A. WHAT NGĀTI AWA'S CASE IS ABOUT (AND WHAT IT IS NOT ABOUT)

Ngāti Awa submissions at [4]-[9]:

1. Ngāti Awa here as kaitiaki to protect their taonga; *he taonga tuku iho te wai*.

2. This Court has granted leave to Ngāti Awa on whether:

   - Firstly, the Court of Appeal was correct to discuss the appeals; and

   - Secondly, whether the High Court erred in upholding the Environment Court's decision in relation to the negative tikanga effects.

3. Ngati Awa has framed its submissions under the following two grounds in accordance with its holistic approach to the effects, namely:

   - Ground one – Proper approach to the negative tikanga effects – has two elements (1) whether the negative tikanga effects can be considered at all and (2) the approach to the consideration of those effects.

   - Ground two – When reversion back to Part 2 is required in the context of a resource consent application.

4. Ngāti Awa's case is not about challenging factual findings at the Environment Court. Ngāti Awa say that the Environment Court did not appropriately consider the negative tikanga "end-use" effects; the respondents say that the Environment Court did. Ngāti Awa and the respondents also fundamentally approach the issues in the case differently; Ngāti Awa, holistically, and the respondents in a compartmentalised way.

B. CONTEXT

5. Ko wai a Ngāti Awa: [10]-[12]

6. Mataatua Declaration on water: [13]-[14]

7. Statutory and planning framework: discretionary activity; s104(a)(a); "effect"; "environment"

8. Otakiri Springs' application [15]-[16]

9. Ngāti Awa's case raises proper questions of law as required by RMA s 299 (despite submissions to the contrary by the respondents)

C. GROUND ONE – NEGATIVE TIKANGA EFFECTS OF THE END USE NOT PROPERLY CONSIDERED

Ngāti Awa submissions at paragraphs [30] – [58]:

10. Leave granted – "whether the High Court erred in upholding the Environment Court's decision in relation to the negative tikanga effects"

11. Material facts that are relevant to the negative tikanga effects of the end-use (export and plastic bottles) are at [15]-[29] of submissions. Dr Merito and Dr Mason's evidence was that the proposal will erode the mauri of the wai (EIC [32], **[[204.1242]]**). Ms Simpson noted that Ngāti Awa has deliberately removed plastics from operations (Transcript **[[201.0369]]**). Mr Eruera's evidence focused on the physical sustainability of the take in terms of the

aquifer levels and global water cycle, as well as the positive effects of employment on Ngāti Awa. *See also, evidence hand-up*.

12. The Environment Court Majority treated end-use as a jurisdictional matter and considered it separately at the outset ([32]-[66], **[[05.0030-0038]]**). Bottling and export were considered the primary end uses ([66], **[[05.0038]]**). The Majority misdirected itself on the tikanga effects of end-use [65], [66] **[[05.0037]].** The Environment Court Majority (1) failed to consider the impact of end-use effects on te mauri o te wai as holistically framed by Ngāti Awa's witnesses and did not explain its preference for evidence; (2) conflated biophysical effects with metaphysical effects, showing a preference for evidence that aligns with Western science ([102], **[[05.0043]]**).

13. The High Court held the Environment Court went too far on jurisdiction but ultimately held that the Majority made factual findings on end-use.

14. Ngāti Awa did not lead evidence on plastics but there was evidence adduced following commissioner questions. How this issue came before the Environment Court is a red herring. The point is that, if the effects are relevant to consider, they should be under s 104. The Court of Appeal's judgment on end-use effects focused on plastics as that is what it granted leave to appeal on.

D. GROUND TWO – ERROR IN FAILING TO REVERT TO PART 2

Ngāti Awa submissions at paragraphs [59]-[83]:

15. The Majority failed to revert to Part 2 in its assessment of effects under s 104(a). The error was carried by the Court of Appeal. *Davidson* is the leading authority on reversion to Part 2; *King Salmon* and *Port Otago* are different in context but also consider Part 2 in the planning context.

16. Plans do not furnish a clear answer to whether consent should be granted or declined. While *Davidson* did not deal with multi-dimensional Māori provisions so should be applied cautiously, it does provide a starting point for analysis, leading to a need to revert to Part 2.

17. The Court of Appeal adopted the same approach (not to revert to Part 2) largely because it considered the planning documents sufficient.

E. WHAT SHOULD HAVE BEEN THE APPROACH TAKEN BY THE ENVIRONMENT COURT?

18. Proper conception of Ngāti Awa's evidence as holistic and inclusive of end-use effects capable of consideration under the RMA. A different starting point would have allowed the Court to consider end-use effects and to request the further evidence it required on plastics.

19. *He Poutama* is instructive here in terms of providing a framework for the consideration of the tikanga effects and tikanga evidence; see **[3.10] (p47)**, **[3.18] (p.50)**; **p.102** (the interpretative guide).

F. RELIEF

20. Ngāti Awa are seeking that the matter be remitted back to the Environment Court for reconsideration in light of the findings of this Court.