi resource management plan and any other relevant planning document recognised by the appropriate iwi authority or hapū and lodged with the council, to the extent that its content has a bearing on resource management issues in the region or district; and
 - (i) where appropriate incorporate references to, or material from, iwi resource management plans in regional policy statements and in plans; and
 - (ii) consider providing practical assistance to iwi or hapū who have indicated a wish to develop iwi resource management plans;
- (f) provide for opportunities for tangata whenua to exercise kaitiakitanga over waters, forests, lands, and fisheries in the coastal environment through such measures as:
 - (i) bringing cultural understanding to the monitoring of natural resources;
 - (ii) providing appropriate methods for the management, maintenance and protection of the taonga of tangata whenua;
 - (iii) having regard to regulations, rules or bylaws relating to ensuring sustainability of fisheries resources such as taiāpure, mahinga mātaimai or other non-commercial Māori customary fishing; and
- (g) in consultation and collaboration with tangata whenua, working as far as practicable in accordance with tikanga Māori, and recognising that tangata whenua have the right to choose not to identify places or values of historic, cultural or spiritual significance or special value:
 - (i) recognise the importance of Māori cultural and heritage values through such methods as historic heritage, landscape and cultural impact assessments; and
 - (ii) provide for the identification, assessment, protection and management of areas or sites of significance or special value to Māori, including by historic analysis and archaeological survey and the development of methods such as alert layers and predictive methodologies for identifying areas of high potential for undiscovered Māori heritage, for example coastal pā or fishing villages.

National Policy Statement for Freshwater Management 2020

OBJECTIVE

1. The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:
 - (a) first, the health and well-being of water bodies and freshwater ecosystems
 - (b) second, the health needs of people (such as drinking water)
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

POLICIES

Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.

Policy 2: Tangata whenua are actively involved in freshwater management (including decision making processes), and Māori freshwater values are identified and provided for.

National Policy Statement on Urban Development 2020

Objective 5: Planning decisions relating to urban environments, and FDSs, take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Policy 9: Local authorities, in taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in relation to urban environments, must:

- (a) involve hapū and iwi in the preparation of RMA planning documents and any FDSs by undertaking effective consultation that is early, meaningful and, as far as practicable, in accordance with tikanga Māori; and
- (b) when preparing RMA planning documents and FDSs, take into account the values and aspirations of hapū and iwi for urban development; and
- (c) provide opportunities in appropriate circumstances for Māori involvement in decision-making on resource consents, designations, heritage orders, and water conservation orders, including in relation to sites of significance to Māori and issues of cultural significance; and
- (d) operate in a way that is consistent with iwi participation legislation.

National Policy Statement for Indigenous Biodiversity 2023

2.1 Objective

1. The objective of this National Policy Statement is:

- (a) to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and
- (b) to achieve this:
 - (i) through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and
 - (ii) by recognising people and communities, including landowners, as stewards of indigenous biodiversity; and
 - (iii) by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and
 - (iv) while providing for the social, economic, and cultural wellbeing of people and communities now and in the future.

Policy 2: Tangata whenua exercise kaitiakitanga for indigenous biodiversity in their rohe, including through:

- (a) managing indigenous biodiversity on their land; and
- (b) identifying and protecting indigenous species, populations and ecosystems that are taonga; and
- (c) actively participating in other decision-making about indigenous biodiversity.

WCRPS**Objectives and Policies from Chapter 3**

OBJECTIVES

1. To take into account the principles of the Treaty of Waitangi in the exercise of functions and powers under the RMA.
2. Recognise and provide for the relationship of Poutini Ngāi Tahu and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga within the West Coast Region.

POLICIES

1. Acting cooperatively and in good faith, the Regional and District Councils will continue to provide opportunities for active involvement of tangata whenua in resource management processes under the RMA.
2. In consultation with Poutini Ngāi Tahu, provide for the protection of ancestral land, wāhi tapu, water, sites, and other taonga from the adverse effects of activities, in a manner which is consistent with the purpose of the RMA.
3. The special relationship that Poutini Ngāi Tahu have with te taiao (the environment), and their economic, cultural, and spiritual values, including their role as kaitiaki, will be given particular consideration in resource management decisions and practices.
4. The aspirations of Poutini Ngāi Tahu concerning the development of papakāinga housing on Poutini Ngāi Tahu land will be recognised and supported.

Objectives and Policies from Chapter 8

OBJECTIVES

Objective 2. Provide for a range of land and water uses to enable the economic, social and cultural wellbeing of West Coast communities while maintaining or improving water quality and aquatic ecosystems.

Objective 5. Achieve the integrated management of water and the subdivision, use and development of land within catchments, recognising the interconnections between land, fresh water, and coastal water, including by managing adverse effects of land and water use on coastal water quality.

POLICIES

Policy 2. To give effect to Objective 2 of Chapter 3, the adverse effects of subdivision, use and development on Poutini Ngāi Tahu cultural values will be avoided, remedied or mitigated taking into account the following matters:

- (a) A preference by Poutini Ngāi Tahu for discharges to land over water where practicable;
- (b) The value of riparian margin vegetation for water quality and aquatic ecosystems; and
- (c) Effects on the sustainability of mahinga kai, and protection of taonga areas.

METHODS

Method 3. Regional and district councils, in their plan development and resource consent processes, will consult with Poutini Ngāi Tahu about avoiding, remedying or mitigating adverse effects originating from land and freshwater use on their cultural values associated with fresh and coastal water, including by identifying significant mahinga kai and other taonga areas.