

BEFORE THE HEARING PANEL

UNDER the Resource Management Act 1991
IN THE MATTER of the Proposed Otago Regional Policy Statement 2021

**STATEMENT OF EVIDENCE OF SANDRA JEAN MCINTYRE
ON BEHALF OF KĀI TAHU KI OTAGO, NGĀI TAHU KI MURIHIKU AND TE
RŪNANGA O NGĀI TAHU**

23 November 2022

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INTRODUCTION

1. My name is Sandra Jean McIntyre. I hold the qualifications of Bachelor of Horticultural Science from Massey University and Master of Science in Resource Management (with honours) from Canterbury University. I have more than 30 years' experience in resource management planning and policy development at district, regional and central government levels. This includes experience in developing regional policy statement, district and regional plan provisions and in managing plan development and decision-making processes.
2. I am currently employed as Principal Planner at Aukaha, a consultancy based in Otago and owned by Te Rūnanga o Waihao, Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga.
3. My evidence addresses the submissions of the following parties in respect to provisions in the Proposed Otago Regional Policy Statement 2021 (PORPS):
 - (a) Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively Kāi Tahu ki Otago);
 - (b) Waihōpai Rūnaka, Te Rūnanga Ōraka Aparima and Te Rūnanga o Awarua (collectively Ngāi Tahu ki Murihiku); and
 - (c) Te Rūnanga o Ngāi Tahu.

When referring to these submitters collectively in my evidence, I have used the form Kāi Tahu, which is most commonly used by mana whenua in Otago.

4. I took a leading role in providing input on behalf of Kāi Tahu ki Otago to the PORPS throughout its development. This included:
 - (a) facilitating discussions with papatipu rūnaka to develop the expression of Te Mana o te Wai that has been included in the Land and Freshwater – Te Mana o te Wai (LF-WAI) provisions in the PORPS, and to articulate aspirations that mana whenua sought to be incorporated in the Land and Freshwater Visions and Management (LF-VM) provisions;
 - (b) leading the drafting of the section on Resource Management Issues of Significance to Iwi Authorities (RMIA) on behalf of papatipu rūnaka;

- (c) in collaboration with Te Ao Marama Inc (who work on behalf of Ngāi Tahu ki Murihiku), providing significant input into drafting of the Mana Whenua (MW) provisions; and
 - (d) with other Aukaha staff, reviewing and providing comments on draft provisions across the PORPS.
5. I was involved in the preparation of submissions and further submissions on the PORPS on behalf of Kāi Tahu ki Otago and, together with other staff from Aukaha, Te Ao Marama and Te Rūnanga o Ngāi Tahu, represented the submitters in pre-hearing meetings.
6. Although this is a Council hearing, I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and I agree to comply with it. I confirm that the issues addressed in this statement are within my area of expertise except where I state that I am relying on information provided by another party. I have not knowingly omitted to consider material facts known to me that might alter or detract from the opinions expressed.
7. The key documents that I have referred to in preparing my evidence include:
- (a) The PORPS;
 - (b) Section 32 Evaluation, dated May 2021;
 - (c) The National Policy Statement for Freshwater Management 2020 (**NPSFM**);
 - (d) The National Policy Statement for Electricity Transmission;
 - (e) The National Policy Statement for Renewable Energy Generation;
 - (f) The National Policy Statement for Highly Productive Land 2022 (**NPSHPL**);
 - (g) The National Policy Statement on Urban Development;
 - (h) Kāi Tahu ki Otago Natural Resource Management Plan 2005;
 - (i) Te Tangi a Tauira, the Cry of the People, Ngāi Tahu ki Murihiku Natural Resource and Environmental Management Plan 2008;
 - (j) The relevant section 42A reports and supplementary evidence, and the revised version of the PORPS reflecting the recommendations in these documents;
 - (k) Relevant submissions of other parties;
 - (l) Cultural evidence of Messrs Edward Ellison, Matapura Ellison, David Higgins, Justin Tipa and Brendan Flack on behalf of Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively Ngāi Tahu ki Otago);
 - (m) Planning evidence of Ms Sandra McIntyre, Mr Michael Bathgate, Mr Tim Vial on behalf of Kāi Tahu ki Otago, Ms Maria Bartlett on behalf of Ōraka-Aparima

Rūnaka, Awarua Rūnanga, Waihōpai Rūnaka (collectively Ngāi Tahu ki Murihiku), all dated 23 November 2022.

SCOPE OF EVIDENCE

8. My evidence will address the following matters:
 - (a) Key overarching themes in the Kāi Tahu submissions and further submissions, with reference to the cultural evidence on these matters and also to relevant statutory direction;
 - (b) Specific provisions and proposed amendments to the following sections of the PORPS:
 - (i) Mana Whenua (MW);
 - (ii) Resource Management Issues of Significance to Iwi Authorities (RMIA);
 - (iii) Integrated Management (IM);
 - (iv) Air (AIR);
 - (v) Land and Freshwater (LF), to the extent that these are not subject to the freshwater planning process;
 - (vi) Energy, Infrastructure and Transport (EIT);
 - (vii) Hazards and Risks (HAZ); and
 - (viii) Urban Form and Development (UFD).
9. Michael Bathgate has prepared planning evidence for the submitters on other parts of the PORPS, and Tanya Stevens and Maria Bartlett have prepared planning evidence on some specific matters raised in the submissions of Te Rūnanga o Ngāi Tahu and Ngāi Tahu ki Murihiku respectively. In preparing my evidence I have consulted with those witnesses to minimise duplication and resolve any potential conflicts or confusion between the briefs.
10. The section 42A report recommends acceptance of many of the points in the Kāi Tahu submissions, and agreement on a number of other matters in pre-hearing meetings is reflected in the Otago Regional Council (**ORC**) supplementary evidence. Rather than discussing matters that are non-contentious, my evidence focuses on the central matters of concern to the Kāi Tahu submitters and areas of remaining disagreement between Kāi Tahu and ORC or other parties.

11. The section 32 report includes an overview of the statutory framework for the PORPS, and the section 42A report also discusses aspects of this framework as relevant to the analysis of submissions. I do not consider it is necessary to repeat this discussion, but instead will highlight matters that are of particular relevance to the Kāi Tahu submissions and offer my planning assessment where my opinion differs from those expressed in the section 42A report.
12. Appendix 1 to my evidence sets out my recommendations with respect to each of the Kāi Tahu submission and further submission points in the PORPS sections I have addressed, with reference to where these are discussed in the evidence. Amendments to other chapters are addressed in the planning evidence of Michael Bathgate.

OVERARCHING THEMES IN THE SUBMISSIONS

13. The Kāi Tahu submissions and further submissions are extensive, but much of the content is concerned with a small number of overarching matters or themes. In this section of my evidence I discuss the following overarching themes:
 - (a) Provision for Kāi Tahu values, rights and interests relating to te taiao (the natural environment), including:
 - (i) Recognition and provision for the relationship of Kāi Tahu to te taiao;
 - (ii) The importance of enabling the use and development of Māori land to support the cultural, social and economic wellbeing of Kāi Tahu whānau and hapū; and
 - (iii) Appropriate use of te reo Māori concepts and traditional placenames;
 - (b) Requirements for an integrated management approach throughout the PORPS;
 - (c) The need for consideration of climate change to be embedded throughout;
 - (d) Consideration of requests from other submitters for special recognition of particular categories of economic activity; and
 - (e) Clarity of policy direction.

Providing for Kāi Tahu values, rights and interests relating to te taiao

14. A focus on recognition and provision for Kāi Tahu values, rights and interests in the environment runs throughout the Kāi Tahu submissions. The submissions support the recognition in the PORPS of the mana and rakatirataka of Kāi Tahu and of mana whenua values. However they request some amendments to better reflect the appropriate role of mana whenua in resource management and to ensure mana whenua concepts are

correctly expressed. The submissions also seek amendments in some chapters to strengthen or clarify policy direction relating to provision for mana whenua values and interests, and to better enable use of ancestral land and of mahika kai resources. The further submissions oppose relief sought by other parties that would weaken recognition of the role of mana whenua.

The relationship of Kāi Tahu to te taiao

15. The cultural evidence for the submitters describes the deep and enduring relationship of Kāi Tahu to te taiao. Important characteristics of the relationship include:

- (a) Kāi Tahu are bound to te taiao by whakapapa;¹
- (b) This whakapapa connection carries rakatirataka rights for mana whenua, and imposes an associated kaitiakitaka obligation to care for the environment so that, as it was handed on from the ancestors, it can be handed on to future generations;²
- (c) The ability to maintain connections with wāhi tūpuna (cultural landscapes) and to keep the practice of mahika kai alive is fundamental to the cultural identity of Kāi Tahu;³
- (d) To enable these connections to be maintained, and restored where they have been lost, the following requirements are crucial:
 - (i) Protection of mauri, and restoration of this where it has been degraded;⁴
 - (ii) Recognition of wāhi tūpuna values;⁵
 - (iii) The ability to live on ancestral land and to develop this land in ways that support economic, cultural and social wellbeing;⁶
 - (iv) The ability for mana whenua to access and use mahika kai resources;⁷
 - (v) Recognition of mātauraka; and⁸

¹ See for example evidence of Edward Ellison, 'Mana Whenua Relationships with the Taiao' section

² See for example evidence of Edward Ellison, 'Rakatirataka and kaitiakitaka' section

³ See for example evidence of Edward Ellison, 'Wai Māori and Wai Tai' section; evidence of Brendan Flack, 'Mana whenua relationships with the coastal environment' section

⁴ See for example evidence of Edward Ellison, 'Mauri' section

⁵ See for example evidence of Edward Ellison, 'Wāhi tūpuna' section

⁶ Evidence of Justin Tipa, 'Reconnecting whānau through relationships with ancestral land' section; Evidence of Matapura Ellison

⁷ See for example evidence of Edward Ellison, 'Mahika kai' section; evidence of Brendan Flack, 'Mana whenua relationships with the coastal environment' section

⁸ See for example evidence of Edward Ellison, 'Mahika kai' section

- (vi) Involvement of mana whenua in management and decision-making that affects these matters.⁹

16. Part 2 of the Resource Management Act 1991 (**RMA**) imposes an obligation on the PORPS to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taoka,¹⁰ to have particular regard to kaitiakitanga¹¹ and to take into account the principles of the Treaty of Waitangi.¹² In my opinion, Te Tiriti principles that are relevant in the context of providing for the relationship of Kāi Tahu to te taiao include:

- (a) Active protection of mana whenua interests;¹³
- (b) Recognition of rakatirataka;¹⁴ and
- (c) Partnership.¹⁵

17. The cultural evidence emphasises the centrality of mauri, wāhi tūpuna, mahika kai and mātauraka to the relationship with te taiao. As described by the cultural witnesses, the relationship requires active connection with the wai and whenua through the ability to maintain and pass on cultural practices.¹⁶ The cultural witnesses also describe the ways in which the connections with te taiao have been diminished by the way in which land and water have been managed.¹⁷

18. In light of this evidence, I consider that section 6(e) RMA cannot be given effect to simply by applying protection to areas and resources that are valued by mana whenua. The ability for mana whenua to carry out practices relating to mahika kai and wāhi tūpuna must also be enabled and, where environmental degradation has diminished connections with te taiao, the relationship of mana whenua to te taiao can only be effectively recognised and provided for by reversing the degradation. Involvement in decision-making for valued areas and resources, and recognition of the contribution of mātauraka to the management of these, is also required to provide for the relationship under section 6(e) and to meet the obligations of sections 7(a) and 8 of the RMA.

⁹ Evidence of Edward Ellison, 'Treaty partnership' section

¹⁰ RMA, s. 6(e)

¹¹ RMA, s. 7(a)

¹² RMA, s. 8

¹³ *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 at 664.

¹⁴ *Waitangi Tribunal, Motunui-Waitara Report*, pg 51.

¹⁵ *Te Rūnanga o Wharekauri Rekohu v Attorney-General* [1993] 2 NZLR 301, *Cooke J.*

¹⁶ See for example evidence of Edward Ellison, 'Mahika kai' section; evidence of Justin Tipa, 'Changes to our landscape and the impacts on mahinga kai practices' section

¹⁷ See for example evidence of Brendan Flack, 'The importance of recognising the interconnectivity of the taiao' section; evidence of Edward Ellison, 'Degradation of te taiao and mahika kai' section

19. The New Zealand Coastal Policy Statement 2010 (**NZCPS**) and the National Policy Statement for Freshwater Management 2020 (**NPSFM**) provide specific direction on how sections 6(e), 7(a) and 8 are to be given effect to in regard to management of the coastal environment and freshwater:¹⁸

(a) Objective 3 and Policy 2 of the NZCPS require that, in relation to the coastal environment:

- (i) There is early, meaningful and effective consultation with iwi authorities and hapū in development of regional policy statements and plans;
- (ii) Mātauraka is incorporated in regional policy statements, plans and decision-making processes;
- (iii) Relevant iwi management plans are taken into account;
- (iv) Appropriate opportunities are provided for mana whenua involvement in decision-making and for exercise of kaitiakitaka through other measures; and
- (v) Provision is made for management, maintenance and protection of taoka and areas of significance or special value to mana whenua.

(b) The NPSFM emphasises the role of mana whenua in freshwater management and the requirement for mana whenua involvement in freshwater planning and management at all stages, including in decision-making.¹⁹ It specifically requires that mana whenua freshwater values are identified and provided for,²⁰ and that the application of mātauraka to freshwater management is enabled.²¹

20. The direction in the NZCPS and the NPSFM emphasises the importance of making provision for mana whenua to take an active role in decision-making and management of the coastal environment and freshwater resources. As described in the evidence of Brendan Flack, recognition of the interconnectedness of te taiao is central to the Kāi Tahu

¹⁸ I note that the NZCPS refers to “Māori” and the NPSFM refers to “tangata whenua”. As described in the evidence of David Higgins (‘Roles and responsibilities of mana whenua as kaitiaki’ section) and Edward Ellison (‘Rakaitirataka and kaitiakitaka’ section), rakaitirataka rights and kaitiakitaka obligations in respect to te taiao sit with mana whenua. For this reason, in the context in which they are used in the national instruments, I have interpreted “Māori” and “tangata whenua” as referring to mana whenua, and have used the term “mana whenua” to reflect Kāi Tahu preferences.

¹⁹ NPSFM 1.3(4)(a)-(c); Policy 2; 3.2(a)-(b); 3.4

²⁰ NPSFM Policy 2 and 3.4

²¹ NPSFM 3.2(d) and 3.4

approach to environmental management.²² I consider it would not be consistent with the requirements of Part 2 of the RMA discussed above to apply the NZCPS and NPSFM direction regarding the role of mana whenua only to the Coastal Environment (CE) and LF sections in the PORPS. To facilitate an interconnected approach it would be appropriate to reflect this direction across the whole of the PORPS.²³

21. Through the agency of Aukaha and Te Ao Marama, Kāi Tahu provided input to development of the PORPS at all stages. I led the Aukaha component of this work through most of the plan development period. The extent of engagement varied across different parts of the document. There was significant involvement in development of the MW and RMIA chapters and the freshwater components of the LF chapter but, due at least in part to the tight timeframe for development of the PORPS, opportunities to contribute to the direction of other chapters were more limited. As a result of variability in the opportunity to contribute, the approach to providing for Kāi Tahu values, rights and interests is somewhat uneven across the PORPS. This is of particular concern to the submitters in respect to the CE chapter, as discussed in the evidence of Michael Bathgate. I consider that the opportunities for input to development of the CE chapter fell short of the requirement in NZCPS Policy 2 for early, meaningful and effective consultation.
22. The section 42A report recommends acceptance of a number of Kāi Tahu submission points seeking clearer recognition of the rakatirataka and kaitiakitaka roles of Kāi Tahu, and of the relationship with te taiao. The outstanding matters that have not been resolved are discussed in my evidence below relating to specific chapters of the PORPS, and in other planning evidence provided for Kāi Tahu.

Use and development of Māori land

The importance of the use and development of Māori land

23. Provision for the relationship of mana whenua to their ancestral land is a matter that falls within the ambit of section 6(e) of the RMA. Recognition of rakatirataka over this land is also a matter that must be taken into account under section 8 of the RMA. The NZCPS provides further direction, in Policy 6(d), requiring appropriate provision for meeting the needs for papakāinga, marae and associated developments on land in the coastal environment.

²² Evidence of Brendan Flack, 'The importance of recognising the interconnectivity of the taiao' section

²³ I note that the recently released exposure draft of the National Policy Statement for Indigenous Biodiversity signals a similar direction to the NPSFM in respect to providing for the role and interests of mana whenua in environmental management.

24. The submissions support provisions enabling Kāi Tahu to use land in Native Reserves and land covered by Te Ture Whenua Māori Act for purposes that will support their cultural, social and economic wellbeing, but seek extension of this management approach to other land with a clear ancestral connection. Amendments are also sought to ensure that use of this land is not subject to unnecessary impediments. I note that similar concerns have also been raised in the submission of the Cain Whanau, who are owners of Māori land (including land subject to ancillary claims) in Otago.
25. Matapura Ellison and Edward Ellison describe the history of the Native Reserves, which were understood by Kāi Tahu to be intended to provide both a place to live and a means for people to sustain themselves.²⁴ They outline the history of land alienation that has led to disconnection of whānau from their ancestral land and from the resource base and cultural and social framework that formerly sustained them.²⁵ They describe the frustration experienced over many generations about the lack of opportunity for mana whenua to influence central and local government decision-making about their land, which has contributed to the alienation of the land or imposed severe restrictions on the ability to use it.²⁶ These witnesses and Justin Tipa discuss the aspirations of Kāi Tahu for whānau to be able to return to live on and reconnect with ancestral land and engage in cultural practices, and the importance of this to maintaining the relationship of mana whenua with the whenua.²⁷

The need for clearer direction for the management of Māori land

26. Prior to my employment at Aukaha, as part of the development of the Proposed Timaru District Plan, I undertook an investigation, in consultation with mana whenua, of needs and aspirations for papakāika provision in the Timaru District. As part of that, I assessed the effect of district planning frameworks on the ability for mana whenua to use and develop their land. I consider that some of the particular effects that I identified are also relevant in Otago. These are discussed below.
27. From the enactment of the Town and Country Planning Act 1953, preparation of district schemes led to regulation of where particular activities could take place across districts.

²⁴ Evidence of Edward Ellison, 'The Ōtākou Purchase and the native reserves' section; Evidence of Matapura Ellison

²⁵ Evidence of Edward Ellison 'Degradation of te taiao and mahika kai' section; Evidence of Matapura Ellison

²⁶ Evidence of Matapura Ellison

²⁷ Evidence of Matapura Ellison, 'Papakāika aspirations and barriers' section; Evidence of Edward Ellison, 'Aspirations for future use of the native reserves' section; evidence of Justin Tipa, 'Reconnecting whānau through relationships with ancestral land' section

The activities taking place in rural settlements were commonly provided for by appropriate zoning; however the similar purpose of the Native Reserves was often not recognised in zoning decisions. In many cases these areas were made subject to rural zoning and this has persisted through successive district schemes and district plans.

28. The implications of a rural planning framework include:
- (a) Development aspirations are subject to a policy framework focused on rural production and rural amenity, rather than supporting settlement. Particular constraints arise from requirements for large boundary setbacks, large minimum lot sizes and limits on housing density. Provision for community facilities and for economic activities other than primary production are also often constrained;
 - (b) The purpose of areas zoned for settlement is commonly recognised in delineation of planning overlays for protection of landscapes, indigenous vegetation and highly productive land, meaning that land with a rural zoning is more likely to be subject to such overlays and related restrictions on use and development;
 - (c) Infrastructure planning is often linked to areas zoned for settlement, with reticulation of water supply and wastewater confined to these areas. This approach is sometimes accompanied by policy direction discouraging residential development where reticulation is not available; and
 - (d) Management of natural hazard risks generally makes a distinction between residential and rural areas, with hazard protection being greater in residential areas and constraints on development in hazard-prone areas being more onerous in rural areas.
29. While there has been a growing trend in second generation district plans towards a more enabling approach to the use of ancestral land, there is significant variation in practice between different districts. Contributors to this variation include:
- (a) The weighting given to matters such as rural amenity;
 - (b) The extent of restrictions imposed to protect landscape values, indigenous vegetation and habitats;
 - (c) The policy approach to maintaining urban-rural boundaries and managing demands on service infrastructure;
 - (d) The level of understanding of the needs and aspirations of the owners of Māori land, including the categories of land and the scope of activities that should be recognised in providing for these needs and aspirations; and

(e) The extent to which provision for use of this land is recognised as a matter of national importance under section 6(e) RMA.

30. I consider clear direction is needed in the PORPS to ensure that the requirements of sections 6(e) and 8 of the RMA are given appropriate weight across all districts in Otago in respect to the ability for Kāi Tahu to occupy and use ancestral land that has been set aside for this purpose. That direction should recognise and provide for the intended purpose of the land without inappropriate restrictions being imposed on its use. The direction should also recognise rakatirataka by enabling mana whenua to lead decision-making as to how to manage effects of the use. The implications of this for specific provisions in the PORPS are discussed in the evidence relating to the relevant chapters.

The definition of 'Māori land'

31. The notified version of the PORPS includes provisions in the MW, HAZ and UFD chapters relating to the use of Māori land or ancestral land and the involvement of Kāi Tahu in decision-making affecting such land, and the submitters also seek direction on this matter in the CE and ECO chapters. Some submitters and section 42 report authors have highlighted uncertainty about the extent of land encompassed by these policies. This matter was discussed in pre-hearing meetings and to respond to the concern, a new definition of "Māori land" has been proposed by the submitters to apply to all the policies relating to use of ancestral land.

32. The PORPS definition of Māori land as notified is limited to land that falls within the ambit of Te Ture Whenua Māori Act 1993. The evidence of Matapura Ellison discusses some of the historic pressures that have resulted in land that was previously part of the Native Reserve land being alienated.²⁸ Edward Ellison discusses the impacts of physical processes such as coastal erosion in further limiting the land available for use and development.²⁹ Limiting the ambit of the relevant provisions to Te Ture Whenua Māori Act land does not adequately recognise the ancestral land base and does not provide sufficient flexibility for hapū and whānau to meet their aspirations for reconnection with this land base and to respond to the challenges of natural hazards that are likely to be exacerbated by climate change. The ability for papatipu rūnaka to acquire substitute areas to make up for land that cannot be used due to natural hazard effects will be increasingly important to adapt to climate change.

²⁸ Evidence of Matapura Ellison, 'Alienation of the native reserves' section

²⁹ Evidence of Edward Ellison, 'Degradation of wāhi tūpuna' section

33. The definition of Māori land proposed by the submitters was developed in consultation between the planners and representatives of the Cain Whanau who have also made submissions about use of ancestral land. I understand that it incorporates the various categories of land that are regarded as having an equivalent purpose to the Native Reserves, including land that may be purchased by papatipu rūnaka in the vicinity of existing Native Reserves to offset land that has been lost. I consider that the definition is appropriate because:
- (a) It provides more clarity and certainty than the term “ancestral land” used in some of the provisions in the notified PORPS;
 - (b) It provides for the intended purpose of the Native Reserves while recognising that the legal tenure of some of the land originally set aside has changed over time; and
 - (c) It recognises that to give effect to the aspirations of the submitters for reconnection with ancestral land, there may be a practical need to adjust or extend some of the boundaries of these areas to respond to local circumstances.

Direction in the National Policy Statement for Highly Productive Land 2022 (NPSHPL)

34. The NPSHPL, gazetted in September 2022, takes a directive approach to protecting highly productive land from inappropriate subdivision, use and development so it can be used for land-based primary production now and in the future. This is relevant to some of the Native Reserve land in Otago, including land discussed in the evidence of Matapura Ellison, which has been identified and mapped as ‘highly productive land’.
35. The relevant direction in the NPSHPL is as follows:
- (a) Clause 3.8 requires territorial authorities to avoid subdivision of highly productive land except in specified circumstances. There is an exception for specified Māori land,³⁰ which is a defined term similar to, but narrower than, the definition of Maori land developed for the PORPS and discussed above;
 - (b) Clause 3.9 requires territorial authorities to avoid the inappropriate use or development of highly productive land. Exceptions provided for in this clause include specified Māori land,³¹ as well as use for a purpose associated with a matter of national importance under section 6 of the RMA.³²

³⁰ NPSHPL 3.8(1)(b)

³¹ NPSHPL 3.9(2)(d)

³² NPSHPL 3.9(2)(c)

36. As discussed above, I consider that provision for use and development of ancestral land is a matter that needs to be addressed in the PORPS to give effect to section 6(e) of the RMA. Accordingly, I consider that reference to section 6 matters in Clause 3.9 would include use associated with providing for the relationship of mana whenua with their ancestral lands. I discuss my recommendations as to how this should be provided for in areas of highly productive land in my evidence on the LF and UFD chapters.

Use of te reo Māori terms and traditional place names

37. The evidence of Justin Tipa and Edward Ellison explains the importance of traditional place names in keeping the connections with wāhi tūpuna alive.³³ The submissions of Kāi Tahu ki Otago requested that the correct version of traditional names be used in the PORPS, particularly with respect to the names of rivers. The section 42A report recommends accepting these submissions and I support that recommendation as an appropriate measure to recognise the relationship of mana whenua to te taiao.
38. Appropriate use of cultural concepts such as mauri, rakatirataka, kaitiakitaka, and mātauraka is also important to Kāi Tahu. The submissions explain that the meaning of such words “cannot be adequately expressed through a simple English translation. Deeper meaning and understanding can only be gained through discussion that examines the interrelationships between these values”.³⁴ To reflect this, the approach that has been taken in the PORPS is to include explanations of key concepts in the MW chapter rather than simply including the words in a glossary. This approach is supported by the Kāi Tahu submitters subject to some refinements to the explanations requested in the submissions. Those refinements have generally been accepted in the section 42A report recommendations.
39. Explanations or definitions of additional te reo Māori terms have been sought by other submitters or by authors of the section 42A report. In response to this, through the pre-hearing process the Kāi Tahu parties have proposed further text relating to hauora, kawa³⁵ and mātauraka³⁶ and the ORC supplementary evidence recommends this be included.³⁷

³³ Evidence of Edward Ellison, ‘Wāhi tūpuna’ section

³⁴ Kāi Tahu ki Otago submission, 3.3

³⁵ Kāi Tahu ki Otago FS00226.390 on Queenstown Lakes District Council 00138.051

³⁶ Kāi Tahu ki Otago FS00226.193 on Jim Hopkins 00420.007

³⁷ 04 supplementary evidence of James Adams at [14], [15] and [32]

40. Kāi Tahu ki Otago opposed submissions requesting definitions of the terms rakatirataka,³⁸ taoka and tikaka.³⁹ The narrative in the MW chapter includes explanation of these concepts and sets them in their broader cultural context. I do not consider that it is necessary, or that it would be appropriate, to convert these rounded explanations into simple definitions, and I support the section 42A report recommendations to reject these requests.

Integrated management

41. The Kāi Tahu submissions support the focus on integrated management in the PORPS but seek greater reflection of this in some places, particularly in respect to the interrelationships between the terrestrial and coastal environments and between land and water.
42. As described in the cultural evidence, for Kāi Tahu there is no distinction between whenua (land) and wai (water); wai māori (freshwater) is part of the whenua and they are inseparable. Similarly, the coastal environment cannot be separated from the whenua, or wai tai (coastal waters) from wai māori. The cultural witnesses provide a range of examples illustrating how past failure to give adequate attention to the interrelationships across the environment has contributed to the degradation of mauri and mahika kai.
43. In his evidence, Brendan Flack also highlights other aspects of integrated management that are important. In particular he refers to:
- (a) the importance of considering interconnectedness across time as well as spatial areas; and
 - (b) the difficulties that arise in working with separate local authorities when they do not share an integrated approach across jurisdictional boundaries.⁴⁰
44. A central purpose of a regional policy statement is to provide policies and methods to achieve integrated management of the natural and physical resources of the region as a whole.⁴¹ A regional plan and a district plan must give effect to a regional policy statement.⁴² The role of the regional policy statement in providing an overarching

³⁸ Kāi Tahu ki Otago FS00226.595 on Yellow-eyed Penguin Trust 00120.010

³⁹ Kāi Tahu ki Otago FS00226.391 and FS00226.392 on Queenstown Lakes District Council 00138.030 and 00138.050

⁴⁰ Evidence of Brendan Flack, 'The importance of recognising the interconnectivity of the taiao' section

⁴¹ RMA, s. 59

⁴² RMA, s. 67(3)(c) and s. 75(3)(c)

framework for integrated environmental management in the region is crucial to ensuring that:

- (a) interconnections across jurisdictional boundaries are recognised and appropriately considered in plan development and resource consent decision-making; and
- (b) the management approaches in regional and district plans are developed in a way that will work together towards common outcomes for the significant resource management issues.

45. In my opinion, this role requires more than inclusion of general statements about the need for integrated management. Clear direction for the lower order plans must be provided about the matters that need to be considered and addressed to achieve integrated management, and the direction for management of specific parts of the environment must ensure the interconnections with other parts are managed consistently.

46. The NZCPS, NPSFM and National Policy Statement for Highly Productive Land 2022 (**NPSHPL**) include specific direction providing for integrated management between land and water:

- (a) in the coastal environment, NZCPS Policy 4 requires co-ordinated management or control of activities across administrative boundaries and particular consideration of:
 - (i) Effects of subdivision, development and land use activities that extend across the coastal marine area boundary, including effects of sedimentation on water quality and marine ecosystems;⁴³
 - (ii) Situations where development or land management practices may be affected by physical changes to the coastal environment or coastal inundation, including as a result of climate change;
- (b) the NPSFM requires that the effects of land use and development on freshwater and on receiving environments, including coastal receiving environments, are addressed in freshwater management.⁴⁴ Clause 3.5 sets out detailed direction on what is required for an integrated management approach; and

⁴³ Further direction on managing the effects of sedimentation across the land/ water boundary in the coastal environment is set out in NZCPS Policy 22.

⁴⁴ NPSFM 1.5, Policy 3, and definition of 'receiving environment'

(c) in terms of the management of highly productive land, the NPSHPL requires consideration of the way in which land-based primary production interacts with freshwater management.⁴⁵

47. As highlighted by the cultural evidence, natural and physical systems and processes do not respect jurisdictional boundaries. In my experience, inconsistent policy direction across those boundaries can result in perverse outcomes. For example, if a land and water regional plan includes direction to avoid particular types of discharge into water bodies, but there is no similar direction in the regional coastal plan, this may encourage land users to discharge to coastal waters rather than finding a more appropriate means of dealing with wastes. The potential for inconsistencies in policy direction to occur is exacerbated when the plan development cycles for different plans are not well-aligned. In my opinion, clear direction in the regional policy statement about integrated management across jurisdictional boundaries is important to avoid such outcomes.
48. The Kāi Tahu submissions include a number of specific requests to address this concern, and these are discussed in the planning evidence for the relevant chapters of the PORPS.

Consideration of climate change

49. While generally supporting the direction on consideration of climate change effects in the IM chapter of the PORPS, the Kāi Tahu submissions raise concerns that this direction is not clearly reflected across the PORPS as a whole. A number of specific amendments are requested, and the submissions also urge the Council to review the direction provided throughout the document to ensure this is sufficiently clear and strong.
50. The implications of climate change are prominent in the considerations of Kāi Tahu relating to management of te taiao and, as discussed in the evidence of Tanya Stevens, a tribal response to climate change has been developed in Te Tāhū o Te Whāriki and Te Kounga Paparangi.⁴⁶ In their cultural evidence, Brendan Flack and Justin Tipa highlight some of the effects of climate change that are of specific concern to Kāi Tahu in Otago. These include:

⁴⁵ NPSHPL, Clause 3.2

⁴⁶ Evidence of Tanya Stevens, Te Tāhū o Te Whāriki – Anchoring the Foundation. He Rautaki Mō te Huringa o te Ahurangi Climate Change Strategy, August 2018

- (a) The impacts of increased coastal erosion on Māori land in coastal areas, including destruction of urupā and reduction in the area of land available for settlement and related uses;⁴⁷
 - (b) The implications of increasing coastal hazard risks for location and management of infrastructure;⁴⁸ and
 - (c) Impacts on natural processes and habitats.⁴⁹
51. Section 7 of the RMA requires that, in relation to managing the use, development, and protection of natural and physical resources, particular regard is had to the effects of climate change. National policy statements require consideration of the impacts of climate change in:
- (a) Management of coastal hazard risks,⁵⁰ and of coastal resources that are potentially vulnerable to the effects of climate change;⁵¹
 - (b) Management of freshwater, including setting limits on resource use to achieve freshwater outcomes;⁵²
 - (c) Providing for renewable electricity generation and electricity transmission;⁵³ and
 - (d) Planning for urban environments.⁵⁴
52. In my opinion, the matters currently recognised in the national policy statements do not represent the full range of climate change considerations that are relevant to resource management planning and decision-making. The potential effects of climate change reach into all parts of te taiao, and the submissions seek better recognition of this in specific policies and methods in across the PORPS. A number of these submission points are accepted in the section 42A report, and remaining concerns are discussed in the evidence relating to specific chapters of the PORPS.
53. To assess the request of the submitters for a broader review of the direction in the PORPS relating to consideration of climate change effects, I have undertaken a search throughout the PORPS to determine how climate change is referred to in the various chapters. The section 42A report recommends acceptance of several submission points seeking reference to climate change effects, and this has addressed some of the most important

⁴⁷ Evidence of Justin Tipa ‘Changes to our landscape and the impacts on mahinga kai practices’ section

⁴⁸ Evidence of Brendan Flack, ‘Climate change, flooding, infrastructure damage, and mahika kai’ section

⁴⁹ Evidence of Edward Ellison, ‘Taoka’ section

⁵⁰ NZCPS Objective 5

⁵¹ NZCPS Policy 3(2)

⁵² NPSFM Policy 4 and clauses 3.14(2) and 3.16(4)

⁵³ National Policy Statement for Renewable Electricity Generation 2011, Policy A; National Policy Statement on Electricity Transmission 2008, Policy 1

⁵⁴ National Policy Statement on Urban Development, Objective 8, Policy 1 and Policy 6

gaps that were apparent to Kāi Tahu in the notified version, particularly in the CE and ECO chapters. However, in my view, a significant gap remains in the EIT chapter. This is discussed later in my evidence.

Requests of other submitters for special provision for particular categories of economic activity

54. Kāi Tahu ki Otago further submissions oppose a number of submissions by other parties seeking special recognition and provisions for particular economic activities:
- (a) Requests for specific management approaches to be taken for suction dredging,⁵⁵ viticulture and orchards⁵⁶ are opposed because they would be more appropriately considered in the Land and Water Regional Plan;
 - (b) A request for “regionally significant industry” to be defined and treated in a similar way to regionally significant infrastructure,⁵⁷ is opposed on the grounds that it is not appropriate to treat industrial activities in the same way as regionally significant infrastructure;
 - (c) Requests for specific objectives and policies to provide for mining, including full or partial exemptions from obligations to consider adverse effects, are opposed on the basis that this would be inappropriate in respect to achieving the objectives of the PORPS and Part 2 of the RMA.⁵⁸
55. The requests regarding suction dredging, viticulture and orchards, and regionally significant industry have been rejected in the section 42A report. I agree with the analysis in the section 42A report, which mirrors the reasons given by Kāi Tahu ki Otago for opposition to the requests.
56. I do not fully agree with the section 42A report and ORC supplementary evidence analysis and recommendations in respect to the requests relating to mining.⁵⁹
57. The analysis in the section 42A report rejects, as a general philosophy, the approach of including specific policy direction on particular economic activities in the PORPS. I agree with Ms Boyd on this. As with activities such as suction dredging, viticulture and orchards,

⁵⁵ Mark Kramer 00417.001

⁵⁶ McArthur Ridge Vineyard 00403.001-003; Strath Clyde Water & others 00404.001-003

⁵⁷ Fonterra 00213.006

⁵⁸ Oceana Gold 00115.002, 00115.016; Darryl Sycamore 00018.001-004; Matakanui Gold 00021.010-013

⁵⁹ Section 42A report and supplementary evidence of Felicity Boyd: 01 Introduction and General Themes

I consider that this type of specific policy direction is more appropriately considered at the level of a regional plan or district plan.

58. In both the section 32A report and in supplementary evidence assessing a suite of amendments proposed by Oceana Gold following pre-hearing meetings, Ms Boyd also rejects the exemptions sought by Oceana Gold in relation to management of the effects of mining and aggregate extraction activities on a range of values.⁶⁰ I agree with her that such exemptions would be inappropriate.
59. In his cultural evidence, Brendan Flack describes his concerns about some of the impacts of mining on the rivers and coastal environment, including contamination by leachate from mine tailings and disruption of natural river flows through dewatering, re-routing or piping of water.⁶¹ Mining activities can have also significant effects on indigenous habitats, natural landscapes and wāhi tūpuna, particularly where they involve large-scale earthworks. I consider that prioritising mining activities over these values would be inconsistent with the direction in section 6 of the RMA as well as the objective and policies of the NPSFM.⁶²
60. As discussed earlier in my evidence, a key role of the PORPS is to achieve integrated management to address the significant resource management issues of the region. SRMR-I10 identifies the following as a significant resource management issue: *Economic and domestic activities in Otago use natural resources but do not always properly account for the environmental stresses or the future impacts they cause.* In my opinion, providing a “carve-out” for mining activities would entrench this issue rather than addressing it effectively.
61. In the supplementary evidence, Ms Boyd acknowledges that extractive industries have a need to locate where the minerals are present and considers there is merit in recognising this, as well as the economic and social benefits obtained from mineral and aggregate extraction. She recommends an amendment to UFD-P7 to this end.

⁶⁰ The suite of provisions produced by Oceana Gold would give mineral and aggregate extraction activities priority over protective provisions for significant indigenous biodiversity, outstanding natural features and landscapes, natural wetlands, outstanding water bodies, areas of high or outstanding natural character, areas or places of significant or outstanding historic heritage, wāhi tūpuna and areas with protected customary rights, and areas of high recreational and amenity value.

⁶¹ Evidence of Brendan Flack, ‘Observations of the impacts of siloed environmental management on the coastal environment’ section

⁶² In respect to the effects discussed by Mr Flack, see particularly Policies 1, 2, 3, and 7 and the requirements for integrated management in Clause 3.5 of the NPSFM.

62. I am not opposed to recognition in the PORPS of the locational constraints faced by mineral and aggregate extraction activity, provided that such recognition is not expressed in a way that would prioritise this activity such that it is inconsistent with the direction in the higher order documents and the ability to effectively address the significant resource management issue identified in SRMR-I10. However, I do not support the amendment proposed to recognise the contribution of mineral and aggregate extraction to economic and social wellbeing.
63. From my review of the PORPS provisions, the provision recommended by Ms Boyd in respect to mineral and aggregate extraction is the only policy that refers to the contribution made by a specific economic activity. The supplementary evidence does not explain why Ms Boyd considers the contribution of mineral and aggregate resources to the social and economic wellbeing of the region should be singled out for recognition when this is not done for other industries. SRMRI10 states that mining contributes 4.5% of the region's GDP, which is comparable to the figures cited for agriculture, forestry and fishing (6.9%) and electricity, gas, water and waste services (4.4%). There is no information provided in the PORPS, the section 42A report or the supplementary evidence about any other economic or social indicators associated with these or other activities. In this context, I do not consider there is any clear justification for a policy singling out the contribution of mineral and aggregate extraction. In my opinion, this could lead to inappropriate weight being given to this factor when considering the approach to be taken to mineral and aggregate extraction in district and regional plans, and in assessing the effects of these activities in resource consent decision-making.

Clarity and consistency of direction

64. To be effective in achieving integrated management, it is important that the direction in the PORPS is clear and unambiguous, so that it is not subject to different interpretations in development of regional and district plans and in resource consent decision-making across the region. The Kāi Tahu submissions include a number of points seeking increased clarity in specific provisions, and these are discussed in the evidence on the various chapters. There are two key concerns that feature in many of these points, as follows:
- (a) The need for clarity as to the effects that are to be managed, and in particular that these include effects on mana whenua values; and
 - (b) The need for clarity in respect to how the chapters work with each other, and consistency as to how matters are dealt with across chapters.

65. Direction requiring that adverse effects of activities are managed appears throughout the PORPS. While some provisions clearly identify what the effects are that must be managed, and how they are to be managed, others do not. In my opinion, clarity of direction requires more than a general reference to “adverse effects”. While it is generally not necessary to list all the possible adverse effects that are relevant to a particular policy, the scope of effects to be considered must be clear. This is particularly so in respect to effects that have not been well recognised in the past. In my experience, the absence of reference to effects on mana whenua values in district and regional plans has commonly led to consideration of these values being omitted from resource consent assessments. I consider that it would be helpful for the PORPS to provide clear direction to ensure that the omissions of the past do not continue in the future.
66. Cross-referencing across chapters can be useful to ensure integration across the PORPS, but care needs to be taken to ensure it is completely clear which provisions apply in any situation. This is particularly important to ensure consistency between chapters when they are dealing with aspects of the same matter. Some of the concerns about integration across chapters have been addressed in the revised version of the PORPS; remaining concerns are discussed in my evidence on the EIT chapter and in Michael Bathgate’s evidence.

MANA WHENUA (MW) AND RESOURCE MANAGEMENT ISSUES OF SIGNIFICANCE TO IWI (RMIA)

67. Because the MW and RMIA sections of the PORPS are closely interrelated, I will discuss them together. Much of the content of the RMIA section and the MW sections headed *Environmental management perspectives and values of Kāi Tahu* and *Resources of significance to Kāi Tahu* was initially drafted as a single narrative, with the components later divided to reflect the structure required by the National Planning Standards.
68. The RMIA section was drafted by Aukaha with input from papatipu rūnaka and is aligned with the issues identified in the Kāi Tahu ki Otago Natural Resource Management Plan 2005. Ngāi Tahu ki Murihiku input was also incorporated through the agency of Te Ao Marama.
69. Ms Bartlett and I also had significant input to the drafting of the MW chapter to ensure Kāi Tahu values and interests in resource management were appropriately identified and adequate provision was made for the role of mana whenua in resource management processes. We also sought to ensure that the MW chapter provides clear direction at the regional level to assist local authorities to interpret the requirements of sections 6(e) and

8 of the RMA in a way that appropriately recognises rakatirataka and enables the exercise of kaitiakitaka.

70. The Kāi Tahu submissions generally support the MW chapter and the RMIA section, including the way in which the values, interests and concerns of Kāi Tahu are expressed, and the direction on how these are to be recognised in resource management processes and decision-making. However, some amendments are requested to address the following matters:

- (a) references to kaitiakitaka should more clearly reflect that this is integrally linked to mana and rakatirataka;
- (b) the importance of mātauraka in resource management processes and decision-making should be better recognised;
- (c) the policy direction on Kāi Tahu use of ancestral land is not sufficiently enabling;
- (d) traditional place names should be recognised; and
- (e) Kāi Tahu values and relationships to te taiao would be better reflected by some expansion of the MW narrative and RMIA issues, including reference to current issues such as climate change.

71. These matters, and the cultural evidence relating to them, are discussed in my overarching evidence above, and many of the submission points are accepted in the section 42A report or ORC supplementary evidence. Matters that I consider require further discussion are:

- (a) Amendments to provisions for use and development of Māori land;
- (b) Matters relating to recognition of rakatirataka and a partnership approach; and
- (c) Some matters of clarity.

Use and development of Māori land and resources

72. In my evidence above on overarching themes, I have discussed the constraints facing whānau and hapū regarding their ability to use and develop ancestral land for its intended purpose, and the need for an enabling approach in the planning framework to counter these constraints. Following the pre-hearing process, the approach proposed in the Kāi Tahu submissions to address this was further refined through discussion between the planners representing Kāi Tahu and representatives of the Cain Whānau. The supplementary evidence of Mr Adams discusses the revised approach and has accepted most of the proposed changes. The remaining matters that I wish to comment on are as follows:

- (a) Definition of papakāika: The supplementary evidence accepts the submitters' revised definition to better reflect the scope of activities that Kāi Tahu consider would fall within the concept of papakāika.⁶³ However the definition has not been amended in the revised version of the PORPS. I also note that the definition recommended in the supplementary evidence has not incorporated reference to Māori land to reflect use of the proposed definition of this term.
- (b) Definition of Māori land: I have discussed the intent of this definition in my evidence on overarching themes above. The supplementary evidence recommends a modified version of the proposed definition. I support the supplementary evidence recommendation, except for the proposed deletion of clause 1 referring to land owned by Te Rūnanga o Ngāi Tahu or papatipu rūnaka. The intent of this clause is to provide for the circumstance, described above, where land may need to be acquired as a substitute for areas that cannot be used due to natural hazard effects, or to respond to practical needs for adjustment or extension of boundaries. I consider it would be appropriate to recognise these needs within the definition.
- (c) Policy MW-P4 and method MW-M5: The supplementary evidence accepts the submissions of the Kāi Tahu submitters in respect to MW-P4. Mr Adams does not accept the reference to primacy sought by the Cain Whānau, but recommends an amendment to MW-M5 to provide for Kāi Tahu to find alternative approaches to management of adverse effects on matters of national importance (which are referred to in the notified version on MW-P4 but are deleted in the recommended version). I support the general intent of Mr Adams' recommended changes to MW-M5, but I consider further amendments would be appropriate to better provide for rakatirataka over ancestral land and ensure that the ability for mana whenua to make decisions about the use of this land is not unnecessarily constrained.

73. In Appendix 1, I recommend amendments to the definitions and to MW-M5 to address these points.

74. Tanya Stevens has also provided evidence for Te Rūnanga o Ngāi Tahu on clause 3A of MW-P5, relating to interests in aquaculture under the Māori Commercial Claims Aquaculture Settlement Act 2004. I agree with Ms Stevens that the amendment she has recommended would better provide for the matters in section 6(e), and I note that it is

⁶³ For discussion of this, see evidence of Matapura Ellison, 'Papakāika aspirations and barriers' section

consistent with the approach I have recommended in respect to the use of Māori land. Ms Stevens' recommended amendment is also included in Appendix 1.

Recognition of rakatirataka and references to partnership

75. The Kāi Tahu further submissions oppose requests of other parties seeking dilution of recognition of rakatirataka and kaitiakitaka, and insertion of other parties' concerns into the RMIA section. These have mostly been rejected in the section 42A report, and I agree that is appropriate. There are only two matters relating to the further submissions that I wish to discuss in this evidence:

- (a) MW-O1: Kāi Tahu ki Otago opposed submissions of other parties who sought to amend the reference in Objective MW-O1 to giving effect to the principles of Te Tiriti o Waitangi by means of a partnership approach. Those parties argue that section 8 RMA only requires that the principles be taken into account, not given effect to. This argument has been rejected in the section 42A report. I agree with Mr Adams that the objective takes into account the principles of Te Tiriti by pursuing an approach that gives effect to the principles of partnership and active protection, and that the wording in the objective is appropriate to reflect that approach.
- (b) MW-E1: Kāi Tahu ki Otago opposed the submission of Otago Water Resource User Group (OWRUG) requesting wording relating to partnership between Kāi Tahu and local authorities. The section 42A report accepts the OWRUG submission in part but recommends slightly different wording. I agree that there would be merit in referring to a partnership approach in the explanation, to reflect the approach in MW-O1 discussed above. However, both the wording requested by OWRUG and the placement of the amendment recommended by Mr Adams suggests that the role and participation of Kāi Tahu in resource management is limited by such partnership. I consider that this does not appropriately reflect the rakatirataka and kaitiakitaka role of Kāi Tahu as described by the cultural witnesses.⁶⁴ In Appendix 1 I suggest a further amendment to recognise that partnerships with local authorities are only one aspect of mana whenua participation in resource management.

⁶⁴ For example see evidence of Brendan Flack, 'Mana whenua relationships with the coastal environment' section

Matters of clarity

76. In the section 42A report and in the course of pre-hearing meetings, Mr Adams identified a number of places which might benefit from further explanation of te reo Māori terms. Following the approach described earlier in my evidence, some amendments were agreed between the Kāi Tahu submitters and Mr Adams. These are reflected in the supplementary evidence and in the revised version of the PORPS, except as follows:
- (a) In the section 42A report, Mr Adams rejected amendments to MW-P3 requested by Kāi Tahu ki Otago to refer to the hauora of Kāi Tahu, on the basis that the term “hauora” was not clearly defined. In his supplementary evidence, Mr Adams accepted inclusion of an explanation of hauora but did not discuss the use of the term in MW-P3. I consider that, as the reason for rejecting use of the term no longer applies, it would be appropriate to accept the Kāi Tahu ki Otago submission on this point and in Appendix 1 I recommend amendments to MW-P3 to reflect this.
 - (b) To improve clarity, it was agreed to remove reference to taoka tuku iho in MW-O1, MW-E1 and MW-AER2. This is recommended in the supplementary evidence but the amendments have not been incorporated in the revised version of the PORPS.
77. In Appendix 1 I also recommend the following amendments to improve clarity relating to Kāi Tahu interests:
- (a) Amendments to more accurately describe the interests of papatipu rūnaka in the Otago region and relationship agreements with local authorities;
 - (b) Corrections to wording in the list of Native Reserves (Table 1);
 - (c) An amendment to MW-P2 to clarify the scope of Kāi Tahu relationships with te taiao; and
 - (d) An amendment to the explanation in RMIA – WTA – I2.

INTEGRATED MANAGEMENT (IM)

78. The Kāi Tahu submissions generally support the IM chapter but seek some amendments to more clearly provide for:
- (a) Recognition of interconnections across te taiao;
 - (b) Involvement of Kāi Tahu in resource management processes; and
 - (c) Consideration of the impacts of climate change and the need to foster resilience to these impacts.

79. These matters, and the related cultural evidence, are discussed in the earlier section of my evidence on overarching themes.

Restructuring of provisions

80. The amendments recommended in the section 42A report and ORC supplementary evidence have generally improved the clarity of the chapter and have addressed many of the concerns raised by the submitters. However in some cases I consider the restructuring of provisions has resulted in some loss of the original policy intent:

- (a) Deletion of IM-P9 (Community response to climate change impacts): The section 42A report recommends deletion of IM-P9 because the content is covered in IM-O4. Although this is mostly the case, IM-O4 does not refer to the lifestyle adjustments needed to adapt to climate change, which was included in IM-P9. Such adjustments are an important component of ensuring resilience to the impacts of climate change, and I recommend an amendment to IM-O4 to address this.
- (b) Deletion of IM-P13 (Managing cumulative effects): IM-P13 was deleted in the section 42A report. The supplementary evidence reverses that recommendation but rather than reinstating IM-P13, recommends insertion of reference to cumulative effects into IM-P5, which relates to management of interconnected resources. Although I agree that cumulative effects across interconnected resources are an important matter to consider, confining the policy direction to this policy does not recognise cumulative effects on a particular resource that may result from multiple uses of the same resource. I note that cumulative impacts have been highlighted as a significant issue in SRMR-I11 and in several of the issues in the RMIA section.⁶⁵ The cultural evidence also highlights concerns about degradation in water bodies and coastal resources arising from inadequate management of cumulative effects.⁶⁶ In Appendix 1 I recommend reinstating IM-P13, but with amended wording to address the concern expressed in the section 42A report that the original provision was framed as an objective rather than a policy. I have also incorporated reference to climate change resilience sought by Kāi Tahu ki Otago, which was not considered in the section 42A report.

⁶⁵ See RMIA-WAI-I5, RMIA-MKB-I1, RMIA-CE-I5

⁶⁶ Evidence of Brendan Flack, 'Observations of the impacts of siloed environmental management on the coastal environment' section; Evidence of Edward Ellison, 'Degradation of te taiao and mahika kai' section

- (c) Deletion of IM-P15 (precautionary approach): I consider that incorporation of IM-P15 requiring adoption of a precautionary approach, into Policy IM-P6 (*Acting on best information*) significantly alters its effect, because it may be interpreted as being subsidiary to the direction to avoid delays in decision-making processes. I note that the section 42A report also recommends an amendment to IM-P6 to clarify that the intent is not just to avoid unreasonable delay but to manage uncertainty. I consider it is evident that the “unreasonable delay” that the policy is concerned with is delaying decision-making in order to gather more robust information as a way of managing uncertainty. In my opinion management of uncertainty should be clearly expressed as the primary intent of the policy. In Appendix 1 I recommend further amendment of IM-P6 to make this clear and to ensure that the adoption of a precautionary approach is clearly expressed as the approach to managing uncertainty, not just a means of avoiding delay in decision-making.

Other matters

81. Some concerns also remain with respect to the following matters:
- (a) Recognition in the provisions of interconnections that need to be considered;
 - (b) Changes in the hierarchy of priorities expressed in the combined IM-P1/IM-P2;
 - (c) Inappropriately broad reference to existing activities in IM-P10; and
 - (d) Reference to “where practicable” in IM-P14 and IM-M1 in relation to identifying limits.
82. Recognition of interconnections: In my evidence above, I discuss the importance of recognising the interconnections across the taiao. I have recommended amendments to IM-O3 and IM-P5 to ensure that such interconnections are fully considered:
- (a) IM-O3 (Sustainable impact) seeks to safeguard the life-supporting capacities of air, water, soil and ecosystems. Kāi Tahu ki Otago has requested specific reference to both freshwater and coastal waters (wai māori and wai tai). This request has been rejected because both of these are covered within the definition of water. Although I accept this, I note that the cultural evidence and the planning evidence of Michael Bathgate highlight concerns about a lack of integrated management across the CMA boundary. This indicates that, despite it being covered by RMA definition, people may not think of coastal waters when they read ‘water’ in IM-O3. In the context of a chapter that is specifically

concerned with integrated management, I consider that it would be helpful, efficient and effective to draw attention to both freshwater and coastal water in the objective, without changing its intent or effect.

- (b) IM-P5 (Managing environmental interconnections): Kāi Tahu ki Otago has sought consideration of impacts on water quality resulting from activities upstream or on land. I understand that the underlying concern in this request is that the policy does not clearly address the need to consider effects that cross land/water and freshwater/coastal water boundaries, or effects along the length of a river. I agree with the section 42A report author that the wording proposed in the submission is more specific than warranted by the context, but I consider that it would be appropriate for a policy on managing interconnected resources to refer to the effects of activities in one part of the environment on other parts. This may be what clause 2 is intended to do, but in my opinion this is not clear. It is also not clear to me why the scope of the policy has been limited to “resource management decision-making”, as recognition of environmental connections should be an integral part of all resource management processes. I recommend alternative wording to address both these points in my Appendix 1.

83. Prioritisation: While I support the section 42A report recommendation to combine IM-P1 and IM-P2 (relating to an integrated approach and priorities for decision-making), I do not support the change made to the prioritisation. The analysis in the section 42A report emphasises the stresses on the natural environment in Otago and I agree with the author’s view that in light of these it is appropriate to give priority to the needs of the environment. I consider this is consistent with section 5 of the RMA that requires provision for social, economic, and cultural well-being and health and safety to be made in a way that safeguards the life-supporting capacity of the environment and its potential to meet future needs. It is also consistent with the focus of Kāi Tahu on safeguarding mauri.⁶⁷ However, I disagree with the section 42A report analysis that bracketing provision for health and safety with the requirement to safeguard the life-supporting capacity of the environment would better align with section 5. In section 5, health and safety is included alongside provision for social, economic and cultural wellbeing, not the requirement to safeguard life-supporting capacity, which is a separate requirement under s 5(b). I recommend an amendment to IM-P1 to reflect this.

84. IM-P10 (Climate change adaptation and climate change mitigation): The supplementary evidence recommends an amendment that is intended as a cross-reference to HAZ-NH-

⁶⁷ See, for example, the perspective of David Higgins that: “*When the mauri is strong, everything else is strong*”. (Evidence of David Higgins, section headed *Protecting mauri*)

P4 (relating to management of natural hazard risks on existing activities). However, as worded I consider the amendment would have a broader, and inappropriate, effect. It could be used as an argument for modification of natural processes to protect any existing activities, including for reasons of convenience and minimising financial costs as well as the health and safety matters contemplated in HAZ-NH-P4. I recommend an amendment that more clearly limits the reference to the hazard management approach.

85. IM-P14 and IM-M1: Reference to identifying limits beyond which the environment will be considered to be degraded has been qualified by the words “wherever practicable”. In respect to IM-P14 this is attributed to a submission by OWRUG, but that submitter did not seek inclusion of those words and the section 42A analysis does not explain why the qualifier is considered appropriate. Putting issues of scope to one side, I do not consider that practicability is the appropriate test to use for determining a point beyond which degradation will occur. The intent of identifying such limits is to achieve the outcomes described in objectives. I do not consider a qualifier is required in clause 1 of this policy, or in the related clause (6) of IM-M1. If a qualifier is to be inserted, I consider this should relate to whether a limit is necessary to achieve the objectives of the PORPS, not whether it is “practicable” to identify a limit.

AIR (AIR)

86. The Kāi Tahu submissions generally support the approach taken in the AIR chapter but some amendments are requested to ensure that:
- (a) effects of air discharges and poor air quality on mana whenua values are recognised and considered;
 - (b) the policy direction has regard to the needs of vulnerable communities; and
 - (c) action is required to be taken if monitoring shows that air quality standards are not being met.
87. Kāi Tahu ki Otago further submissions oppose requests by other parties that would weaken the direction to maintain and improve air quality or remove reference to protection of mana whenua values.
88. The RMIA chapter identifies air quality as an issue of significance to Kāi Tahu. RMIA-AA-11 states that discharges to air can adversely affect the health of people and of mahika kai, and can be culturally offensive, impacting on wāhi tapu sites and wāhi tūpuna. In my opinion this is a relevant consideration under sections 5, 6(e), and 7(f) of the RMA.

89. In general I support the assessments of the section 42A report and most of the recommendations in that report in response to the Kāi Tahu submissions. In Appendix 1 I recommend some additional amendments to address the following matters:
- (a) With respect to provision for mana whenua values, I consider that the section 42A report recommendations have appropriately reflected the intent of these. However I consider that in AIR-M2, there is no need to retain reference to wāhi tūpuna as this is covered by the broader reference to mana whenua values.
 - (b) With respect to the need for action to follow monitoring results if standards are not met, I consider that direction on this needs to be clearer and recommend an amendment to AIR-M4 to require ORC to report regularly on actions taken to address any concerns revealed by monitoring results. I consider that a reporting requirement will provide a check to ensure that action is taken where necessary.
 - (c) I agree with the supplementary evidence recommendations, in AIR-P4 and AIR-M2, to separate the management approach for effects that noxious and dangerous from the approach for those that are offensive or objectionable. However I consider that the amendments proposed do not provide sufficient clarity as to the approach to be taken for offensive or objectionable discharges if these cannot be avoided. I recommend an amendment to provide greater clarity about this.

LAND AND FRESHWATER (LF)

Implications of split decision-making processes

90. Since lodgement of submissions on the PORPS, and the issuing of ORC recommendations in the section 42A report, consideration of the PORPS, and the LF chapter in particular, has been split into two processes as a result of ORC's response to the High Court's decision on the scope of the freshwater planning process. This gives rise to some complications in preparing evidence for this hearing. Some closely-related provisions are split across the two processes and it is not clear how the split process will enable the Hearing Panel to make decisions that provide for an integrated approach across the LF chapter as a whole.
91. There are particular difficulties in respect to the LF-WAI section. This section sets out an objective for Te Mana o te Wai and four policies to achieve it. The objective and one

policy have been assigned to the freshwater planning process, but the other three policies, and the methods and explanation relating to the full policy package, are being considered in the current process. Although the objective is not part of this process, I consider it necessary to include some discussion on it to provide appropriate context for aspects of my evidence.

92. Splitting of the process after submissions were lodged and considered in the section 42A report has also resulted in some submission points being separated from their broader context. In the case of general or “whole of chapter” submission points, or points considering several provisions together, there are some apparent inconsistencies in the assignment of submission points between the two processes. In particular there are a number of general submission points assigned to the current process that I consider would be more appropriately assessed in relation to the provisions included in the freshwater planning process. Some of these points are the subject of further submissions by the Kāi Tahu submitters. I discuss them briefly below but consider that they cannot be effectively considered out of context of the provisions assigned to the freshwater planning process.

The submissions

93. The Kāi Tahu submissions on the parts of the LF chapter being considered in this hearing generally support the approach taken throughout the chapter to give effect to Te Mana o te Wai and to recognise and provide for the relationship of mana whenua with wai māori, but request some amendments to clarify and strengthen this approach, including by:
- (a) better reflecting the interconnectedness of land and water, and of wai māori and coastal waters;
 - (b) aligning with the approach on rakatirataka and mātauraka requested in the MW chapter; and
 - (c) amending the approach on identification of outstanding water bodies to recognise that all water bodies are highly valued by Kāi Tahu.
94. Submissions of other parties seeking to dilute recognition of the role and interests of Kāi Tahu in freshwater management, and submissions seeking an approach that is not consistent with giving effect to Te Mana o te Wai, have been opposed.
95. Many of the requests of the Kāi Tahu submitters have been accepted in the section 42A report and supplementary evidence, and the submissions of other parties seeking to

depart from a Te Mana o te Wai approach or to dilute recognition of the role of mana whenua have been rejected.

Direction relating to Te Mana o te Wai

96. Higher-order direction for the LF chapter is provided particularly by the NPSFM. The fundamental concept of the NPSFM is Te Mana o te Wai, and NPSFM Policy 1 requires that freshwater is managed in a way that gives effect to Te Mana o te Wai. Key aspects of Te Mana o te Wai are that it:
- (a) requires that the health and wellbeing of water bodies is the first consideration in all decision-making affecting freshwater;⁶⁸
 - (b) requires a holistic, integrated approach that recognises interconnectedness;⁶⁹ and
 - (c) recognises the relationship of mana whenua with freshwater and their particular role in freshwater management processes.⁷⁰
97. The PORPS objective for Te Mana o te Wai (LF-WAI-O1) and the explanation accompanying the LF-WAI provisions were developed through a workshop process with mana whenua, which I facilitated. This process was also a key source of input to development of the LF-WAI policies and methods, and the direction and language used in the LF-WAI policies reflects the relationship of Kāi Tahu with freshwater expressed in LF-WAI-O1. The explanation in LF-WAI-E1 was developed as a narrative to explain the Kāi Tahu values and perspectives underlying LF-WAI-O1 but has become somewhat separated from the objective to fit the structural requirements set by the National Planning Standards. I consider that LF-WAI-E1 provides important context for understanding the depth and breadth of the relationship of Kāi Tahu with wai māori, and the implications of this for their role in freshwater management.
98. LF-WAI-E1 has been amended to replace reference to “recognising and honouring” Te Mana o te Wai with reference to “implementing” this concept. Although I consider the notified wording reflects the Kāi Tahu perspective on the obligations of all people to respect and care for the water bodies, I agree that it does not accurately reflect the requirement in the NPSFM. The requirement in NPSFM Policy 1 is to give effect to Te Mana o te Wai, and I recommend that reference to “implementing” be replaced by “giving

⁶⁸ NPSFM 1.3(1) and (5), 2.1 Objective

⁶⁹ NPSFM Policy 3, Clause 3.5

⁷⁰ NPSFM Clause 1.3(4)(a)-(c), Policy 2, Clause 3.4

effect to". While the two terms are generally interpreted as being consistent with one another, in my opinion it is more effective and efficient to adopt the language that appears in the RMA, rather than how that language has been interpreted by the Courts, to avoid any risk of confusion.

Recognition of the relationship of Kāi Tahu with freshwater

99. The evidence of the cultural witnesses describes:
- (a) the centrality of wai to Kāi Tahu cultural identity, and the rakatirataka rights and kaitiakitaka obligations that arise from the whakapapa relationship with water;⁷¹
 - (b) the importance to mana whenua of recognising the interconnectedness of the whenua, wai māori and wai tai;⁷² and
 - (c) the degradation that has occurred through failure to recognise and reflect this interconnectedness in resource management.⁷³
100. LF-WAI-P2: I consider that LF-WAI-P2 generally reflects the approach sought by Kāi Tahu in respect to recognising rakatirataka and enabling mana whenua to exercise their kaitiakitaka obligations. However I do not support deletion of reference to the "environmental, social, cultural and economic" relationships. I consider this wording reflects the breadth and depth of the relationships, as described by Edward Ellison.⁷⁴ My experience is that without clear direction, references to Kāi Tahu relationships with water have been interpreted very narrowly in resource management decision-making in Otago, with a focus only on recognition of specific identified sites. I consider the wording is helpful in encouraging decision-makers to apply a broader and more appropriate interpretation.
101. LF-WAI-P3: I consider that LF-WAI-P3 recognises the interconnectedness of the whenua, wai māori and wai tai in a way that is consistent with the approach sought by the cultural witnesses. I support the recommendations in the section 42A report and supplementary evidence that retain and strengthen the recognition of what is required to achieve integrated management ki uta ki tai, but I note that in the section 42A report, Ms Boyd has put a question to the Kāi Tahu parties about the intent of reference to tikaka and

⁷¹ Evidence of Edward Ellison, 'Mana whenua relationships with the taiao', 'Rakatirataka and kaitiakitaka', 'Wai Māori and Wai Tai' sections; evidence of Justin Tipa, 'Mana whenua relationship with wai'; Evidence of David Higgins, 'Roles and responsibilities of mana whenua as kaitiaki' section

⁷² Evidence of Edward Ellison, 'Mana whenua relationships with the taiao' section; Evidence of Brendan Flack, 'The importance of recognising the interconnectivity of the taiao' section

⁷³ Evidence of Edward Ellison, 'Degradation of te taiao and mahika kai' section; Evidence of Brendan Flack, 'Observations of the impacts of siloed environmental management on the coastal environment' section

⁷⁴ Evidence of Edward Ellison, 'Wai Māori and Wai Tai' section

kawa. These concepts are explained in the MW chapter, and I understand that in the context of resource management they relate to the appropriate way to care for and manage the environment. Reference to tikaka and kawa was included in LF-WAI-P3 on the request of papatipu rūnaka representatives, and I understand that the intent was to draw attention to the relationship of mana whenua with te taiao and to emphasise that an approach that recognises and sustains interconnectedness is consistent with tikaka and kawa. On reflection, I consider that the way in which this is expressed could be interpreted as imposing additional and uncertain requirements in the policy, and in Appendix 1 I recommend an amendment to better reflect the intent.

102. LF-WAI-M1: This method addresses the way in which Kāi Tahu rakatirataka in respect to freshwater management is to be provided for. It refers to the broader MW chapter requirements relating to involvement of mana whenua in resource management, and Kāi Tahu ki Otago sought addition of reference to MW-M2 to reflect their submission on that method. Kāi Tahu ki Otago sought to fill a gap in the MW provisions in respect to recognition and provision for mātauraka to be incorporated into resource management processes, and MW-M2 was amended in response to this request. The cultural evidence emphasises the importance of mātauraka in relation to wai māori,⁷⁵ and this was not reflected in the notified version of LF-WAI-M1. Inclusion of reference to the amended MW-M2 would address this omission. However clause (6), inserted in response to the submission of Ngāi Tahu ki Murihiku, addresses the same matter as MW-M2 and so I consider that inclusion of a reference to MW-M2 in LF-WAI-M1 is no longer needed.

Approach to outstanding water bodies

103. As described by the cultural witnesses, mana whenua have a relationship with all water bodies within their takiwā. This relationship remains even if the water body is degraded. The aspiration of Kāi Tahu is to ensure that the mauri of all water bodies is safeguarded, and that where it has been degraded, it is restored. As a result, Kāi Tahu prefer an approach that recognises and protects the cultural and spiritual values associated with all water bodies over an approach that singles out particular water bodies as “outstanding”, as that could be seen as giving lower priority to the values of other water bodies.
104. Kāi Tahu ki Otago and Ngāi Tahu ki Murihiku both submitted on the PORPS approach for outstanding water bodies, but recommended different approaches to reflect the same perspective I have outlined above. The changes made to APP1 through the section 42A

⁷⁵ See for example evidence of Edward Ellison, ‘Mahika kai’ section

report and supplementary evidence mean that cultural and spiritual values are now not identified as criteria for determining a water body to be “outstanding”. I consider that this approach is appropriate provided that Kāi Tahu values are recognised and provided for in the provisions applying to all water bodies, and on the basis that provisions for involvement of Kāi Tahu in resource management processes enable mana whenua to identify the values associated with a particular water body and ensure these are provided for in any decisions relating to that water body.

105. I note that LF – FW – E3 has not been amended to reflect the change in APP1 and I have recommended an amendment to address this.

Provisions for highly productive land

106. Direction for management of highly productive land has recently been issued through the NPSHPL, which was gazetted in September 2022. Ms Boyd has provided supplementary evidence on the implications of the NPSHPL. I accept Ms Boyd’s analysis of the direction in the NPSHPL and do not consider it necessary to repeat it here. However I discuss the implications for particular aspects of the Kāi Tahu submissions.
107. LF-LS-O11 and LF-LS-P19: The intent of these provisions is to protect the productive capacity of highly productive land. Kāi Tahu ki Otago requested use of more a narrowly defined term than primary production to apply to the provisions because that definition, as prescribed by the National Planning Standards, includes mining and quarrying. Facilitation of these activities on highly productive land would be contrary to the intent of the objective. The Kāi Tahu ki Otago submission point has been overtaken by the gazettal of the NPSHPL, which uses the term “land-based primary production”. Use of this term is recommended in the supplementary evidence and I agree with Ms Boyd’s analysis about the effect of the NPSHPL in this respect.
108. As described in my overarching themes evidence, the directive nature of the NPSHPL could impose limitations on the ability of mana whenua to use and develop Māori land for its intended purpose. LF-LS-P19(2) requires that land-based primary production is prioritised on highly productive land. This would affect some of the land at Karitane that is discussed by Matapura Ellison in his evidence.⁷⁶ To ensure that the provisions for highly productive land do not conflict with the intent of MW-P4 to enable use and development of Native Reserves and Māori land, I recommend an amendment to provide an exception for use that is in accordance with MW-P4.

⁷⁶ Evidence of Matapura Ellison, ‘Papakāika aspirations and barriers’ section

Clarity

109. In Appendix 1 I also recommend some amendments to improve the clarity of provisions as follows:

- (a) LF-FW-P13 (Preserving natural character and instream values): In response to other submitters,⁷⁷ the section 42A report recommends amending clause (7), relating to reduction of the braided character of a river. I understand that the intent of the amendment is to allow temporary works that would not have long term effects on the braided character. However, the amendment would allow any temporary modification, regardless of long term effects. Modification that is not permanent can also reduce braided character by changing the characteristics of sediment transport and flow. I consider that the reference to permanence has been inserted in the wrong part of clause (7) and recommend an amendment to attach the notion of permanence to the effects rather than the activity. I also recommend an amendment to clause (9) to address a lack of clarity Ms Boyd has identified in the Kāi Tahu ki Otago submission on this clause. I agree there is a lack of clarity in the amendment requested in the submission and propose alternative wording.
- (b) LF-WAI-E1: The ORC supplementary evidence recommends that reference to access to water within environmental limits be amended to remove the word “environmental”. This is consistent with a general approach recommended in the supplementary evidence as to use of this term. Although I support the general approach, I consider that in this instance it makes the meaning less clear and recommend that the word “environmental” is reinstated.
- (c) LF-LS-M12: This method includes a clause requiring that removal of montane tall tussock grasslands is minimised. I support the intent of this clause, but recommend an amendment to the wording to explain why tussock grasslands are to be maintained, to improve clarity.
- (d) LF-LS-E4: I recommend several amendments to improve clarity and consistency with the provisions the explanation relates to.

⁷⁷ 00206.034 Trojan, 00411.046 Wayfare, 00119.012 Blackthorn Lodge

Matters relating to the freshwater planning process

110. A number of general submission points that Kāi Tahu ki Otago have opposed in further submissions relate to matters that will be considered in the freshwater planning process, but they have not been shown in the section 42A report as belonging to that process. These include submissions relating to timeframes for achievement of freshwater visions,⁷⁸ reference to balancing the needs of the environment and communities,⁷⁹ direction for water allocation between competing needs⁸⁰ and water reliability.⁸¹ Submissions seeking an overarching freshwater vision⁸² and additional anticipated environmental outcomes for wetlands⁸³ which were supported or supported in part by Kāi Tahu ki Otago have also not been shown as belonging to the freshwater planning process. Although I recommend that these matters are left for consideration in the freshwater planning process, in the event that they are considered in the current process, I set out some brief comments below:

- (a) In the section 42A report, Ms Boyd rejects the submissions of the parties seeking reference to balancing the needs of the environment and communities or greater prioritisation for particular water uses, and I agree with her analysis and recommendations on those matters.
- (b) I also agree with Ms Boyd that the Land and Water Regional Plan, rather than the PORPS, is the appropriate place to consider the details of matters such as allocation between competing needs, water reliability and efficiency, use of water storage and frameworks for achieving the long-term visions.
- (c) In their input to development of freshwater visions for the PORPS, Kāi Tahu ki Otago proposed an overarching vision for freshwater management to ORC. This formed the basis for mana whenua input to the long term freshwater visions described in LF-VM-O1 to LF-VM-O6 and also to the broader freshwater objective LF-FW-O8. I note that there is a large degree of similarity between the freshwater visions, as well as some puzzling differences. I consider there would be merit in restructuring the LF-VM and LF-FW sections to provide for an

⁷⁸ OWRUG 00235.003

⁷⁹ Federated Farmers 00239.076; OWRUG 00235.086; AWA 00502.008;

⁸⁰ Strath Clyde Water Ltd, McArthur Ridge Investment Group Ltd & Mount Dunstan Estates Ltd 00404.001-003; Queenstown Lakes District Council 00138.048 and 00138.081

⁸¹ McArthur Ridge Vineyard Ltd 00403.004

⁸² Fish & Game 00231.05; Forest & Bird 00230.078; Matthew Sole 00508.008

⁸³ Greenpeace Aotearoa 00407.045

overarching vision with sub-parts to clearly recognise matters for which a distinct vision is appropriate for a particular FMU. However this would require some substantial redrafting and opportunity for comment by all submitters on the visions.

- (d) I consider there is merit in including additional content in the anticipated environmental outcomes to better reflect LF-FW-O9 and LF-FW-P10, but that this would most appropriately be included in LF-FW-AER11. All of these provisions are included in the freshwater planning process, so any amendments would need to be made as part of that process.

Other miscellaneous matters

111. Kāi Tahu ki Otago opposed a number of submission points of Otago Fish & Game Council and the Central South Island Fish & Game Council (Fish & Game) seeking a framework for protection of trout and salmon habitat, on the grounds that the amendments requested would not preserve the priority for indigenous species required by NPSFM Policy 9 and 10. Ms Bartlett and I took part in discussions with Fish & Game, the Department of Conservation and Ms Boyd to develop alternative provisions that would be consistent with the NPSFM. The agreed provisions are set out in Ms Boyd's supplementary evidence and I support her recommendations on the Fish & Game submission points. (I note that this is a matter where the various submission points span across provisions that are in the current process and others that are included in the freshwater planning process.)
112. LF-WAI-E1: In this explanation, I recommend deletion of bracketed definitions of te reo, consistent with the approach that I have described in my evidence above.
113. Provision for infrastructure: Kāi Tahu ki Otago have opposed further submissions seeking exemptions for infrastructure from the protections applying to outstanding water bodies (LF-FW-P12) and natural character (LF-FW-P13). I discuss such requests in my evidence on the EIT chapter below, and my analysis there also applies to the requests affecting the LF-FW provisions.
114. LF-LS-P22: I recommend re-ordering of words in clause 3(f) to reflect the cultural evidence⁸⁴ about wāhi tūpuna. Wāhi taoka and wāhi tapu are subsets of wāhi tūpuna , so should follow that term in the order.

⁸⁴ Evidence of Edward Ellison, 'Wāhi tūpuna' section

ENERGY, INFRASTRUCTURE AND TRANSPORT (EIT)

115. The Kāi Tahu submissions request further guidance on management of the effects of energy and infrastructure development. The submitters consider that adverse effects of energy and infrastructure development on water bodies, the coastal marine area and areas of significance to mana whenua, including wāhi tūpuna and marae, should be avoided. A concern is also raised about potential for development of marae and whānau housing to be inappropriately restricted in non-reticulated areas.
116. Further submissions oppose broad “carve-outs” from the requirement to avoid or manage adverse effects that are sought by some parties. Submissions to broaden the definition of “regionally significant infrastructure” are also opposed.

Managing the adverse effects of infrastructure

117. Brendan Flack and Edward Ellison, in their cultural evidence, draw attention to some of the adverse effects of infrastructure development, particularly where this occurs in sensitive locations. Examples include:
- (a) the previous discharge of wastewater to the Otago Harbour, and the continued discharge of stormwater to the Harbour;⁸⁵ and
 - (b) wastewater plants located on low lying coastal areas.⁸⁶
118. Management of some types of infrastructure is subject to national direction through national policy statements and national environmental standards:
- (a) The National Policy Statement for Renewable Electricity Generation 2011 (NPSREG) requires that the national significance of renewable electricity generation is recognised and provided for to increase the proportion of renewable electricity generation so it will meet or exceed the government’s national target for renewable electricity generation, and requires that the development, operation, maintenance, and upgrading of renewable electricity generation activities are provided for in regional policy statements and regional and district plans. In respect to management of adverse effects of renewable electricity generation, the NPSREG says only that decision-makers must have regard to offsetting measures or environmental compensation when considering

⁸⁵ Edward Ellison ‘Degradation of Te Taiao’ section.

⁸⁶ Brendan Flack ‘Climate Change, Flooding, Infrastructure damage and Mahika Kai’ section.

any residual environmental effects of renewable electricity generation activities that cannot be avoided, remedied or mitigated.⁸⁷

- (b) The National Policy Statement on Electricity Transmission 2008 (NPSET) recognises the national significance of the electricity transmission network by facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new transmission resources, while managing the adverse environmental effects of the network and the adverse effects of other activities on the network. The NPSET is supported by the regulations in the National Environmental Standards for Electricity Transmission Activities.
- (c) The NPSFM includes specific provisions for use of an effects management hierarchy to manage the effects of specified infrastructure⁸⁸ in respect to the loss of extent and values of natural inland wetlands.⁸⁹ Consistent with this, prohibitions in the National Environmental Standards for Freshwater (NESF) relating to activities in and near wetlands are also relaxed for specified infrastructure. In respect to the effects of the Clutha hydro-electricity generation scheme, the NPSFM also provides some leeway from the requirement to meet national bottom lines. However there is still a requirement to achieve an improved attribute state to the extent practicable.⁹⁰

119. I consider it is important to note that the requirements in these higher order documents to provide for renewable electricity generation, electricity transmission infrastructure and specified infrastructure do not exempt infrastructure from the obligation to manage adverse effects. Rather, they incorporate specific approaches to managing such effects, including implicit or explicit effects management hierarchies (in the case of the NPSREG and the NPSFM) and tailored consenting frameworks (in the case of the NESETA and NESF). It is also relevant that this direction only relates to narrowly defined categories of infrastructure. I also note that, unlike other national policy directions, the NPSREG and the NPSET are not intended to “cover the field”, which permits reference to broader values (such as those enshrined in sections 6(e), 7(a) and 8 of the RMA); and are generally expressed in less directive terms than the objectives and policies of the NPSFM.

⁸⁷ NPSREG, Policy C2

⁸⁸ Specified infrastructure is defined in the NPSFM to include lifeline utilities, infrastructure identified as regionally significant infrastructure in a regional policy statement or regional plan, and public flood control, flood protection, or drainage works under the control of a local authority or drainage district.

⁸⁹ NPSFM 3.22

⁹⁰ NPSFM 3.31

120. In setting out the approaches for managing the effects of infrastructure, the PORPS makes a distinction between nationally significant/ regionally significant infrastructure and other infrastructure, with a higher bar set in some cases for infrastructure that is not defined as nationally significant infrastructure or regionally significant infrastructure. I consider this distinction is important to ensure appropriate weighting of the needs of infrastructure in relation to the values being affected.
121. I do not consider it would be appropriate to grant a broad exemption for infrastructure from the PORPS requirements relating to management of adverse effects, as is sought by some infrastructure providers. Similarly, I do not consider the definition of “regionally significant infrastructure” should be broadened to include infrastructure that does not serve a lifeline utility function. To do so would give inappropriate priority to the needs of infrastructure over the life-supporting capacity of the environment and the matters to be recognised and provided for in section 6 of the RMA. I consider that limiting the scope of “regionally significant infrastructure” is particularly important given the use of that definition as a threshold for admittance to the NPSFM and NESF provisions for specified infrastructure. I support the section 42A report recommendations to reject provisions requesting these changes.
122. Because of the implications attached to the scope of the “regionally significant infrastructure” definition, the Kāi Tahu submitters have questioned inclusion of broad reference in the definition to “*facilities for public transport, including terminals and stations*”. In my experience, particularly at the level of district plans, facilities for public transport can be interpreted as including minor facilities such as bus stops. I agree with the submitters that it would be inappropriate to deem such facilities as regionally significant infrastructure. I also note that bus stops and similar facilities are subject to change in location as public transport routes are adjusted to meet needs, and I consider there is likely to be significant flexibility available in decisions about where to locate facilities associated with these routes. In Appendix 1 I recommend an amendment to the definition to limit the provision for public transport facilities to more substantial facilities.

PORPS framework for infrastructure

123. Submitters including Kāi Tahu have highlighted a number of concerns about integration of other provisions in the EIT chapter and other parts of the PORPS, particularly with respect to the way in which EIT-INF-P13 works with other provisions relating to management of adverse effects. I agree there is a need for clarity and consistency in the provisions and the way they are integrated with the other chapters.

124. While the concerns raised by the submitters have been partially addressed, I consider further amendments are needed to address the following matters:

- (a) The management framework in EIT-P13 generally requires infrastructure in areas that have protective overlays in respect to section 6 RMA matters to be managed in accordance with provisions in the relevant chapter for that topic. However this is not the case for infrastructure in outstanding natural features and landscapes. The analysis in the section 42A report rejects the submission of Kāi Tahu ki Otago on this matter because some nationally and regionally significant infrastructure will have no alternative but to be located in or on outstanding natural features. While I accept that this will be the case in some areas, I consider that the appropriate way to deal with this would be to include a more nuanced approach in the NFL chapter (for example with reference to functional need), rather than setting a lower bar for all nationally and regionally significant infrastructure in these areas.
- (b) I support the inclusion of EIT-INF-P13A to clarify the relationship between the EIT and CE chapters. However the wording of the policy leaves a gap in regard to management of effects on wāhi tūpuna, as these areas are managed through the HCV-WT provisions regardless of their location. I recommend an amendment to include reference to the relevant provisions.
- (c) I note that protected customary rights, which are provided for under the Marine and Coastal Area (Takutai Moana) Act 2011, would fall under the ambit of EIT-INF-P13A rather than EIT-INF-P13, and I recommend deletion of reference to these in EIT-INF-P13.
- (d) In the ORC supplementary evidence, Mr Langman recommends amending the test in EIT-INF-P13 in relation to avoiding locating infrastructure in the listed areas from “possible” to “demonstrably practicable”. (The listed areas are those with values that are required to be recognised and provided for under section 6 RMA or protected under the NPSFM.) Mr Langman’s reason for the proposed amendment is that he considers that “demonstrably practicable” sets a higher bar than “possible”. I disagree with his assessment. In my experience reference to “practicability” commonly introduces arguments about cost-effectiveness and shifts the weighting away from the significance of the values to be protected. I prefer the original wording.

125. The supplementary evidence also recommends a new policy EIT-EN-P10 for electricity distribution, which previously fell within the ambit of EIT-INF-P13. The new policy duplicates a policy in the Partially Operative Regional Policy Statement 2019 (PORPS 2019), and there has been no apparent consideration of the need to integrate this into the new PORPS. In particular, the effects management approach in EIT-INF-P13 has not been reflected in the new policy. The only adverse effects of new and upgraded electricity distribution infrastructure that are required to be considered in EIT-INF-P10 are effects on existing land uses, whereas EIT-INF-P13 requires consideration of a range of environmental values. I recommend an amendment to EIT-INF-P10 to align it with EIT-INF-P13, and note that this would be consistent with the approach taken in EIT-INF-P16 for electricity transmission and the National Grid.⁹¹

Managing conflicts with other activities

126. EIT-INF-P14 (Decision making considerations) requires consideration, in proposals to upgrade or develop infrastructure, of opportunities to reduce adverse effects, including on sensitive activities. "Sensitive activities" is a defined term taken from the NPSET, and includes schools, residential buildings and hospitals. The Kāi Tahu ki Otago submission raised a concern that this definition is too narrow, and would not enable consideration of effects on activities such as marae, other cultural buildings and mahika kai activities. I consider the concern is valid as the policy does not just relate to electricity transmission infrastructure and would include, for example, wastewater infrastructure, which could have adverse effects on a much broader range of activities. Although the policy is not exclusive to the range of activities included in the definition, I consider it is unhelpful and recommend that the reference to sensitive activities is deleted.
127. EIT-INF-P15 as notified, included direction to manage reverse sensitivity effects on nationally significant and regionally significant infrastructure. The section 42A report recommendation has substantially revised this policy in response to a submission by Queenstown Airport Company. Although the analysis in the section 42A report refers only to the effectiveness in addressing reverse sensitivity matters, I consider that the revisions inappropriately broaden the scope beyond management of reverse sensitivity. I understand the concept of reverse sensitivity to relate to the potential for constraints on existing activities that may be imposed by development of conflicting sensitive activities nearby. This is the matter addressed by clauses (1) and (2) of the amended policy, but by requiring avoidance of activities and development that foreclose an opportunity for future development of infrastructure, clause (3) extends the approach to a highly

⁹¹ Note that EIT-INF-P16 has been shifted to sit in the EIT-EN section.

uncertain “sterilisation” of any areas where there may be a possibility of nationally or regionally significant infrastructure being developed in future. I consider that this would be inappropriate and recommend that clause (3) is deleted. Where new or expanded activities are proposed, infrastructure operators should be required to meet the same standards as other applicants and avoid, remedy or mitigate their effects to an appropriate level.

Climate change

128. In my evidence above on overarching themes, I discuss the concern of the submitters about poor integration of climate change considerations across the PORPS. There is no reference in the EIT-INF section to consideration of the effects on climate change on infrastructure maintenance and development, including downstream effects on te taiao if the integrity of infrastructure is undermined. As highlighted by Brendan Flack in his evidence, location of wastewater infrastructure in areas subject to climate change-related hazards poses risks to mahika kai.⁹² I consider that consideration of climate change impacts when infrastructure is being developed and upgraded is important, not only to address the matter identified by Mr Flack, but also to ensure resilience of infrastructure more broadly. In Appendix 1 I recommend amendments to EIT-INF-P12 and EIT-INF-P14 to require consideration of the effects of climate change and needs for resilience.

Use of Native Reserves and Māori land

129. My evidence above also discusses the importance of enabling use of Native Reserves and Māori land for papakāika, and I refer to service infrastructure requirements as one of the constraints that is commonly imposed on such development. EIT-INF-M5(6) is an example of the inflexible approach that is of concern to the Kāi Tahu submitters. I consider that this provision is inconsistent with the more nuanced approach set out in the UFD chapter. I also question its inclusion in the EIT chapter, as it does not provide direction for infrastructure, but for development that uses infrastructure (which is more appropriately dealt with alongside the other considerations in the UFD chapter). I recommend that clause 6 is deleted.

Clarity

130. The Kāi Tahu submissions request greater clarity in EIT methods about how adverse effects are to be managed. I agree with the submitters that this is not clear, but I note that the approach taken in the methods across the PORPS is simply to identify that regional

⁹² Evidence of Brendan Flack, ‘Climate Change, Flooding, Infrastructure damage and Mahika Kai’ section

and district plans must include provisions to manage effects in particular jurisdictional areas, rather than specifying the types of effects that must be managed. I accept that the policies can be referred to for direction on this, provided they are sufficiently clear. I consider the focus should therefore be on ensuring that the policies clearly identify the effects they are intended to manage and have made recommendations about this elsewhere in my evidence.

131. EIT-INF-M5 (District plans): Kāi Tahu ki Otago requests that this method include the management of adverse effects within the margins of water bodies and the coast, and as a priority avoid infrastructure within the listed locations where possible. The method refers to managing effects on the surface and beds of lakes and rivers and on land. I agree it would be appropriate to add reference to the margins of water bodies and the coast. However I consider the question of priority for avoidance is a matter that should be considered in the policy approach in the LF chapter rather than in this method. Kāi Tahu ki Otago has requested inclusion of policy direction for riparian management in the LF chapter and this has been accepted in the section 42A report recommendations.
132. References to “environmental limits” have been changed to “limits” in several provisions.⁹³ As discussed earlier, I generally support this approach. However I consider that in EIT-EN-O2, EIT-EN-M1 and EIT-INF-O4, this reduces the clarity of the provisions and have recommended that reference to “environmental limits” is reinstated. I also consider that additional clarity is needed in EIT-INF-O4 about the nature of the limits and the outcomes they are intended to achieve, and that the appropriate way to provide that clarity would be to refer to achievement of the objectives of the PORPS.
133. EIT-INF-O5: I have also recommended some rewording to make the intent of the objective clearer.

HAZARDS AND RISKS (HAZ)

134. The Kāi Tahu submissions generally support the approach taken in the HAZ chapter but seek clearer direction to address adverse effects of hazard protection structures on natural systems and mana whenua values, and adverse effects of waste management facilities on the values of wāhi tūpuna. The submissions also identify the need to avoid inappropriate restrictions on whānau already living in areas with relatively low levels of risk and to appropriately recognise rakatirataka and kaitiakitaka.

⁹³ EIT-EN-O2, EIT-EN-M1, EIT-INF-O4

135. Concerns associated with living with natural hazards, particularly coastal hazards, are discussed in the cultural evidence. Edward Ellison refers to the impact of coastal erosion on the availability of land in areas where mana whenua have aspirations for papakāika development.⁹⁴ Justin Tipa discusses the impact of erosion on the integrity of urupā,⁹⁵ and Brendan Flack discusses the risks associated with the effect of coastal hazards on water and wastewater infrastructure.⁹⁶

Relevant statutory direction

136. The matters raised in the submissions concern Kāi Tahu values, rights and interests. As discussed in my evidence above on overarching issues, these are provided for in section 6(e), 7(a) and 8 RMA. Section 6(h) requiring management of significant risks from natural hazards is also relevant. In some circumstances it can be challenging to find a management pathway that will provide for the matters in both section 6(e) and section 6(h), and in my experience local authorities will often place a higher priority on section 6(h). I note that the section 6(h) requirement relates to 'significant' risks and does not impose an obligation in respect to risks that fall below that threshold. Section 6(h) does not prescribe how significant risks are to be managed.
137. That said, the NZCPS provides further direction regarding the management framework that must be applied to the management of coastal hazards, as follows:
- (a) Objective 1 recognises the importance of natural processes in safeguarding the coastal environment and its ecosystems, and Policy 3 requires a precautionary approach to use and management of resources that may be vulnerable to climate change effects, to allow for natural adjustments to occur in coastal processes, natural defences, and ecosystems;
 - (b) Objective 5 and Policies 24 to 27 set out a framework for identification and management of coastal hazards, including locating new development away from risk-prone areas, considering risk responses for existing development, protecting or restoring natural defences and considerations as to when hard protection structures may be used.
138. There is no similar direction for hazard management outside the coastal environment.

⁹⁴ Evidence of Edward Ellison, 'Degradation of wāhi tūpuna' section

⁹⁵ Evidence of Justin Tipa, 'Changes to our landscape and the impacts on mahinga kai practices' section

⁹⁶ Evidence of Brendan Flack, 'Climate change, flooding, infrastructure damage, and mahika kai' section

Integration with coastal environment provisions

139. Mr Bathgate's evidence discusses problems of integration between the provisions in the CE chapter and those in other parts of the PORPS. The HAZ chapter is no different. In respect to management of natural hazards, a risk-based approach has been developed for management of natural hazards outside the coastal environment and there has been no integration of this approach with the approach in the CE chapter, which closely follows the NZCPS prescription. Confusion about the relationship between the provisions in the HAZ and CE chapters was raised by a number of submitters, and the section 42A report and ORC supplementary evidence have made recommendations to address this. In my opinion the recommendations do not provide sufficient clarity about the approach required.
140. The approach adopted to distinguish between the coastal environment and the broader Region is to specify which provisions apply to coastal hazards and which do not. My evaluation of how well this works follows.
141. HAZ-NH-P10, which sets out the approach for managing development in areas subject to coastal hazards excludes the application of HAZ-NH-P3 and HAZ-NH-P4 regarding management of new and existing activities. I consider this will generally avoid conflict between the general approach for managing development subject to natural hazard risks and the approach required in the NZCPS for coastal hazards. However, it is not clear which approach will apply for coastal communities such as Karitane that may be affected by a combination of coastal and "non-coastal" hazards. In such locations, there could be confusion about when HAZ-NH-P3 and HAZ-NH-P4 apply and when the HAZ-NH-P10 approach would be used. In my opinion this requires further consideration; for example, in an area where riverine flooding and coastal storm surges come together, what management approach will apply?
142. The amendments proposed in the section 42A report exclude the assessment matters in HAZ-NH-P1 and HAZ-NH-P2 and APP6 from applying to coastal hazards. The effect of this is that there is no direction in the PORPS as to how the significance of coastal hazards will be assessed:
- (a) CE-P2(4) requires identification of "areas that are potentially affected by coastal hazards (including tsunami), giving priority to the identification of areas at high risk of being affected" and HAZ-NH-M1(2)(c) requires that this identification is in accordance with Policy 24 of the NZCPS; and

- (b) while the requirement in CE-P2(4) and NZCPS Policy 24 is that areas at high risk of coastal hazard effects are prioritised for identification, there is nothing in either the CE chapter or the NZCPS that says how the degree of risk should be determined i.e. there is no equivalent or alternative to the approach in HAZ-NH-P1 (particularly clause (5) of this policy) and APP6.
143. Because the PORPS does include a detailed methodology for assessing the risks of “non-coastal” hazards, then the absence of a methodology for coastal hazards is likely to increase confusion and uncertainty for affected coastal communities.
144. I have not recommended specific amendments to address these matters, as I consider it would require consideration by relevant experts, and substantial redrafting which should be led by the Council itself.

Hazard management affecting Māori land and wāhi tūpuna

145. The PORPS as notified included a policy (HAZ-NH-P11) that provided for involvement of Kāi Tahu in decision making about hazard management on ancestral land. The Kāi Tahu submitters supported this policy, with some amendment to better recognise rakatirataka. However, the section 42A report recommended that this policy be deleted on the basis that HAZ-NH-M2(1) and HAZ-NH-M5(2) provide sufficiently for communities, stakeholders, and partners to be involved in assessment of natural hazard risk. I disagree that those provisions make HAZ-NH-P11 redundant, and do not support the recommendation to delete it.
146. In my evidence above, I have discussed the barriers to development of ancestral land, and my reasons for considering that an enabling approach is appropriate for use and development of such land. One of the constraints that Kāi Tahu communities have faced is the adoption, in district plans, of prescriptive and inflexible controls on development in hazard-prone areas. This may be exacerbated by a risk-averse approach in areas where there is poor information about the degree of hazard.
147. I consider it is important that risks from natural hazards are taken into account when development of hazard-prone areas is contemplated. However, as well as the degree of risk, other matters are also relevant, including the purpose and form of the development, the range of solutions available to manage the risk, and the presence or absence of social infrastructure to assist the community to develop resilience to risks. In respect to ancestral land, a further important consideration is the obligation under section 6(e), 7(a) and 8 to recognise rakatirataka and provide for the relationship of mana whenua with the land.

148. I understand that the intent of HAZ-NH-P11 was to provide for rakatirataka in respect to decision-making about how to manage natural hazards on Native Reserves and other land that would fall within the recommended definition of Māori land, and also in wāhi tūpuna areas where the presence of natural hazards pose a risk to the values of those areas (for example, exposure of kōiwi or loss of mahika kai habitat). This would require a greater level of collaboration between the relevant local authorities and mana whenua, and a greater ability for mana whenua to lead decision-making and find their own solutions for the land than the methods in HAZ-NH-M2 and HAZ-NH-M5 currently provide.
149. I agree that the policy as worded did not make its intent sufficiently clear. In Appendix 1 I recommend an amended version to address this.

Effects of climate change

150. In my evidence above, I have also discussed concerns about the recognition of effects of climate change across the PORPS. In Appendix 1 I recommend an amendment to HAZ-NH-P1A to recognise the influence of climate change on coastal hazards.
151. The Ngāi Tahu ki Murihiku submission also raises a specific concern about provision for management of closed landfills and contaminated land that are at risk from the effects of climate change. This was discussed in the pre-hearing meeting process and arising from that Ms Bartlett and I developed a policy and a method to address the issue. I generally support the way this has been incorporated in the supplementary evidence into HAZ-CL-P14 and new method HAZ-CL-M8A. However, reference to prioritisation of sites at greatest risk has not been incorporated, despite inclusion of the word “prioritisation” in the method heading. I consider a risk-based approach to managing this issue is appropriate and recommend an amendment to incorporate this into HAZ-CL-M8A.

Effects of hard protection structures and waste management facilities on Kāi Tahu values

152. The Kāi Tahu submissions seek amendments to provide greater clarity about adverse effects that must be considered in some policies. In respect to whether hard protection structures may be used (HAZ-NH-P7) the submissions seek reference to effects on Kai Tahu values, natural processes and ecosystems. When providing for waste management facilities (HAZ-CL-P18) the submissions seek reference to Kāi Tahu values and also to avoidance of such facilities in or near wāhi tūpuna.
153. The section 42A report analysis accepts that effects on these values are appropriate considerations, but the submission points are rejected on the basis that the inclusion

would limit consideration of other effects or that there is no need to specify effects in the policy because it must be read in conjunction with a range of other policies that address the effects. I do not accept that analysis. I consider that where there is a clear acknowledgement that a particular effect is relevant, it would be more helpful, efficient and effective to include reference to that effect in the policy than to rely on general reference to adverse effects. The section 42A report author's concern about inadvertently limiting consideration of other effects in respect to HAZ-NH-P7 could be easily resolved by wording that makes the list of effects non-exclusive, and I recommend an amendment to this effect.

Matters of clarity and consistency

154. In Appendix 1 I recommend minor amendments to the following provisions to improve clarity of, or to use consistent language:
- (a) HAZ-NH-O1
 - (b) HAZ-NH-M2
 - (c) HAZ-CL-P15.
155. I also note that in HAZ-NH-P8 and HAZ-NH-P9, the scope of policy about protection of lifeline utilities and facilities for essential or emergency services is not clearly limited to natural hazard management measures. I have not recommended amendments to address this as I am not confident that there is scope to do so in the Kāi Tahu submissions. However the tenor of other submissions highlights ambiguity in the ambit of the provisions, and I consider it would be desirable to ensure the scope is clearly confined to hazard management, rather than including general provision for these activities.

URBAN FORM AND DEVELOPMENT (UFD)

156. The Kāi Tahu submissions strongly support recognition, in the UFD chapter, of the role of mana whenua in strategic planning processes. However, amendments are sought in respect to:
- (a) Provision for use and development of Native Reserves and Māori land;
 - (b) Water supply, wastewater and stormwater considerations; and
 - (c) Integration of climate change considerations.

Use of Native Reserves and Māori land

157. I discuss the need for an enabling approach to the use of Native Reserves and Māori land throughout my evidence. As discussed in my evidence on the LF chapter, constraints to development include the direction in the NPSHPL to avoid development on highly productive land. Consistent with the approach I discuss in the LF chapter, I consider an exception needs to be made in the objective and policies referring to highly productive land to align with MW-P4.⁹⁷

Consideration of water supply, stormwater and wastewater

158. The submissions seek clearer provision in the UFD chapter for the management of stormwater, wastewater and water supply in urban development, and for alignment with LF-FW-P15 that sets out a management approach for stormwater and wastewater management, including a preference for disposal of wastewater to land. Concerns about the impacts of poor management of stormwater and wastewater are described in the cultural evidence.⁹⁸
159. I consider it is important to ensure that planning for urban development takes into account the pressures on water bodies from additional water demand and the potential effects of stormwater and wastewater discharges. In particular, this is necessary to provide for Te Mana o te Wai and the mauri of the coastal environment, and to align with the LF-WAI and LF-FW provisions, particularly LF-FW-P15. I note that LF-FW-P15 has been assigned to the freshwater planning instrument process and at the time of writing this evidence, submissions had not yet been received for that process. I recommend an amendment to UFD-P4 to provide direction for consideration of effects relating to water supply, wastewater and stormwater provision when urban expansion is being planned. Because the content of LF-FW-P15 is subject to uncertainty, I have not attempted to closely align this with LF-FW-P15.

⁹⁷ See UFD-O4, UFD-P4, UFD-P7, UFD-P9

⁹⁸ Refs

Consideration of climate change

160. As discussed in my evidence above on overarching themes, the Kāi Tahu submissions are consistent in their desire for or clearer integration of climate change direction across the PORPS. The Kāi Tahu ki Otago submission highlights that UFD-P4 (urban expansion) does not overtly contribute towards achieving UFD-O5 and climate change outcomes.
161. I consider relief sits more properly in UFD-P1 which promotes strategic planning prior to urban growth and development and is referenced by UFD-P4(1A). Clause (3) already covers resilience and climate change adaptation, I recommend expansion of this to incorporate the need to reduce the contribution of urban growth and development to climate change, as required by UFD-O5.

Mineral and aggregate extraction

162. In my discussion of overarching themes above, I discuss submissions seeking provision for mineral and aggregate extraction and the response of the ORC supplementary evidence to these. The supplementary evidence recommends wording in UFD-P7, and I recommend a further amendment to this as discussed earlier.

CONCLUSION

163. I have reviewed the approach taken across the PORPS in respect to the matters raised in the Kāi Tahu submissions, and consider that the recommendations in the section 42A reports and supplementary evidence respond appropriately to many of the matters raised. I consider further amendments are needed to address some aspects of the submissions, particularly to:
- (a) better enable Kāi Tahu to develop and use ancestral land;
 - (b) recognise and provide for Kāi Tahu rākatirataka and kaitiakitaka in resource management processes and decision making;
 - (c) improve provision for integrated management; and
 - (d) ensure climate change effects are considered in resource management decision-making.
164. I consider that the amendments I recommend in Appendix 1 will better provide for integrated management and the requirements of Part 2 of the RMA and the direction in national instruments.

Sandra McIntyre

Sandra McIntyre

APPENDIX 1: RECOMMENDED AMENDMENTS

Refer to separate document