

ORC Omnibus Plan Change - Plan Change 8

Submission Reference no: 59

Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga c/- Sandra McIntyre, **Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga**

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Submitter Type: Not specified

Source: Web Form

Overall Notes:

Clause

Are you a trade competitor?

Position

I am a person who would not gain an advantage in trade competition through this submission

Notes

Clause

What are you submitting on? You can submit on specific parts of Plan Change 8 or the whole plan change.

Position

I am submitting on the whole plan change.

Notes

Clause

What is your view on the Plan Change 8 or the specific parts listed above? Please select one, if you have multiple views state clearly in the notes box below.

Position

Multiple views

Notes

We support the overall direction of Proposed Plan Change Plan 8 to the Regional Plan: Water for Otago but seek some amendments, as set out in the attached submission document.

Clause

The reason(s) for my views are:

Notes

See attached submission document.

Clause

What decision would you like the Environment Court to make?

Position

Approve the plan change with amendments

Notes

See attached submission document for details of requested decisions.

Clause

The reasons form my view and/or any amendment(s) I am seeking are:

Notes

See attached submission document for details.

Clause

Do you wish to be heard in support of your submission? All submissions will be considered by the Environment Court. Please

indicate if you wish to be heard in support of your submission.

Position

I wish to be heard in support of my submission

Notes

Clause

Please indicate your choice(s) below. If you do not indicate your intention to call experts, you can change your mind later and decide to call experts to give evidence in relation to your submission, provided you do so in time to meet any procedural direction the Environment Court might make.

Position 1

I intend to call an expert witness

Position 2

If others make a similar submission I/we would consider presenting a joint case with them at a hearing

Notes

Clause

Authority to act:

Position

I confirm I have the authority to sign this submission on behalf of the submitter

Notes

See authorised signatory on attached submission document.

SUBMISSION	
TO:	Environmental Protection Authority
DATE:	17 August 2020
PLAN CHANGE:	Proposed Plan Change 8 to the Regional Plan: Water for Otago
KĀI TAHU KI OTAGO PAPATIPU RŪNAKA	Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively mana whenua)
TRADE COMPETITION:	Mana whenua could not gain an advantage in trade competition through this submission
<p>Mana whenua support the overall direction of Proposed Plan Change Plan 8 to the Regional Plan: Water for Otago (the Plan Change) but seek some amendments.</p> <p>Mana whenua do wish to be heard in support of this submission at a hearing and request an opportunity to expand on this submission. If others make a similar submission, we will consider presenting a joint case with them.</p>	

1. Introduction

- 1.1 Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga are mana whenua within the Otago region.
- 1.2 The takiwā of Te Rūnanga o Moeraki is based at Moeraki and extends from the Waitaki River to the Waihemo (Shag) River. The takiwā of Kāti Huirapa Rūnaka ki Puketeraki centres on Karitāne and extends from the Waihemo River (Shag River) to Purehurehu Point (north of Heyward Point). The takiwā of Te Rūnanga o Ōtākou centres on Ōtākou and extends from Purehurehu Point to Te Matau (the Clutha River). The takiwā of Hokonui Rūnanga centres on the Hokonui region and includes a shared interest in the lakes and mountains between Whakatipu-Waitai and Tawhititarere with other Murihiku Rūnanga and those located from Waihemo southwards.

1.3 This submission is supported by Te Rūnanga o Ngāi Tahu (Te Rūnanga). The submission should be read in conjunction with the submission of Te Rūnanga o Ngāi Tahu on behalf of Ngāi Tahu Whānui as a whole, and the submission of Te Ao Marama Incorporated on behalf of Murihiku Papatipu Rūnaka.

Mana whenua in respect of the Otago region and water

1.4 Two historical deeds are important in the Otago region. The Otago Deed was signed at Koputai (Port Chalmers) on 31 July 1844 for the purchase of half a million acres of coastal Otago for £2,400. On 12 June 1848, the Canterbury Deed of Purchase (otherwise known as ‘Kemp’s Deed’) was signed aboard the warship Fly in Akaroa Harbour. This Deed saw the Crown purchase twenty million acres of land in Canterbury and inland Otago for £2000. The 150-year history of the Kāi Tahu¹ claims founded in the deeds and Te Tiriti o Waitangi clearly demonstrate that both the deeds and Te Tiriti did not alter Kāi Tahu rights and rangatiratanga over freshwater.

Tino Rakatirataka recognised under the Ngāi Tahu Settlement

1.5 The Ngāi Tahu Claims Settlement Act 1998 (Settlement Act) gives effect to the Deed of Settlement signed by the Crown and Te Rūnanga o Ngāi Tahu on 21 November 1997. The purpose of these documents was to:

- confirm the Treaty relationship, obligations and responsibilities between Kāi Tahu and the Crown. The settlement marked the beginning of a “*a new age of co-operation*” between Kāi Tahu and the Crown. The Otago Regional Council must work in partnership with Te Rūnanga and Papatipu Rūnanga;
- achieve a final settlement of Kāi Tahu historical claims against the Crown as outlined in the settlement; and
- confirm Kāi Tahu tino rakatirataka. This includes an express acknowledgement (in both the Settlement Act and the earlier Deed) that:

¹ The southern Māori Kāi Tahu dialect uses a ‘k’ interchangeably with ‘ng’. The preference for mana whenua is to use a ‘k’. In this document, the ‘k’ will be used except for names and references to legislation, except for the tribal entity, Te Rūnanga o Ngāi Tahu, or the wider Ngāi Tahu whānui.

“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.”

- 1.6 The Deed of Settlement and Settlement Act also acknowledge the requirement for Kāi Tahu to express its traditional relationship with the natural environment and to exercise its kaitiaki responsibilities.

Kaitiakitaka

- 1.7 All fresh water is of great significance to Kāi Tahu. Mana whenua have responsibilities through whakapapa to act as kaitiaki and care for catchments as a whole. The right of Kāi Tahu to oversee land, resources, aspirations and wellbeing was protected under the Te Tiriti o Waitangi, and this right still exists today, as recognised by the Kāi Tahu Settlement.

- 1.8 Section 2 of the Resource Management Act 1991 (**RMA**) provides the interpretation of tikaka/tikanga² and kaitiakitaka/kaitiakitanga for the purposes of the RMA:

tikanga Māori means Māori customary values and practices

kaitiakitanga means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship.

- 1.9 Tikaka values and practises associated with kaitiakitaka are dependent on, and reflect, the exercise of rakatirataka. Kāi Tahu tikaka is an intergenerational source of mātauraka that gives insight into customary views and practices and how they have evolved over time.

- 1.10 Section 7 of the RMA requires consent authorities to have ‘particular regard’ to kaitiakitaka in a manner that respects and accounts for tikaka unique to each iwi exercising kaitiakitaka within their rohe.

- 1.11 The Kāi Tahu ki Otago Natural Resource Management Plans 1995 and 2005 and the Waitaki Iwi Management Plan 2019 are the principal resource management planning documents for Kāi Tahu ki Otago and the embodiment of Kāi Tahu rakatirataka and kaitiakitaka. The kaupapa

of the plans is 'Ki Uta ki Tai' (Mountains to the Sea), which reflects the holistic Kāi Tahu ki Otago philosophy of resource management.

- 1.12 The plans express Kāi Tahu ki Otago values, knowledge and perspectives on natural resource and environmental management issues. While the plans are first and foremost planning documents to assist Kāi Tahu ki Otago in carrying out their kaitiaki roles and responsibilities, they are also intended to assist others in understanding tākata whenua values and policies.
- 1.13 As kaitiaki exercising rakatirataka over the water of the Otago region, mana whenua have both a responsibility and a right to ensure that decision-making puts the interests of the water first. Mana whenua request that this submission is afforded status and weight appropriate to recognise their rakatirataka and exercise of kaitiakitaka over the Otago region, and fresh water in particular.

2.0 Consultation with Mana whenua

- 2.1 Mana whenua acknowledge the work that was undertaken by the Otago Regional Council to work with staff at Aukaha on drafting this plan change. This included multiple meetings and discussions around the wording of the provisions for this plan change. Mana whenua provided feedback via Aukaha throughout the pre-notification consultation process.

3.0 General submission

- 3.1 The purpose of Proposed Plan Change 8 to the Otago Regional Plan: Water is to strengthen Otago's regional planning framework in the interim period while a new Regional Policy Statement is prepared and reviews of the Regional Plan: Water and Regional Plan: Waste are undertaken, by amending provisions for specific activities with known water quality impacts.
- 3.2 The National Policy Statement for Freshwater Management 2014 (amended 2017) (**NPSFM 2017**) requires that land use and development be sustainably managed to safeguard the life-supporting capacity and ecosystem processes of freshwater, and the health of people and communities as affected by contact with freshwater.³

³ NPSFM Objective A1

3.3 The National Policy Statement for Freshwater Management 2020 (**NPSFM 2020**) comes into force on 3 September 2020. The NPSFM 2020 requires that freshwater is managed in a way that gives effect to Te Mana o te Wai,⁴ and describes six principles of Te Mana o te Wai. These are:

(a) *Mana whakahaere*: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater

(b) *Kaitiakitanga*: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations

(c) *Manaakitanga*: the process by which tangata whenua show respect, generosity, and care for freshwater and for others

(d) *Governance*: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future

(e) *Stewardship*: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations

(f) *Care and respect*: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.⁵

3.4 Policy 3 of the NPSFM 2020 requires that freshwater is managed in an integrated way that considers the effects of land use and development.

3.5 Both the Waitaki Iwi Management Plan and the Kāi Tahu ki Otago Resource Management Plan identify deteriorating water quality as a concern in the Otago region. Poor water quality has significant impacts on mahika kai, taonga species, drinking water sources and the mauri of waterways.

3.6 Mana whenua consider that all land users have a responsibility to manage their land in a way that avoids impacts on the quality of surface water and groundwater, and have long held concerns about weaknesses in the planning framework with respect to land use activities. Continuing failure to address the impacts of poor land management practices on water quality does not provide for the relationship of mana whenua to the freshwater resources of Otago,

⁴ NPSFM 2020, Policy 1.

⁵ NPSFM 2020 1.3(4).

as required by section 6(e) of the RMA. It also inhibits the ability of mana whenua to sustain cultural practices and carry out kaitiakitaka responsibilities with respect to freshwater.

- 3.7 The current planning framework is inconsistent with the RMA, NPSFM 2017 and NPSFM 2020 and fails to have sufficient regard to Kāi Tahu rakatirataka and kaitiakitaka. Mana whenua agree that an interim solution is necessary to improve management of high-risk activities while the Regional Plan: Water and Regional Plan: Waste are being reviewed. Mana whenua support strengthening of policies and rules on land use in the Regional Plan: Water to improve management of water quality effects, but have an expectation that the comprehensive plan review will incorporate additional measures to provide for stronger management of some of the activities addressed in Proposed Plan Change 8, as well as management of other activities that are beyond the scope of this Plan Change.
- 3.8 Proposed Plan Change 8 includes some provisions relating to activities that are controlled in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NESF 2020**) and the Resource Management (Stock Exclusion) Regulations 2020 (**Stock Exclusion Regulations**). The provisions in Proposed Plan Change 8 for intensive grazing and for stock exclusion from water bodies and wetlands differ in some respects from those in the national instruments.
- 3.9 A regional rule for an activity controlled in a national environmental standard or regulation can only differ from the requirements of the national instrument if the standard or regulation expressly allows for this.⁶ The national instruments do not allow for greater leniency in the case of either intensive grazing or stock exclusion. However both instruments allow for a regional rule for these activities to be more restrictive.⁷ To the extent that the provisions in Proposed Plan Change 8 are more restrictive than the national instruments, mana whenua support retention of the proposed provisions in order to minimise the adverse effects on water bodies that have resulted from these activities.

⁶ RMA s. 43B and 68(2)

⁷ NESF 2020 Clause 6 and Stock Exclusion Regulations Clause 19.

4.0 Specific Submissions

- 4.1 Mana whenua submissions specific to each provision are shown in Appendix 1.
- 4.2 Mana whenua generally support the stronger policy and rule framework established in Proposed Plan Change 8 and consider that this will contribute to improved environmental outcomes for freshwater quality. Mana whenua seek that the provisions are retained, unless otherwise specified in Appendix 1.
- 4.3 Mana whenua support inclusion of reference to “Kāi Tahu cultural and spiritual beliefs, values and uses” as a consideration in all policies and matters for discretion included in Proposed Plan Change 8. This will improve recognition of the relationship of mana whenua to Otago’s freshwater resources, and the rakatirataka and kaitiakitaka of mana whenua in respect to water.
- 4.4 If other submitters seek to change any provisions, we retain an interest across the entire Plan Change.

Nahaku noa, nā



Maree Kleinlangevelsloo

Manager Mana Taiao (acting)

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Appendix 1: Mana whenua submission Regional Plan: Water (Plan Change 8)

Chapter / Provision	Support/oppose	Relief sought	Reason/comment
Part A: Discharge policies			
Policies 7.C.5 and 7.C.6	Support	Retain as notified.	Contamination of water bodies from poor design and inappropriate management of stormwater systems can have significant adverse impacts on mahika kai and on the life-supporting capacity and mauri of freshwater resources. The clearer and stronger direction to minimise the environmental effects of stormwater discharges and to progressively reduce cross-contamination from sewage, industrial waste, sediments and nutrients will improve water quality outcomes and better give effect to Te Mana o te Wai.
New policy 7.C.12	Support with amendment	Amend clause (d) of Policy to read: <i>Having particular regard to any adverse effects on cultural values <u>Kāi Tahu cultural and spiritual beliefs, values and uses.</u></i>	Discharges of sewage to water (whether treated or not) are culturally offensive to Kāi Tahu. In the longer term, mana whenua continue to seek stronger direction in rules to avoid discharges of sewage to water. However, as an interim measure, mana whenua support the policy direction to reduce the effects of such discharges and to give preference to discharges to land. Recognition of the relationship of Kāi Tahu with water in clause (d) is also supported; however mana whenua request that the wording be amended to be consistent with wording used in other provisions of this Plan Change.
Policy 7.D.5	Support	Retain as notified.	Contamination of water bodies from inappropriate discharges can have significant adverse impacts on mahika kai and on the life-supporting capacity and mauri of freshwater resources. Mana whenua consider that, to give effect to Te Mana o te Wai, significant adverse effects of discharges should be avoided, and in the longer term seek a strong direction to this effect in rules. However, as an interim measure, mana whenua support the policy

			requirement to consider the sensitivity of the receiving environment, the performance of the discharge management system and the extent to which applications for discharge consent avoid significant effects.
New Policy 7.D.6	Support with amendment	Amend policy to correct error in rule reference as follows: <i>When considering applications for resource consent for discharges of nitrogen under Rule 12.C.3.2 12.C.2.3</i> ...	Contamination of water bodies resulting from excessive nutrient loading can have significant adverse impacts on mahika kai and on the life-supporting capacity and mauri of freshwater resources. The restriction on consent duration and guidance on resource consent considerations places the focus of consideration more clearly on the needs of the water body and on recognition of the relationship of Kāi Tahu with water, and will facilitate decision-making that gives better effect to Te Mana o te Wai.
Part B: Animal waste storage and application			
New Policies 7.D.7 and 7.D.8	Support	Retain as notified.	Contamination of water bodies resulting from poor design and inappropriate management of animal waste systems can have significant adverse impacts on mahika kai and on the life-supporting capacity and mauri of freshwater resources. Inclusion of a policy and rule framework for managing construction and use of animal waste systems, and for ensuring such discharges do not enter water, will improve water quality outcomes and better give effect to Te Mana o te Wai.
New Rules 12.C.0.4, 12.C.1.4 and 12.C.2.5	Support	Retain as notified.	Contamination of water bodies resulting from poor design and inappropriate management of animal waste systems can have significant adverse impacts on mahika kai and on the life-supporting capacity and mauri of freshwater resources. Inclusion of a policy and rule framework for managing discharges from animal waste systems, and for ensuring such discharges do not enter water, will improve water quality outcomes and better give effect to Te Mana o te Wai.

<p>New Rules 14.7.1, 14.7.2 and 14.7.3 Schedules 18 and 19</p>	<p>Support with amendment</p>	<p>1. Amend Rules 14.7.1 and 14.7.2 and Schedule 18 to replace the requirement to meet pond drop test criteria with a requirement for a leak detection system that is designed to capture leachate from under the entire storage pond.</p> <p>2. Amend Rules 14.7.1(c) and 14.7.2(e) to add the following requirement for management plans: <i><u>(iii) Specified measures and timeframes to be met to remedy any identified leak.</u></i></p>	<p>Contamination of water bodies resulting from poor design and inappropriate management of animal waste systems can have significant adverse impacts on mahika kai and on the life-supporting capacity and mauri of freshwater resources. Inclusion of a policy and rule framework for managing construction and use of animal waste systems will improve water quality outcomes and better give effect to Te Mana o te Wai.</p> <p>However, mana whenua consider the rule requirements need to be tightened to ensure the intended outcomes are achieved, in particular by including stronger measures to identify and remedy any leaks from waste storage systems.</p>
<p>Definition: Suitably Qualified Person</p>	<p>Oppose</p>	<p>Amend the definition to include objective criteria for qualifications, experience and competence.</p>	<p>Rules 14.7.1 and 14.7.2 rely on a “Suitably Qualified Person” to certify compliance of an animal waste system with construction and testing requirements. However the definition does not include any objective criteria to provide confidence to land users or mana whenua that the person will have appropriate qualifications, experience and competence for this.</p>
<p>Part C: Good farming practices</p>			
<p>New Policy 7.D.9 Definition: Critical source area</p>	<p>Support with amendment</p>	<p>1. Amend Policy 7.D.9(b) to read: <i>(b) Managing stock access to water bodies to: (i) Progressively exclude stock from lakes, wetlands, and continually flowing rivers; and (ii) Avoid significant adverse effects on water quality, bed and bank integrity and stability, Kai Tahu values, and river and riparian ecosystems and habitats; and</i></p>	<p>Mana whenua are concerned about the impacts of inappropriate land management on mahika kai and on the life-supporting capacity and mauri of freshwater resources, and consider that all land users have an obligation to manage land in a way that avoids impacts on the quality of surface water and groundwater. Mana whenua support the policy requirements relating to stock access and intensive grazing, which reflect requirements included in the NESF 2020 and the Stock Exclusion Regulations.</p>

		<p><u>(iii) Avoid significant adverse effects on Kāi Tahu cultural and spiritual beliefs, values and uses; and ...</u></p> <p>2. Amend Policy 7.D.9(d) to read: <i>(d) Managing the risk of sediment run off from farming activities by:</i> <i>(i) Implementing setbacks from water bodies and establishing riparian margins vegetation, and ...</i></p>	<p>In the longer term, mana whenua seek stronger management requirements in rules to address sediment and contaminant loss to water bodies, but as an interim measure the direction provided in Policy 7.D.9 is supported as a step towards improving water quality outcomes and giving effect to Te Mana o te Wai.</p> <p>Mana whenua support recognition of the relationship of Kāi Tahu with water in clause (b)(ii); however the wording should be amended to be consistent with wording used in other provisions.</p> <p>The wording of clause (d)(i) is unclear, and an amendment is requested to better reflect the intent of the provision.</p>
Part D: Intensive grazing			
New Rules 14.6.1.1 and 14.6.2.1 Definitions	Support		<p>Contamination of water bodies resulting from excessive nutrient loading can have significant adverse impacts on mahika kai and on the life-supporting capacity and mauri of freshwater resources. Inclusion of rules to manage intensive grazing on fodder crops will facilitate management of nutrient loadings, improve water quality outcomes and better give effect to Te Mana o te Wai.</p> <p>Mana whenua note that the proposed rules differ in some respects from the requirements of the NESF 2020. To the extent that the provisions in Proposed Plan Change 8 are more restrictive than the national instruments, mana whenua support retention of the proposed provisions in order to minimise the adverse effects on water bodies from this activity.</p>
Part E: Stock access to water			
Rule 13.5.1.8A Definition	Support	Retain as notified.	Contamination of water bodies and destruction of habitat resulting from livestock activity in and alongside water

			bodies and wetlands can have significant adverse impacts on mahika kai and on the life-supporting capacity and mauri of freshwater resources. Mana whenua support the proposed exclusion of dairy cattle and pigs, and also support the date prescribed for this to come into effect. This will provide for improvements in the freshwater environment earlier than will be achieved by the Stock Exclusion Regulations.
Part F: Sediment traps			
New Rule 13.5.1.10 Definition	Support	Retain as notified.	Sedimentation of water bodies can have significant adverse impacts on mahika kai and on the life-supporting capacity and mauri of freshwater resources and on estuarine and coastal waters downstream. The preference of mana whenua is for land users to manage land in a way that does not result in sediment entering water bodies. However, mana whenua recognise that sediment traps are an appropriate tool to remediate sedimentation problems generated by past practices, and support provision for use of this tool subject to controls to ensure there are no adverse effects in the water body downstream.
Part G: Sediment from earthworks for residential development			
New Policy 7.D.10 and New Rule 14.5.1.1	Support	Retain as notified.	A lack of integrated management of earthworks from urban development has contributed to sedimentation of water bodies, with resulting adverse impacts on mahika kai and on the life-supporting capacity and mauri of freshwater resources and on estuarine and coastal waters downstream. Mana whenua support inclusion of a strong policy direction and rules to improve management of earthworks. This will contribute to improving water quality outcomes and will better give effect to Te Mana o te Wai.
New Rule 14.5.2.1	Support with amendment	Amend matter for discretion (e) to read: <i>Any adverse effect on <u>mahika kai</u>, on any natural or human use value, and</i>	The matters for discretion listed are appropriate considerations when making decisions on resource consents for earthworks that do not meet the standards. However, mana whenua consider that it would be appropriate to

		<i>on use of the coastal marine area for contact recreation and seafood gathering; and</i>	consider effects on freshwater mahika kai as well as on seafood gathering. Mahika kai in both freshwater and coastal environments is of central importance to Kāi Tahu identity, and the ability to consider and address effects on mahika kai is necessary to enable exercise of kaitiakitaka.
Part H: Nationally or regionally important infrastructure			
Policy 10.4.2	Support	Retain as notified.	Alignment of the policy with the definition of “nationally or regionally significant infrastructure” used in the Regional Policy Statement will provide greater certainty in respect to how the effects of particular activities on wetlands will be considered.

