

Before the Independent Hearings Commissioners

Mai I Kā Kaikōmihana Motuhake

Under the Resource Management Act 1991 (**RMA**)

In the matter of the hearing of the submissions and further submissions on the Proposed Te Tai o Poutini Plan:

Topic 12: Sites and Areas of Significance to Māori - Ngā Wāhi
Tāpua ki te Māori

**LEGAL SUBMISSIONS ON BEHALF OF TE RŪNANGA O NGĀTI WAEWAE, TE
RŪNANGA O MAKAAWHIO, AND TE RŪNANGA O NGĀI TAHU
(Submitter 620 and Further Submitter 41)**

Topic 12: Sites and Areas of Significance to Māori

16 April 2024

**SIMPSON
GRIERSON**

Sarah Scott / Katherine Viskovic

T: +64 3 968 4018

sarah.scott@simpsongrierson.com

katherine.viskovic@simpsongrierson.com

PO Box 874 Christchurch

1. INTRODUCTION

- 1.1** These legal submissions are filed on behalf of Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio, and Te Rūnanga o Ngāi Tahu (together **Ngāi Tahu**), in relation to the Sites and Areas of Significance to Māori (**SASM**) topic in the Proposed Te Tai o Poutini Plan (**TTPP**). Ngāi Tahu filed a submission (number 620) and further submission (number FS 41) on the TTPP.
- 1.2** Poutini Ngāi Tahu, as mana whenua, have a unique and abiding interest in the sustainable management of te taiao – the environment – within the West Coast/Te Tai o Poutini region. As Mr Madgwick describes, the cultural redress in the Ngāi Tahu settlement included confirmation of the ability for Ngāi Tahu to continue to express their traditional kaitiaki relationship with the environment within their takiwā. To Poutini Ngāi Tahu, kaitiakitanga entails an active exercise of rights and responsibilities in a manner beneficial to the resource and the environment.
- 1.3** The ‘kaitiaki’ responsibility is inherited from tūpuna/ancestors. Kaitiakitanga is intergenerational, and in this context, it can be briefly summed up as having the responsibility to care and look after our environment as handed to us by our ancestors. Kaitiakitanga is not a passive custodianship, and Poutini Ngāi Tahu have a responsibility to be active in their kaitiaki role in the day-to-day management of natural resources.
- 1.4** The identification of SASM in the TTPP assists Poutini Ngāi Tahu in exercising their responsibilities as kaitiaki. The identification of SASM and the inclusion of SASM rules in the TTPP also enables council staff and consent applicants to be aware of activities that may have an impact on Poutini Ngāi Tahu values, such as mahinga kai.

1.5 I wish to emphasise the ‘targeted’ regulatory response that the TTPP takes to listed SASM. It is not a ‘one-fits-all’ framework. Rather, and as Ms Pull emphasises in her evidence:¹

- (a) The SASM provisions were identified on a site-specific basis, as opposed to general rules applying wider than necessary and /or for more sites than required;
- (b) This approach is a strength of these rules as it provides for the relationship of Poutini Ngāi Tahu with each site, while enabling appropriate subdivision, use and development; and
- (c) The assessment of the values of each of the sites and the potential threats to those values has been considered through the plan development stage, rather than at the resource consent stage, resulting in more clarity to landowners, applicants and councils.

1.6 As Ms Pull concludes on this point:² *I consider that the ‘targeted’ approach taken in the SASM provisions has been enabling of subdivision, use and development where it is appropriate for each individual SASM site. This approach differs from the approach I have seen taken in other district planning frameworks where resource consent is required due to the prominent feature within a SASM site creating a standardised approach to rule application.*

1.7 These submissions support the relief sought in the evidence of Ms Pull and endorse the cultural evidence provided by Mr Madgwick. At the outset, we emphasise there is a high level of agreement between Poutini Ngāi Tahu and the section 42A officer Ms Easton.

1.8 These submissions address the following matters:

- (a) Statutory requirement for identification of SASM;
- (b) Written approval / certification;
- (c) Site specific amendments sought by submitters;

1 At paragraphs 33-34.

2 At paragraph 35.

- (d) Silent files;
- (e) Consultation obligations;
- (f) SASM are just one part of the TTPP's recognition of Poutini Ngāi Tahu values; and
- (g) Conclusion.

2. STATUTORY REQUIREMENT FOR IDENTIFICATION OF SASM

2.1 Ngāi Tahu lodged a submission³ and further submission⁴ on the TTPP which sets out the background and statutory framework for their interest in the TTPP. This was further expanded on in the legal submissions provided on behalf of Ngāi Tahu in Hearing Topic 1⁵ which are also attached to these submissions as **Appendix A**.

2.2 While this is not the first opportunity for Ngāi Tahu to address you as Commissioners on your task in making recommendations on the TTPP, we wish to emphasise some key points by way of a high level summary and to provide context for this hearing topic.

2.3 Through the Te Rūnanga o Ngāi Tahu Act 1996 (**TRoNT Act**), Ngāi Tahu is the statutorily recognised representative tribal body of Ngāi Tahu whānui⁶ comprising over 80,000 registered iwi Members. The Poutini Ngāi Tahu takiwā comprises the entire West Coast/Te Tai o Poutini region. The contemporary relationship between the Crown and Ngāi Tahu is defined by three core documents; Te Tiriti o Waitangi (**the Treaty**), the Ngāi Tahu Deed of Settlement 1997 (**Deed of Settlement**) and the Ngāi Tahu Claims Settlement Act 1998 (**Settlement Act**). The Deed of Settlement and the Settlement Act confirmed the rangatiratanga of Ngāi Tahu and their relationship with the natural environment and whenua within the takiwā.

3 Submission 620, dated 11 November 2022.

4 Further submission FS 41, dated 13 July 2023.

5 Dated 16 October 2023.

6 Te Rūnanga o Ngāi Tahu Act 1996, s 15.

2.4 As Ngāi Tahu holds rangatiratanga over its takiwā, it has a responsibility to ensure the sustainable use and management of natural resources and the environment on the West Coast. As kaitiaki of its takiwā Poutini Ngāi Tahu is the guardian of the West Coast / Te Tai o Poutini. This requires the active exercise of rights and responsibilities in a manner beneficial to the resource and the environment. Mr Madgwick’s evidence provides further explanation of these terms.⁷

2.5 Poutini Ngāi Tahu has provided extensive expert assistance, at the request of the TTPP Committee, with the identification, mapping and categorisation of the SASM sites in the TTPP. This is discussed further in the evidence of Mr Madgwick at paragraphs [65] - [69] and [76] – [84].

Support for TTPP approach to SASM

2.6 As discussed by Mr Madgwick, and Ms Pull, Ngāi Tahu supports the proposed approach to recognition and protection of SASM through the TTPP (subject to some minor amendments as discussed in their evidence). This proposed approach, particularly the identification and mapping of sites was undertaken by Poutini Ngāi Tahu at the request of the TTPP Committee. As previously stated, as mana whenua of the West Coast/Te Tai o Poutini region, and holding rangatiratanga, Poutini Ngāi Tahu are kaitiaki of the West Coast/Te Tai o Poutini environment. Mr Madgwick explains this at paragraphs [50] – [59] of his evidence. These roles qualify Poutini Ngāi Tahu to identify the importance of the SASM provisions.

2.7 Furthermore, for the reasons set out below, the proposed approach is required to ensure that the TTPP meets the requirements of the Resource Management Act 1991 (**RMA**).

7 Evidence of Mr Madgwick paragraphs 31 – 60.

Part 2 RMA

2.8 Further to our submissions provided in hearing Topic 1,⁸ the identification of SASM in the TTPP is a tool / mechanism to fulfil the Councils' obligations under the RMA. In achieving the purpose of the RMA, to promote the sustainable management of natural and physical resources,⁹ and in exercising the Councils' functions, including preparing a district plan, the Councils must (relevantly):

recognise and provide for:¹⁰

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:
- (g) the protection of protected customary rights:
- ...

have particular regard to:¹¹

- (a) kaitiakitanga:
- (aa) the ethic of stewardship:
- ...
- (c) the maintenance and enhancement of amenity values:

8 Dated 16 October 2023.

9 RMA, s 5(1).

10 RMA, s 6.

11 RMA, s 7.

...

- (f) maintenance and enhancement of the quality of the environment:

take into account the principles of the Treaty of Waitangi.¹²

2.9 All of the above matters are considered to be of relevance to the identification and protection of SASM however we wish to emphasise that section 6(f) requires the Councils to protect historic heritage from inappropriate subdivision, use and development. With the definition of historic heritage in section 2 of the RMA expressly including sites of significance to Māori, identification and protection of SASM clearly fits within 6(f). In our submission this places a clear obligation on the Councils to identify and appropriately protect SASM sites.

2.10 However, that is not the start nor end of the Council's relevant statutory considerations. All of the following are relevant to SASM, as are the RMA sections set out in paragraphs 16 – 26 of Ms Pull's evidence, but I wish to emphasise:

- (a) Section 6(e) is not concerned with ancestral land, water, wāhi tapu and taonga in themselves. It is concerned with the *relationship* of Māori and their culture and traditions with the identified matters. We refer to the evidence of Mr Madgwick that provides an overview of this relationship, and we highlight that these relationships generate obligations, such as those that coalesce around the notion of kaitiakitanga. The SASM chapter provisions are a method which recognise and provide for the contemporary relationship between Poutini Ngāi Tahu and the natural and spiritual world. As Poutini Ngāi Tahu values extend beyond SASM boundaries, the identification and protection of SASM is not the only way in which the TTPP gives effect to section 6(e) – as has been addressed in various other hearings on the TTPP and further below in Section 7 of these legal submissions.

12 RMA, s 8.

- (b) Section 7(a) expressly recognises the role of kaitiakitanga within the RMA framework. The SASM chapter provisions acknowledge the Poutini Ngāi Tahu value of kaitiakitanga for the sites identified in the overlay.
- (c) Section 8 requires the Councils to take the principles of Te Tiriti into account. Ms Pull gives evidence on these principles. This requirement reinforces those considerations addressed in sections 6 and 7 of the RMA.

2.11 As set out in *Environmental Protection Society Inc v Tauranga City Council* [2021] 3 NZLR 882 (*Transpower*) the implications of those part 2 provisions have been recognised in case law. In that case the High Court referred to the comments made in the Judicial Committee of the Privy Council in *McGuire v Hastings District Council*, by Lord Cooke who described Part 2 of the RMA as “strong directions, to be borne in mind at every stage of the planning process”.

2.12 The Privy Council in *McGuire* also commented that all authorities making decisions under the RMA are “bound by certain requirements, and these include particular sensitivity to Maori issues.”¹³ The Privy Council found further (relevant to the issues in that case, which related to a proposed road through Māori Land) that:¹⁴

By section 8 the principles of the Treaty of Waitangi guaranteed Maori the full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties which they desired to retain. While, as already mentioned, this cannot exclude compulsory acquisition (with proper compensation) for necessary public purposes, it and the other statutory provisions quoted do mean that special regard to Maori interests and values is required in such policy decisions as determining the routes of roads.

¹³ *McGuire v Hastings District Council* [2000] UKPC 43, [2002] 2 NZLR 577 at [21]. Recently cited in *Environmental Protection Society Inc v Tauranga City Council* [2021] 3 NZLR 882.

¹⁴ At [21].

2.13 The identification and protection of SASM is a method in the TTPP to recognise and protect sites of significant importance to Poutini Ngāi Tahu, this is a requirement to meet the obligations as set out in Part 2.

Higher order planning documents

2.14 Further matters that are to be considered through the preparation, change and content of the TTPP are set out in sections 74 and 75 of the RMA. In particular section 75(3) requires that the TTPP must give effect to higher order planning documents. These documents are discussed in the section 42A report and in Ms Pull's evidence.

2.15 However, we wish to highlight that the National Planning Standards¹⁵ specifically provides for the identification of 'Sites and areas of significance to Māori' in the district wide standards. While SASM is a 'western' planning construct that does not necessarily fit easily with the Ngāi Tahu Te Ao Māori view, it does support the approach taken to the identification and protection of SASM as proposed in the TTPP.

Meaning and importance of SASM

2.16 The Overview in the SASM Chapter¹⁶ identifies SASM as including cultural landscapes, wāhi taonga, mahinga kai, wāhi tapu, and pounamu and aotea Management Areas. As set out in the evidence of Mr Madgwick, these may include burial caves and urupā/cemeteries, battle sites, kāinga/villages and pā sites, marae, cultivation areas, current and former māori reserves, tāwhito/trails, significant maunga/mountains, nohoanga campsites, important mahinga kai areas, and where ancestors are embedded in the landscape.¹⁷

2.17 All SASM were cross referenced against sources such as manuscripts, published books, maps, historical land surveys and reports from the

15 Dated November 2019.

16 Noting that the section 42A report does not propose amendments to that text.

17 At paragraph 61.

Commissioners of Native Reserves, evidence prepared for the Ngāi Tahu Settlement Claim, oral histories and recorded archaeological sites.¹⁸

- 2.18** The SASM could be associated with creation stories, particular events or ceremonies or they may be where valued resources and precious taonga are located.¹⁹ The SASM are an important part of Ngāi Tahu history which reinforces their tribal identity, provides continuity between generations, and documents the events which shaped the environment of Te Tai o Poutini/the West Coast region and Poutini Ngāi Tahu as a people.²⁰
- 2.19** The information relied on to identify SASM was complete and accurate, including the approach taken to mapping. As set out earlier in these submissions and explained by Mr Madgwick in his evidence, Poutini Ngāi Tahu was engaged by the TTPP to complete this work including mapping. The work undertaken is explained by Mr Madgwick at paragraphs [65] - [69] and [76] – [84], he has also provided information regarding specific sites that are the subject of submissions at Attachment 1.

SASM as a mechanism to achieve the purpose and obligations under the RMA

- 2.20** In this case, identifying SASM in the TTPP, assists Poutini Ngāi Tahu in exercising their role as kaitiaki. Additionally, the mapped identification of SASM and associated SASM provisions in the TTPP provides a mechanism for the Councils to recognise and provide for, have particular regard to, or take into account the various nationally important matters, other matters, Treaty principles, and relevant iwi documents. The proposed approach in relation to SASM is a key mechanism that achieves this for Te Tai o Poutini/West Coast region.
- 2.21** Therefore, the accuracy of the mapped identification of SASM, and the appropriateness of associated provisions is of vital importance in the effective implementation of the RMA. Ngāi Tahu is concerned with ensuring this, and

18 Evidence of Mr Madgwick, paragraph 78.

19 Evidence of Mr Madgwick, paragraph 79.

20 Evidence of Mr Madgwick, paragraph 76.

therefore, while generally supportive of the TTPP, Ngāi Tahu seeks amendments and additions to the TTPP where it considers necessary.

Submissions seeking removal of SASMs

2.22 In our submission the relief sought by some submitters,²¹ to remove the identification of all SASMs from the TTPP, is not an outcome available to the Panel. To do so would be contrary to the requirements set out above.

2.23 The High Court in considering cultural effects in relation to a proposal by Transpower to realign an existing electricity transmission line, considered the cultural effects on Ngāti Hē (a sub-tribe directly affected by the proposal). In that case the High Court noted that the Environment Court was entitled to, and must, assess the credibility and reliability of the evidence for Ngāti Hē. But when the considered, consistent, and genuine view of mana whenua is that the proposal would have a significant and adverse impact on an area of cultural significance to them and on Māori values of outstanding natural features and landscapes, it was not open to the Court to decide it would not. The Ngāti Hē view was determinative of those findings.²²

2.24 Not upholding the views of Ngāti Hē was found to be inconsistent with their rangatiratanga which the Court was required to take into account by section 8 of the RMA, and was inconsistent with section 6(e) of the RMA.²³

2.25 This position is further supported by *SKP Incorporated v Auckland Council* (cited in the *Transpower* case) where the High Court stated that that:²⁴

... persons who hold mana whenua are best placed to identify impacts of any proposal on the physical and cultural environment valued by them,

²¹ For example, Grey District Council (submitter S608 and further submitter FS1).

²² *Environmental Protection Society Inc v Tauranga City Council* [2021] 3 NZLR 882 at [65].

²³ *Environmental Protection Society Inc v Tauranga City Council* [2021] 3 NZLR 882 at [66].

²⁴ *SKP Incorporated v Auckland Council* [2018] NZEnvC 81 at [157]. On appeal, Gault J considered the general statement of position in support of the proposal by the party taken to represent mana whenua “resolved any cultural effects issue”. (He accepted that finer grained evidence would be required in an application for re-hearing where two entities were claiming mana whenua with competing evidence on cultural effects): *SKP Inc v Auckland Council* [2021] 2 NZLR 94 at [57].

and making submissions about provisions of the Act and findings in relevant case law on these matters.

2.26 Although those cases were determined in respect of applications for consents / notices of requirement for designations, in our submission the principle is relevant for planning matters as well.

2.27 The significance of SASM is therefore submitted to be individual to Ngāi Tahu, and based on the above precedent there is no equivalent way to challenge this as there is to challenge other types of evidence. Therefore, if the Panel were to remove any SASMs, or amend the level of protection they are given through the TTPP, this would need to be supported by Ngāi Tahu.

3. WRITTEN APPROVAL / CERTIFICATION

3.1 Ngāi Tahu has been provided with advice from Wynn Williams dated 23 November 2023 (**WW advice**) which considered the appropriateness of amending rule TEMP-R1, to include a third party written approval requirement for a temporary activity to be permitted on a SASM site. The WW advice notes that the written approval approach was proposed by Ngāi Tahu (in the context of the temporary activities chapter). That is not correct.

3.2 By way of clarification, this was not an approach that was proposed by Ngāi Tahu. Rather it supported a submission point from the New Zealand Defence Force (**NZDF**), who had taken guidance from the fact that the notified TTPP already included the written approval method (including in the SASM chapter). Ngāi Tahu supported NZDF's relief as it considered that this was a pragmatic approach to enable where appropriate, certain temporary activities, within a SASM, without resource consent. Furthermore, this approach aligned with the approach taken to permitted activities in other notified TTPP provisions.²⁵

²⁵ The TTPP also includes written approval as a permitted activity standard in a number of other TTPP rules including Rules EW-R1, NOSZ-R1, ENG-R7, OSZ-R1.

3.3 We address the WW advice in the context of the SASM hearing as the notified version of the SASM rules, which Ngāi Tahu supported by way of a submission, included the requirement to obtain written approval from the Poutini Ngāi Tahu rūnanga as a permitted activity standard in Rules SASM-R2 – R7.

Vires of a written approval requirement in a permitted activity standards

3.4 Ngāi Tahu considers that including a written approval requirement as a permitted activity standard is a pragmatic (and available) approach to ensure that consents do not unnecessarily need to be obtained where there are no cultural effects on SASM. It is difficult to draft rules that can fully capture acceptable activities due to the different sensitivities of SASM sites and the different reason for the sites having cultural importance, and the varying scale, duration and intensity of proposed activities. It is therefore considered appropriate for Poutini Ngāi Tahu to consider proposed activities before they occur on SASM sites.

3.5 The section 42A report has offered an alternative approach by requiring that the relevant Poutini Ngāi Tahu rūnanga certify that the proposed activity will not have adverse effects on the cultural values of the SASM site. While we understand that this approach has been proposed as an alternative to written approval in light of the WW advice, in our submission the certification approach has not been fully developed, nor has its lawfulness been fully assessed. We acknowledge that the section 42A reporting officer was looking for a proposed solution to ensure permitted activity status can remain (and that is applauded), however for a certification requirement to properly work there needs to be criteria in the TTPP that any request for certification can be considered against. To ensure that certification occurs consistently the criteria should be set out in the TTPP, rather than being left to be developed (and potentially amended) at a later date.²⁶

²⁶ *Re Otago Regional Council* [2022] NZEnvC 101, at [233] – [234].

3.6 In our submission the inclusion of written approval as a standard for a permitted activity rule is not precluded. While there is clear judicial direction that it is *ultra vires* for a condition on a resource consent to rely on approval from a third party, there is no clear authority in the plan making context, where the approval is required to take advantage of a more permissive activity status. On the contrary, we have identified an Environment Court decision that has endorsed this approach, and the RMA in 2017 was also amended to explicitly allow this approach to be followed.

3.7 The Environment Court in *Population and Public Health Unit of the Northland District Health Board v Northland Regional Council* [2021] NZEnvC 96 confirmed a permitted activity rule that included the option that a notification agreement be developed and signed by the occupier of the property on which agrichemicals are sprayed. This rule requires that the notification be reviewed and re-signed annually.

3.8 We have also found several examples of operative plan provisions where an activity is permitted subject to written approval from a third party, for example:

- (a) Napier City ODP includes Rule 53.10 in the Network Utility Operations chapter. This rule allows for crop structures as a permitted activity, subject to Transpower giving written approval where the structure is proposed to be located within 12 metres of a National Grid Tower (in accordance with clause 2.4.1 of NZECP31:2001).²⁷
- (b) Hamilton City ODP includes Rule 12.4.1 in the Te Rapa North Industrial Zone. This rule provides that a setback can be reduced with the written approval of the relevant roading authority which is required to have regard to particular identified factors.²⁸

3.9 The WW advice relies on the *Twisted World Limited v Wellington City Council* EnvC Wellington W024/2002 case. The question there was whether the

²⁷ <https://napier.isoplan.co.nz/eplan/rules/0/72/0/5011/0/42>

²⁸ <https://hamilton.isoplan.co.nz/eplan/rules/0/53/0/2636/0/79>

Council could hold a discretion in determining whether the activity was permitted or not.

3.10 That is not what is drafted in the notified version of the relevant TTPP rules. Instead, the Council's role would be limited to having to receipt the written approval prior to the activity commencing.

3.11 Wynn Williams has also not acknowledged that the RMA was amended in 2017 to specifically allow for deemed permitted boundary activities. Despite breaching a district plan setback standard, section 87BA of the RMA allows a person to avoid the need to obtain resource consent by getting written approval from the owner(s) of the neighbouring properties where the infringement(s) occurs. Therefore since 2017, the RMA has contemplated this form of 'written approval rule', with no criteria in the plan being needed as to when written approval may or may not be given.

4. SITE SPECIFIC AMENDMENTS SOUGHT BY SUBMITTERS

4.1 A number of submitters have sought the deletion of particular SASM sites from the TTPP, or have sought amendments to the SASM boundaries.

4.2 Mr Madgwick has comprehensively addressed those submissions in his evidence. We refer you to the table included in his Attachment 1.

5. SILENT FILES

5.1 The term 'silent file' is used to describe sites of significance to Māori where there are particular sensitivities regarding either the location or cultural value of the site that iwi are not comfortable sharing in the public arena. Examples of silent file sites are urupā (burial grounds) and wāhi tapu (sacred sites) that are documented and/or known only to Māori.

5.2 Several SASM are recorded in the TTPP as 'silent files' including five that have been submitted on (SASM 41, 42, 122, 135 and 199). All of these SASM are silent files given the sensitive nature of the site. If the Panel requires further

information on the site beyond what is set out in Mr Madgwick's attachment, then this information could be provided in a public excluded hearing session.²⁹

5.3 Section 42 of the RMA enables a local authority (which includes the TTPP hearing panel)³⁰ to protect sensitive information where it is satisfied that it is necessary to avoid serious offence to tikanga Māori or to avoid the disclosure of the location of wāhi tapu, and the importance of this outweighs the public interest in making the information available. In accordance with section 42(2) the Panel may make an order for the purposes of excluding the public from part of a hearing.

5.4 In our submission Ngāi Tahu have a right to not disclose details of cultural, spiritual and heritage values important to them. Due to the Ngāi Tahu view that the information relating to the listed SASMs are sensitive and should not be publicly disclosed, if the Panel seeks further information, counsel submits that it would be appropriate to make an order to do so in a public excluded hearing under section 42 of the RMA.

6. CONSULTATION OBLIGATIONS

6.1 Ngāi Tahu has reviewed the evidence of Mr Michael McEnaney filed on behalf of the Grey District Council (dated 10 April 2024). In his evidence Mr McEnaney raises concerns with the approach taken to consultation in respect of SASM sites.

6.2 The consultation requirements of the RMA, as they apply to plan change processes, are set out in clauses 3 to 4A of Schedule 1. Clause 3 is particularly relevant, as it sets out certain mandatory consultation requirements,³¹ and provides the power to consult with any other person.³²

29 Evidence of Mr Madgwick dated 5 April 2024, Attachment 1: Responses to submissions on specific SASM.

30 Local authority is defined in section 42 as including a person given authority to conduct hearings under section 34A of the RMA.

31 Schedule 1, clause 3(1).

32 Schedule 1, clause 3(2).

6.3 The consultation obligations do not require a council to consult with landowners affected by the mapping of overlays over their property prior to the notification of a proposed plan. Nor is there a requirement to make a draft of the plan available to the public prior to notification. This point was made in the section 42A report at paragraph [58], Ms Easton then also explained that:

In addition all landowners affected by SASMs were specifically notified by letter at the time of notification of the Plan. This resulted in a large number of enquiries and subsequent submissions and also the two minor amendments to the Plan that were made to clarify the extent of the SASMs and the associated rules.

6.4 The Schedule 1 plan making process gives broad opportunities for public participation in the preparation of a district plan. In particular, landowners have been able to make submissions in relation to SASM sites notified on their land (and on any other matter in the notified TTPP), and to participate in this hearings process. It was also open to any interested parties to seek to engage with Poutini Ngāi Tahu after the notification of the TTPP regarding the identification of SASM sites.

6.5 Furthermore, through its membership on the TTPP Committee and involvement with the plan making process more generally, Grey District Council will have had the opportunity to raise any concerns with the approach taken to identification of SASM, and consultation with landowners before the plan was notified.

6.6 In our submission, Mr McEnaney's evidence should be given little if any weight. The statutory requirements in relation to consultation have been complied with. Further the proposed TTPP is Grey District Council's plan. The council has had a seat on the TTPP Committee. It has been involved in the decision to notify the plan. It is difficult to understand how the council is now questioning the process it took to notify its own plan.

7. SASM ARE JUST ONE PART OF THE TTPP'S RECOGNITION OF POUTINI NGĀI TAHU VALUES

7.1 Before concluding, we wish to emphasise that to Poutini Ngāi Tahu, the approach to identifying and protecting SASM in the TTPP is just one way for the Council to achieve its obligations under the RMA.

7.2 Provided the SASM framework is endorsed, as recommended by Ms Pull, known significant cultural landscapes have been identified as part of SASM.

7.3 Outside of SASM, the s42A officer for the Natural Features and Landscapes topic recommended that where a SASM is also located within an outstanding natural feature (**ONF**) or landscape (**ONL**), the cultural values from the SASM table are also listed as the values of the ONF or ONL that need to be protected. However Poutini Ngāi Tahu values are not limited to SASM, ONF or ONL.

7.4 For completeness, we also refer the Panel to the Environment Court's discussion in *Te Rūnanga o Ngāti Whātua v Auckland Council* [2023] NZEnvC 277 which considered cultural values and effects on cultural values. That case recognised that effects on cultural values are broader than physical effects. In considering the approach to be taken to the evidence on cultural values and effects the Court stated:

[497] *In assessing the cultural values and the effects on those values we have had regard to Commissioner Tepania's decision. We agree with her analysis of the approach we must take to the evidence on cultural values and effects – that we must be able to identify, involve and provide for iwi and their mana whenua in accordance with mātauranga Māori and tikanga Māori.*

[498] *Referring to the outcomes sought by iwi in order to meet those directives, we must meaningfully respond to the claim that the duty must apply to the tikanga-based claims made by iwi as to what is required to meet those objectives.*

[499] Further, we agree that:

... that duty also requires us to engage meaningfully with the impact of the application on the whanaungatanga and kaitiakitanga relationship between iwi and the natural environment, with their lands, waters, taonga and other significant features of the environment such as Te Awa Hōteu and Kaipara moana: seen not just as physical resources but as entities in their own right – as ancestors, gods, whānau – that iwi have an obligation to care for and protect.

[Footnotes omitted]

- 7.5** The above comments acknowledge and highlight the responsibilities of mana whenua as kaitiaki, and their relationship with their land. As discussed earlier in these submissions Ngāi Tahu exercise rangatiratanga and are kaitiaki of the entirety of the West Coast/Te Tai o Poutini region. This extends beyond SASM sites. The potential for activities to affect the Poutini Ngāi Tahu values (which are identified and explained in the Tangata Whenua chapter of the TPPP) are not limited to SASM sites.
- 7.6** As discussed in the legal submissions presented on behalf of Ngāi Tahu for Topic 1, section 6(e) requires that the Poutini Ngāi Tahu relationship and their cultural and traditions with their ancestral lands, water sites, wāhi tapu and other taonga be recognised and provided for as a matter of national importance. SASM sites encompass all of the listed matters to be protected, and although those sites identify wāhi tapu and other taonga sites in particular, the identification of specific sites cannot fully capture the importance of the West Coast/Te Tai o Poutini to Poutini Ngāi Tahu. This is because the relationship between Poutini Ngāi Tahu their responsibilities as rangatira and kaitiaki extend across their taikwā. It is for this reason that Ngāi Tahu has sought that consideration of Poutini Ngai Tahu values be identified

as a matter of control or discretion in various rules in the TTPP (i.e. not only in respect of SASM).

8. CONCLUSION

8.1 We finish by setting out the apology from the Crown to Ngāi Tahu for failing to uphold its Treaty obligations, as recorded in the Deed of Settlement. Under the Apology:³³

The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, but failed to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.

The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

8.2 Poutini Ngāi Tahu largely support the proposed approach to protection of SASM sites through the TTPP, subject to the changes set out in the evidence of Ms Pull. Mr Madgwick has carefully considered each of the submissions seeking refinement or change to the listed SASM. Poutini Ngāi Tahu seek that the past failures, as acknowledged in the above apology, are not repeated and

33 As included in Mr Madgwick's evidence.

ask that the Commissioners respect the very clear requirement in the RMA to endorse the SASM provisions.

DATED this 16th day of April 2024

A handwritten signature in black ink, appearing to read 'Scott', written in a cursive style.

Sarah Scott / Katherine Viskovic
Counsel for Ngāi Tahu

Appendix A: Legal submissions on behalf of Ngāi Tahu in Hearing Topic 1 dated 16 October 2023

Before the Independent Hearings Commissioners

Mai I Kā Kaikōmihana Motuhake

Under the Resource Management Act 1991

In the matter hearing of the submissions and further submissions on the proposed Te Tai o Poutini Plan:
Hearing One - Introduction and General Provisions
Hearing Two – Strategic Direction

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

16 October 2023

**SIMPSON
GRIERSON**

Sarah Scott / Katherine Viskovic

T: +64 3 365 9914

sarah.scott@simpsongrierson.com

katherine.viskovic@simpsongrierson.com

PO Box 874 Christchurch

May it please the Panel:

1. INTRODUCTION

1.1 These submissions are given on behalf of Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu, collectively referred to in these submissions as “**Ngāi Tahu**”. Ngāi Tahu lodged a submission (S620) and further submissions (FS41) in relation to the proposed Te Tai o Poutini Plan (**proposed TTPP**).

1.2 As explained in the evidence of Ms Veronica Baldwin-Smith, Ngāi Tahu are manawhenua of the Te Tai o Poutini region (the West Coast). As identified in the Te Rūnanga o Ngāi Tahu Act 1996 (**Ngāi Tahu Act**), the Ngāi Tahu Deed of Settlement 1997 (**Deed of Settlement**) and the Ngāi Tahu Claims Settlement Act 1998 (**Settlement Act**), Ngāi Tahu’s takiwā extends over the West Coast in its entirety.

1.3 As Ngāi Tahu holds rangatiratanga over its takiwā, it feels a strong responsibility to ensure the sustainable use and management of natural resources and the environment on the West Coast. Through the proposed TTPP process Ngāi Tahu seeks to exercise kaitiakitanga and to ensure there is sufficient protection and acknowledgement of mahinga kai practices.

1.4 This is the first opportunity for Ngāi Tahu to address you on the content of the proposed TTPP. As such, these submissions cover those matters which sit at the core of the Ngāi Tahu submission – their identity, their relationship with te taiao, and the history associated with that relationship.

2. WITNESSES

2.1 Ngāi Tahu filed evidence from the following expert witnesses in support of its submissions on hearing streams 1 and 2:

- (a) **Veronica Jane Baldwin-Smith** – Cultural Expert. Ms Baldwin-Smith’s evidence provides an overview of Ngāi Tahu’s relationship with the West Coast, and the importance of its rangatiratanga rights as mana whenua of that area. This evidence explains why Ngāi Tahu is committed to partnering with the Buller, Grey and Westland District Councils, and underpins its interest in the TTPP; and
- (b) **Rachael Pull** – Planner. Ms Pull’s evidence sets out the high degree of agreement between the section 42A reporting officer for hearing streams 1 and 2, and Ngāi Tahu. Appendix 1 of her evidence provides a summary of the Ngāi Tahu submission points and the position of the reporting officer. The substance of Ms Pull’s evidence focuses on the confined areas where there is not agreement.

3. NGĀI TAHU’S INVOLVEMENT WITH THE TTPP

3.1 At the outset Ngāi Tahu recognises the high degree of collaboration that has occurred in the development of the TTPP. As required by the Local Government Reorganisation Scheme (West Coast Region) Order 2019, representatives from Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio are members of the Te Tai o Poutini Plan Committee (**TTPP Committee**). Ms Baldwin-Smith discusses Francois Tumahai and Paul Madgwick’s membership of the TTPP Committee at paragraph [12].

3.2 Ngāi Tahu acknowledges the collaborative approach taken in the development of the TTPP and, again as discussed by Ms Baldwin-Smith, considers that this approach

taken is in keeping with the spirit of the Paetae Kotahitanga ki Te Tai Poutini, and the Mana Whakahono ā Rohe agreement with the West Coast Regional Council.¹

4. STATUTORY FRAMEWORK

4.1 For Ngāi Tahu, the relationship with their takiwā is one of whakapapa and ahi kā with extensive occupation and use patterns. As kaitiaki, Ngāi Tahu are bound to ensure the wairua and mauri of the land and water are maintained. Degradation of the waterways and land negatively impacts on the mana of individuals and their hapū and iwi, as well as their collective identity.

4.2 The reason for Ngāi Tahu to be involved in resource management issues on the West Coast arises not only from the recognition of their interests in Part 2 of the Resource Management Act 1991 (**RMA**), but further from the inextricable link to the settlement of Treaty of Waitangi claims, including Te Kerēme that resulted in the Settlement Act.

The settlements for historical breaches of Te Tiriti o Waitangi

4.3 Consideration of Ngāi Tahu's perspective on the integrated management of the natural and physical resources cannot occur in a vacuum. By necessity, this consideration must take into account the position as it exists today as a result of the Crown's acknowledged historical breaches of Te Tiriti o Waitangi.

4.4 As discussed by Ms Baldwin-Smith in her evidence, the contemporary relationship between the Crown and Ngāi Tahu is defined by:

- (a) Te Tiriti o Waitangi;
- (b) The Ngāi Tahu Act;
- (c) the Deed of Settlement and
- (d) the Settlement Act.

¹https://www.wcrc.govt.nz/repository/libraries/id:2459ikxj617q9ser65rr/hierarchy/Documents/Publications/Strategies/Mana%20Whakahono%20a%20Rohe%20Arrangement_WebInteractive.pdf

- 4.5 In addition to, and consistent with, the statutory considerations under the RMA, the obligations and principles contained in these documents apply to the Buller, Grey and Westland District Councils as arms of the Crown. Specifically, as the High Court stated in *Ngāti Maru Ki Hauraki Inc v Kruithof*:²

It is the responsibility of successors to the Crown, which in the context of local government includes the council, to accept the responsibility for delivering on the second article promise...[The council] is answerable to the whole community for giving effect to the Treaty vision in the manner expressed in the RMA.

- 4.6 As discussed by Ms Pull in her evidence, the Ngāi Tahu Act provides for the modern structure of Ngāi Tahu. Of particular relevance, section 15 confirms the status of Te Rūnanga o Ngāi Tahu as being the iwi authority with respect to matters affecting Ngāi Tahu Whanui³:

15 Status of Te Runanga o Ngai Tahu

- (1) *Te Runanga o Ngai Tahu shall be recognised for all purposes as the representative of Ngai Tahu Whanui.*
- (2) *Where any enactment requires consultation with any iwi or with any iwi authority, that consultation shall, with respect to matters affecting Ngai Tahu Whanui, be held with Te Runanga o Ngai Tahu.*
- (3) *Te Runanga o Ngai Tahu, in carrying out consultation under subsection (2),—*
- (a) shall seek the views of such Papatipu Runanga of Ngai Tahu Whanui and such hapu as in the opinion of Te Runanga o Ngai Tahu may have views that they wish to express in relation to the matter about which Te Runanga o Ngai Tahu is being consulted; and*

² *Ngāti Maru Ki Hauraki Inc v Kruithof* HC Hamilton CIV 2004-485-330, 11 June 2004 at [57].

³ Section 2 of the Ngāi Tahu Act includes the following definition of Ngai Tahu Whanui:

In this Act, unless the context otherwise requires, Ngai Tahu Whanui means the collective of the individuals who descend from the primary hapu of Waitaha, Ngati Mamoe, and Ngai Tahu, namely, Kati Kuri, Kati Irakehu, Kati Huirapa, Ngai Tuahuriri, and Kai Te Ruahikihiki.

(b) shall have regard, among other things, to any views obtained by Te Runanga o Ngai Tahu under paragraph (a); and

(c) shall not act or agree to act in a manner that prejudices or discriminates against, any Papatipu Runanga of Ngai Tahu or any hapu unless Te Runanga o Ngai Tahu believes on reasonable grounds that the best interests of Ngai Tahu Whanui as a whole require Te Runanga o Ngai Tahu to act in that manner.

4.7 In respect of the TTPP, Te Rūnanga o Ngāi Tahu is therefore the relevant iwi authority that is to be consulted in accordance with any requirement under the RMA.

4.8 The Deed of Settlement and the Settlement Act resolved the Ngāi Tahu Claim. The nine “tall trees” of Te Kerēme, consisting of eight major land transactions (including Te Tai Poutini) and mahinga kai as the ninth tree, resulted in a Waitangi Tribunal inquiry during which the Crown conceded that it had failed to ensure that Ngāi Tahu were left ample lands for their present and future needs.⁴

4.9 Section 6 of the Settlement Act contains the Crown apology to Ngāi Tahu. Section 6(2) of the Settlement Act recorded the unconscionable and repeated breaches of Te Tiriti by the Crown in its dealings with Ngāi Tahu in its purchases of Ngāi Tahu land, which included the eight “tall trees” referred to above. The Crown also acknowledged that it had failed to set aside adequate lands for Ngāi Tahu and to provide adequate economic and social resources, in relation to those deeds of purchase.

4.10 Section 6(3) recorded the Crown’s acknowledgement that it has breached Article 2 of Te Tiriti by failing to preserve and protect Ngāi Tahu of such use and ownership of their land and valued possessions as they wished to retain.

⁴ Refer to the quote from the Waitangi Tribunal provided at paragraph [30] of Ms Baldwin-Smith’s Evidence.

4.11 Importantly, section 6(7) of the Settlement Act recognises Ngāi Tahu as “the tangata whenua of, and as holding rangatiratanga within, the takiwā of [Ngāi] Tahu Whānui”. This is important as it specifically provides that the Crown recognises rangatiratanga, in fulfilment of its Te Tiriti obligations. The Ngāi Tahu Act recognises the takiwā of Ngai Tahu Whanui at section 5. Ms Pull has attached a map of the takiwā as Appendix Two to her evidence, which shows that it encompasses the entirety of the land subject to the TTPP.

4.12 Section 6(8) of the Settlement Act also provides that the Crown wishes to “enter a new age of co-operation with [Ngāi] Tahu”.

Part 2 of the RMA

4.13 As acknowledged by the High Court:⁵

There is comprehensive provision within the RMA for Māori and iwi interests, both procedurally and substantively. In this regard ss 6(e), 7(a) and 8 in Part 2 of the RMA are of particular importance. These are strong directions to be borne in mind at every stage of the planning process.

4.14 In accordance with section 74 of the RMA, the TTPP is required to be prepared and changed in accordance with a number of factors. Of relevance to Ngāi Tahu’s interests, this requirement includes the provisions of Part 2.

4.15 Part 2 of the RMA provides, amongst other matters, for the following in achieving its sustainable management purpose:

- (a) recognition and provision for the relationship of Ngāi Tahu and their culture and traditions with their ancestral lands, waters, wāhi tapu and other taonga⁶ as a matter of national importance;
- (b) the ability for Ngāi Tahu to exercise kaitiakitanga in relation to the West Coast. Kaitiakitanga is defined in section 2 to mean “*the exercise of guardianship by tangata whenua of an area in accordance with tikanga*”

⁵ *Ngāti Paoa Trust Board v Auckland Council* [2022] NZHC 893, at [76].

⁶ RMA, section 6(e) Matters of National Importance - *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*

*Māori in relation to natural and physical resources and includes the ethic of stewardship”;*⁷ and

- (c) the principles of Te Tiriti o Waitangi are to be taken into account in the exercise of functions and powers under the RMA (including decision making in relation to the TTPP).⁸

4.16 The sustainable management purpose of the RMA includes the management of natural and physical resources in a way or at a rate that provides for current and future generations. Ms Baldwin-Smith’s evidence details the background to the breaches of Te Tiriti, the subsequent redress, and the need to recognise the special role and responsibilities Ngāi Tahu has as mana whenua of the West Coast. Their role as rangatira and katiaki of the region underpin their submission on the TTPP. As expressed by Ms Baldwin-Smith Ngāi Tahu feels “*a strong responsibility for the sustainable use and management of natural resources and the environment – mō tātou, ā, mō kā uri ā muri ake nei (for us and our children after us).*”⁹ The relief sought through Ngāi Tahu’s submission is therefore aligned with achieving the sustainable management purpose of the RMA.

Relevance of higher order planning documents

4.17 Further considerations required by the Council are set out in sections 74 and 75, in particular section 75(3) requires:

- (3) *A district plan must give effect to—*
- (a) *any national policy statement; and*
 - (b) *any New Zealand coastal policy statement; and*
 - (ba) *a national planning standard; and*
 - (c) *any regional policy statement.*

4.18 The following national policy statements (**NPS**) include objectives and policies that are particularly relevant to Ngāi Tahu’s submission on the TTPP:

- (a) New Zealand Coastal Policy Statement: objective 3, and policy 2;
- (b) National Policy Statement for Freshwater Management: objective, and policies 1 and 2;

⁷ RMA, section 7(a).

⁸ RMA, section 8.

⁹ Refer to [57].

- (c) National Policy Statement for Indigenous Biodiversity: objective 2.1(1)(b)(i), and policy 2;
- (d) National Policy Statement for Urban Development: objective 5, and policy 9.

4.19 The NPS listed above will have direct relevance to the Panel’s consideration of specific TTPP topics and chapters. They are raised here for completeness, and to acknowledge the national recognition of Te Tiriti o Waitangi principles, acknowledge tangata whenua involvement and values in planning processes and the role of mana whenua as katiaki. The objectives and policies identified above are set out in **Attachment A** to these submissions.

4.20 In relation to the provisions being considered in Hearing Streams 1 and 2, the West Coast Regional Policy Statement (**WCRPS**) is submitted to be of particular relevance. Chapter 2 of the WCRPS identifies the following “Significant issues for Poutini Ngāi Tahu”, as being significant resource management issues for the West Coast:

1. *Expression of rangitiratanga through active involvement in resource management decision-making.*
2. *The need for integrated environmental management of and between all resources, reflecting ki uta ki tai.*
3. *It is important to Poutini Ngāi Tahu that the life-supporting capacity of the environment is safeguarded, and this capacity is restored where it has been impaired by use and development of resources.*
4. *The need to use resources, including mahinga kai resources, to sustain the community.*
5. *The obligation to protect wāhi tapu and other taonga for future generations.*
6. *The wise and efficient allocation and use of non-mineral resources within their capacity to regenerate themselves, and having regard to the effects of the use.¹⁰*

¹⁰ Refer to page 7, WCRPS.

4.21 The above issues are then expanded upon and discussed further in the provisions of the WCRPS, in particular in Chapter 3. That chapter identifies two objectives and four policies that seek to address the significant resource management issues for Poutini Ngāi Tahu. These objectives and policies are set out in **Attachment A**.

4.1 The TTPP is required to “give effect to” the WCRPS. The term ‘give effect’ is a strong statutory directive. “Give effect to” simply means “implement”, it places a firm obligation on the Panel in respect of the TTPP’s content.

4.2 However, in relation to the requirement to “give effect to” a national policy statement, the Supreme Court in *King Salmon* stated:¹¹

The implementation of such a directive will be affected by what it relates to, that is, what must be given effect to. A requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction.

4.3 The WCRPS objectives and policies set out in **Attachment A** provide specific recognition of Ngāi Tahu’s special relationship with te taio, and are prescriptive in the outcomes they are seeking. This relates to requirements to provide for the protection of ancestral land, wāhi tapu, water, sites, and other taonga, acknowledges Poutini Ngāi Tahu’s role as katiaki (which is to be given particular consideration in RMA decision making and practice), and requires Poutini Ngāi Tahu’s aspirations regarding development of papakāinga housing be recognised and supported.

4.4 The objectives and policies are both process based (objective 1, policies 1 and 2), and also provide clear direction as to how Poutini Ngāi Tahu’s rangatiratanga rights are to be recognised (objective 2, policies 3 and 4). In accordance with the requirement to “give effect to” the WCRPS, and the Supreme Court’s direction above, significant weight should be given to those objectives and policies.

¹¹ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited* [2014] NZSC 38 at [80].

- 4.5 These objectives and policies not only relate to these hearing streams, but are also relevant to consideration of Ngāi Tahu’s submission on the TTPP as a whole.

Mana Whakahono ā Rohe - Iwi Participation Arrangement

- 4.6 A Mana Whakahono ā Rohe - Iwi Participation Arrangement was signed by representatives from Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio, Te Rūnanga o Ngāi Tahu, and West Coast Regional Council, at the Arahura Marae on 22 October 2020.

- 4.7 Section 58M of the RMA sets out the purpose of Mana Whakahono ā Rohe, which includes:

to assist local authorities to comply with their statutory duties under this Act, including through the implementation of sections 6(e), 7(a), and 8.

- 4.8 This Arrangement formally acknowledges the partnership and relationship between Council and Ngāi Tahu, and includes the Paetae Kotahitanga ki Te Tai Poutini - Partnership Protocol.

- 4.9 As explained by Ms Pull in her evidence, Ngāi Tahu’s submission sought consistency between the TTPP and the Mana Whakahono ā Rohe. The Mana Whakahono ā Rohe was entered into with the Regional Council and therefore relates to the same spatial area as the TTPP. It is considered to be a highly relevant document for consideration by the Panel, as it will assist in particular to ensure that it is complying with its obligation to give effect to sections 6(e), 7(a), and 8.

5. RELIEF SOUGHT IN HEARING STREAMS 1 AND 2

- 5.1 As acknowledged by Ms Pull¹² there has been a high level of support for Ngāi Tahu’s submission and further submissions in the recommendations made in the section 42A reports for hearing streams 1 and 2. The table attached to her evidence as Appendix 1 details each of Ngāi Tahu’s submission points and the response on the

¹² Refer to paragraph [31] and appendix 1.

section 42A. These submissions touch on some of the matters identified by Ms Pull as remaining outstanding.

- 5.2 The legislative context above provides justification for the relief sought by Ngāi Tahu in its submission on the TTPP.

Hearing Stream 1 – Introduction and General Provisions

Ngāi Tahu values as a consent consideration

- 5.3 Through its submission 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. Ngāi Tahu's values are identified in the Tangata Whenua chapter of the TTPP, and are consistent with the WCRPS, and the West Coast Land and Water Plan¹³. Ms Pull has provided detail on each of the values in Table 3 in her evidence.
- 5.4 Recognition of Ngāi Tahu values, as sought by the submission, is submitted to give effect to sections 6(e), 7(a) and 8 of the RMA, and to the objectives and policies of the WCRPS (particularly those set out in **Attachment A**), and will assist with ensuring that the adverse effects of activities on those areas are managed to ensure they meet the purpose of the RMA.¹⁴
- 5.5 Identification of Ngāi Tahu values as matters of control and discretion enable a decision maker to consider those values when considering applications for resource consent. Not including reference to those values will mean that they cannot be taken into account in decision making on controlled or restricted discretionary activities.
- 5.6 Ngāi Tahu acknowledges that its values may not be relevant to the consideration of all controlled or restricted discretionary activities as this will depend on the nature and scale of an activity proposed to be undertaken by an applicant.

¹³ 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.

¹⁴ Refer Objective 2 and Policy 2 of the WCRPS in particular (Chapter 3 Resource Management Issues of Significance to Poutini Ngāi Tahu)

However, it is difficult to know whether those values will be relevant for decision making until an application is being considered.

- 5.7** Schedule 4 of the RMA sets out the requirements for information that is required in an application for resource consent. Of relevance, clause 2(2) requires an assessment of the activity against the relevant provisions in a document, and clause 1 states:

Any information required by this schedule, including an assessment under clause 2(1)(f) or (g), must be specified in sufficient detail to satisfy the purpose for which it is required.

- 5.8** Where a matter of control or discretion is not considered relevant to the activity for which consent is sought, it does not need to be discussed in detail in the consent application. For example if Ngāi Tahu values are not relevant to an application (e.g. a minor infringement of external storage standards in a commercial zone that has no impact on Ngāi Tahu's interests) then this can be covered off briefly in the assessment of environmental effects.

- 5.9** As this submission point will be relevant to multiple topics and hearings, as set out at paragraph [89(d)] of Ms Pull's evidence, Ngāi Tahu requests that the Panel provide a direction that can be used for later hearings as to its position on this submission point. This approach is intended to avoid the need for this issue to continue to be raised in multiple hearings.

Removal of overlays

- 5.10** Grey District Council sought the removal, review or reassessment of all of the overlays in the TTPP. Ngāi Tahu lodged a further submission in opposition to this submission point.

- 5.11** No evidence has been filed by Grey District Council, and therefore there remains no evidential basis for the wholesale removal of overlays from the TTPP. Conversely, the section 32 analysis in support of the TTPP provides justification as

to why the inclusion of each of the overlays is considered to be efficient and effective in achieving the objectives of the TTPP.

- 5.12** Furthermore, a number of the overlays (for example significant natural areas, outstanding natural landscapes, sites of significance to Māori) are required to meet the requirements of Part 2 of the RMA, and to give effect to national policy statements¹⁵ and/or the national planning standard.

Tangata whenua chapter

- 5.13** Ngāi Tahu generally supports the provisions of the Tangata Whenua chapter as set out in the section 42A report. Ms Pull's evidence discusses some fairly minor amendments sought to this chapter which have been proposed for accuracy and clarity.

Definitions

- 5.14** Ms Pull has set out Ngāi Tahu's position on a number of definitions. As a general position, Ngāi Tahu supports the discussion of the definitions for particular terms within the context of the relevant hearing stream which includes the provisions that use the term. As an example, the definition for "sensitive activities" should be considered in the 'Noise' hearing stream so that the term can be considered within the context of the provisions that use it.
- 5.15** As Ms Pull has discussed the amendments sought to definitions in some detail, other than one exception, these submissions do not specifically address the proposed amendments to definitions.
- 5.16** In relation to the definition of "camping grounds" Ngāi Tahu requests that the proposed definition be amended to clarify that the term does not include nohoanga. Although Ngāi Tahu did not directly submit on this definition, the scope

¹⁵ For example the New Zealand Coastal Policy Statement, and the National Policy Statement for Indigenous Biodiversity.

for the clarification now proposed by Ngāi Tahu derives from its submissions seeking appropriate recognition of nohoanga sites.¹⁶

- 5.17** Nohoanga sites traditionally refer to areas used by Ngāi Tahu in the pursuit of food and other natural resources. In accordance with section 256(2) of the Settlement Act:

Nohoanga entitlements are created and granted for the purpose of permitting members of Ngāi Tahu Whānui to occupy temporarily land close to waterways on a non-commercial basis, so as to have access to waterways for lawful fishing and gathering of other natural resources.

- 5.18** The proposed definition of “camping grounds” references a requirement that the land be used “for rent, hire, donation, or otherwise for reward”. Given that nohoanga entitlements are provided to enable temporary occupation of land “on a non-commercial basis”, the definition would exclude nohoanga. However, to ensure that this is clear to plan users, and to appropriately recognise nohoanga within the TTPP, Ngāi Tahu seeks a minor clarification to make it clear that nohoanga are not captured within the definition of “camping grounds”.

Hearing Stream 2 – Strategic Directions

Objective POU-O2

- 5.19** Ngāi Tahu supported the notified version of Objective POU-O2, which reads:

To include Te Tai Poutini wide provisions to support Poutini Ngāi Tahu exercise of cultural rights and interests including:

- a. Establishment of papakāinga;*
- b. Access to mahinga kai and cultural materials;*
- c. Management of Pounamu and Aotea stone; and*
- d. Management of taonga and wāhi tapu*

¹⁶ Submission points 620.025, and 620.057.

- 5.20** Te Tumu Paeroa - The office of the Māori Trustee (submitter 440) seeks the introduction of a “where appropriate” qualifier in the chapeau of this objective.¹⁷ Ngāi Tahu opposes the inclusion of a “where appropriate” qualifier.
- 5.21** First and foremost, as the West Coast is within Ngāi Tahu’s takiwā, over which it has rangatiratanga, for the reasons set out in section 4 of these submissions, in order to fully give effect to Part 2 of the RMA and the WCRPS it is not appropriate to qualify its rights and interests.
- 5.22** Second, it is submitted that this submission point goes beyond the legislative role of the Māori Trustee. The Māori Trustee explains in her submission that the Trustee is appointed by the Minister for Māori Development to provide for the administration and management of whenua and other client assets in compliance with the principles and obligations of trusteeship and agency, and in accordance with the Māori Trustee Act 1953. The submission also notes that “[a] primary objective of The Māori Trustee, is to protect, utilise and grow the assets of our Māori land owners.”¹⁸
- 5.23** The amendment sought to Objective POU-O2 does not relate to whenua or assets administered by the Māori Trustee. Rather, Ngāi Tahu considers that the addition of the qualifier would curtail Ngāi Tahu’s rangatiratanga rights without a connection back to the assets administered by the Māori Trustee. For the reasons set out in these submissions, Ngāi Tahu opposes the amendment sought to Objective POU-O2.

6. CONCLUSION

- 6.1** These submissions are provided in support of Ngāi Tahu’s submission as it relates to the Introduction/Whole Plan, and Strategic Directions provisions. For reasons set out in the evidence of Ms Baldwin-Smith, Ms Pull and these submissions, Ngāi Tahu:

¹⁷ Te Tumu Paeroa seeks the following Amendment to POU-O2:
To include Te Tai Poutini wide provisions to support Poutini Ngāi Tahu exercise of cultural rights and interests, where appropriate, including...

¹⁸ Paragraphs [15] – [20], in the Appendix to submission 440.

- (a) Generally supports the recommendations made by the section 42A officer (as identified in Appendix 1 to Ms Pull's evidence); and
- (b) Requests further amendments be made to the provisions as identified in paragraph [89] of Ms Pull's evidence.

Katherine Viskovic

20 October 2023

Counsel for Te Rūnanga o Ngāti Waewae, Te Rūnanga o Makaawhio and Te Rūnanga o Ngāi Tahu

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 mātaītai 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.

Chapter 3 Objectives and Policies from the WCRPS

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.