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Board of Inquiry – Proposed New Zealand Coastal Policy Statement
C/- The Department of Conservation
PO Box 10 420
Wellington 6143

Proposed New Zealand Coastal Policy Statement 2008
Submission of behalf of Te Rūnanga o Ngāi Tahu

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1. **Te Rūnanga o Ngāi Tahu**

- 1.1 This submission is made on behalf of Te Rūnanga o Ngāi Tahu (“Te Rūnanga”).
- 1.2 Te Rūnanga, the tribal representative body of Ngāi Tahu Whānui, is a body corporate established on 24 April 1996 under section 6 of Te Rūnanga o Ngāi Tahu Act 1996 (“the Act”).
- 1.3 Section 3 of the Act states:

This Act binds the Crown and every person (including any body politic or corporate) whose rights are affected by any provisions of this Act.
- 1.4 Section 15(1) of the TRoNT Act states:

Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui.

2. **Collective Voice**

- 2.1 In paragraph 7 of section 6 of the Ngāi Tahu Claims Settlement Act 1998 (“the Settlement Act”) (recording the Crown’s apology) Ngāi Tahu is recognised “as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.”
- 2.2 It has therefore been clearly affirmed in statute that Te Rūnanga is the sole representative of Ngāi Tahu Whānui, the iwi that is tāngata whenua within the Ngāi Tahu Takiwā.
- 2.3 Te Rūnanga, by virtue of its statutorily recognised position as the representative tribal body of Ngāi Tahu Whānui, makes this submission on behalf of the Ngāi Tahu tribal collective. Te Rūnanga is constituted as the kaitiaki of the tribal interest through its Charter adopted on 21 August 1993.
- 2.4 The attention of the Board of Inquiry is respectfully drawn to the special status of Te Rūnanga. Te Rūnanga notes that this submission should not be treated as a single submission, in the manner customarily adopted by Board of Inquiry, but should be accorded the status and weight due to the tribal collective, Ngāi Tahu Whānui, which it represents.
- 2.5 There are currently over 43,000 members of Ngāi Tahu Whānui whose names are registered on the roll in accordance with section 8 of the Act and this number continues to grow.
- 2.6 Notwithstanding its statutory status as the representative voice of Ngāi Tahu Whānui “for all purposes”, Te Rūnanga accepts and respects the right of

individuals and Papatipu Rūnanga to make their own submissions to the Board of Inquiry.

3. Introduction

- 3.1 Te Rūnanga o Ngāi Tahu has an extensive takiwā consisting of approximately half of New Zealand's land area. Through the principle of mana whenua mana moana, Ngāi Tahu also hold rangatiratanga and mana over the foreshore, seabed and wider coastal marine area adjoining the takiwā, constituting our rohe moana.
- 3.2 Tangaroa is an integral part of the Ngāi Tahu whakapapa and this association is spelt out in Ngāi Tahu creation stories, waiata, whakataukī, tauparapara, ingoa wāhi and tikanga relating to the use of the ocean and more recently within the Ngāi Tahu Claims Settlement Act 1998. Tangaroa provides the mahinga kai which has ensured our survival as a people for over forty-eight generations.
- 3.3 We recognise the significant role of the New Zealand Coastal Policy Statement (NZCPS) in the Resource Management Act (RMA), framework and have considerable input into, and experience of, the processes administered under the RMA including the work of the 26 local government bodies within our takiwā.
- 3.4 Changes to the NZCPS will have significant implications for Te Rūnanga, papatipu rūnanga and tangata whenua in general. This review of the NZCPS provides an opportunity, not only to strengthen the policy basis upon which our system of coastal management is founded, but also to provide clearer and more detailed guidance to local authorities about how to address the complex array of coastal issues we are confronted with.

4. Lack of Specific Policy Guidance

- 4.1 Te Rūnanga o Ngāi Tahu is concerned that, in its present form, the Proposed NZCPS 2008 fails to afford sufficiently specific policy guidance, especially in respect of tangata whenua issues. Te Rūnanga o Ngāi Tahu is especially concerned that the general guidance that is provided in policies 1 – 4 is concerned only with procedure and is not backed up with any policies setting out specific cultural outcomes that are to be sought.
- 4.2 By way of illustration, proposed policy 2(a) provides that:

All persons exercising functions under the Resource Management Act 1991 in relation to the coastal environment shall:
(a) take into account the principles of the Treaty of Waitangi;

- 4.3 As it presently stands, this policy is meaningless and unnecessary as it merely repeats the same duty that section 8 of the Resource Management Act 1991 (the RMA) already imposes.

- 4.4 In a similar vein, proposed policy 2(c) simply reiterates the same requirement as that contained in clause 3B of the First Schedule of the RMA.
- 4.5 We believe that these policies add little or nothing to the existing RMA framework and that they should be deleted and replaced with clear policy direction about how these duties are to be carried out. For example, the NZCPS could helpfully offer more specific guidance to local authorities about such matters as:
- How to identify the types of situations in which it will be relevant to consult with tangata whenua;
 - The value of undertaking a cultural impact assessment and the circumstances in which it might be relevant to do so; and
 - How and in what circumstances iwi management plans will be “*taken into account*” and what is their relevance under section 104.
- 4.6 Te Rūnanga o Ngāi Tahu considers that local authorities have, generally speaking, struggled to come to terms with the nature of the tangata whenua provisions of the RMA and that, as a result, these provisions have often tended to be overlooked or downplayed, both within the context of district and regional plans and in resource consent decisions. In order to assist councils to rectify this situation, it is necessary for central government to provide clearer direction about the nature of these statutory obligations. Within the context of the coastal environment, the NZCPS seems the logical place within which to provide such guidance.

5. Implementation Assistance

- 5.1 In addition to providing more specific policy direction within the NZCPS, we consider that additional emphasis should also be placed on assisting councils to implement and “give effect” to the NZCPS. By way of illustration, and within the context of the tangata whenua policies of the existing NZCPS:
- How should councils go about “recognis[ing] and facilitate[ing] the special relationship between the Crown and tangata whenua as established by the Treaty of Waitangi...” (as required by existing policy 4.2.1);
 - How and in what ways should provision be “...made for the identification of the characteristics of the coastal environment of special value to the tangata whenua in accordance with tikanga Maori.” (as required by existing policy 2.1.1); and
 - How do you protect “...the characteristics of the coastal environment of special value to the tangata whenua...in accordance with tikanga Maori.” (as required by existing policy 2.1.2)
- 5.2 In this context, Te Rūnanga o Ngāi Tahu submits that it should become a policy of the NZCPS for the Minister to monitor the implementation process and the extent to which local authorities are satisfying the requirement to “give effect” to it. In order to streamline the implementation process, it should also be a policy of the revised NZCPS for local authorities to conduct a review of

their policy statements and plans within a reduced timeframe than the five year period referred to in policy 13 of the Proposed NZCPS. Te Rūnanga o Ngāi Tahu submits that three years is a more suitable period within which to make the necessary amendments in order to give effect to the NZCPS.

- 5.3 In summary, in order to get the best out of the NZCPS, the implementation process needs to become more proactive.

6. Definition of the Coastal Environment

- 6.1 The NZCPS should seek to clarify the considerable confusion that has surrounded the ambit of the definition of the coastal environment. In particular, the NZCPS's definition of the "coastal environment" should make it explicit that the concept of the "coastal environment" encompasses coastal lakes, lagoons, estuaries and coastal wetlands.

- 6.2 From a Ngāi Tahu perspective, coastal lakes such as Te Waihora and Te Roto o Wairewa, lagoons such as Wainono Lagoon and estuaries such as Ihu Tai are not only dominated by coastal processes, but are also regarded as the mahinga kai food baskets of Ngāi Tahu culture. It is therefore considered vital that such places obtain the protection of the objectives and policies contained in the New Zealand Coastal Policy Statement.

- 6.3 Accordingly, policy 1(c) of the Proposed NZCPS 2008 should be expanded so as to include a specific reference to coastal lakes, lagoons, estuaries and coastal wetlands.

7. Tangata Whenua Involvement in Decision Making Processes

- 7.1 Notwithstanding the emergence in the use of cultural impact assessments and iwi management plans, Te Rūnanga o Ngāi Tahu is of the view that the extent to which cultural effects are adequately assessed and taken into account by consent applicants, councils and hearing panels is, at best, marginal. For example, we consider that, generally speaking, assessments of effects, officer's reports and consent and planning decisions fail to adequately discuss and recognise the range of cultural effects that an activity may cause. Unfortunately, this is the case even in circumstances where a detailed cultural impact assessment of a proposal has been undertaken.

- 7.2 One method of overcoming such hurdles is to actively support the appointment of experts in tikanga and tangata whenua values to decision making panels/boards of inquiry. By doing this, it would help to ensure that, at the time of making a decision about what a plan should say and/or whether resource consent should be granted, there will at least be an assurance that cultural effects will not be overlooked – as they so often have been in the past. The cultural significance of the coastal environment means that the NZCPS is an ideal place within which to begin promoting both the training and appointment of tangata whenua commissioners.

- 7.3 In this context, policy 2(g) of the Proposed NZCPS should be expanded to make it clear that it is seeking to require local authorities to actively support the training and appointment of people with expertise in cultural matters to hearing panels.

8. **Transfer of Powers and Joint Management Agreements**

- 8.1 While Te Rūnanga o Ngāi Tahu is supportive of the purpose of proposed policy 4, it is concerned about its likely effectiveness. This concern stems from the fact that an almost identical policy in the NZCPS 1994 (policy 2.1.3) has failed to deliver any transfers or delegations. Therefore we fear that policy 4 in its present form will only serve to bring about similarly unsuccessful results. In short, the policy is considered to be too soft and easily ignored by local authorities.

- 8.2 What is needed in order to begin to realise the opportunities that sections 33¹, 34 and 36B present is the imposition of a mandatory obligation on local authorities (in conjunction with iwi organisations) to carry out a formal evaluation of the types of situations in which the transfer of powers or the entering of joint management agreements may be an effective and meaningful way of giving effect to the tangata whenua provisions of the RMA (contained in sections 6(e), 7(a) and 8). As far as Te Rūnanga o Ngāi Tahu is aware, no such evaluation has ever been undertaken by councils to date.

- 8.3 At the same time, it is also likely to be necessary for the Minister of Conservation to offer a greater level of guidance to local authorities and iwi organisations about where and when it may be appropriate to consider entering into such arrangements and how such arrangements may be structured and resourced. Potentially, this additional policy direction could be provided through a series of pilot projects, whereby assistance is provided to local authorities to:

- Identify suitable transfer or joint management agreement situations;
- Devise an effective structure which effectively addresses resourcing, capacity and accountability issues;
- Implements the arrangement, monitors the results and carries out refinements as required.

- 8.4 The NZCPS policy framework should be sufficiently robust to support a pilot project initiative such as this.

- 8.5 The NZCPS should also direct local authorities to examine how and in what ways they can seek to enhance the contribution of non-statutory cultural

¹ In a Sustainable Management Fund report entitled 'Transferring RMA Functions to Iwi Using Section 33' (located on the Quality Planning website - <http://www.qualityplanning.org.nz/>) it is said "However, should both sides of the process work proactively and diligently towards the goal, section 33 has the potential of delivering a level of empowerment to iwi authorities far in excess of any other currently available under the RMA. If implemented as intended, it could also provide the opportunity to achieve co-management efficiency goals sought by councils and iwi in the drive for improved sustainable management." (page 56)

management techniques such as mahinga kai cultural parks, mātaimai and taiāpure reserves, species recovery programmes and the imposition of rāhui.

- 8.6 It is important to Te Rūnanga o Ngāi Tahu that the NZCPS recognise the often overlooked connection between the achievement of improved environmental outcomes and the increased adoption of traditional tangata whenua approaches to natural resource management. There needs to be an increase in the community's awareness of the significant role and value that the practice of kaitiakitanga has to play within New Zealand's coastal management regime.

9. **Ki Uta Ki Tai (From the Mountains to the Sea)**

- 9.1 The philosophy of Ki Uta Ki Tai is central to kaitiakitanga and the way Ngāi Tahu approaches the management of natural resources. Ki Uta Ki Tai reflects the knowledge that all natural resources are interconnected and must be managed as such. Ki Uta Ki Tai is a Ngāi Tahu paradigm and ethic – it is the holistic way in which Ngāi Tahu seek to understand the natural environment, including how it functions, how people relate to it and how it can be looked after appropriately. Ki Uta Ki Tai involves not only a planning and policy framework, but the development of monitoring, reporting, geographical information system analysis, information databases, area management and succession tools for natural resource management.

- 9.2 Te Rūnanga o Ngāi Tahu believes that the NZCPS should incorporate a Ki Uta Ki Tai policy, which will assist to ensure that our coastline is managed in a way that recognises not only that coastal processes and influences often extend a considerable distance inland, but also that inland activities have the ability to profoundly affect the coastal environment.

- 9.3 Te Rūnanga o Ngāi Tahu considers that there is a lack of explicit recognition in the NZCPS of the degree of connection between the coastal and inland environments. This is contributing to a failure by regional and district councils to effectively address the degraded condition of culturally significant features of the coastline (such as estuaries, lagoons, and lowland lakes and streams). In this light, we consider that the following policies within the existing NZCPS have not been given effect to:

Policy 3.2.7

Policy statements and plans should identify any practicable ways whereby the quality of water in the coastal environment can be improved by altered land management practices, and should encourage the adoption of those practices.

Policy 5.1.6

Consideration should be given to reducing contamination of natural water in the coastal environment from non-point sources.

- 9.4 At present, there is a lack of meaningful assessment (either in regional/district plans or in resource consent applications) of the impacts on the cultural health

of the coastal environment of non-point source discharges from activities such as:

- Urban development;
- Land use intensification via irrigation; and
- The diversion of surface water for hydro-electricity generation.

- 9.5 In addition, transferring and mixing of waters may also have adverse impacts on river mouths environments, as it means that the amount, type and duration of flow may change. The natural mixing of freshwater and seawater as rivers flow to the sea is an important component of a hydrological cycle.
- 9.6 Such changes have the potential to change beach areas and the natural ecology of river mouth environments. For example, in some areas of the Canterbury plains, changing flow regimes in rivers are linked to increased coastal erosion where rivers meet the sea. Low flows result in the inability of waterways to carry and deposit coarse, larger sediments, which are necessary to 'bind' beach areas, creating stability and natural protection against wave induced coastal erosion. In addition, beach erosion and changes to sediment deposit have the potential to reveal cultural remains, including kōiwi (human bones), as river mouth and coastal areas were historically areas of concentrated activity and settlement by tangata whenua. An example of this is to be found at Taumutu where erosion has led to the exposure of the coastal urupā.
- 9.7 Until such time as there is a clearer recognition of the interconnectedness of the coastal and inland environments (via a mechanism such as a Ki Uta Ki Tai policy), there is unlikely to be any tangible improvement in the cultural health of the coastal environment – at least where it most matters. Further, until there is a marked improvement in both the quality and quantity of freshwater entering the lowland catchments of the coastal environment, Ngāi Tahu will continue to be disadvantaged in carrying out vital customary activities such as the gathering of mahinga kai.
- 9.8 Te Rūnanga o Ngāi Tahu does not accept that there are any jurisdictional impediments, which might limit the ability of the NZCPS to control land use activities outside the "coastal environment". To the contrary, we believe that the requirement in the RMA to achieve "integrated management" serves to highlight just how careful planning and policy instruments must be to avoid compartmentalising the natural environment.
- 9.9 A necessary feature of any revised NZCPS will be the provision of clearer and more emphatic direction to local government about how to control the impacts of land based activities upon culturally significant features of the coastal environment. In this respect, Te Rūnanga o Ngāi Tahu believes that, while

policy 6(d)² of the Proposed NZCPS is on the right track, it still needs to go further and outline in more detail the types of effects that need to be addressed and the steps that should be taken to do so. Te Rūnanga o Ngāi Tahu also submits that such policy guidance should be cast within the realm of Ki Uta Ki Tai.

10. Cultural Monitoring

10.1 Te Rūnanga o Ngāi Tahu considers that, at present, there is a lack of reliable and accessible information available, especially of an empirical or quantitative nature, about the state of the coastal environment from a cultural perspective, including:

- An understanding of the features and values of the coastal environment that are of particular cultural significance; and
- The nature and extent of the issues that are impacting upon the cultural health and wellbeing of the coast.

10.2 This lack of cultural information is felt by Te Rūnanga o Ngāi Tahu to be having a significant effect upon:

- The extent to which cultural values are able to be taken into account when developing regional and district plans, and, consequently, the nature of the protection afforded in RMA planning instruments to cultural values;
- The ability to reliably assess the actual or potential effects of a proposed activity upon cultural values; and
- The acceptability of imposing conditions upon resource consents requiring the consent holder to monitor the effects of their activity upon specified cultural values.

10.3 This cultural information deficit could be overcome by expanding policy 12 of the NZCPS³ so as to make it clear that local authorities are required to incorporate cultural monitoring into their coastal monitoring functions.

10.4 Recently, Te Rūnanga o Ngāi Tahu has expended a lot of energy (not to mention money) towards the development of a system of cultural monitoring. One such tool (known as State of the Takiwā) is described in the *Ngai Tahu 2025* vision document as:

An environmental monitoring and reporting approach that integrates Mātauranga Māori and Western Science to gather information about the environment and to establish a baseline for the creation of policy and

² Which seeks to promote "...coordinated management or control of activities within the coastal environment, and which could cross administrative boundaries, particularly...where land management practices affect, or are likely to affect water quality in the coastal environment..."

³ "When identifying the procedures and methods to be used to monitor the coastal environment of the region or district, local authorities shall recognise the need to collect data in a manner that facilitates comparison and collation to provide a national perspective on the state of the coastal environment."

improvement of environmental health. A programme developed to complement conventional state of the environment reporting used by the Ministry for the Environment that takes into account tangata whenua values.

- 10.5 State of the Takiwa is about the gathering of information on the health or mauri of the environment and collating the information collected into a database from which reports can be prepared. These reports can then be used to help measure the success of and inform policy and planning. State of the Takiwa could also make it possible to complement the work of key environmental agencies and in particular the monitoring of resource consents and other activities.
- 10.6 We also refer to the Cultural Health Index (CHI) for Streams and Waterways, developed for the Ministry for the Environment. The CHI is a tool for facilitating the input and participation of iwi into land and water management processes and decision making. It is a tool that is grounded in the established beliefs, values and practices of Māori and which employs a range of indicators to assess the cultural health of a waterbody. By combining western scientific methods and cultural knowledge about stream health, the CHI allows resource managers to obtain a unique insight into the state of our waterways and the issues facing them.
- 10.7 Recently, work has been undertaken on adapting the CHI to the marine environment. The result is a marine health index, which is a set of indicators, observations and measures that will help a scientist, fisher or manager record and track changes in the health of a particular coastal area. An MHI might include indicators such as the continuation of traditional harvest practices, changes in the taste, smell and size of kai, and visual water pollution and litter.
- 10.8 With established and professional cultural monitoring systems such as State of the Takiwā, CHI and, more recently, MHI, there is no reason why local government should not be seeking to support the undertaking of a comprehensive assessment of the state of the coastal environment from a cultural perspective. The NZCPS should direct local authorities to embark upon this process.
- 10.9 There is a pressing need for cultural monitoring to become a mainstream monitoring technique. All policies contained in the NZCPS relating to monitoring (including proposed policies 11 and 12) should therefore be amended to include a specific reference to the need to carry out cultural monitoring and to monitor the coastal environment from a cultural point of view. In addition, it will also be important for cultural monitoring to become a component of the process of assessing natural character (refer proposed policy 36).

- 10.10 Proposed policy 3 should also be amended to include a reference to the need not only to identify characteristics of the coastal environment that are of special value to tangata whenua, but also to monitor such characteristics.
- 10.11 Ngāi Tahu also believes that the task of undertaking cultural monitoring is a local authority function that is well suited to being transferred to iwi authorities pursuant to section 33 of the RMA.

11. Mahinga Kai

- 11.1 Te Rūnanga o Ngāi Tahu believes it is imperative that the NZCPS incorporate a specific mahinga kai policy, which makes it a national priority to protect and restore traditional and contemporary mahinga kai sites and species within the coastal environment. In order to appreciate just how vital such a policy initiative is for Ngāi Tahu, it must be emphasised how important mahinga kai is to Ngāi Tahu – the treasured places from which the kai is gathered, the prized species themselves and the special techniques and processes used to gather, prepare and preserve the kai.

- 11.2 The Te Rūnanga o Ngāi Tahu Freshwater Policy states⁴:

Mahinga kai was and remains one of the cornerstones of Ngāi Tahu existence and culture. Survival was dependent upon knowledge of mahinga kai and the ability to gather resources from the land, waterbodies and the sea. Healthy waterbodies continue to be a direct source of mahinga kai, provide ecosystem support for mahinga kai species and support other mahinga kai environments such as forests, riparian habitats and coastal environs. Sadly there are many examples across the rohe where inappropriate water management has impacted adversely on mahinga kai. Observable effects include alterations to the abundance and distribution of species, disturbances to the breeding cycles and patterns, loss of access to waterbodies, and the deterioration, reduction and removal of habitat.

- 11.3 The most prized mahinga kai habitats were (and still are) often centred in and around the coastline of Te Waipounamu. As has already been mentioned earlier in this submission, coastal lakes, lagoons and estuaries were the food baskets of the people, teeming with life and rich in an array and abundance of different species.
- 11.4 The failure to afford these special places suitable protection has resulted in their contamination and degradation, loss of mauri, and ultimately, an ever dwindling supply of mahinga kai. Ngāi Tahu (and the Māori culture as a whole) has paid a very high price indeed for the disregard that has been had for our dynamic coastal environments. The very health and wellbeing of our people and their culture has suffered enormously, but not necessarily irretrievably.

⁴ Page 22

- 11.5 It is in this context that we ask the Board of Inquiry and the Minister of Conservation to seriously consider implementing a specific policy directing local authorities to proactively address the unfortunate state of the mahinga kai environment. Such a policy would help to make it clear that the present situation is unacceptable and that meaningful measures must begin to be put in place to rectify the position.
- 11.6 We observe that, in the Proposed NZCPS, the Department of Conservation has seen fit to include policies not only about maintaining and enhancing recreational opportunities, but also a specific policy about protecting surf breaks of national significance from inappropriate development. Although we have no issue with these policies per se, it does feel that it is unfair that these matters warranted policy guidance while mahinga kai was overlooked. Te Rūnanga o Ngāi Tahu submits that the protection and restoration of mahinga kai should have rated considerably higher than merely ensuring that activities in the coastal environment do not adversely affect surfing.
- 11.7 It is also worth observing that the Department of Conservation has previously endorsed the adoption of a mahinga kai policy. In the Te Waihora Joint Management Plan, the Department and Te Rūnanga o Ngāi Tahu developed a specific mahinga kai policy for Te Waihora. Policy 2.4 (page 104) states:
- 2.4.1 To improve mahinga kai resources at Te Waihora and to enable successful customary use.
 - 2.4.2 To recognise Ngāi Tahu associations with taonga and other species of importance within the Te Waihora environment.
 - 2.4.3 To seek that all mahinga kai species sourced from Te Waihora are culturally fit for human consumption.
 - 2.4.4 To provide for the use of kāinga nohoanga around Te Waihora.
 - 2.4.5 To provide access to and the customary taking or use of indigenous plants and animals and other natural materials from Te Waihora, subject to the consent of the Minister where required.
 - 2.4.6 Ngāi Tahu will implement a Mahinga kai Cultural Park status for the Ngāi Tahu lakebed and other Ngāi Tahu lands, in accordance with *Ngāi Tahu 2025* and consistent with the other policies and methods of this Plan.
- 11.8 Te Rūnanga o Ngāi Tahu also has its own mahinga kai objective and policy contained in the Te Rūnanga o Ngāi Tahu Freshwater Policy⁵. This provides:

Objective

⁵ Page 39

To maintain vital, healthy mahinga kai populations and habitats capable of sustaining harvesting activity.

Policies

1. Protect critical mahinga kai habitats and identified representative areas.
2. Restore and enhance the mahinga kai values of lakes, rivers, streams, wetlands, estuaries and riparian margins.
3. Ensure that activities in the upper catchments have no adverse effect on mahinga kai resources in the lower catchments.
4. Restore access to freshwater resources for cultural activities, including the harvest of mahinga kai.

11.9 With some modification and expansion, such policies could also be helpfully incorporated into the NZCPS. In the case of the NZCPS, however, it will be necessary to state that the protection and enhancement of mahinga kai is a national priority and then to impose a series of obligations on local authorities both to identify significant mahinga kai resources within their region/district and to develop their own policy initiatives for their proactive management and restoration. At the very least, proposed policy 35 should be amended to include a specific reference to the need to restore mahinga kai sites.

11.10 It must also be made clear that the NZCPS promotes the ecologically sustainable cultural harvesting of mahinga kai resources in the coastal environment. At present, we are concerned that the focus on the need to preserve the natural character of the coastal environment could lead to a situation whereby Ngāi Tahu whānui are prevented from exercising their Treaty based rights to gather and use cultural resources.

12. Cumulative effects

12.1 Te Rūnanga o Ngāi Tahu has long been concerned about the failure of local authorities to effectively manage the adverse cumulative effects of land use intensification upon coastal lakes, lagoons, estuaries and wetlands. There has been a general failure to manage the combined effect of activities such as the abstraction of surface and ground water, the drainage of wetlands and the discharge of contaminants in circumstances which may result in that contaminant entering water.

12.2 The failure to avoid these cumulative adverse effects has led to the extensive degradation of these once healthy and vibrant ecosystems; and in the context of section 5 of the RMA, a failure to:

- Sustain their potential to meet the reasonably foreseeable needs of future generations; and
- Safeguard their life supporting capacity.

12.3 By way of illustration, we point to the comments of the Environment Court in *Lynton Dairies Ltd v Canterbury Regional Council* (C108/05), in which the Court in commenting on its site visit to the Te Waihora lowland catchment said:

[97] To the east of State Highway 1 things change significantly. The area has clearly been subject to extensive land management over the last 100 years, with the aim of converting what was formerly wetlands to pastoral farm land. Much of that is now occupied by dairying and is extensively irrigated. There was very limited evidence to satisfy us that there had been active management of the waterways in this area and we were disappointed to see waterways, including the Irwell, Selwyn, Hanmer Drain, Doyleston, Boggy Creek and Hart Creek all subject to little or no riparian planting or fencing.

[100] We were shocked at the ever-present effluent smell from all of these waterways and the clear evidence of poor management, excess effluent levels and contamination.

[101] Te Waihora (Lake Ellesmere) was a significant shock to the Court. The lake is eutrophic, green in colour and seems to be devoid of any riparian management. For example, stock seem to have free access to the water, the margins appear to be subject to chemical spraying regimes and lake levels manipulated for farming rather than the natural values. The lake water is in a serious ecological condition and is in urgent need of attention. Riparian management is required as an absolute minimum.

- 12.4 The NZCPS must send a very clear message that it is a national priority to address this unacceptable situation via more proactive management of the cumulative effects of activities upon the lowland coastal environment. It must become a priority for local authorities not only to determine the sustainable limits of these valued coastal resources, but also to impose meaningful restrictions upon existing and future activities.
- 12.5 In this context, we refer to the recent and very helpful article by Philip Milne entitled '*When is Enough, Enough? Dealing with Cumulative Effects under the Resource Management Act*'⁶. In this article, the author examines the challenges councils face in seeking to manage cumulative effects and considers a range of techniques that may be available to assist. Proposed policy 21 should be reviewed and expanded in light of this article.
- 12.6 It is also important that policy 21 be amended to make it clear that the policy encapsulates threats and risks to cultural values.
- 12.7 Also in relation to cumulative effects, Te Rūnanga o Ngāi Tahu has recently come across a number of consent applications that seek (either explicitly or implicitly) to rely upon the degraded condition of culturally significant features of the coastal environment (such as lowland lakes and estuaries) as a basis for allowing further adverse effects to occur. For example, the Assessment of Environmental Effects for the Central Plains Water Enhancement Scheme in Canterbury (which is possibly one of the most significant consent applications

⁶ Available on the Quality Planning website.

to be lodged in the Canterbury region since the enactment of the RMA) states:

The effects of increased freshwater and nutrient inputs on Lake Ellesmere are considered minor in relation to the existing pressures on the lake environment (e.g. intensive agriculture adjacent to the lake, and artificially regulated lake levels).

- 12.8 The NZCPS should seek to clarify that, as far as culturally significant coastal environments are concerned (which must be more clearly identified in planning instruments), pre-existing water quality problems are not a proper basis for the introduction of further contaminants. To the contrary, considerable emphasis should be required to be placed in regional plans upon ensuring that there is no further decline in the quality of culturally significant features of the coastal environment.

13. Cultural Landscapes

- 13.1 A cultural landscape is one that is characterised not only by its natural and physical aspects, but also its sites, whakapapa, stories, mahinga kai, rock art and wāhi tapu sites. Many such cultural landscapes occur in and around the coastal environment.
- 13.2 Many coastal landscapes hold prominent ancestral names that are important to tribal histories, stories and identity. For example, the name of Kaitorete Spit – Ngā Poupou a Te Rakihouia – recalls the important eel fisheries of the area as well as their link to the exploration of the Waitaha ancestor Te Rakihouia.
- 13.3 The concept of a cultural landscape is one that is beginning to emerge in resource consent decision-making, although unfortunately at this stage is not reinforced by suitable protection in regional and district plans. Accordingly, the NZCPS should seek to formalise the concept of a cultural landscape by including a policy that firstly recognises their existence, and secondly requires their protection from inappropriate subdivision, use and development.
- 13.4 Such a policy would go some way towards overcoming the tendency that has existed among local authorities to fail to afford protection to places of cultural and spiritual significance to tangata whenua simply because they have either been modified or do not satisfy the nationally outstanding criteria. For example, in the recent hearings on the Meridian Energy consent applications to establish the North Bank Tunnel hydro scheme and the Hunter Downs Irrigation scheme, the applicant argued that section 6(b) of the RMA was not relevant because of the extensive modification that had occurred in the Waitaki Valley. This was in spite of the fact that, from a cultural perspective, the Waitaki is the awa to which all Ngāi Tahu whānui whakapapa and which is therefore central to Ngāi Tahu's overall wellbeing.

- 13.5 This example highlights the fact that a landscape may be outstanding from a cultural point of view even though it may not qualify as an outstanding natural landscape. The consequence of this is that many cultural landscapes are particularly susceptible to development pressure because, due to the fact that they have often been modified, they fail to obtain the protection afforded by section 6(b) of the RMA.
- 13.6 At least in the context of the coastal environment, the Minister should seek to address this unenviable situation by using the NZCPS to raise the profile of cultural landscapes and directing councils to adopt measures necessary to identify and protect these outstanding places and features from inappropriate development. At this stage, it is considered that proposed policy 32(f) does not go far enough as it merely repeats the landscape assessment criteria identified by the Environment Court in the decision of *Pigeon Bay Aquaculture Ltd v Canterbury Regional Council* [1999] NZRMA 209.
- 13.7 The addition of more specific policy guidance on cultural landscapes would be entirely consistent with the provisions of the RMA. By way of illustration, we refer to the decision in *New Zealand Marine Hatcheries (Marlborough) Ltd v Marlborough District Council* (W129/97) in which the Court observed:

As we understand the issue, landscape when considered under the provisions of the Act and the New Zealand Coastal Policy Statement, is not limited to natural landscapes, nor is it restricted to visual aspects. It may be interpreted to include the physical and the perceptual. As Ms Lucas pointed out: "Landscape as a human experience combines both aesthetic values and other values which humans attribute to landscape. Used in this sense landscape is not only the physical appearance of land, but also the subjective baggage each person carries with them – what they know, what they imagine and how they are disposed."...She further identified that the Marlborough Sounds Landscape Study (1981) noted that in Port Underwood the area was almost totally modified by people, yet it maintained a certain historical interest. An historic landscape is defined as "an area which has been a setting for an event or activity which is significant in human history"...And, an archaeological landscape is said to be "significant where patterns visible upon land or evident in subsurface remains can provide important information about land use and occupation of prehistoric or historic peoples".

- 13.8 In this context, there should be nothing preventing the NZCPS from clarifying the outstanding significance of cultural landscapes within the coastal environment.

14. **Cultural Access**

- 14.1 Over the last 160 years, the ability of Ngāi Tahu to be able to access coastal environments has been eroded and degraded, largely due to an overall deterioration in the health of coastal waterways, and in turn mahinga kai species. The loss of customary access to the coastal environment has also restricted the ability of Ngāi Tahu to carry out its kaitiaki role.

- 14.2 The erosion of Ngāi Tahu's ability to access the coastal environment for the purpose of gathering mahinga kai and carrying out its kaitiaki duties is inconsistent with the requirements in section 6(e) and 7(a) of the RMA; and is at odds with the principle of the Treaty requiring the active protection by the Crown "of Māori people in the use of their lands and waters to the fullest extent practicable".
- 14.3 Te Rūnanga o Ngāi Tahu considers that the limited recognition of customary access that presently exists has the additional effect of rendering the following requirement in policy 3.5.4 of the existing NZCPS ineffectual:
- Policy statements and plans should as far as practicable identify the access which Maori people have to sites of cultural value to them, according to tikanga Maori.
- 14.4 An important function of any review of the NZCPS will be to introduce policies requiring that greater emphasis be placed upon preserving and expanding cultural access to the coast. At the very least, the review of the NZCPS must make it clear that, under no circumstances are there to be any further restrictions placed upon customary access rights.
- 14.5 In order to achieve this, the NZCPS should state that a central consideration to be taken into account is the preservation of customary access to the foreshore and seabed. In this context, proposed policy 17 should be expanded to include specific reference to the Crown's interest in making land available for customary and cultural access. In addition, the NZCPS should state that the maintenance and enhancement of customary access be a foremost consideration whenever coastal space is sought to be allocated and/or occupied.
- 14.6 It will also be necessary to clarify that any presumption to the effect that it is a privilege, not a right, to use the land of the Crown in the coastal marine area (as alluded to on pages 66 – 67 of the Issues and Options paper) does not apply to customary access to the coastal environment, which must be regarded as a customary right.
- 14.7 The NZCPS could also usefully clarify what is meant by customary access to the coastal environment. In particular, it is important that the NZCPS explain that customary access depends upon being able to enjoy unencumbered physical access to the water of the coastal environment. Customary access must also be understood to mean access to healthy and productive coastal environments. Anything short of this must be understood to represent an erosion of customary rights.

15. Cultural Heritage

- 15.1 We consider that there is an overall lack of recognition in regional and district plans of the location and nature of sites of cultural significance within the coastal environment. By way of illustration, there has been no attempt by local government to “recognise and provide for the ...relationship of Māori and their culture and traditions with their ...sites, wahi tapu and other taonga” (a matter of national importance identified in section 6(e)) by creating anything in the form of cultural protection zones (i.e., areas in which development is restricted or prevented due to the presence of wahi tapu sites and sites of cultural significance).
- 15.2 In making these comments, Te Rūnanga o Ngāi Tahu recognises that it too has an important role to play in seeking to enhance the community’s appreciation of the location and value of culturally significant sites. Te Rūnanga o Ngāi Tahu acknowledges that, at present, there is considerable confusion about the process to be followed in assessing whether a proposed activity will have an impact upon archaeological values. In addition, we recognise that, notwithstanding the need for the location and nature of some significant sites to remain confidential, there is an overall need to improve the transparency of the present system. The cost of not doing so is likely to be the occurrence of further unintentional and irreparable damage to sites of outstanding cultural significance.
- 15.3 Ngāi Tahu considers that the NZCPS would be a suitable place to provide clearer direction, not only to local government, but also to iwi about the means by which sites of significance to tangata whenua are to be identified and protected. It would also be appropriate for the NZCPS to recommend that a precautionary approach be taken to development in or near archaeological sites.
- 15.4 Proposed policy 56 needs to be more clearly directed towards the achievement of cultural heritage outcomes. At present, all policy 56 does is to identify a comparatively standard procedure, which councils should be following already (although admittedly there are still some who are not). What is needed is more detailed policy direction about what it is that local authorities should be doing in order to manage historic heritage of significance to Māori. Specific reference to the need for councils to identify cultural heritage sites and zones on planning maps would be helpful in this regard.
- 15.5 In relation to policy 56, the term Māori should be replaced with Tangata Whenua.
- 15.6 In addition, the criteria in proposed policy 32 for evaluating outstanding natural features and landscapes should be expanded to include a specific reference to “significant places or areas of historic or cultural significance” (which is the wording that is contained in policy 1.1.3 of the existing NZCPS). Likewise, the criteria in proposed policies 14 and 16 should also be expanded to include specific reference to the need to avoid subdivision and

development taking place in and around “significant places or areas of historic or cultural significance”.

16. **Hector’s Dolphin**

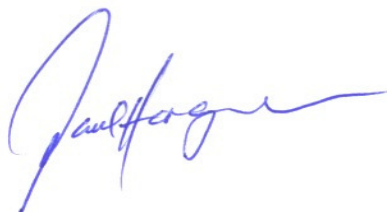
16.1 Proposed policy 38 (relating to Maui Dolphin) should be extended to Hector’s Dolphin. Hector’s dolphins (pahu - also known as aihe) are revered by Ngāi Tahu as a taonga. Ngāi Tahu whānui have a special connection with Pahu, and this has its basis in tradition. Pahu are kaitiaki (guardians) of the coastline of Te Waipounamu, and are regarded as a tohu (sign) in certain spiritual practises, as well as being closely linked into whakapapa (genealogy).

16.2 For many years, the population of Hector’s Dolphin has been in steady decline to the point where, in 1999, the Minister of Conservation declared them a threatened species. In these circumstances, the direction in proposed policy 38 to councils to include provisions in their plans for avoiding threats to Maui Dolphin should also be extended to Hector’s Dolphin.

17. **Conclusion**

17.1 Te Rūnanga o Ngāi Tahu considers that the review of the NZCPS presents an important opportunity to enhance the way in which we manage the many outstanding cultural features of our coastal environment. As has been mentioned throughout this submission, Te Rūnanga o Ngāi Tahu is concerned that there remains a considerable amount of misunderstanding and confusion amongst councils about how they should best go about giving effect to the tangata whenua provisions of the RMA. By providing clear and outcome focused policy guidance, the NZCPS could go a considerable way towards demystifying the objectives, aspirations and expectations of iwi. Te Rūnanga o Ngāi Tahu hopes that its submission will assist the Board and the Minister in this regard.

Te Rūnanga o Ngāi Tahu wishes to be heard in support of its submission.



.....
 Paul Horgan
Environmental Advisor
Toitū te Whenua
Te Rūnanga o Ngāi Tahu