

**In the Environment Court
at Christchurch**

In the Matter

of the Resource Management Act
1991

And

In the Matter

of an appeal under Clause 14(1),
Schedule 1 of the Act

Between

TE RŪNANGA O NGĀI TAHU

Appellant

And

DUNEDIN CITY COUNCIL

Respondent

**Notice of Appeal by Te Rūnanga o Ngāi
Tahu on a decision on the Proposed
Second Generation Dunedin City District
Plan**

Dated: 19 December 2018

To: The Registrar
Environment Court
Christchurch

Notice of Appeal

1. Te Rūnanga o Ngāi Tahu (**Te Rūnanga**) appeals against parts of decisions of the Dunedin City Council (**Respondent**) on the Proposed Second Generation Dunedin City District Plan (**Proposed Plan**).
2. Te Rūnanga made a submission on the Proposed Plan.
3. Te Rūnanga is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**Act**).
4. Te Rūnanga received notice of the Respondent's decisions on 7 November 2018.
5. The parts of the decisions that Te Rūnanga are appealing is (referred to collectively as **Decisions**):
 - (a) Rural Zones Decision Report; and
 - (b) Manawhenua Decision Report.

Reasons for the Appeal

Particular Reasons

6. Huriawa and Māpoutahi were two tribal properties vested fee-simple in Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998.
7. These properties are of great importance to Ngāi Tahu Whānui and ensuring these properties are managed so that the cultural, archaeological, landscape and geological values are maintained is of the utmost importance to Ngāi Tahu.
8. Te Rūnanga and Kāti Huirapa Rūnaka ki Puketeraki are working with the Department of Conservation to prepare and implement management plans (**Management Plans**) for Huriawa and Māpoutahi. These will set out Iwi and Papatipu Rūnaka aspirations to carry out land use activities on Huriawa

and Māpoutahi in the future (for example, signs, interpretation, structures, fences and tracks).

9. While a number of activities can be undertaken as permitted activities on Huriawa and Māpoutahi, the Decisions require resource consent for some land use activities on Huriawa and Māpoutahi, such as earthworks, signage, buildings and structures.
10. It is considered the consent requirements under the Decisions are disproportionate to the type and scale of the activities Te Rūnanga would seek to undertake on the properties. The Decisions also create inefficiencies in effects assessment. It is considered the Decisions fail to recognise the environmental controls ensured by the requirement of a Management Plan to first be approved before an activity can take place.
11. A consenting trigger also adds to the existing regulatory regime requiring Iwi and Rūnaka to obtain an authority under the Heritage New Zealand Pouhere Taonga Act 2014 for any activity that affects an archaeological site.
12. There is inadequate effects based justification for Iwi and Rūnaka to also have to obtain an additional resource consent under the District Plan for land use activities on these properties, where such activities are carried out in accordance with a Management Plan.
13. Te Rūnanga seek that the Proposed Plan enables and facilitates land use activities on Huriawa and Māpoutahi that comply with a Management Plan without the need for a resource consent.
14. Alternatively, Te Rūnanga seek that specific activities should be identified in the Proposed Plan as being permitted on Huriawa and Māpoutahi to provide certainty to both Te Rūnanga and the Respondent as to what activities and effects can occur on those areas without the need to obtain a resource consent.

General Reasons

15. The general reasons for Te Rūnanga's appeal are that the Decisions on the Proposed Plan fail to appropriately enable minor and anticipated land use activities on Huriawa and Māpoutahi and create inefficiencies in environmental controls. As such, the Decisions:

- (a) do not adequately recognise or provide for the relationship of Ngāi Tahu with Huriawa and Māpoutahi and its role in the management of the tribal properties;
- (b) impose undue constraints and complexity on the use and maintenance of Huriawa and Māpoutahi for non-commercial activities;
- (c) fail to achieve the functions of the Respondent under section 31 of the Act in respect of the integrated management of the effects of the use and development of land and physical resources;
- (d) fail to meet the requirements of section 32;
- (e) does not recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga under section 6(e);
- (f) does not recognise and provide for the protection of protected customary rights under section 6(g);
- (g) do not represent an efficient use of land under section 7(a);
- (h) fail to take into account the principles of Te Tiriti o Waitangi;
- (i) does not enable Ngāi Tahu people and communities to provide for their social economic and cultural wellbeing and for their health and safety; and
- (j) fail to promote sustainable management of resources and will not achieve the purpose of the Act.

Relief Sought

16. Te Rūnanga seek the following relief subject to the general relief in paragraphs 16(c) to 8(d) below (noting the provisions referred to are those as shown in the Decisions Version of the Proposed Plan):

Primary Relief

- (a) As the primary form of relief make the following amendments to the Proposed Plan:

Section 1: Plan Overview and Introduction

- (i) Amend Section 1: Plan Overview and Introduction to add the following new definitions to 1.4.1 Definitions:

“Huriawa means the land described by that name in Section 142 of the Ngāi Tahu Claims Settlement Act 1998.”

“Māpoutahi means the land described by that name in Section 143 of the Ngāi Tahu Claims Settlement Act 1998.”

“An Approved Management Plan means a management plan approved by Te Rūnanga o Ngāi Tahu [whether alone or jointly with another party].”

Section 13: Heritage

- (ii) Amend Section 13: Heritage to add the following new policy to 13.2 Objectives and Policies:

“Enable land use activities on Huriawa and Māpoutahi that comply with an Approved Management Plan.”

- (iii) Amend Section 13: Heritage to add the following new rule/performance standard into Rules 13.3 to 13.9:

“Except that activities on Huriawa and Māpoutahi that comply with an Approved Management Plan, which shall be a permitted activity.”

Section 14: Manawhenua Chapter

- (iv) Amend Section 14: Manawhenua to add the following new policy under 14.2 Objectives and Policies:

“Enable land use activities on Huriawa and Māpoutahi that comply with an Approved Management Plan.”

- (v) Amend Section 14: Manawhenua to add the following new rule/performance standard into Rules 14.3 to 14.7:

“Except that activities on Huriawa and Māpoutahi that comply with an Approved Management Plan, which shall be a permitted activity.”

Section 16: Rural Zones

- (vi) Amend Section 16: Rural Zones to add the following new policy under 16.2 Objectives and Policies:

“Enable land use activities on Huriawa and Māpoutahi that comply with an Approved Management Plan.”

- (vii) Amend Section 16: Rural Zones to add the following new rule/performance standard into Rules 16.3 to 16.13:

“Except that activities on Huriawa and Māpoutahi that comply with an Approved Management Plan, which shall be a permitted activity.”

Appendices

- (viii) Amend Appendix A4.6.1 as follows:

“Part of the Huriawa Peninsula was vested fee-simple in Te Rūnanga o Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998; Te Rūnanga o Ngāi Tahu and Kāti Huirapa Rūnaka ki Puketeraki are working with the Department of Conservation to prepare a management plan for this area. Land use activities on Huriawa should be carried out in accordance with an Approved Management Plan.”

- (ix) Amend Appendix A4.17.1 as follows:

“Māpoutahi peninsula was vested fee-simple in Te Rūnanga o Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998; Te Rūnanga o Ngāi Tahu, Kāti Huirapa Rūnaka ki Puketeraki and the Department of Conservation are working with the Department of Conservation to prepare a management plan for this area. Land use activities on Māpoutahi should be carried out in accordance with an Approved Management Plan.”

Alternative Relief

- (b) An alternative and lesser preferred relief to the primary relief above, is to amend the Proposed Plan as follows:

- (i) Amend Section 13: Heritage, Section 14: Manawhenua and Section 16: Rural Zones to add new rules or performance

standards to provide for specific activities as permitted activities on Huriawa and Māpoutahi with express permitted activity standards.

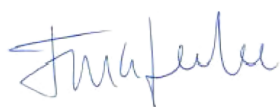
General Relief

- (c) That the Proposed Plan be amended in a similar or such other way as may be appropriate to address the matters raised in this appeal; and
- (d) Any other similar, consequential, alternative, or other relief as is necessary to address the issues raised in this appeal or otherwise raised in Te Rūnanga's submission and further submission.

Attached Documents

17. The following documents are **attached** to this notice:
- (a) a copy of Te Rūnanga o Ngāi Tahu's submission (**Annexure A**);
 - (b) the relevant parts of the Respondent's decisions (**Annexure B**); and
 - (c) a list of the names and addresses of the persons to be served with a copy of this notice of appeal (**Annexure C**).

Dated this 19th day of December 2018



Joshua Leckie

Counsel for Te Rūnanga o Ngāi Tahu

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Advice to Recipients of Copy of Notice of Appeal

How to become a Party to Proceedings

You may be a party to the appeal if:

Within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and

Within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties in accordance with the requirements below.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

Service Requirements in Accordance with ENV-2018-CHC-206

Section 274 notices must be lodged with the court electronically by email to Christine.McKee@justice.govt.nz in accordance with the standard requirements set out in the Resource Management Act 1991 and the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

The requirement relating to the service of section 274 notices have been altered to the effect that:

- Section 274 notices must be served on the Council electronically by email to dppappeals@qldc.govt.nz and on the appellant to any email address provided in the notice of appeal;
- The requirement to lodge a signed original and one hard copy of any section 274 notices with the Court has been waived;
- The requirement for section 274 parties to serve their notice/form 33 on all other parties has been waived; and

- Service of section 274 notices on “all other parties” will be deemed to be effected to the Council uploading copies of section 274 notices onto its website as soon as possible (within two working days) after the section 274 notice is received..

ANNEXURE A – Copy of Te Rūnanga o Ngāi Tahu’s Submission

**Submission on Proposed Second Generation Dunedin City District Plan
under Clause 6 of the First Schedule of the Resource Management Act 1991**

To: Dunedin City Council, PO Box 5045, Moray Place, Dunedin 9058

Submitter: Te Rōnanga o Ngāi Tahu, PO Box 13-046, Christchurch 8024

- 1. Te Rōnanga o Ngāi Tahu could not gain an advantage in trade competition through this submission.**
- 2. The submission of Te Rōnanga o Ngāi Tahu seeks to:**
 - (a) ensure that the Proposed District Plan is consistent with promoting the sustainable management purpose of the Resource Management Act 1991 (RMA);
 - (b) ensure consistency with Part 2 and other relevant provisions of the RMA;
 - (c) enable Ngāi Tahu people and communities to provide for their social, economic and cultural wellbeing and for their health and safety;
 - (d) promote the efficient use and development of natural and physical resources; and
 - (e) promote sound resource management practice.
- 3. Te Rōnanga o Ngāi Tahu seeks the following decision from the Dunedin City Council:**
 - (a) that the submissions and relief sought (or those with similar or like effect) outlined in this submission and below be accepted;
 - (b) such further or other relief as is appropriate or desirable in order to take account of the concerns and issues expressed in this submission; and
 - (c) that in the event that the submissions and relief sought set out above are not implemented, the Proposed District Plan be withdrawn.
- 4. Te Rōnanga o Ngāi Tahu wishes to be heard in support of this submission.**
- 5. If others make a similar submission, Te Rōnanga o Ngāi Tahu would be prepared to consider presenting a joint case with them at any hearing.**



Signature _____

Aaron Leith, on behalf of Te Rōnanga o Ngāi Tahu

Date: 24 November 2015

Address for service: Te Rōnanga o Ngāi Tahu, PO Box 13-046, Christchurch 8024. Attention: Kelly Governor / Aaron Leith
Telephone: (03) 366 4344
E-mail: info@ngaitahu.iwi.nz

Sub. No.	Plan Section	The specific Plan provision/s that my submission relates to are:	My submission is that:	I seek the following decisions from the Dunedin City Council:
1.	1 Plan Overview and Introduction	1.5.1 Activity Definitions	Definitions of Huriawa, Mōpoutahi and Approved Management Plan should be included in the District Plan, in order to provide clarification and certainty to Council and Plan users.	That new definitions be inserted into 1.5.1 Activity Definitions, as follows: • <u>Huriawa means the land described by that name in Section 142 of the Ngāi Tahu Claims Settlement Act 1998.</u> • <u>Mōpoutahi means the land described by that name in Section 143 of the Ngāi Tahu Claims Settlement Act 1998.</u> • <u>An Approved Management Plan means a management plan approved by Te Rōnanga o Ngāi Tahu [whether alone or jointly with another party].</u>
2.	13 Heritage	13.2 Objectives and Policies Rules 13.3 to 13.9	The planning maps of the proposed District Plan identify Huriawa as being subject to archaeological site A001 [Huriawa P 143/1] and the archaeological alert layer. Mōpoutahi is identified as being subject to archaeological site A004 [Mōpoutahi P 144/17].	That a new policy be inserted into 13.2 as follows: • <u>Enable land use activities on Huriawa and Mōpoutahi that comply with an Approved Management Plan.</u>

Sub. No.	Plan Section	The specific Plan provision/s that my submission relates to are:	My submission is that:	I seek the following decisions from the Dunedin City Council:
			The proposed District Plan provisions appear to require resource consent for land use activities on Huriawa and Mōpoutahi, such as earthworks buildings and structures. Huriawa and Mōpoutahi were vested fee-simple in Te Rōnanga o Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998. Te Rōnanga o Ngāi Tahu and Kōti Huirapa Rōnaka ki Puketeraki are working with the Department of Conservation to prepare management plans for Huriawa and Mōpoutahi. These will set out lwi and papatipu rōnaka aspirations to carry out land use activities on Huriawa and Mōpoutahi in the future [for example, signs, interpretation, structures, fences and tracks]. There is already a need for lwi and Rōnaka to obtain an authority under the Heritage New Zealand Pouhere Taonga Act 2014 for any activity that affects an archaeological site. It is inappropriate for lwi and Rōnaka to also have to obtain an additional resource consent from Council for land use activities on these properties, where such activities are carried out in accordance with an Approved Management Plan. The District Plan should enable and facilitate land	That a new rule / performance standard be inserted into Rules 13.3 to 13.9, as follows: • <u>Except that activities on Huriawa and Mōpoutahi that comply with an Approved Management Plan, which shall be a permitted activity.</u>

Sub. No.	Plan Section	The specific Plan provision/s that my submission relates to are:	My submission is that:	I seek the following decisions from the Dunedin City Council:
			use activities on Huriawa and Mōpoutahi that comply with an Approved Management Plan without the need for a resource consent.	
3.	14 Manawhenua	14.2 Objectives and Policies Rules 14.3 to 14.7	The planning maps of the proposed District Plan identify Huriawa and Mōpoutahi as being subject to Wāhi Tupuna sites. The proposed District Plan provisions appear to require resource consent for land use activities on Huriawa and Mōpoutahi, such as earthworks buildings and structures. Huriawa and Mōpoutahi were vested fee-simple in Te Rōnanga o Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998. Te Rōnanga o Ngāi Tahu and Kōti Huirapa Rōnaka ki Puketeraki are working with the Department of Conservation to prepare management plans for Huriawa and Mōpoutahi. These will set out lwi and papatipu rōnaka aspirations to carry out land use activities on Huriawa and Mōpoutahi in the future [for example, signs, interpretation, structures, fences and tracks]. There is already a need for lwi and Rōnaka to obtain an authority under the Heritage New Zealand Pouhere Taonga Act 2014 for any activity that affects an archaeological site.	That a new policy be inserted into 14.2 as follows: • <u>Enable land use activities on Huriawa and Mōpoutahi that comply with an Approved Management Plan.</u> That a new rule / performance standard be inserted into Rules 14.3 to 14.7, as follows: • <u>Except that activities on Huriawa and Mōpoutahi that comply with an Approved Management Plan, which shall be a permitted activity.</u>

Sub. No.	Plan Section	The specific Plan provision/s that my submission relates to are:	My submission is that:	I seek the following decisions from the Dunedin City Council:
			It is inappropriate for Iwi and Rōnaka to also have to obtain an additional resource consent from Council for land use activities on these properties, where such activities are carried out in accordance with an Approved Management Plan. The District Plan should enable and facilitate land use activities on Huriawa and Māpoutahi that comply with an Approved Management Plan without the need for a resource consent.	
4.	16 Rural Zones	16.2 Objectives and Policies Rules 16.3 to 16.13	The planning maps of the proposed District Plan identify Huriawa and Māpoutahi as being zoned Rural Coastal, situated in the coastal environment and being subject to the ONF landscape overlay. The proposed District Plan provisions appear to require resource consent for land use activities on Huriawa and Māpoutahi, such as earthworks buildings and structures. Huriawa and Māpoutahi were vested fee-simple in Te Rōnanga o Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998. Te Rōnanga o Ngāi Tahu and Kōti Huirapa Rōnaka ki Puketeraki are working with the Department of Conservation to prepare management plans for Huriawa and Māpoutahi. These will set out Iwi and papatipu rōnaka aspirations to carry out land use activities on Huriawa and Māpoutahi in the future [for	That a new policy be inserted into Section 16.2 as follows: • <u>Enable land use activities on Huriawa and Māpoutahi that comply with an Approved Management Plan.</u> That a new rule / performance standard be inserted into Rules 16.3 to 16.13, as follows: • <u>Except that activities on Huriawa and Māpoutahi that comply with an Approved Management Plan, which shall be a permitted activity.</u>

Sub. No.	Plan Section	The specific Plan provision/s that my submission relates to are:	My submission is that:	I seek the following decisions from the Dunedin City Council:
			example, signs, interpretation, structures, fences and tracks]. There is already a need for Iwi and Rōnaka to obtain an authority under the Heritage New Zealand Pouhere Taonga Act 2014 for any activity that affects an archaeological site. It is inappropriate for Iwi and Rōnaka to also have to obtain an additional resource consent from Council for land use activities on these properties, where such activities are carried out in accordance with an Approved Management Plan. The District Plan should enable and facilitate land use activities on Huriawa and Mōpoutahi that comply with an Approved Management Plan without the need for a resource consent.	
5.	F Appendices	A4. Wāhi Tūpuna Values [A4.6 Huriawa Peninsula]	The District Plan should identify both the ownership and management work being carried out on Huriawa. It should also reflect that Te Rōnanga o Ngāi Tahu and Kōti Huirapa Rōnaka ki Puketeraki are working with the Department of Conservation to prepare a management plan for this property. It is also important to signal that land use activities should be carried out in accordance with an Approved Management Plan.	That A4.6.1 be amended by inserting the following wording: • <u>Huriawa was vested fee-simple in Te Rōnanga o Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998.</u> • <u>Te Rōnanga o Ngāi Tahu and Kōti Huirapa Rōnaka ki Puketeraki are working with the Department of Conservation to prepare a management plan for Huriawa.</u> • <u>Land use activities on Huriawa</u>

Sub. No.	Plan Section	The specific Plan provision/s that my submission relates to are:	My submission is that:	I seek the following decisions from the Dunedin City Council:
				<u>should be carried out in accordance with an Approved Management Plan.</u>
6.	F Appendices	A4. Wāhi Tūpuna Values [A4.17 Mapoutahi and Mateawhiawhi – Beach at Purakaunui Bay]	The District Plan should identify the ownership of Māpoutahi. It should also reflect that Te Rūnanga o Ngāi Tahu, Kāti Huirapa Rūnaka ki Puketeraki and the Department of Conservation are responsible for managing Māpoutahi. It is appropriate to signal that land use activities should be carried out in accordance with an Approved Management Plan.	That A4.17.1 be amended by inserting the following wording: • <u>Māpoutahi was vested fee-simple in Te Rūnanga o Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998.</u> • <u>Te Rūnanga o Ngāi Tahu, Kāti Huirapa Rūnaka ki Puketeraki and the Department of Conservation are responsible for managing Māpoutahi.</u> • <u>Land use activities on Māpoutahi should be carried out in accordance with an Approved Management Plan.</u>

ANNEXURES B – Copies of the Relevant Parts of the Decisions



**SECOND
GENERATION
DISTRICT PLAN**

**Rural Zones Hearing
Decision of Hearings Panel**

**Proposed Second Generation Dunedin City
District Plan (2GP)**

7 November 2018

territorial local authorities under a triennial agreement, but could not produce formal confirmation of this delegation. We recommended clarification of this position between the two authorities as a matter of relative urgency, to then enable the resource management issues listed under s30(c) to be considered and the appropriateness of any relevant management options formally assessed.

1073. The Reporting Officer made no change to his recommendation in relation to *Forest and Bird* and *Otago Regional Council's* submissions to add new provisions to manage land use in dry catchments.

3.7.3.5 Decision and reasons

1074. We reject the submission of *HPPC* (OS447.71) and *STOP* (OS900.103) to change the word 'minor' to 'insignificant' and to change the word 'insignificant' to 'very insignificant, meaning bordering on unidentifiable'. With regard to the use of the word 'minor', we draw attention to our decision in the Natural Environment report on a similar submission by *HPPC* (OS447.15). We note the concerns of the further submitters and agree with the assessment of the Reporting Officer that it would not be appropriate to use the requested terminology as it would be inconsistent with the 2GP drafting protocol, as detailed in the Plan Overview Section 42A Report (pages 22-23) and we therefore reject both submissions.

1075. We reject the submissions of *Otago Regional Council* (OS908.72) and *Forest and Bird NZ* (OS958.110) that the 2GP should be managing land conversions in dry catchments. We agree with the reasoning by the Reporting Officer and note, as discussed elsewhere, the control of land use for the maintenance and enhancement of water and ecosystems in water bodies and coastal water is a responsibility of regional councils under s30(c) of the RMA.

3.7.4 Request for new provisions for Huriawa and Māpoutahi

3.7.4.1 Background

1076. Huriawa Peninsula has several pā sites and is mapped in the 2GP as a wāhi tūpuna. The bulk of the peninsula, with the address of 50 Sulisker Street Karitane, is a former historic reserve, now vested in Te Rūnanga o Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998 and is also mapped as the Karitane Outstanding Natural Feature overlay and the Karitane Headland Coastal Environment, with the general zoning of Coastal Rural Zone.
1077. Māpoutahi (peninsula) and Mateawheawe (beach) located at the northwestern point of Pūrākaunui Bay are mapped in the 2GP as wāhi tūpuna and identified as Māpoutahi Pā archaeological site (Heritage NZ category 2). The peninsula is also mapped as the Māpoutahi Outstanding Natural Feature, while the beach and the landward edge of the site are mapped as part of the Hayward Coast Significant Natural Landscape. The entire area is also mapped as Māpoutahi Cliffs Coastal Environment and has a general zoning of Coastal Rural Zone.

3.7.4.2 Submissions

1078. *Te Rūnanga o Ngāi Tahu* (OS790.2, 3 & 4) sought to add new policies, rules and related definitions to enable land use activities on Huriawa and Māpoutahi, noting that there is already a need to obtain an Archaeological Authority from Heritage New Zealand for any activity (such as earthworks or buildings) that affects an archaeological site. *Te Rūnanga o Ngāi Tahu* considered that the 2GP should enable and facilitate land use activities on Huriawa and Māpoutahi that comply with an Approved Management Plan, without the need for a resource consent. The submission stated that both *Te Rūnanga o Ngāi Tahu* and *Kāti Huirapa Rūnaka ki Puketeraki* are working with DoC to prepare management plans for Huriawa and Māpoutahi setting out iwi and papatipu aspirations for land use activities in the future. The submission provided the example of signs, interpretations, structures, fences and tracks as

potential activities. *Kāti Huirapa Rūnaka ki Puketeraki* and *Te Rūnanga o Otakou* (FS2456.14 & 76) supported OS790.3 and OS790.4 respectively because they are 'consistent with the aspirations' of the Rūnanga.

1079. *Te Rūnanga o Ngāi Tahu* (OS790.13) also sought that if the relief sought by the submissions described above was not implemented, the submitter wished the whole plan to be withdrawn.
1080. A related submission point, to amend the wāhi tūpuna values listed in the appendices for both Huriawa and Māpoutahi, was considered in the Manawhenua Section 42A report (OS790.5 and OS790.6). That report recommended accepting the submission in part and adding additional information with regard to the areas vested to Ngāi Tahu. However, the Report recommended against adding in reference to a requirement that activities in the areas be carried out "in accordance with an approved management plan" as this is not a DCC enforcement matter. In addition, the report recommended declining amending the mapping so that the wāhi tūpuna mapped areas are consistent with the legal description of the vested areas. The Reporting Officer noted that the areas identified in *Te Rūnanga o Ngāi Tahu's* submission were smaller than the wāhi tūpuna mapped areas, which were mapped by Manawhenua and which reflected the areas which are significant to them.

3.7.4.3 Section 42A Report

1081. With regard to the request by *Te Rūnanga o Ngāi Tahu*, the Reporting Officer, Katie James, did not consider it to be appropriate to permit all activities that comply with a management plan approved by Ngāi Tahu, or to provide a new definition of 'approved management plan' within the 2GP. She explained that:
- a management plan is prepared for different purposes than a district plan and may have different standards for activities than those set out in the 2GP, and would not be enforceable by the DCC.
 - the DCC has a statutory role under s31 of the Resource Management Act 1991 to control any actual or potential effects of the use, development, or protection of land within its jurisdiction, including reserve land, and it is important that activities with potential material effects on the values of Huriawa and Māpoutahi are appropriately managed.
 - the recognition of both Huriawa and Māpoutahi as Outstanding Natural Features means that there is more restriction on effects for development activities taking place at these sites. The Reporting Officer considered that this was appropriate given the rich cultural, archaeological, landscape and geological values associated with both landforms.
 - Objective 10.2.5 of the 2GP provides for the protection of ONFs along with Significant Natural Landscapes and Outstanding Natural Landscapes from inappropriate development. Policy 10.2.5.1 limits rural and community activities (including conservation) in an ONF to those that do not require buildings or involve change to the landform. Policy 10.2.5.4 expressly avoids buildings and structures in an ONF unless there are no material effects on landscape values.
1082. With regard to the concern raised by the submitter that activities such as earthworks would potentially require resource consent as well as an Archaeological Authority, the Reporting Officer considered that this was appropriate, where necessary, as the two types of consent serve different purposes. An Archaeological Authority may be required for any work affecting an archaeological site because of the high risks associated with disturbance of archaeological remains or artefacts.
1083. The Reporting Officer noted that the 2GP allows for small scale earthworks without resource consent, although the status of Huriawa and Māpoutahi as Outstanding Natural Features places more restrictions on earthworks given the potentially greater adverse effects on these visually prominent natural features. In addition, she noted that earthworks are considered to be one of the principal threats to wāhi tūpuna values. She noted further, that in an ONF, any tracks involving a greater than 1m

change in ground level or involving more than 50m² in area will require resource consent, allowing for minimal disturbance of the land, such as maintenance of an existing track. However, the Reporting Officer also noted that:

- fences are a permitted activity and while any new building or structure is non-complying, other buildings and structures activities such as repairs and maintenance are restricted discretionary.
- The 2GP allows for one ancillary sign per site while public amenities including information or interpretation kiosks or panels, place name signs, picnic tables, seating and pedestrian paths are permitted, subject to size, setbacks and status of any associated development activities.

1084. Therefore, the Reporting Officer was satisfied that the 2GP provided for a range of activities that are appropriate for the nature of the two areas while ensuring that activities associated with material effects on landscape values, such as large scale earthworks, buildings and structures, are subject to a resource consent process. In relation to the areas defined as Huriawa and Māpoutahi, she did not consider it to be appropriate to provide definitions for both Huriawa and Māpoutahi based on the description contained within the Ngāi Tahu Settlement Claims Act because these describe smaller areas than the wāhi tūpuna mapped areas in the 2GP, which were mapped by Manawhenua, and which reflected the larger areas which are significant to them rather than being based on legal ownership.

1085. The s42A Report recommended rejecting the submission to withdraw the whole plan if other submission points were not implemented.

3.7.4.4 Hearing

1086. *Te Rūnanga o Ngāi Tahu* (OS790) tabled evidence but did not appear at the hearing. The written evidence noted that an approved management plan approach has been applied successfully in Southland District. The submitter's evidence suggested that a Management Plan would not necessarily be at cross purposes with the District Plan and it was not necessary for DCC to reject the management plan approach because the effects of activities within the management plan would be below the 'materiality threshold' to need controlling via consents and as the properties are non-commercial they would be managed "in a manner that respects their intrinsic landscape and cultural values". The submitter was concerned that if more than one sign was required it would require resource consent which would be "incongruous to the scale of effect and fails to recognise the safety checks provided by the requirement of a management plan to first be approved before an activity can take place" (Statement of Evidence, p. 5).

3.7.4.5 Revised recommendations

1087. In her revised recommendations, the Reporting Officer referred to the s42A Report where she outlined a range of activities that would be permitted on the site under the 2GP, including: maintenance of an existing track involving less than 1m change in ground level or less than 50m² in area, fences, and a range of public amenities subject to size, setbacks and status of associated development activities including: information or interpretation kiosks or panels, place name signs, picnic tables, seating and pedestrian paths. With respect to signs, she considered that the 2GP provides sufficient scope to allow *Te Rūnanga* to provide for a range of information or place name signs as appropriate under public amenities rules. She explained that consent would only be required if the height exceeded 3m and for place name signs, if the maximum area of the display face exceeded 2m². In addition, she noted that one ancillary sign (sign related to permitted or lawfully established land use activity) is allowed in an ONF. While accepting that a management plan would not necessarily be at cross purposes with the plan and recognising the intent to manage the areas in a way that respects intrinsic landscape and cultural values, she considered that there is a level of uncertainty around what would be included in the Management Plan. In addition, as the Management Plan would not require approval by the DCC, she

considered it appropriate that the 2GP provisions continued to apply to these areas. This would allow for a range of activities to be carried out without consent while still requiring that more significant activities would be subject to 2GP requirements.

3.7.4.6 Decision and reasons

1088. We reject the submission of *Te Rūnanga o Ngāi Tahu* (OS790.2, 3 & 4) to add new policies, rules and related definitions to enable land use activities on Huriawa and Māpoutahi. We agree with the assessment of the Reporting Officer that the 2GP already provides for a range of activities (including many that are listed in *Te Rūnanga o Ngāi Tahu's* submission) that are appropriate for the special nature of each area while ensuring that activities which are associated with greater effects are managed through the resource consent process. We note the submitter's evidence that a management plan would not necessarily be at cross purposes with the District Plan, however the DCC would have no control or certainty as to the level of protection to be provided to Māpoutahi or Huriawa or what would be provided for as de facto permitted activities. Without such certainty, we cannot be sure that the effects of these activities would be minor, or that the DCC would be meeting its requirements under s31. We do not consider that the rules in the 2GP are unduly onerous given the importance of these two sites.
1089. We also reject the request of *Te Rūnanga o Ngāi Tahu* (OS790.13) to withdraw the 2GP if the relief sought in the submitter's other submissions is not implemented.

3.8 Zoning and mapping submissions

3.8.1 Introduction

1090. This section of the Decision Report responds to zoning and mapping submissions.

3.8.2 High class soils mapped area

3.8.2.1 Background

1091. The high class soils mapped area (HCS mapped area) in the 2GP was carried over from the Dunedin District Plan (2006). There was one submission in support of the HCS mapped area and several seeking removal at particular locations, discussed separately below.

3.8.2.2 Submission in support

1092. *Vicky Carthew* (OS342.3) sought to retain the HCS mapped area.

3.8.2.3 60 Mount Grand Rd

1093. *James Fraser* (OS93.3) sought to remove the mapped area from his property at 60 Mount Grand Rd. He did not consider that his land has high class soils based on his own review of information relating to characteristics of high class soils (see submission for full details). There is a small area of high class soils mapped at the centre of the site. The submitter stated that this is an elevated site and has a farm road cut through it. He also explained that the soil is too rocky and the site is too steep, noting that part of the HCS mapped areas is also in a Hazard 2 overlay zone, and attached photos to the submission as evidence. The submitter also provides a list of characteristics for high class soils, one of which is listed as slopes of less than 12°. The submitter also asked for more information about 'what is High Class Soil?'



**SECOND
GENERATION
DISTRICT PLAN**

**Manawhenua
Decision of the Hearings Panel**

**Proposed Second Generation Dunedin City
District Plan (2GP)**

7 November 2018

165. We are also concerned that while *Nga Rūnanga's* submission is clear and provides legal scope to extend the wāhi tūpuna to cover the whole of Otago Peninsula, Peninsula residents would not have been aware of this proposal. For reasons of natural justice, we consider it would be fairer to make such a major change through a variation to the 2GP. Consequently, we reject the request of *Ngā Rūnanga* (OS1071.122) to extend the wāhi tūpuna site to incorporate the whole of Otago Peninsula through this process.

3.9.3 Appendix A4 Wāhi Tūpuna values

3.9.3.1 Appendix A4.6 Huriawa Peninsula

166. *Te Rūnanga o Ngāi Tahu (TRoNT)* (OS790.5), supported by *Ngā Rūnanga* (FS2456.16), requested additional information be added to the description of wāhi tūpuna site A4.6 (Huriawa), and to state that management of activities on Huriawa must be undertaken in accordance with an approved management plan. The wording proposed was:

"Huriawa was vested fee-simple in Te Rūnanga o Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998. Te Rūnanga o Ngāi Tahu and Kāti Huirapa Rūnaka ki Puketeraki are working with the Department of Conservation to prepare a management plan for Huriawa. Land use activities on Huriawa should be carried out in accordance with an Approved Management Plan".

167. By way of background, *TRoNT* (OS790.4) also sought changes to the activity status of activities on Huriawa such that activities are permitted if they are carried out in accordance with a management plan. Related submission point OS790.3 was to include a definition of 'Huriawa' that matches the description of the land vested in *Te Rūnanga o Ngāi Tahu* under the *Ngāi Tahu Claims Settlement Act*. These submissions were considered in the Rural topic hearing. Our decision is to reject those submissions (see Rural decision report).
168. *Ngā Rūnanga* (OS1071.17, 18) also sought to ensure that mapping of the Huriawa wāhi tūpuna mapped area, and the related Huriawa height restriction mapped area (OS1071.18), were consistent with the legal description of these sites in the *TRoNT* submission.
169. The Reporting Officer explained that the area identified as Huriawa in *TRoNT's* submission is a smaller area than the area mapped as a wāhi tūpuna in the 2GP, as only part of the area significant to manawhenua was vested to *Ngāi Tahu*. Consequently, she recommended that the wāhi tūpuna A4.6 remained as mapped in the 2GP (s42A Report, Section 4.3.22, pp. 54-55).
170. She also noted that the Huriawa height restriction mapped area does not overlap with the area identified by *TRoNT*, and consequently her view was that there was no need to amend the mapping of that area.
171. She recommended that the additional wording requested by *TRoNT* be added, but in an amended form as below, to reflect the fact that the *Ngāi Tahu* site and the wāhi tūpuna areas are different and that DCC cannot enforce any management plan for the area.

"Part of the Huriawa peninsula was vested fee simple in Te Rūnanga o Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998; Te Rūnanga o Ngāi Tahu and Kāti Huirapa Rūnaka ki Puketeraki are working with the Department of Conservation to prepare a management plan for this area."

172. Mr Vial, representing *Ngā Rūnanga*, supported this approach in his written evidence.

3.9.3.1.1 Decision and decision reasons

173. We accept *TRoNT's* submissions in part, and the relief recommended by the Reporting Officer for the reasons outlined in the s42A Report as detailed above. The amendment to A4.6.1 Description of area is shown in Appendix 1 (MW 790.5). No changes are made to the A4.6 Huriawa Peninsula wāhi tūpuna area mapped or the Huriawa height restriction mapped area in response to these submissions.

3.9.3.2 Appendix A4.17 Mapoutahi and Mateawheawhe (Beach at Pūrākaunui Bay)

174. As with Huriawa, *TRoNT* (OS790.6), supported by *Ngā Rūnanga* (FS2456.17), sought to amend the description of wāhi tūpuna site A4.17 (Mapoutahi and Mateawheawhe) by inserting:

"Mapoutahi was vested fee-simple in Te Rūnanga o Ngai Tahu under the Ngai Tahu Claims Settlement Act 1998; Te Rūnanga o Ngai Tahu, Kāti Huirapa Rūnaka ki Puketeraki are working with the Department of Conservation to prepare a management plan for this area. Land use activities on Mapoutahi should be carried out in accordance with an Approved Management Plan".

175. *Ngā Rūnanga* (OS1071.137) sought that mapping of the Mapoutahi wāhi tūpuna mapped area is consistent with the legal description of these sites in the *TRoNT* submission.
176. As with Huriawa, the area identified by *TRoNT* is smaller than the area mapped in the 2GP, and the s42A Report recommendation was that the wāhi tūpuna site remained as mapped in the 2GP. The Reporting Officer recommended that the additional words be added to the description of the site, but amended to reflect the fact that DCC cannot enforce a management plan for the area, as below (s42A Report, Section 4.3.22, pp. 54–55).

"Mapoutahi peninsula was vested fee simple in Te Rūnanga o Ngāi Tahu under the Ngāi Tahu Claims Settlement Act 1998; Te Rūnanga o Ngāi Tahu and Kāti Huirapa Rūnaka ki Puketeraki are working with the Department of Conservation to prepare a management plan for this area".

177. Mr Vial, in his written evidence, supported this approach.

3.9.3.2.1 Decision and decision reasons

178. We accept the submissions in part, and the relief recommended by the Reporting Officer to amend the description of wāhi tūpuna site A4.17, for the reasons outlined in the s42A Report as detailed above. This amendment is shown in Appendix 1 (MW 790.6). No amendment is made to the area mapped as A4.17.

3.9.4 Threats to wāhi tūpuna from adjacent land

179. *Ngā Rūnanga* (OS1071.16) noted that where restricted discretionary activities that may threaten a wāhi tūpuna are located outside the wāhi tūpuna, effects on Manawhenua are not identified as a matter of discretion, and therefore cannot be considered. To resolve this, they sought that wāhi tūpuna, where "adjacent" activities are listed as a threat, are mapped more broadly, to allow consideration of these effects.

180. The s42A Report identified wāhi tūpuna sites that have threats from adjacent land as:

- water bodies, being Matainaka/Hawksbury Lagoon, Te Tauraka Poti/Merton Tidal Arm, Blueskin Bay; Pūrākaunui, Otago Harbour and the Taieri River
- two sites where threat of wilding tree spreading into them is an issue
- the nohoaka site at Middlemarch, where reverse sensitivity effects from adjoining subdivision is an issue.

181. For the water body sites, the relevant threats are activities affecting water quality (for example, sediment entering the water) and loss of access to the coastal marine area. The Reporting Officer suggested two solutions: either map the sites to include a 20m buffer of land around them (consequential amendments required to assessment rules in the various zones in which the buffer falls) or expand the matters of discretion for non-compliance with the 'Setback from water bodies' performance standard (Rule 10.3.3) to include 'Effects on Manawhenua values' where the site is adjacent to a wāhi tūpuna site. This would require an amendment to various assessment rules and, while it would be inconsistent with the structure of the existing assessment rules, it would still achieve the desired outcome (s42A Report, Section 4.3.21, pp. 51-52).

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