

BEFORE THE OTAGO REGIONAL COUNCIL

IN THE MATTER of a proposed plan under Schedule 1 to the
Resource Management Act 1991

AND

IN THE MATTER of a submission by **THE CAIN WHĀNAU**
on the **PROPOSED OTAGO REGIONAL POLICY STATEMENT**

**STATEMENT OF EVIDENCE OF AILSA MARGARET CAIN
ON BEHALF OF THE CAIN WHĀNAU**

Culture and Policy

23 November 2022

INTRODUCTION

Ko Hananui te mauka tūpuna
Ko Mata-au te awa
Ko Waitaha, Kāti Māmoe, Ngāi Tahu ōku iwi
No Murihiku au
Ko Ailsa Cain toku ingoa.

1. My name is Ailsa Margaret Cain. My whānau have long associations with Otago from Waitaha to the later arrival of Kāti Māmoe and Ngai Tahu. My tūpuna Kohuwai and Honekai were married in the 1700s to establish an armistice between Kati Māmoe and Ngāi Tahu. Today, my whānau have Māori land holdings in Otago and Southland, including Kaka Point, the Catlins, and Waikouaiti.
2. I was born and raised in Milton where I attended primary and secondary school. At Otago University I studied New Zealand history and indigenous politics and obtained a Bachelor of Arts in 2000. I later obtained a Graduate Certificate in Museum and Heritage Studies from Victoria University of Wellington while working at the Ministry for Culture and Heritage Te Manatu Taonga.
3. I have over 20 years' experience working in New Zealand's cultural heritage and environment sectors. Professionally, I primarily work with manawhenua in influencing non-regulatory and regulatory processes, such as the Resource Management and Conservation acts. I established and am the Director of a consultancy, Kauati, based in Queenstown that focuses on the interwoven relationships between nature and culture.
4. I am an author of *Āpiti Hono Tātai Hono: Ngā Whenua o Ngāi Tahu ki Murihiku Stage 1 of the Southland Cultural Landscape Assessment Study 2021*. The Study developed a Te Ao Ngāi Tahu specific landscape methodology founded on Ira Atua Ira Tangata for use in Murihiku.
5. I am a member of ICOMOS New Zealand and on the Taukiaki (Māori heritage committee). I was recently ministerially appointed to the Guardians of Lakes Manapōuri, Monowai and Te Anau.

6. I have prepared evidence for this hearing as a family member of, and on behalf of the Cain Whānau. I am authorised to give evidence on their behalf. I am a beneficiary of Maranuku.

EXECUTIVE SUMMARY

7. My evidence specifically refers to Maranuku but many of the points I raise apply to other ancillary and Māori lands. Maranuku forms the basis of the Cain Whānau submission for the proposed Otago Regional Policy Statement (**pORPS**).
8. I outline the alienation of owners from Maranuku and the impacts that has had on development and economic opportunities, as well as the direction sought in the pORPS for redress and equity. Primacy is sought for ancillary claims to enable post Treaty Settlement outcomes for whanau to continue ahi kā, reconnect with the whenua and continue of mahinga kai.
9. My evidence discusses the issues for the Cain Whānau from expert opinions embedded in the status quo that are contrary or at odds with Ngāi Tahu paradigms, expectations, and aspirations as well as ideas of what is or is not appropriate at place.

MARANUKU ANCILLARY CLAIM

10. The Maranuku or Te Karoro reserve at Willsher Bay lies just south of the Kaka Point township in South Otago. The reserve was originally set aside by Walter Mantell under the terms of the Kemp Deed. Entitlement to the area was determined by the Native Land Court in 1868. Karoro A, section 48, block IV, Glenomaru survey district was vested in my tūpuna Alfred and Ellen Kihau, as well as others.
11. A map of the reserve is on page 311 of the pORPS version 21 October 2022 and has been attached in Appendix A of my evidence. Maranuku is covered in indigenous vegetation with freshwater streams and a coastal area. Manaaki Whenua have determined it to be strongly rolling (16-20°) land.

12. The Maranuku reserve was specifically provided on Crown grants that the land was to be absolutely inalienable for ever, and that the Governor-in-Council 'shall have no power to consent to an alienation by lease or otherwise'.
13. However, by way of a complicated backstory outlined in the Ngai Tahu Ancillary Claims Report 1995, the Crown took lands at Maranuku for a public scenic reserve. From when alienation first occurred to Wai 27 in the 1990s, the taking of the land, compensation, and management was an ongoing issue with multiple applications by owners to the Māori Land Court and petitions and letters to government and ministers.
14. The Waitangi Tribunal found that in 1909, despite the fact that the land was said to be inalienable, the Crown took 127 acres of land at Maranuku reserve the Public Works Act without notifying the owners of the land.¹ The Tribunal found that the taking of Māori land under the Public Works Act without notification given to the owners of Section 48 to be a breach of Article II of the Treaty. It also found that the lack of consultation or negotiation with the Ngai Tahu owners of the block constituted a breach of the principles of the Treaty.
15. The Tribunal voiced its concern during the hearings that there are so many instances in which small Ngāi Tahu reserves have been reduced by the Crown's compulsory public works acquisitions without notice, consultation, or consent.
16. Maranuku is referred to within the Treaty Settlement process as an 'ancillary claim'.² Ancillary Claims are the private claims of individual Ngāi Tahu beneficial owners or groups of beneficial owners which were taken to the Waitangi Tribunal at the same time as the Wai 27 hearings were held.
17. These claims arose out of Crown actions when dealing with the individual property rights of members of Ngāi Tahu Whānui in the years following the execution of the original purchase agreements between Ngāi Tahu and the Crown. For this reason, the redress package offered in respect of these claims goes to the descendants of the claimants and does not come to Te Rūnanga o Ngāi Tahu.

¹ Ngāi Tahu Deed of Settlement 1997, section 14.

² Please note that ancillary claims are not the same as South Island Landless Natives Act 1906 (SILNA) claims.

18. Maranuku lands were returned as part of the Ngāi Tahu Deed of Settlement and vesting arrangement were specified in the Ngāi Tahu Claims Settlement Act 1998.
19. My father is a descendant of the claimants and original owners at Maranuku and is a beneficiary.

CAIN WHĀNAU RELATIONSHIPS AND ASSOCIATIONS FOR MARANUKU

20. My whānau have long held relationships with the Kaka Point area centuries before and in decades after the vesting of the reserve in Alfred and Ellen Kihau and the alienation of lands. As is the case for many people who find themselves in similar situations with similar stories to Maranuku, our relationship is both with the place and the alienation. While the alienation of the place has dominated our associations with Maranuku for a period, the tangible and intangible relationships of the Cain Whānau with the place and our associated whakapapa continue regardless.
21. My childhood and that of my father and Taua (grandmother) were spent at Kaka Point as had our tūpuna Tuhawaiki, who was born nearby. My father is tangata tiaki for the nearby Puna-wai - Tōriki mātaitai, and Taua before her death was actively involved in the local Māori community. Kaka Point and Ruapuke Island where Taua was raised are closely linked by the sea route and it is common to hear of tūpuna fishing in the Southland Current that flows between the two locations (reaching speeds of 25 centimetres per second)³ and living at either place.
22. Maranuku and its coastal waters have long been a favourite place for my whānau to live and practice mahinga kai. However, it was always overshadowed with the sorrow, anger and shame that our lands and waters had been taken without consent. With the return of Maranuku, it is critical to my whānau that:
- a. ahi kā continue,
 - b. there be physical/built expressions of our presence on the land,
 - c. mahinga kai be practiced,
 - d. economic opportunities be considered, and
 - e. the land is not taken, use restricted or alienated again.

³ Craig Stevens and Stephen Chiswell, 'Ocean currents and tides - Currents', Te Ara - the Encyclopedia of New Zealand, <http://www.TeAra.govt.nz/en/ocean-currents-and-tides/page-1> (accessed 22 November 2022)

23. I have no confidence that the Crown's breaches will not happen again; there are a number of regulations that when combined with the status quo and western environmental attitudes and expertise can make ahi kā theoretical rather than actual, in essence alienating owners from their land and use of resources. I do not support a theoretical existence of ahi kā at Maranuku or mahinga kai being just a value, not to be practiced nor prioritised. The intergenerational, active transfer of knowledge through doing at place is fundamental to ahi kā and kaitiakitanga.
24. The ability of my whānau to sustainably use, access, interpret, live within their takiwā and sustain themselves as part of the natural environment is fundamental to retaining our mana and ahi kā.
25. Ahi kā is fundamental to land tenure for Māori – it shows the rights of hapū to an area through continuous occupation. Ahi kā is also used to describe the home people – the ones who live on their whenua, who keep the home fires burning, who keep undertaking their practices and connections to place in their takiwā. Ahi kā and kaitiakitangaa are closely intertwined. They include notions of wellbeing, leadership, authority and management of lands, hapū and local issues, economic and social resilience, and cultural and environmental knowledge and practices required to undertake the role.
26. There is an assumption that the ahi kā people will maintain 'home' so that whānau living away always have a place to return to. This point is of particular importance to my whānau as many of our whānaunga live away from the area but look to us to maintain those connections for future generations. My father, sister and I carry the responsibility to ensure when our cousins return, permanently or temporarily, they can visit and/or live at Maranuku.

MARANUKU AND THE OTAGO REGIONAL POLICY STATEMENT

27. The Cain Whānau submitted that the pORPS recognise and provide 'for the primacy of ahi kā, reconnection with the whenua and continuation of mahinga kai'. I support this position because I think primacy is essential to enable post-Settlement outcomes for Maranuku.

28. Originally, the reserve land was deemed in 1868 to be absolutely inalienable yet it was taken by the Crown 40 years later. It was subsequently returned to owners via Treaty Settlement legislation in 1998, seven years after the Resource Management Act 1991 (**RMA**) came into effect and the first generation of regional and district plans. The Waitangi Tribunal found that the alienation of Maranuku is a breach of both Article II of the Treaty of Waitangi and Treaty principles.
29. Maranuku is not an isolated, 'one off event' as multiple instances of encroachment and acquisition of Māori reserves were found during Wai 27. Additionally, public perception continues of the land being 'theirs' and for the public good despite ownership being vested back with the owners. This perception can sometimes have a greater impact on what our whānau can do as the local authorities are swayed or influenced by public opinion, albeit based on factually incorrect information. There are cases where officials in the local authority have also incorrectly thought the land to be a council reserve and managed it accordingly.
30. In my opinion, Maranuku cannot be regarded in the same way as public or privately owned land. A legacy factor of its alienation until 1998 means that the pORPS needs to recognise that Treaty principles have been breached and equity is required in pORPS policies. These reserves are scarce and already heavily restricted due to decades of national, regional, and local decisions by authorities that have failed to ensure and provide for hapū rights and interests.
31. Alienation from Maranuku meant my whānau could not consider any forms of development or management within or adjacent to the reserve, nor practice mahinga kai when other areas were undergoing land use changes, urbanisation, and increasing intensification. This is not a case of whānau being 'slow on the uptake' – they were deliberately and unjustifiably removed from any regulatory process until recently and I have found that we are again having to create appropriate regulatory pathways, pushing against the status quo and the benefits carved out by others.
32. The pORPS needs strong regional direction to ensure visibility and recognition of the issues facing ancillary claims and provide clear guidance to local authorities on how to actively manage redress, ahi kā and reconnection of beneficiaries and their whānau with their whenua and resources. This redress includes providing for the physical presence by owners in the landscape and recognition of economic opportunities.

33. For example, I often find that an ongoing issue at regional or district levels is that consideration is not given as to what role the RMA tools play in supporting the practice of mahinga kai, and what responses need to be suitably woven through regulatory and non-regulatory processes. Often mahinga kai is mentioned in a plan narrative and tangata whenua chapter but is not adequately understood or supported through the plan provisions. It is my opinion that it is not a 'nice to have' to include these mechanisms in the plan architecture and consenting, but a necessity to ensure alignment with Treaty Settlement legislation relevant to Otago.
34. The Treaty Settlement redress mechanisms and relationships Ngāi Tahu hold and/or want to re-establish following colonisation and land alienation have been invisible or curtailed in RMA processes and decisions. How the pORPS deals with this matter across the board has direct consequences for the Cain Whānau submission and Maranuku.
35. Primacy is a crucial tool to protect Maranuku from cumulative effects of regional and local regulations that in themselves do not prevent and prohibit but collectively mean that development and use of the ancillary land and resources by whānau is cost prohibitive or that consents cannot be granted. This is the modern equivalent of the Public Works Act taking or alienating whānau from the reserve. Primacy also provides protection from the ongoing issue (not just historical) of encroachment and land being forcefully taken for other purposes.
36. The Cain Whānau submission considers primacy with tikanga and what is appropriate at place. Appropriateness is a significant issue for Maranuku and its future uses, relationships, and associations. What is deemed appropriate under tikanga and Ngāi Tahu designed and/or led assessment methods may not be agreed by other experts, especially if compartmentalised or dissociative approaches are applied. Skilful consideration is needed of whakapapa, tikanga, mātauranga and other matters such as ahi kā by those with the expertise to do so across the region and at place.
37. I support the amendments to *MW-M1 – Collaboration with Kāi Tahu* as it is my opinion that mapping alone cannot identify all matters referenced in this provision nor suitably provide, in a Te Ao Māori context, for their protection. Consideration is needed of the appropriateness of the specific activity at place at that time alongside metaphysical and physical elements.

CONCLUSION

38. Simply, the Cain Whānau submission seeks to enable whānau to use their lands returned under ancillary claims and continue ahi kā. In my opinion, this requires special enabling provisions within the pORPS due to legacy issues and Treaty of Waitangi breaches that restricted any development of Maranuku and the active participation and recognition of owners in previous management decisions.
39. Clear direction is required in the pORPS for local authorities so they can confidently provide equity for ancillary claims, especially in regards to competing interests, public perception and misinformation. Equity includes valuing methodologies and tools based on Ngāi Tahu paradigms, mātauranga, and tikanga of what is or is not appropriate at place.



Ailsa Cain

23 November 2022

APPENDIX A: MAP OF MARANUKU RESERVE

