In the Supreme Court of New Zealand
I Te Kōti Mana Nui O Aotearoa

SC 82/2022

between: **CLOUD OCEAN WATER LIMITED**
Appellant

and: **AOTEAROA WATER ACTION INCORPORATED**
First Respondent

and: **CANTERBURY REGIONAL COUNCIL**
Second Respondent

and: **SOUTHRIDGE HOLDINGS LIMITED**
Third Respondent

and: **TE NGĀI TŪĀHURIRI RŪNANGA INCORPORATED**
Intervener

Synopsis of submissions for Te Ngāi Tūāhuriri Rūnanga Incorporated

Dated: 15 March 2023

Counsel certify that the intervener's submissions are suitable for publication and do not contain any information that is supressed.

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SYNOPSIS OF SUBMISSIONS FOR TE NGĀI TŪĀHURIRI RŪNANGA

May it please the Court:

1 Te Ngāi Tūāhuriri Rūnanga Incorporated (*Ngāi Tūāhuriri* or *the Rūnanga*) appears as Intervener in this proceeding. It represents mana whenua directly affected by the decisions that are challenged in this appeal.

2 The fundamental position of the Rūnanga is that the Court of Appeal decision is both legally correct and the most appropriate interpretation of the Resource Management Act 1991 (*RMA*) and the relevant provisions of the Canterbury Land and Water Regional Plan (*Plan*) in light of the relevant tikanga.

3 The Rūnanga supports and adopts the position of the First Respondent.

4 To avoid repetition with the submissions for the First Respondent, these submissions are limited to:

4.1 outlining the relevance of tikanga to this appeal;

4.2 The third ground from Aotearoa Water Action's (*AWA*) Notice that Judgment will be Supported on Other Grounds,[1] that the Court of Appeal did not decide:

the adverse effects on cultural values and tikanga arising from the water bottling activity including the export of bottles, were relevant and should have been taken into account by the Council prior to determining whether to notify the application, when:

(a) Changing the use of water has cultural effects, including effects on Ngāi Tūāhuriri and the right to exercise kaitiakitanga; and

(b) The principles of kāwanatanga, rangatiratanga and partnership are relevant considerations for the application, which is fundamentally inconsistent with

[1] Notice [**05.0019**] at [3].

the guarantees and principles of Te Tiriti o Waitangi, and its inclusion in the RMA (giving rise to both substantive and procedural requirements) to provide for iwi and their mana whenua in accordance with mātauranga Māori and tikanga Māori.

4.3 submissions for the Appellant regarding restrictions on relief.

BACKGROUND

Ngāi Tūāhuriri hapū

5 Ngāi Tūāhuriri hapū have mana whenua over the area subject to these proceedings.[2] Ngāi Tūāhuriri is a principal hapū of Ngāi Tahu, acknowledged in Te Rūnanga o Ngāi Tahu Act 1996 and the Ngāi Tahu Claims Settlement Act 1998 (*Settlement Act*).

6 Ngāi Tūāhuriri Rūnanga is one of the 18 Papatipu Rūnanga (or 'original regional assemblies') whose representatives form the governing body of Te Rūnanga o Ngāi Tahu. The members of each Papatipu Rūnanga exercise rangatiratanga and kaitiakitanga over the natural and physical resources within their respective takiwā.

7 The Rūnanga is centred on the Tuahiwi Marae on Kaiapoi Māori Reserve 873 and was established in 1859. The takiwā of the Rūnanga centres on Tuahiwi and extends from the Hurunui to Hakatere, sharing an interest with Arowhenua Rūnanga northwards to Rakaia, and thence inland to the Main Divide.[3] Within this area, Ngāi Tūāhuriri actively exercises rangatiratanga and kaitiakitanga over natural and physical resources, including through:

7.1 participating in regional resource management forums, including water zone committees;

7.2 providing input into resource consent applications through Mahaanui Kurataiao Limited (the resource and environmental management advisory company established by six Rūnanga in

[2] Tau [**201.0076**] at [9] [**201.0077**].

[3] Te Runanga o Ngai Tahu (Declaration of Membership) Order 2001, Schedule.

the Canterbury region to assist and improve the recognition of mana whenua values within their respective takiwā);

7.3 regularly engaging with the Waimakariri District Council and Christchurch City Council on district planning matters;

7.4 working in partnership with the Department of Conservation within the takiwā; and

7.5 customary management of fisheries under the Fisheries (South Island Customary Fishing) Regulations 1999.

8 In 2012, Papatipu Rūnanga and the Canterbury Regional Council (*Council*) signed a relationship agreement for the Tuia programme. The name of this programme means "*working together arm in arm*", and was intended to signal a "*new era* of *collaboration*" and "*new approach to the management of natural resources in the region*". It was intended that this agreement would acknowledge and bring together the "*tikanga responsibilities of Ngāi Tahu and the statutory responsibilities of the Council*".[4]

Orawhata E kainga nohoanga, e kainga mahinga kai, e pa tuturu, ona kai, he tuna, he kanakana, he parera, he putakitaki, he koau, he koreke, he kiore[5]

9 The area where the permits challenged in these proceedings are located is a wāhi taonga of significance to Te Ngāi Tūāhuriri, and is an area with extensive evidence of traditions and records of association.[6]

10 As Dr Tau has explained in his affidavit,[7] the sites at which the water is taken and used is intended to be recognised and protected in the RMA context through a '*silent file'* designation. Silent files are areas identified by Papatipu Rūnanga as requiring special protection due to the presence of significant wāhi tapu and wāhi taonga.[8]

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4 Environment Canterbury "Tuia – standing shoulder to shoulder" (2016) <https://api.ecan.govt.nz/TrimPublicAPI/documents/download/2985518>.

5 Tau [**201.0076**] at [26] [**201.0081**].

6 Tau [**201.0076**] at [24] [**201.0080**] to [28] [**201.0081**] and [32] [**201.0082**].

7 Tau [**201.0076**].

8 Tau [**201.0076**] at [32] [**201.0082**].

11 Accordingly, as the Canterbury Regional Policy Statement explains:[9]

> *Where sites are of special significance, Ngāi Tahu may wish to protect them by restricting certain activities, access and information about their location, through the use of silent files [Te Whakatau Kaupapa defines silent files as identifying the general nature and location of wāhi tapu or other special sites without disclosing their precise location] …*
>
> *It is important that wāhi tapu sites are protected from inappropriate activity and that there is continued access to such sites for Ngāi Tahu, which is provided for in Article 2 of the Treaty of Waitangi and Section 6(e) of the RMA …*
>
> *As the knowledge of specific sites may not be known to Ngāi Tahu as a whole, it is important to **always** consult with Papatipu Rūnanga to ensure that wāhi tapu sites are protected.*
>
> [Emphasis added]

12 Silent files are one expression of rangatiratanga and kaitiakitanga over treasured places, which arise from mana whenua participation and partnership with local authorities in Canterbury. Ngāi Tūāhuriri have actively sought to continue exercising rangatiratanga and kaitiakitanga over water within the takiwā, and maintain these rights as recognised in the Settlement Act and the relevant planning documents discussed later in these submissions.

13 For a long time, Ngāi Tūāhuriri has been opposed to practices that enabled water permits to be traded about their takiwā, switching from use to use, in order to avoid measures intended to reduce groundwater allocation.[10]

14 Ngāi Tūāhuriri is opposed to water being taken from this silent file area for water bottling purposes, and advised the Council of this by email in May 2017, some time before the consents challenged in this proceeding being granted.[11] Despite this, the Rūnanga was not

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9 Canterbury Regional Policy Statement 2013, page 28, section 2.2.8 Wāhi tapu.

10 Dyanna Jolly "Mahaanui Iwi Management Plan 2013". Policy WM11.1.

11 Tau [**201.0076**] at [33] [**201.0082**] to [40] [**201.0083**].

considered an affected party for the applications to change the use of water.

15 The significant cultural value of the area in question was commented on by the District Court in a 2019 sentencing decision, noting the Kaputone Creek is a long treasured wahi taonga and the iwi is involved in a project to enhance and restore the mauri of the water. This cultural significance was considered particularly relevant for the sentencing of a party that had polluted the Creek.[12]

16 The affidavit of Dr Tau explains that this is a significant area to Ngāi Tūāhuriri, particularly in relation to mahinga kai. It is important to recognise that this significance is not limited only to the Creek and other surface water. As Dr Tau explained, the relationship of Ngāi Tūāhuriri is with water in all of its connected forms.[13]

17 This relationship recognises the importance of managing water *ki uta ki tai* from the mountains to the sea, as well as the connection between surface water and groundwater.[14] For example, Te Whakatau Kaupapa records the oral history of the iwi that the Ruataniwha (Cam River) which flows past Tuahiwi marae supports two types of eel who act as kaitiaki of the river, and travel between Kaiapoi and Te Taumutu (south of Christchurch) via underground waterways.[15]

18 This is consistent with the scientific evidence for the Council that the aquifers beneath Christchurch are not '*discrete'* isolated units, with water moving between layers and a network of artisanal springs feeding lowland water bodies, such as Kaputone Creek.[16]

19 The fact that the consents in question are located within a silent file area is intended to operate as a signal for both consent applicants and the Council that additional consideration is required as to the

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12 *Canterbury Regional Council v Emergent Cold Ltd* [2019] NZDC 23930 at [14].

13 Tau [**201.0076**] at [26] [**201.0081**].

14 Consistent with Objective 3.2 of the LWRP.

15 Te Maire Tau [et al.] "Te Whakatau kaupapa: Ngai Tahu resource management strategy for the Canterbury Region" (1990) Aoraki Press <https://api.ecan.govt.nz/TrimPublicAPI/documents/download/2738436> at page 5-16.

16 1 Burge [**201.0037**] at [76] [**201.0051**].

potential for adverse cultural effects. The Council and High Court, in concluding that there was nothing unlawful or unreasonable in the Council's consideration of cultural effects, failed to have sufficient regard to the cultural context within which the proposed activity was to take place.

Ko te wai te oranga o ngā mea kātoa[17]

20 Water is critical to the identity of Ngāi Tahu and Ngāi Tūāhuriri. Not only is water the foundation for physical life, but for Ngāi Tūāhuriri there are further layers of meaning. This is recognised, for example, in the Canterbury Regional Policy Statement, which acknowledges the central importance of water for the sustenance of Ngāi Tahu identity and culture.

21 For Ngāi Tūāhuriri, water is not simply a '*resource'* or abstract substance, but a component of Te Ao Tūroa that is linked by whakapapa to mana whenua, and a determinant of the welfare and mana of Ngāi Tūāhuriri.[18]

22 Given the nature of these proceedings, the Court does not have the benefit of extensive cultural evidence regarding the impact of water bottling as a '*use of water'*, as was the case in, for example, *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council*.[19] While the affidavit of Dr Tau provides some background on the matter, this was prepared on the basis of supporting an application to intervene in the proceedings, not to set out in detail the potential adverse cultural effects of the consents that have been granted.

23 Water from within the Ngāi Tūāhuriri takiwā, whether it is in an aquifer, polluted by industrial waste or in a plastic bottle, is still bound to Ngāi Tūāhuriri through whakapapa, and the relationship between people and the environment that determines rights and responsibilities in relation to the use and management of taonga of the natural world. Under the previous consents, water was not leaving the Ngāi Tūāhuriri takiwā, and remained under the care of Ngāi Tūāhuriri. The cultural effects of discharging treated

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17 Dyanna Jolly "Mahaanui Iwi Management Plan 2013", page 75.

18 Canterbury Regional Policy Statement 2013, page 26, section 2.2.

19 *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2020] NZHC 3388; *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2022] NZCA 598.

wastewater back into the local environment is vastly different to abstracting and bottling water for export. The wider social and economic effects of the previous consents were also different.[20]

24 The Environment Court has found that kaitiaki have a right to protect the history of their cultural and customary associations to an area.[21] In a Ngāi Tahu context, the Environment Court in *Aratiatia Livestock Ltd v Southland Regional Council* has commented that it is the responsibility of kaitiaki to ensure that water is available for future generations in as good as, if not better quality, and tikanga goes beyond any rights or obligations that may attach to the use of water.[22]

25 This obligation is clearly referenced in the 24 May 2017 email from Rūnanga Whakahaere Koral Gallagher to the Council which states *"it is the responsibility of this Rūnanga to ensure that any Taonga (including water) is kept for us and our children in line with our values – Mō Tātou, Mō ka uri a muri ake nei"*.[23]

26 The failures of the Canterbury Regional Council in relation to recognising kaitiakitanga also needs to be seen against the relevant provisions of the Canterbury Regional Policy Statement. This includes key provisions that set out that:[24]

26.1 kaitiakitanga entails the active protection and responsibility for natural and physical resources by tāngata whenua;

26.2 to give effect to kaitiakitanga it is important to engage meaningfully with the appropriate Papatipu Rūnanga;

26.3 the definition of kaitiakitanga in the RMA is a starting point only for Ngāi Tahu, as kaitiakitanga is a much wider cultural concept than pure guardianship;

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20 For example, the Belfast freezing works in particular was a significant employer for Ngāi Tūāhuriri people. See Te Pānui Rūnaka "Ngāi Tūāhuriri women recognised" 27 February 2015 <https://tepanui.co.nz/2015/02/ngai-tuahuriri-women-recognised/>.

21 *Ngāi Te Hapū v Bay of Plenty Regional Council* [2017] NZEnvC 73 at [88].

22 *Aratiatia Livestock Ltd v Southland Regional Council* [2019] NZEnvC 208 at [50].

23 [**302.0176**] at [**302.0178**].

24 Canterbury Regional Policy Statement 2013, page 27, section 2.2.4.

26.4 kaitiakitanga is fundamental to the relationship between Ngāi Tahu and the environment;

26.5 the responsibility of kaitiakitanga is twofold:

(a) first, there is the ultimate aim of protecting mauri; and

(b) secondly, there is the duty to pass the environment to future generations in a state which is as good as, or better than, the current state; and

26.6 kaitiakitanga is not a passive custodianship, nor is it simply the exercise of traditional property rights, but entails an active exercise of responsibility in a manner beneficial to the resource.

27 The Canterbury Regional Policy Statement further explains that rangatiratanga:[25]

27.1 is about having the mana or authority to exercise the relationship between Ngāi Tahu and their culture and traditions with the natural world;

27.2 is relevant to Article 2 of the Treaty of Waitangi, and sections 6(e) and 8 of the RMA;

27.3 traditionally incorporates the right to make, alter and enforce decisions pertaining to how a resource is to be used and managed, and by whom (in accordance with kawa and tikanga);

27.4 is similar to the functions of the Council and is expressed through the relationship between Papatipu Rūnanga, Te Rūnanga o Ngāi Tahu and the Council; and

27.5 can be expressed through iwi management plans and the active involvement of tangata whenua in resource management decision-making processes.

[25] Canterbury Regional Policy Statement 2013, page 27, section 2.2.5.

28 For Ngāi Tahu, rangatiratanga means chiefly sovereignty, authority and autonomy. Rangatiratanga is exercised by leaders (rangatira) of an iwi or hapū and is closely related to and derived from the concept of mana. In exercising rangatiratanga leaders must make decisions that consolidate and improve the mana of the wider whānau, hapū and iwi.

29 In *Ngāi Te Hapū v Bay of Plenty Regional Council* the Court noted that the result of its finding that certain hapū have the right to exercise rangatiratanga or customary authority over the Otaiti reef meant that it is the tikanga of those hapū that should be applied, which was important for the Court's consideration of the mauri of the reef.[26]

30 The Settlement Act similarly acknowledges Ngāi Tahu as holding rangatiratanga:[27]

> *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.*

31 While water remains in the Ngāi Tūāhuriri takiwā, it remains under the cloak of Ngāi Tūāhuriri rangatiratanga and is able to be cared for and managed by Ngāi Tūāhuriri in a manner consistent kaitiakitanga. Ngāi Tūāhuriri are able to work with consent applicants and the Council to ensure that the use of this water, including the level of treatment of any discharge, is consistent with their values and obligations.

32 These proceedings therefore have significant implications for Ngāi Tūāhuriri rangatiratanga and kaitiakitanga over freshwater.

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[26] *Ngāi Te Hapū v Bay of Plenty Regional Council* [2017] NZEnvC 73 at [86].

[27] Ngāi Tahu Claims Settlement Act 1998, s 6(7).

THE COURT OF APPEAL WAS CORRECT TO ALLOW THE APPEAL

33 The Rūnanga takes issue with the process that the Council undertook to grant the challenged consents, which it considers is inconsistent with the RMA and in breach of tikanga, and mana whenua rights and interests.

34 In dismissing the concerns of the Rūnanga, the High Court failed to consider how changing the use of water impacts on the Rūnanga, including impeding Ngāi Tūāhuriri from exercising its right to kaitiakitanga according to tikanga. The High Court also failed to consider rangatiratanga as a relevant consideration for the challenge to the consents at issue, which is fundamentally inconsistent with the guarantees and principles of Te Tiriti o Waitangi, and its inclusion in the RMA.

35 On this basis, the Rūnanga say that the Court of Appeal must be correct. To reverse the decision would be inconsistent with tikanga, and the recognition of the "*multi-dimensional Māori provisions"* of the RMA, which specifically provides for the recognition of tikanga, including in the definition of kaitiakitanga.[28]

36 The relevance of tikanga in this case is supported by:

36.1 *Ellis v King* [2022] NZSC 114, where:

(a) the Supreme Court was unanimous that tikanga has been and will continue to be recognised in the development of the common law of Aotearoa/New Zealand in cases where it is relevant, forms part of New Zealand law as a result of being incorporated into statutes and regulations, may be a relevant consideration in the exercise of discretions and is

[28] Hon Justice Joseph Williams "Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law" (2013) 21 Waikato Law Review 1, at page 18 Justice Williams refers to the Māori provisions in the RMA as "*multi-dimensional*"; see also *Ellis v King* [2022] NZSC 114 at [100] per Glazebrook J.

incorporated in the policies and processes of public bodies;[29]

(b) the Court (by majority) held that:

(i) the colonial tests for incorporation of tikanga in the common law should no longer apply and the relationship between tikanga and the common law will evolve contextually and as required on a case by case basis;[30]

(ii) tikanga was the first law of Aotearoa and it continues to shape and regulate the lives of Māori, therefore, the courts must not exceed their function when engaging with tikanga and must take care not to impair the operation of tikanga as a system of law and custom in its own right;[31]

(iii) the appropriate method of ascertaining tikanga (where it is relevant) will depend on the circumstances of the particular case.[32]

36.2 *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801, where the Supreme Court:

(a) unanimously confirmed that tikanga is capable of applying as '*applicable law*';[33] and

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29 At [19]; [98]–[105] per Glazebrook J; [173]–[176] per Winkelmann CJ; [257] per Williams J and [280] per O'Regan and Arnold JJ.

30 At [21]; [113]–[116], [119], [127] per Glazebrook J; [177], [183] per Winkelmann CJ and [260]-[261] per Williams J.

31 At [22]; [107] and [110], [120], [122]–[123] per Glazebrook J; [168], [169], [172], [181] per Winkelmann CJ; [270]–[272] per Williams J.

32 At [23]; [121], [125] and [127] per Glazebrook J, [181] per Winkelmann CJ and [261]–[267] and [273] per Williams J.

33 *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801 at [9], [169] per William Young and Ellen France JJ, [237] per Glazebrook J, [296]–[297] per Williams J and [332] per Winkelmann CJ.

(b) unanimously found that tikanga based rights, including kaitiakitanga, constituted '*existing interests*' , an approach that follows from the guarantee of rangatiratanga under the Treaty;[34]

(c) unanimously found that Treaty clauses in legislation should not be narrowly construed and must be given a broad and generous construction;[35]

(d) Williams J (Glazebrook J concurring) further added that where tikanga Māori is relevant to a particular case, the consideration ought not to be viewed only through a '*Pākehā lens*', as the interests of iwi with interests in the consent area reflect the relevant values of the interest holder, including mana, whanaungatanga and kaitiakitanga.[36]

36.3 The findings of Whata J in *Ngati Maru Trust v Ngati Whatua Orakei* in respect of the comprehensive provision for Māori and iwi interests in the RMA:[37]

(a) section 104 of the RMA, which provides a power to grant resource consents, is expressly subject to Part 2 of the Act, which outlines "*numerous mandatory considerations concerning a wide range of matters*"

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[34] At [8], [154]–[155] per William Young and Ellen France JJ, [237] per Glazebrook J, [296]–[297] per Williams J and [332] per Winkelmann CJ.

[35] At [8], [150]–[151] per William Young and Ellen France JJ, [237] per Glazebrook J, [296] per Williams J and [332] per Winkelmann CJ.

[36] At [297] per Williams J, n 371 per Glazebrook J. This position was affirmed by Glazebrook J in *Ellis* at [96].

[37] *Ngati Maru Trust v Ngati Whatua Orakei* [2020] NZHC 2768 at [29]. It is important to note that, while this summary refers to "*planning processes"*, the comments were made in the context of a challenge to conditions of resource consents granted to Panuku Development Ltd for developments of Westhaven and Queens Wharf where the appellant, Ngāti Whātua Ōrākei Whai Maia Limited, was a submitter on the consents and presented expert cultural evidence. The "*strong directions*" are even more relevant in the current challenge of a process that granted consents to change the use of water in an area of recognised cultural significance, without formally notifying the application to mana whenua, which would have enabled the Rūnanga to submit on the applications and present expert evidence on the relevant tikanga and effects of the change on mana whenua.

that, alongside Part 2, provide scope for consideration of mana whenua;[38]

(b) citing Lord Cooke in *McGuire v Hastings District Council*,[39] sections 6(e), 7 and 8 of the RMA are "*focal points"* of "*special significance*" and "*strong directions, to be borne in mind at every stage of the planning process*";[40]

(c) the RMA is "*replete"* with references to kupu Māori, and Parliament "*plainly anticipated that resource management decision-makers will be able to grasp these concepts and where necessary, apply them in accordance with tikanga Māori*";[41]

(d) case law over the last 30 years demonstrates "*an evolving understanding and application of mātauranga Māori and tikanga Māori*";[42]

(e) "*While tikanga Māori is defined in the RMA as* "customary values and practices" *it has come to be understood as a body of principles, values and law that is cognisable by the Courts"*;[43]

(f) iwi involvement in policy and plan promulgation is also anticipated by the RMA "*and that iwi and hapū with defined customary rights will be specifically provided for where relevant"*, including through preparation of Mana Whakahono a Rohe agreements, which demands that persons making decisions under the RMA can "*identify, involve and provide for iwi and their mana*

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38 At [30].

39 *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC).

40 At [42] citing *McGuire v Hastings District Council* [2002] 2 NZLR 577 at [21].

41 At [64].

42 At [64].

43 At [64], citing Christian Whata "'Mātauranga Māori' knowledge, comprehension and understanding: Reflection of lessons learnt and contemplation of the future" (2016) RM Theory & Practice 21.

whenua in accordance with mātauranga Māori and tikanga Māori";[44]

(g) "*The statutory obligation to recognise and provide for the relationship of Māori and their culture and traditions with their whenua and tāonga, to have to regard to their kaitiakitanga and take into account the principles of the Treaty of Waitangi, does not permit indifference to the tikanga-based claims of iwi to a particular resource management outcome*";[45]

(h) decision-makers exercising functions under the RMA are necessarily engaged in ascertaining tikanga Māori in order to discharge statutory directions in Part 2 outlined above, and must "*meaningfully respond*" to claims by iwi that a particular resource management outcome is required to meet those statutory outcomes, which may require evidential findings of how "*kaitiakitanga, in accordance with tikanga Māori, is to be provided for in the resource management outcome*".[46]

36.4 Dr Tau's affidavit, including statements that:

(a) the Ngāi Tūāhuriri relationship extends to water in all its interconnected forms (including both groundwater and surface water), and the concept of *"kaitiakitanga"* is pivotal as it carries an obligation to protect the mauri of a resource;[47]

(b) kaitiakitanga does not consist of passive custodianship, nor is it simply the exercise of traditional property rights, but rather it entails an active exercise of power in a manner beneficial to the resource, requiring the

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44 At [66].

45 At [73].

46 At [102].

47 Tau [**201.0076**] at [26] [**201.0081**].

active protection and responsibility by the kaitiaki of the takiwā;[48]

(c) the loss of taonga water from the environment and Te Waipounamu/Aotearoa through bottling directly offends the Ngāi Tūāhuriri tino rangatiratanga interest in water.[49]

36.5 Directions in a range of relevant and applicable planning documents that were purportedly considered when deciding to grant the consents:

(a) the Canterbury Land and Water Regional Plan objectives and policies, including the following objectives of particular relevance to Ngāi Tūāhuriri rangatiratanga and kaitiakitanga:

(i) Objective 3.1, which states:[50]

Land and water are managed as integrated natural resources to recognise and enable Ngāi Tahu culture, traditions, customary uses and relationships with land and water.

(ii) Objective 3.2, which states:[51]

Water management applies the ethic of ki uta ki tai - from the mountains to the sea – and land and water are managed as integrated natural resources recognising the connectivity between surface water and groundwater, and between fresh water, land and the coast.

(b) the Mahaanui Iwi Management Plan, which is a method through which kaitiakitanga can be exercised, clearly indicating that, for mana whenua:[52]

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48 Tau [**201.0076**] at [29] [**201.0081**].

49 Tau [**201.0076**] at [30]-[31] [**201.0082**].

50 LWRP: Section 3 Objectives [**303.0590**].

51 LWRP: Section 3 Objectives [**303.0590**].

52 Dyanna Jolly "Mahaanui Iwi Management Plan 2013", section 5.3, Wai Māori.

(i) there are a number of important factors when considering different uses of water;

(ii) water management should provide for the taonga status of water, the Treaty partner status of Ngāi Tahu, the importance of water to cultural well-being and the specific rights and interests of tāngata whenua in water;[53]

(iii) different Rūnanga may have different policy positions on the commercial use and ownership of water;[54]

(iv) the responsibility to protect and enhance mauri is collective, and is held by all those who benefit from the use of water and that the right to take and use water is premised on the responsibility to safeguard and enhance the mauri of that the water;[55]

(v) water permits must be connected to the property they were allocated to, and therefore a specific waterway or aquifer, and that when land is sold the new owner must re-apply for consent to take water if there is a proposed change to land use.[56]

37 Accordingly, the Council's process of enabling the Appellant and Third Respondent to change the use of water without applying for a take and use consent is inconsistent with Ngāi Tūāhuriri tikanga, the "*multi-dimensional Māori provisions*" of the RMA, and Ngāi Tūāhuriri kaitiakitanga and rangatiratanga expressed in the Regional Policy Statement, Canterbury Land and Water Regional Plan and the Mahaanui Iwi Management Plan. This process has had the effect of

53 Objective 5.3(1).

54 WM1.3.

55 WM2.4.

56 WM11.1.

preventing the exercise of rangatiratanga by Ngāi Tūāhuriri and their ability to act as kaitiaki of the water in question.

38 The Rūnanga, in exercising its rights and obligations of rangatiratanga and kaitiakitanga over water, is increasingly scrutinising decisions of the Council in allocating water within the takiwā, as pressure on freshwater increases. Processing consents for an entirely different use of water (and tacking new use permits onto historic take permits) on a non-notified basis circumvents this scrutiny from the Rūnanga, preventing Ngāi Tūāhuriri from exercising its rights and obligations in relation to that water.

ADVERSE EFFECTS ON CULTURAL VALUES WERE RELEVANT AND SHOULD HAVE BEEN TAKEN INTO ACCOUNT

39 The Rūnanga submit that the adverse effects on cultural values and tikanga arising from the water bottling activity were relevant and should have been taken into account by the Council prior to determining whether to notify the application, when:

39.1 changing the use of water is inconsistent with tikanga and has cultural effects, including effects on Ngāi Tūāhuriri and the right to exercise kaitiakitanga; and

39.2 the principles of kāwanatanga, rangatiratanga and partnership are relevant considerations under Te Tiriti o Waitangi, and through inclusion in the RMA (giving rise to both substantive and procedural requirements) and require provision for iwi and their mana whenua in accordance with mātauranga Māori and tikanga Māori.

40 In part, this has arisen from what could be characterised as a '*comedy of* errors' in the attempted communications between the Council and Ngāi Tūāhuriri. Notably:

40.1 Prior to any of these consents being processed by the Council, Koral Gallagher, the Rūnanga Whakahaere (Operations Manager), emailed the Ngāi Tahu Relatonship Manager at the Council to advise that the Rūnanga opposed water bottling in

Belfast.[57] The second affidavit of Dr Burge for the Council states that this communication (and presumably information about the Ngāi Tūāhuriri position on water bottling in Belfast) was never passed on to the relevant division of the Council that was processing the consents.[58]

40.2 The email from the Council to the address they had on file for the Rūnanga (to be specific, the email was directed to no one, and blind carbon copied to a person who was not directly associated with the Rūnanga) erroneously states that the Southridge application is for a change of conditions of two water permits and omits that the '*change'* is actually a proposed new use of water for bottling, despite the Council having resolved to process the application in such a manner before that email was sent.[59]

40.3 It remains unresolved whether that email was received – certainly the Rūnanga has no record of such. A reasonable assumption could be that the email was not passed on to the Rūnanga because neither the email, nor the application, clearly triggers any matters of concern to the Rūnanga on face value – it mentions water bottling only once the ninth page of the 11 page document, which could feasibly be missed.[60] The Council did not contact Ms Gallagher about these applications, despite her earlier email advising that the Rūnanga was opposed to water bottling in Belfast that provided her email address and phone number, nor did the Council make any other attempt to contact the Rūnanga.

40.4 The s 42A Report consideration of Schedule 4 matters that must be considered is limited to a statement "*I agree*" to the comment from the application that "*the change of conditions will not result in any effect on … cultural value, or other special value, for present or future generations*" (despite the

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57 [**302.0176**] at [**302.0178**]. Noting that this is consistent with the IMP policy identifying that Rūnanga will have differing positions on the commercial use of water.

58 2 Burge [**201.0059**] at [11] [**201.0062**].

59 [**301.0032**]

60 [**301.0019**] at [**301.0027**].

applicant recording that they had not sought to engage with tangata whenua).[61]

40.5 Incredibly, this process repeats with the Appellants' consents, where the email to inform the Rūnanga states that the applications are for changes of conditions of water permits, [62] even though at this point the Southridge consents had already been processed as new uses for water bottling, and the application mentions water bottling only on three pages in the middle of the 29 page document. [63] The Council similarly does not contact Ms Gallagher about these applications, and the section 42A report comments that the proposal is considered to be consistent with the *relevant* policies of the IMP (it does not mention the specific policies) and that there will be no additional adverse effects on Tangata Whenua values beyond what was previously authorised.[64]

40.6 For all consents, the Council concluded that it was not required to publicly or limited notify the consents on the bases that the *change* would not have minor than minor adverse effects, in absence of the views of mana whenua and based on what we submit was clearly an inaccurate interpretation of the Mahaanui Iwi Management Plan (*IMP*), given that the applications were directly contrary to a range of objectives and policies, most notably Policy WM11.1.

40.7 The Council in the later involvement of Rūnanga in other associated consents for the water bottling disregarded the concerns raised on the basis that they were only relevant to, and should have been raised in relation to, these challenged consents.[65]

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61 [**301.0033**] at [**301.0035**] and [**301.0044**] at [**301.0046**].

62 [**301.0121**]

63 [**301.0092**] at [**301.0111**] and [**301.0113**]-[**301.0114**].

64 [**301.0129**] at [**301.0132**]-[**301.0133**]. The Report also notes that, even though this is a silent file area, it is not a Rūnanga Sensitive Area, however the entire Belfast area is actually identified in the Rūnanga Sensitive Areas layer in the Canterbury Maps Viewer.

65 [**301.0176**] at [**301.0183**] and [**302.0092**] at **[302.0098**] and [**302.0105**].

40.8 The Council did not seek to inform the Rūnanga of this litigation, or to facilitate any input or involvement.

41 In our submission, the Council, when considering whether there would be any adverse cultural effects of '*changing the use'* of the permits in question viewed this consideration through a Pākehā lens only, given the failure to obtain the views of the Rūnanga on the applications.

42 Under section 104(1)(b)(vi) of the RMA consent authorities must have regard to "*any relevant provisions of*" the LWRP, including examining the extent to which a proposal achieves the relevant objectives and policies.

43 In particular, Objective 3.1 directs an '*integrated'* approach to managing land and water, which is for the purpose of recognising the Ngāi Tahu relationship with the natural environment, including water. Objective 3.2 directs that water management in Canterbury "*applies the ethic of ki uta ki tai*", which is a core concept in Ngāi Tahu environmental management and recognises the connectivity between water in its different forms. These objectives should have been identified as relevant and addressed appropriately.

44 The Council should also, under section 104(1)(c) have regard to any other matter it considers relevant and reasonably necessary to determine the application. The Council routinely recognises the Mahaanui Iwi Management Plan (*IMP*) as a relevant consideration for consent applications, as was the case for the consents in question.[66]

45 The High Court and Council in their consideration of cultural effects found that there is nothing in the IMP to indicate that tangata whenua have a cultural interest in the end use of water from an aquifer.[67] However a number of iwi planning documents (which, as noted above, are an expression of rangatiratanga), including the

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[66] The Mahaanui Iwi Management Plan was developed over a three year period from 2009 to 2012 through mahi including working groups, workshops, marae-based hui, interviews, hīkoi, council workshops and collaboration with other organisations. The Mahaanui IMP is a planning document recognised by an iwi authority that must be taken into account when preparing or changing regional policy statements and regional plans under RMA ss 61(2A)(a) and 66(2A)(a).

[67] Judgment [**101.0111**] at [288] [**101.0176**].

IMP, are clearly concerned with cultural priorities for the 'use' of water.

46 The IMP states:[68]

> PRIORITIES FOR USE
>
> Issue WM3: Priorities for the use of freshwater resources.
>
> **Ngā Kaupapa / Policy**
>
> WM3.1 To advocate for the following order of priority for freshwater resource use, consistent with the *Te Rūnanga o Ngāi Tahu Freshwater Policy Statement (1999)*:
>
> (1) That the mauri of fresh water resources (ground and surface) is protected and sustained in order to:
>
> (a) Protect instream values and uses (including indigenous flora and fauna);
>
> (b) Meet the basic health and safety needs of humans, specifically the provision of an untreated and reliable supply of drinking water to marae and other communities; and
>
> (c) Ensure the continuation of customary instream values and uses.
>
> (2) That water is equitably allocated for the sustainable production of food, including stock water, and the generation of energy; and
>
> (3) That water is equitably allocated for other abstractive uses (e.g. development aspirations).
>
> **He Kupu Whakamāhukihuki / Explanation**
>
> The *Te Rūnanga o Ngāi Tahu Freshwater Policy Statement (1999)* sets out priorities for freshwater water use. The priorities recognise mauri as a first order principle given its fundamental importance to sustaining the cultural and environmental health and well-being of waterways. Ngāi Tahu also recognise that sustainable economic

[68] Dyanna Jolly "Mahaanui Iwi Management Plan 2013" <https://mahaanuikurataiao.co.nz/iwi-management-plan/> Section 5.3 Wai Māori, page 78.

development is fundamentally dependent on sustaining healthy waterways.

"We don't want to have to treat our drinking water. When drinking water becomes unsafe, we need to address the source of the problem and not just dig a deeper well or further treat the water. We need to think about water over the long term. We don't want our mokopuna to be drinking treated water." Clare Williams, Ngāi Tūāhuriri.

47 It is therefore submitted that it was not correct for the High Court to find that the IMP was not concerned with the use of water. Nor did the Council, in considering applications for a new use of water, consider this clear policy direction.

48 It is important to note that, while the use of water for a meat works and water bottling, for example, might both be considered "other abstractive uses", other considerations, including other policies in the IMP, mean that these applications would not be treated identically when considered by mana whenua.

49 Most pertinently, the Council and High Court failed to recognise that the challenged consents are directly contrary to Policy WM11.1 of the IMP, which states that when land is sold the new owner must re-apply for consent to take water if there is a proposed change to land use.[69]

50 It is submitted that the risk of significant adverse cultural effects occurring as a result of the proposed change in use to export bottled water should have been informed by the evidence available, including:

50.1 the recognition in planning documents and elsewhere of the significance of the area; and

50.2 the relationship of Ngāi Tūāhuriri with water, which is also recognised in planning documents and includes direction regarding priorities for use.

[69] WM11.1.

51 It is submitted the Council in its decisions on the consents, and the High Court, failed to have sufficient understanding of or regard to these matters.

52 To understand the appropriate consideration of potential adverse cultural effects, it is necessary to consider the requirements of section 104 of the RMA, the cultural significance of the area and the relationship of Ngāi Tūāhuriri with water (discussed at the start of these submissions).

Section 104 RMA

53 Beyond the "*multi-dimensional*" Māori provisions in Part 2 of the RMA, consent authorities when considering applications for resource consent under section 104 of the RMA must have regard to:

53.1 any "actual *and potential effects on the environment of allowing the activity*", including effects on:

(a) ecosystems and their constituent parts, including people and communities; and

(b) all natural and physical resources; and

(c) amenity values; and

(d) the social, economic, aesthetic, and *cultural* conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters;

53.2 any relevant provisions of any national policy statement, regional policy statement or plan or proposed plan; and

53.3 any other matter the consent authority considers relevant, including any iwi planning document.

54 Cultural effects, as an effect on the environment that must be considered under section 104, can be either tangible or intangible.[70] In *Te Runanga o Ngai Te Rangi Iwi Trust v Bay of Plenty Regional Council* the Environment Court rejected submissions that only

[70] *Te Runanga o Ngai Te Rangi Iwi Trust v Bay of Plenty Regional Council* [2011] NZEnvC 402 at [299] and [304].

physical effects can be taken into account, noting that cultural effects clearly include a range of impacts that affect "*historic, traditional, and spiritual aspects of the relationship Maori have with their ancestral lands, waters, waahi tapu and other taonga, and their kaitiakitanga*".[71]

55 The Court commented that the RMA does not "*dismiss relationships or metaphysical issues at all*",[72] and noted that social and cultural wellbeing may involve relationships and metaphysical factors, particularly under provisions such as section 6(e) of the RMA.[73]

56 The High Court in *Tauranga Environmental Protection Society Inc v Tauranga City Council* has commented that it is not the Court's role to decide whether a proposal would have a significant and adverse impact on an area of cultural significance and on Māori values, and a Court cannot substitute its own view of the cultural effects for that of mana whenua.[74] While the Court is entitled to assess the credibility and reliability of evidence provided, when the considered, consistent and genuine view of mana whenua is that the proposal will have a significant and adverse impact on an area of cultural significance to them, and on Māori values, it is not open to the Court to decide it would not.[75]

57 In contrast to this, it is submitted that:

57.1 the Council in making decisions in relation to the consents inputted its own view that there would be no change in cultural effects, despite earlier communication from the Rūnanga advising that it was opposed to water bottling and the decision being contrary to the direction of the Mahaanui IMP; and

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71 At [299].

72 At [304], citing *Bleakley v Environmental Risk Management Autltority* [2001] 3 NZLR 213 (HC) and *Friends & community of Ngawha Incorporated v Minister of Corrections* [2002] NZRMA 401 at [41].

73 At [304].

74 [2021] NZHC 1201 at [36] to [69]. Note that an application by Transpower New Zealand Ltd for leave to appeal was refused: *Transpower New Zealand Ltd v Tauranga Environmental Protection Society Inc* [2022] NZCA 9.

75 At [65].

57.2 there was evidence from Dr Tau in the High Court that there would be adverse cultural effects of water bottling on Ngāi Tūāhuriri;

57.3 the Court appeared to rely on factual findings of the Environment Court on evidence given in *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* that water bottling was not offensive to Ngāti Awa, despite having no evidence whether tikanga relied on by the Environment Court in that case was consistent with Ngāi Tūāhuriri tikanga.[76]

The Rūnanga should have been formally notified of the application

58 The Rūnanga recognises that there is no duty to consult with any person under the RMA.[77] However, there is increasing recognition of the importance of Councils developing and maintaining good working relationships with iwi, including providing for the relationships between iwi and natural resources, which includes:[78]

58.1 taking into account and, where possible, give effect to the principles of the Treaty of Waitangi, noting specifically the principles of kāwanatanga, rangatiratanga and partnership;

58.2 acting in accordance with the *multi-dimensional* Māori provisions in Part 2 of the RMA in good faith, through developed processes and procedures that actively accommodate and engage Ngāi Tahu tikanga in good environmental governance decisions;

58.3 recognising individual Papatipu Rūnanga within their rohe and providing for their involvement in the management of natural and physical resources; and

58.4 fostering a principle of partnership on an ongoing basis.

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[76] [2019] NZEnvC 196.

[77] RMA, s 36A.

[78] The following points are from the Canterbury Regional Policy Statement 2013, section 4.3 Tools and Processes to Sustain Good Working Relationships, page 39, but are also consistent with case law cited in these submissions.

59 In the specific context of this matter, the Canterbury Regional Policy Statement further records that the Council will provide Papatipu Rūnanga with opportunities to participate in the resource consent process as appropriate by:[79]

59.1 *notifying and consulting* affected Papaptipu Rūnanga on consent applications that are site-specific, resource-specific or issues of significance to Ngāi Tahu as identified in iwi management plans and by Papatipu Rūnanga;

59.2 ensuring contact details are maintained, and iwi documents lodged with Council are recorded for applicant use and consultation purposes; and

59.3 encouraging applicants to place applications on hold voluntarily to consult with Rūnanga where appropriate.

60 Despite this, it appears that the Council:

60.1 has ignored the email sent to their Ngāi Tahu Relationship Programme Manager in May 2017 (before any of the consents subject to these proceedings were received) advising that the Rūnanga opposed any consents that allow water to be taken from Belfast to be sold;[80]

60.2 did not seek to communicate with anyone directly from the Rūnanga on the applications, nor encouraged the applicants to consult with the Rūnanga; and

60.3 failed to recognise that the change of use consents were directly contrary to the IMP.

61 Against the above, the High Court and Council recognised that the Rūnanga would be *best placed* to comment on the existence or magnitude of any adverse cultural effects, and that tangata whenua themselves are best placed to explain their relationship with their ancestral waters, lands and sites of significance.[81] The Council and

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79 Canterbury Regional Policy Statement 2013, page 40, section 4.3.5.

80 2 Burge [**201.0059**] at [11] [**201.0062**].

81 Judgment [**101.0111**] at [277] [**101.0174**] citing *Wakatu Inc v Tasman District Council* [2012] NZEnvC 75, [2012] NZRMA 363 at [10].

Court also cited *CDL Land NZ Ltd v Whangarei District Council* as authority that, in the absence of a response the Council was entitled to proceed as it did.[82]

62 It is important to record, however, that the authority relied on arose in the context of an appeal against a decision of the Whangarei District Council to decline a private plan change on the basis that the District Council was not satisfied that the statutory obligation of consultation with local tangata whenua had been adequately fulfilled. The applicant had, over a period of 21 months made at least six attempts to consult with the iwi, which included a letter enclosing a copy of the application, a public meeting, arranging an archaeological inspection of the site, meeting with kaumatua and a representative at which no concerns were expressed, as well as a follow-up phone call to confirm that additional material posted had been received.

63 The similarities between *CDL Land* and this case are very limited. Here the Council relies on one email per application to alert the Rūnanga to an issue noted to be of importance to the Rūnanga, and that the Rūnanga had previously advised it is opposed to, in a culturally sensitive area. In *CDL Land* the engagement was extensive and no issues appear to have been raised by tangata whenua in that engagement. It is also relevant to note that the appeal in *CDL Land* was ultimately dismissed, as the Environment Court found that to allow the appeal would fail to give effect to section 6(e) of the RMA.

64 The Council therefore failed to be adequately informed of the adverse cultural effects of the new use of water. Regardless of whether the Council was required to, and did, consult with the Rūnanga, it is submitted that proper consideration of the change in use, including gaining a proper understanding of adverse cultural effects (with reference to the relevant provisions of the IMP), would have resulted in a different outcome of the Council's decisions on notification.

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[82] Judgment [**101.0111**] at [278] [**101.0174**] citing *CDL Land NZ Ltd v Whangarei District Council* (1996) 2 ELRNZ 423 (EnvC) at 428.

65 In addition to the submissions for the Appellant regarding notification, which the Rūnanga supports, the High Court in *Lysaght v Whakatane District Council* has commented, in the context of a judicial review against a non-notification decision by an iwi authority, that:[83]

65.1 as a starting point, whether an iwi authority qualifies as an "affected person" will be subject to the usual statutory refinements;[84]

65.2 but, there are other complexities associated with affected person status of iwi authorities, including that the respective positions of iwi, hapū and whānau must be considered, and when in accordance with tikanga Māori, affected person status should be afforded to them all or individually or some other combination;[85] and

65.3 iwi authorities have a special status under the RMA, both through the *multi-dimensional* Māori provisions and more specific provisions directing involvement,[86] which is expressly envisaged at all levels of the RMA process, either via joint management agreements or as a matter of sound and responsible resource management practice.[87]

66 It is submitted, in light of these comments and the wider comprehensive provision for Māori interests under the RMA as

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83 *Lysaght v Whakataane District Council* [2021] NZHC 68. This decision concerned separate applications for judicial review by both the Lysaghts, who were not successful, and Te Rūnanga o Ngāti Awa, who was successful in part, so the High Court set aside the decision to grant the resource consent application on a non-notified basis. The Lysaghts appealed the High Court decision, which was affirmed by the Court of Appeal in *Lysaght v Whakatane District Council* [2022] NZCA 423, which is not relevant to the findings summarised above.

84 *Lysaght v Whakataane District Council* at [103].

85 *Lysaght v Whakataane District Council* at [104].

86 See, for example, s 46 which requires the Minister for the Environment to seek and consider comments from relevant iwi authorities when preparing a national policy statement; Schedule 1 that requires local authorities to consult tangata whenua, consider documents recognised by an iwi authority and provide the opportunity to comment on the draft document when preparing a policy statement or plan; s 35A requires local authorities to maintain for each iwi and hapū a record of contact details for each iwi authority and the planning documents recognised by each iwi authority; ss 36B to 36E that provide for the development of joint management agreements, and ss 58L to 58U that provide for mana whakahono a rohe (iwi participation arrangements).

87 *Lysaght v Whakataane District Council* at [106].

outlined in *Ngāti Maru Trust v Ngāti Whātua Ōrākei,*[88] that decisions not to notify an iwi or hapū on an issue they have noted as being of concern to them, such as in the current case, should attract additional scrutiny.

Relief not restricted

67 The Appellants consider that it would be inequitable to grant relief *to the Rūnanga* on the basis that the AWA claim does not identify or allege any failure by the Council in relation to cultural effects. The Rūnanga has been an intervener at all stages of this proceeding, bar the earlier Churchman J preliminary decision that is not challenged in these proceedings. As an intervener, relief would not be granted *to* the Rūnanga, rather the relief sought by AWA and awarded in the Court of Appeal would stand.

68 The Rūnanga has sought intervener status on the basis that its involvement does not seek to widen the issues before the Court, and that:

68.1 its interests will be affected by the proceeding;

68.2 its perspective is of assistance in order to understand the issues more fully; and

68.3 it would be unjust to adjudicate on the matters in dispute without the Rūnanga being heard.

69 The Amended Statement of Claim does, in fact, refer to the Council's consideration of tangata whenua values,[89] and more generally identifies (as the alternative ground) that the Council made errors of law in failing to notify the applications, and erred in the assessment of the actual and potential effects of the challenged applications. Cultural effects are included in the definition of 'environmental effects' that the Statement of Claim alleges were erroneously considered (or not considered, as is the case here).

70 The Appellant also claims that delay in the Rūnanga joining these proceedings (a period of six months) runs against any argument

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88 *Ngāti Maru Trust v Ngāti Whātua Ōrākei* [2020] NZHC 2768.

89 At [29].

that relief should be granted, and incorrectly states that the Rūnanga was not given leave to appear at the High Court hearing. The Rūnanga did appear, but did not present oral submissions.

71 Against a strong presumption that wrongs should be righted,[90] and a requirement that there be "*extremely strong*" reasons not to grant relief,[91] it is submitted that the Appellants claims of delay and scope are neither accurate nor convincing.[92] Against the backdrop of the cultural significance of the area in question, the well-established *multi-dimensional* Māori provisions in the RMA and increasing understanding of the role of tikanga in the law, the perspective of the Rūnanga is important in these proceedings. Without the involvement of the Rūnanga the Court would not be able to appreciate the relevance of this case for mana whenua, nor the range of effects that were not considered when originally granting the consents.

Dated: 15 March 2023

J M Appleyard / R E Robilliard
Solicitor for Te Ngāi Tūāhuriri
Rūnanga Incorporated

90 *Attorney-General v Chapman* [2011] NZSC 110, [2012] 1 NZLR 462 at [1].

91 *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62 at [112] (Elias CJ and Arnold J: "*although relief in judicial review is discretionary, courts today will generally consider it appropriate to grant some form of relief where they find reviewable error. Where there has been a fundamental error by a decision-maker concerning an applicant's legal status, for which the decision-maker is responsible, a court would usually grant relief by ordering the decision-maker to reconsider on the correct basis*").

92 Note also *Wendco (NZ) Ltd v Auckland Council* [2015] NZCA 617, (2015) 19 ELRNZ 328 at [83] (Fogarty J: "*In a judicial review of administrative action, we think it is important not to impose on the parties a standard of care or diligence that is not imposed in the statutory process under review. The RMA does not expect persons potentially adversely affected to monitor closely the progress of any application for resource consent and to be proactive as to whether they will be adversely affected. Rather, the obligation is cast on the consent authority, here the Council, to notify such persons if adversely affected in more than a minor way*").