Reply Report

Proposed Otago Regional Policy Statement 2021

4: MW – Mana whenua

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1. Introduction

1.1. General introduction

1. This report forms part of a suite of reply reports that have been prepared to sit alongside and explain the "marked up" version of the final recommendations on the proposed Otago Regional Policy Statement (pORPS). The approach to the whole suite is set out in the first report in this series, *Reply Report – Chapter 1: Introduction and General Themes*. Appended to the suite of reports is a consolidated version of the pORPS containing all final recommendations from the reporting officers.

2. This report addresses:

    a. Provisions that were still in contention at the time of hearing.

    b. Issues raised through the hearing process

3. I consider the remaining issues with the MW chapter have been resolved through recommendations in my section 42A report or supplementary evidence. The attached marked up version of the pORPS includes my final recommendations from this hearings report, my s42A report, and supplementary evidence.

1.2. The MW – Mana Whenua chapter

4. The mana whenua provisions relate to context and process. They provide a platform within the pORPS for ongoing growth and development of the partnership between Local Authorities and Kāi Tahu, seeking actual and practical outcomes that enable Kāi Tahu to participate in resource management in a way that reflects their place as mana whenua and as a partner in Te Tiriti o Waitangi. Other provisions related to mana whenua are integrated throughout the pORPS.

5. This chapter of the pORPS draws heavily on content created by mana whenua for the pORPS. It provides a brief record of Kāi Tahu's arrival in the South Island and describes the relationship of local rūnaka with the rohe.

6. The chapter includes a description of Kāi Tahu's environmental management approach and provides explanations of a few key values and significant resources. Kāi Tahu has generally avoided direct translations of Kāi Tahu concepts in the pORPS because such translations often fail to adequately convey cultural concepts. Proper understanding and integration of mātauraka comes from an ongoing process of partnership and collaboration.

7. The chapter canvasses the content of the Ngāi Tahu Claims Settlement Act 1998 and its impact on the RPS. Also addressed are relationship agreements with local authorities in Otago, and iwi planning documents lodged with local authorities.

8. Following the above explanation and context, the chapter provides a set of high-level provisions that relate to incorporating Te Tiriti o Waitangi and partnering with Kāi Tahu in resource management in Otago.

1.3. Matters addressed in this report

9. The matters covered in this report are:

   a. Procedural and jurisdictional matters raised through the hearing.

   b. The definition of *Māori Land*.

   c. The definition of *Papakāika*.

   d. MW-P4.

   e. MW-M4.

   f. MW-M5.

   g. Minor changes and points of clarification.

10. It does not address the following provisions because I do not consider there are any additional matters to address as a result of the hearing:

- Recognition of hapū and iwi
- Environmental management perspectives and values of Kāi Tahu
- Resources of significance to Kāi Tahu
- Ngāi Tahu Claims Settlement Act 1998
- Māori Commercial Aquaculture Claims Settlement Act 2004
- Involvement and participation with mana whenua
- Other iwi, hapū and mātāwaka
- Objective MW-O1
- Policy MW-P1
- Methods MW-M1, MW-M2, MW-M3, MW-M6 and MW-M7
- MW-PR1, MW-AER1 and MW-AER2

11. My previously recommended amendments to those provisions, in addition to my amended recommendations in this report, are incorporated in the Reply Report version of the pORPS attached to this suite of reports.

2. Jurisdictional matters

2.1. Jurisdiction for new definition of Māori Land

12. I consider that introducing the defined term "Māori Land" is a reasonable response to the submission to include "ancestral land" in MW-P4[1]. The integrity of the document requires that the wording be changed throughout the pORPS as a consequence.

13. In oral submissions, Ms Sarah Scott, legal counsel for Transpower, expressed concerns about scope for introducing a definition for Māori Land. The legal dimensions of this issue will be addressed in legal submissions.

[1] 00226.048 Kāi Tahu ki Otago

14. There is also a planning perspective. The wording "Te Ture Whenua Māori Land", which the proposed definition replaces, is used in the notified version of MW-P4, and defined in the interpretation section. This was intentional. It provides consistency and integration with provisions in the UFD and ECO chapters that, as notified, also use the term "Te Ture Whenua Māori Land".

15. The reasons for including the term "Māori Land" in MW-P4 are discussed in my supplementary evidence[2]. In brief, I consider it enables MW-P4 to more effectively recognise the lands that have been historically provided to Kāi Tahu for the purpose of development, and therefore more effectively achieves objective MW-O1.

16. Consistency and integration is lost if the term "Māori Land" replaces "Te Ture Whenua Māori Land" only in MW-P4. This would disconnect MW-P4 from other provisions in the pORPS, undermining the function of MW-P4 and the document as a whole.

17. Provisions need to be considered in terms of the meaning, intent, and coherency of both their wording and their context. I consider it would be absurd to alter a provision such that it could not work properly with the document as a whole. I therefore consider the introduction of a new definition to be an appropriate planning response.

2.2. Requiring resourcing of Kāi Tahu participation

18. In oral submissions, Mr Michael Garbett, legal counsel for the Dunedin City Council, questioned whether, in MW-M4(2), the ORC has jurisdiction in the pORPS to require territorial authorities to commit funding to specific actions. Again, this is a legal issue addressed in legal submissions.

19. From a planning perspective, I consider resourcing a necessary tool for the implementation of the policies and objectives in this section of the pORPS. In response to questions from the panel, both Edward Ellison and Ailsa Cain referred to the difficulties in resourcing Kāi Tahu involvement in resource management processes. I consider resourcing is key to enabling participation, a principle of Te Tiriti o Waitangi.

20. Accordingly, I consider a method requiring resourcing is necessary to achieve objective MW-O1. I also note that "resource" does not necessarily connote only financial resourcing – access to staff time and information are examples of resourcing as well, as would be better aligning consultation processes to the needs of papatipu rūnaka.

21. Further, I note that, to the extent that district plans must give effect to a regional policy statement,[3] any provision in a RPS confers resourcing obligations on a territorial authority.

[2] Brief of evidence of James Henry Adams: MW – Mana Whenua paras [35] – [36] and [59] – [61]

[3] Resource Management Act 1991, s75(3)(c)

3. Māori Land definition

3.1. Introduction

22. The definition of "Māori land" was not discussed in the s42A report. The definition was discussed in the brief of supplementary evidence (11 October 2022) in paragraphs [33] to [41], where I recommended replacing the term "Te Ture Whenua Māori Land" with the term "Māori land".

23. The recommended version of this provision currently reads:[4]

Māori Land[5]	for the purposes of this RPS, means land within the region that is: (1) Māori communal land gazetted as Māori reservation under s338 Te Ture Whenua Māori Act 1993; (2) Māori customary land and Māori freehold land as defined in s4 and s129 Te Ture Whenua Māori Act 1993; (3) Former Māori land or general land owned by Māori (as those terms are defined in Te Ture Whenua Māori Act 1993) that has at any time been acquired by the Crown or any local or public body for a public work or other public purpose, and has been subsequently returned to its former Kāi Tahu owners or their successors and remains in their ownership; (4) General land owned by Māori (as defined in Te Ture Whenua Māori Act 1993) that was previously Māori freehold land, has ceased to have that status under an order of the Māori Land Court made on or after 1 July 1993 or under Part 1 of the Māori Affairs Amendment Act 1967 on or after 1 April 1968, that is in the ownership of Kāi Tahu whānui; (5) Vested in a Trust or Māori incorporation under Te Ture Whenua Māori Act 1993; (6) Held or claimed by Te Rūnanga o Ngāi Tahu and/or related entities including by a person or persons with a whakapapa connection to Kāi Tahu, where the land was transferred or vested, is an entitlement, or is part of an ancillary claim: (a) as part of redress for the settlement of Treaty of Waitangi claims; or (b) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed (as those terms are defined under the Urban Development Act 2020); (7) Owned by a person or persons with evidence of Kāi Tahu whakapapa connection to the land (where documentary evidence of whakapapa connection is provided from either

[4] This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.
[5] 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

	the Māori Land Court or the Te Rūnanga o Ngāi Tahu Whakapapa Unit).

3.2. Submissions and evidence

24. Ms Sandra McIntyre, giving evidence for Kāi Tahu ki Otago, suggested that the definition should include a new clause 1:

"Owned by Te Rūnanga o Ngāi Tahu or its constituent papatipu rūnaka;" [6]

25. Two main arguments were put forward at hearing to support this, summarised here:

a. The proposed definition already acknowledges, under clauses 4 and 7, that general land can be purchased by Kāi Tahu and fall within the definition of Māori Land. This is an appropriate approach, given settled interpretation of the term "ancestral land".[7]

b. Much existing Māori Land is at risk from sea level rise, difficult to develop, or is close to its capacity for development in accordance with Kāi Tahu tikaka and kawa. There is a need to be able to replace land that may be lost, or find land to develop in lieu of poorly situated land that was granted in previous settlements.[8]

26. Aidan Cameron, legal counsel for Kāi Tahu, also submits that proposed clause 7 of the definition include the words "or leased" after "owned".[9]

27. Mr Cameron says that if freehold land can be developed according to a more permissive framework and then on-sold, there would appear to be no reason to distinguish leasehold land on the basis that the underlying title is held by someone else. Existing use rights under s10 RMA would still apply. He says it would avoid, for example, arbitrarily excluding a Kāi Tahu holder of a Crown pastoral lease from the definition, where inclusion of that land within the definition would better recognise and provide for their relationship with it.[10]

28. Paul Freeland, giving evidence for the Dunedin City Council, raised a concern about effects on natural justice. In his view, unless the land is mapped, it is difficult to measure effects, and for submitters on proposed plans or plan changes to have a clear view of what constitutes Māori Land. The definition, particularly in the context of MW-P4, is not easy to apply through existing planning tools, given that the extent of Māori Land is unmapped, and may be subject to change.[11]

[6] Sandra McIntyre, for Kāi Tahu ki Otago, para [72](b).
[7] Aidan Cameron, Legal Submissions on behalf of Kāi Tahu, para [41]-[49]
[8] Sandra McIntyre, for Kāi Tahu ki Otago, para [33c]
[9] Aidan Cameron, Legal Submissions on behalf of Kāi Tahu, para [50]-[52]
[10] Aidan Cameron, Legal Submissions on behalf of Kāi Tahu, para [50]-[52]
[11] Paul Freeland, for Dunedin City Council, para [14]

29. Ainsley McLeod, giving evidence for Transpower, said that the definition is not sufficiently certain, and that the definition of Māori Land goes beyond the scope of ancestral land in s6(e) of the RMA.[12]

30. Further points regarding the definition were raised during the hearing:

a. The wording in clause 7 may allow people or commercial entities to circumvent planning or zoning restrictions for commercial gain,

b. The wording in clause 6 seems somewhat opaque – it is somewhat unclear whether all the qualifications apply to all of the types of land.

3.3. Analysis

31. Both amendments put forward by Kāi Tahu parties are addressed in my supplementary evidence.[13] While I do not repeat my reasoning here, I have some further considerations in response to evidence.

32. The categories of general land under clauses 4 and 7 (see paragraph 24a) are accompanied by significant qualifications regarding the provenance of their ownership.

33. In clause 4, "general land owned by Māori" is a defined term in s4 of the Te Ture Whenua Māori Act 1993. and refers to land that must once have been Māori Freehold Land. In Clause 7, there must be documentary evidence of Kāi Tahu whakapapa connection from the Māori Land Court or the Te Rūnanga o Ngāi Tahu Whakapapa Unit.

34. These categories of general land seem to me to be different from any general land owned by Te Rūnanga o Ngāi Tahu or its constituent papatipu rūnaka. The argument in legal submissions seems to be that they are not significantly different; if that is the case, I do not understand why the new clause needs to be included.

35. I find the second line of argument (see paragraph 24b above) more persuasive. I acknowledge the need to be able to expand current papakāika areas in a reasonable way or find replacement land for that which may be inundated by sea level rise in coming years (much Māori Land is coastal). I consider the wording of such a clause could be specific to these goals. I recommend this alternative clause 1:

(1) <u>Owned by Te Rūnanga o Ngāi Tahu or its constituent papatipu rūnaka and to be used for the purpose of:</u>

a. <u>Locating papakāika development away from land that is either at risk from natural hazards, including climate change effects such as sea level rise, or is otherwise unsuitable for papakāika development,</u>

b. <u>extending the area of an existing papakāika development.</u>

36. I maintain that the term "leased" should not be included in clause 7.

37. A "lease" has three elements:

[12] Ainsley McLeod, for Transpower, para [6.33a]

[13] Brief of evidence of James Henry Adams: MW – Mana Whenua paras [37]-[40]

a. The lessee must be given the legal right of exclusive possession of the premises; and

b. The term must be for a definite period (a certain time for commencement and a certain time for ending);

c. The lease must be created in the appropriate form.[14]

38. These parameters cover a broad spectrum of legal arrangements from short or fixed-term residential leases to, as Mr Cameron mentions, Crown pastoral leases.

39. I agree that some kinds of leases, particularly those with very long terms, could function very much like owning land for the purposes of development. However, other kinds of lease could be problematic. For example, a short-term lease may result in the land being considered Māori Land if the lessee has Kāi Tahu whakapapa. A short-term lease does not seem the appropriate vehicle for the sort of development imagined by MW-P4 – that is, development that serves ongoing Kāi Tahu hauora. There seems to be little increased benefit, while increasing risk for misuse of the provisions, for example by enabling landlords to take advantage of short-term Kāi Tahu lessees to circumvent zoning rules. The benefit of such development would not accrue to Kāi Tahu whānui.

40. To take the example of a Crown Pastoral Lease, land use change on such land is a complex matter, requiring permission from the Commissioner for Crown Lands – this is beyond the jurisdiction of the pORPS.

41. For the reasons discussed above, I consider that the kinds of land use that are enabled by the definition of Māori Land, and the provisions in the pORPS that use that definition, should not be extended to the range of arrangements the term "lease" covers.

42. Regarding the issue of mapping and associated natural justice concerns raised by Mr Freeland, I note Ms McIntyre's reference to the Māori Purpose Zone provisions in the proposed Timaru District Plan. [15] These provisions, developed in partnership with Kāi Tahu, provide an example of how this issue can be managed in practice.

43. I note that discussion at the hearing highlighted the currently limited extent of Māori Land, and that it is not likely to grow extensively, particularly given the stated purposes for that use.

44. Ms McIntyre sets out in her evidence the purpose of including the definition of Māori Land, and related provisions. The land is intended to be a place to live and a means for people to sustain themselves in accordance with Kāi Tahu values and aspirations. Land has been historically set aside through settlements and other mechanisms for this purpose. The definition provides for new areas of land to be acquired in recognition of the fact that substantial parts of such land have been alienated through the impacts of physical and political processes.[16] It is not a mechanism for extensive acquisition and redevelopment of land throughout Otago.

[14] Hinde McMorland and Sim, *Land Law in New Zealand*, online edition: LexisNexis, 11.004
[15] Proposed Timaru District Plan, https://timaru.isoplan.co.nz/eplan/rules/0/231/0/47696/0/93, accessed 22 May 2023.
[16] Sandra McIntyre, for Kāi Tahu ki Otago, paras [23]-[32]

45. I do not consider it appropriate to abandon the desired outcome of this definition and related provisions – that is, moving to rectify restrictions on Māori Land historically set aside for development – because current planning tools are not well placed to manage it. Planning tools should serve the outcomes we wish to achieve. If current tools are not effective, other approaches may need to be developed.

46. I note that Ms McLeod accepted, in her oral evidence, that the term "ancestral land" in RMA s6(e) could conceivably apply to most, if not all, of Otago. The definition proposed here gives much greater certainty than the RMA term. I also note that, at least as regards existing areas of Māori Land, Transpower's concern about potential future conflicts seems unlikely to be realised. To my knowledge, no actual conflicts between potential areas of Māori Land or Transpower's future planning have been identified. I am not convinced that substantial uncertainty remains.

47. I consider that the wording issue for clause 6 stems from the fact that each dimension of the policy has various options that interrelate, and each option needs a relatively lengthy description. Because the dimensions fall into different categories, the usual structure of a provision, with a single sentence chapeau and subclauses if required, is not easily able to set out the various options and the relationship between them. Nonetheless, all the elements belong together to express the full idea. I have conceptualised the various parts as follows:

What is the nature of the relationship?	**Who holds or claims the land?**	**How is ownership or claim established?**	**Under what auspices?**
Held	Te Rūnanga o Ngāi Tahu	An entitlement	as part of redress for the settlement of Treaty of Waitangi claims
Claimed	and/or related entities	, part of an ancillary claim	by the exercise of rights under a Treaty settlement Act or Treaty settlement deed (as those terms are defined under the Urban Development Act 2020)
	person or persons with a whakapapa connection to Kāi Tahu	transferred or vested	

48. It seems to me that the auspices are the primary dimension in this subclause and are well delineated by being presented in the subclauses. The dimension of who claims or owns the land could be removed for simplification. To my knowledge, no one has rights to land in Otago under a Treaty Settlement Act or deed unless they have a whakapapa connection to Kāi Tahu, so that dimension could go without saying. Following from this, the clause could be reworked more simply as follows:

Held or claimed (whether as an entitlement, part of an ancillary claim, or because it was transferred or vested) either:

a) as part of redress for the settlement of Treaty of Waitangi claims, or

b) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed (as those terms are defined under the Urban Development Act 2020).

49. Regarding reservations about about the wording in clause 7, I understand that the requirement for a whakapapa connection substantiated by Kāi Tahu or the Māori Land Court puts a considerable restriction on identifying such land as Māori Land. I accept there may be some risk of this definition being improperly used. That risk needs to be balanced against providing adequately for Kāi Tahu to use their ancestral land in a reasonable way. In addition to requiring a whakapapa connection, MW-P4 specifies the potential uses of Māori Land, and MW-M4(1) requires the involvement of Kāi Tahu accredited experts on resource consent panels. I consider the balance of risk is acceptable.

50. As a further clarification, I consider the final clause could be reworded as follows:

(8) Owned by a person or persons with documentary evidence of Kāi Tahu whakapapa connection to the land, where that evidence is provided fby either the Māori Land Court or the Te Rūnanga o Ngāi Tahu Whakapapa Unit.

51. I consider the amendments recommended here are covered by the s32AA evaluation in my supplementary evidence.[17] In summary, these amendments give better effect to RMA s6(e), which requires decisionmakers to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. This approach is more effective and efficient in achieving objective MW-O1, because it gives better effect to the principles of Te Tiriti o Waitangi, in particular the principle of protection.

52. I consider the proposed definition will create minimal overall cost in environmental, social, cultural, or economic terms when compared to the existing version of the provisions. The policies and methods in the pORPS provide a framework for managing adverse effects. Conversely, there is increased cultural, social, and economic benefit in allowing such land to be used and developed in accordance with Kāi Tahu tikaka and kawa.

53. I consider these updated recommendations are more appropriate for achieving the purpose of the RMA than my original section 42A recommendations.

[17] Brief of evidence of James Henry Adams: MW – Mana Whenua, paras [52] to[57] and [65] to [69].

3.4. Final recommendation

54. My final recommended amendments to the notified version of the pORPS are:

Māori Land[18]	for the purposes of this RPS, means *land* within the region that is: (1) owned by Te Rūnanga o Ngāi Tahu or its constituent papatipu rūnaka and to be used for the purpose of: (a) Locating *papakāika* development away from *land* that is either at *risk* from *natural hazards*, including climate change effects such as sea level rise, or is otherwise unsuitable for *papakāika* development, (b) extending the area of an existing *papakāika* development. (2) Māori communal *land* gazetted as Māori reservation under s338 Te Ture Whenua Māori Act 1993; (3) Māori customary *land* and Māori freehold *land* as defined in s4 and s129 Te Ture Whenua Māori Act 1993; (4) former *Māori land* or general *land* owned by Māori (as those terms are defined in Te Ture Whenua Māori Act 1993) that has at any time been acquired by the Crown or any local or public body for a public work or other public purpose, and has been subsequently returned to its former Kāi Tahu owners or their successors and remains in their ownership; (5) general *land* owned by Māori (as defined in Te Ture Whenua Māori Act 1993) that was previously Māori freehold *land*, has ceased to have that status under an order of the Māori Land Court made on or after 1 July 1993 or under Part 1 of the Māori Affairs Amendment Act 1967 on or after 1 April 1968, that is in the ownership of Kāi Tahu whānui; (6) vested in a Trust or Māori incorporation under Te Ture Whenua Māori Act 1993; (7) held or claimed (whether as an entitlement, part of an ancillary claim, or because it was transferred or vested) either: (a) as part of redress for the settlement of Treaty of Waitangi claims; or (b) by the exercise of rights under a Treaty settlement Act or Treaty settlement deed (as those terms are defined under the Urban Development Act 2020); (8) owned by a person or persons with documentary evidence of Kāi Tahu whakapapa connection to the *land*, where that

[18] 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau

	evidence is provided by either the Māori Land Court or the Te Rūnanga o Ngāi Tahu Whakapapa Unit.

55. As a consequence, I recommend deleting the definition of Te Ture Whenua Māori Land.

4. Definition of Papakāika

4.1. Introduction

56. The definition of "papakāika" was discussed in section 4.3.1 of the s42A report, with my analysis in paragraphs [26] to [27]. This definition was also discussed in my brief of supplementary evidence (11 October 2022) in paragraphs [16] to [17].

57. The recommended version of this provision currently reads:[19]

Papakāika or papakāinga	Means subdivision, use and development by mana whenua, either on their own or in conjunction with other parties, of ancestral or tribal lands and associated resources to provide for ~~sustain~~ themselves in general accordance with tikanga Māori, which may include residential activities and non-residential activities for cultural, social, educational, recreational, environmental, or ~~limited~~ commercial purposes.[20]

4.2. Submissions and evidence

58. Sandra McIntyre noted that, for consistency, the definition of papakāika should use the proposed new defined term "Māori Land".

59. During the hearing, several issues were highlighted, which I will make further comment on. They are:

a. Should the definition include commercial activities?

b. What is the purpose of including development in conjunction with other parties? Is there a risk of third parties using this as an avenue to undertake unexpected activities?

c. Why does the definition stipulate only "general" accordance with tikanga Māori?

60. While other parties did mention concern with the scope of activities allowed under this definition, I understood this to be related more generally to the ambit of MW-P4 and the definition of Māori Land, rather than the definition of papakāika.

[19] This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.
[20] All changes to this definition attributable to 00010.003 Cain Whanau

4.3. Analysis

61. I agree that, if the defined term "Māori Land" is included in the pORPS as recommended, the definition of papakāika should refer to it. I recommend including this in the definition in place of "ancestral and tribal lands".

62. With respect to the matters raised in paragraph 58 above, I offer the following considerations:

a. Papakāika activities are primarily about the village, connection, and the activities that support that. Commercial activities, for example food shops or other activities related to tikaka and kawa, are an integral part of that approach.

b. There may be some activities that benefit by being developed in conjunction with other parties – perhaps research, or economic development that fits with tikaka and kawa. Kāi Tahu need the flexibility to bring in other parties to help achieve what they are trying to achieve. Nonetheless, the requirement to be in general accordance with kawa and tikaka puts a restriction on those activities, as does the involvement of Kāi Tahu in the resource consent process under MW-M4(1).

c. The inclusion of "general" accordance recognises the need to ensure that tikaka and kawa are not frozen in time. Kāi Tahu culture and practice needs the freedom to move with a changing world – papakāika activities need not be the traditional forms of those activities.

63. The only addition to my earlier recommendations on this definition[21] is the term "Māori Land". I consider this is a consequential change to the existing definition, following from the recommendation to insert a new term "Māori Land" into the pORPS. In other respects, I consider that the recommended changes do not change the substance and effect of the definition beyond the assessment in the original s32 report for the pORPS. The changes directly reflect the views and values of Kāi Tahu, in keeping with this chapter's purpose.

4.4. Final recommendation

64. My final recommended amendments to the notified version of the pORPS are:

Papakāika or papakāinga	Means <u>*subdivision*,[22]</u> use and development by *mana whenua*<u>, either on their own or in conjunction with other parties,[23]</u> of <u>*Māori Land*[24]</u> ~~ancestral or tribal lands~~ <u>and associated resources</u> to <u>provide for</u> ~~sustain~~[25] themselves in <u>general[26]</u> accordance with tikanga Māori, which may include residential activities and non-residential activities

[21] See Brief of evidence of James Henry Adams: MW – Mana Whenua, paras [16] – [17]
[22] 00010.003 Cain Whanau
[23] 00010.003 Cain Whanau
[24] 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau
[25] 00010.003 Cain Whanau
[26] 00010.003 Cain Whanau

	for cultural, social, <u>educational,</u>[27] recreational, environmental<u>,</u> or ~~limited~~[28] commercial purposes.

5. MW-P4 – Sustainable use of Native Reserves and Māori Land

5.1. Introduction

65. MW-P4 addresses use of Māori Land. It enables Kāi Tahu to use their land according to mātauraka and tikaka, by providing for a wider range of activities on Māori Land than may be available on similar land elsewhere, for instance in areas with rural zoning or coastal areas.

66. MW-P4 was discussed in section 4.9 of the s42A report, with my analysis in paragraphs [155] to [165]. The policy was also discussed in the brief of supplementary evidence (11 October 2022) in paragraphs [58] to [64].

67. The recommended version of this provision currently reads:[29]

> **MW-P4 – Sustainable use of ~~Māori land~~ <u>Native Reserves and *Māori land*</u>[30]**
>
> Kāi Tahu are able to ~~protect,~~[31] develop and use *land* and resources within native reserves and ~~land held under Te Ture Whenua Māori Act 1993~~ <u>*Māori land*</u>[32] in <u>accordance with mātauraka and tikaka,</u> ~~a way consistent with their culture and traditions and~~ <u>to provide for their</u>[33] economic, cultural and social aspirations, including for *papakāika*, marae and marae related activities<u>.</u> ~~, while:~~
>
> ~~(1) avoiding adverse *effects* on the health and safety of people,~~
>
> ~~(2) avoiding significant adverse *effects* on matters of national importance, and~~
>
> ~~(3) avoiding, remedying, or mitigating other adverse *effects*.~~[34]

[27] 00010.003 Cain Whanau
[28] 00010.003 Cain Whanau
[29] This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.
[30] 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau
[31] 00226.047 Kāi Tahu ki Otago, 00226.048 Kāi Tahu ki Otago, 00234.009 Te Rūnanga o Ngāi Tahu, 00010.004 Cain Whānau
[32] 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau
[33] 00234.009 Te Rūnanga o Ngāi Tahu
[34] 00226.047 Kāi Tahu ki Otago, 00226.048 Kāi Tahu ki Otago, 00234.009 Te Rūnanga o Ngāi Tahu, 00010.004 Cain Whānau

5.2. Submissions and evidence

68. Ms Ailsa Cain, appearing for Cain Whānau, reiterated the view that MW-P4 should have some form of primacy over other provisions in the pORPS.[35]

69. Mr Paul Freeland, appearing for the Dunedin City Council, is of the view that removing subclauses 1 to 3 could suggest that no adverse effects are considered when Kāi Tahu are using or developing native reserves and Māori land. However, he notes that this is a concern only if the Integrated Management chapter does not continue to include provisions requiring that all relevant policies and objectives in the pORPS need to be considered.[36] Mr Freeland proposes some options for the subclauses in the event that the provisions in the IM chapter are removed:

> […]
>
> (1) avoiding <u>significant</u> adverse effects on the health and safety of people,
>
> <u>(2) avoiding significant adverse effects on matters of national importance, and</u>
>
> <u>(3) avoiding, remedying, or mitigating other adverse effects.</u>

70. Ms Ainsley McLeod, appearing for Transpower, notes that Transpower's original submission called for a new subclause to be added to MW-P4 to give effect to Policy 10 and Policy 11 of the National Policy Statement for Electricity Transmission:

> […]
>
> <u>x. avoiding adverse effects, including reverse sensitivity effects, on the National Grid;</u>[37]

71. Ms McLeod considers that MW-P4 goes beyond recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga in section 6(e). Further, she says that including direction in a method does not alter the effect of a policy and method MW-M5 and, therefore, MW-P4 does not address the needs of the National Grid.[38]

72. However, Ms Mcleod goes on to acknowledge that the Section 42A Report anticipates that the pORPS does, or should, provide for the protection of the National Grid.[39] She agrees that it may not be efficient or appropriate to address effects of the use of Māori land on the National Grid in Policy MW-P4 and on that basis supports addressing impact of development on Māori land in Policy EIT-INF-P15.

5.3. Analysis

73. I addressed the issue of primacy in my s42A report[40]. I hold to my view that a primacy clause cuts across the intended integration throughout the pORPS document. However,

[35] Ailsa Cain, for Cain Whānau, para [27]
[36] Paul Freeland for DCC, para [11]
[37] 00314.008 Transpower
[38] Ainsley McLeod, for Transpower, para [6.33]
[39] Ainsley McLeod, for Transpower, para [6.34]
[40] James Adams s42A Hearing Report: MW- Mana Whenua, paras [155]-[157]

I consider that Sandra McIntyre's proposed changes to MW-M5, which I recommend accepting below, elevate Kāi Tahu's role in the implementation of MW-P4, which may substantially provide for the outcomes sought by Cain Whanau.

74. At the current time, the provisions in the IM chapter requiring that all relevant policies and objectives in the pORPS need to be considered are being retained. Mr Freeland's concerns do not arise.

75. However, even if those provisions are removed from the IM chapter, I retain my view, given in my supplementary evidence, that the subclauses are not necessary.[41] I note, for example, the comment in *King Salmon*:

"When dealing with a plan change application, the decision-maker must first identify those policies that are relevant, paying careful attention to the way in which they are expressed." [42]

76. Policies do not stand alone. I consider that it is not open to a decision maker to pick a policy that suits them, ignore other relevant policies, and claim to have properly discharged their duty. Having policies that make this point explicit is helpful for avoiding disputes, but not necessary in my view.

77. Ms McLeod is not aiming to address the issues she raises through amendments to the MW chapter, so I will not respond to her points here except to note:

a. The MW chapter is a high level chapter sitting within a regional policy statement. It establishes the policy framework for lower order instruments, which are, in my view, the appropriate place for setting the specifics of processes and uses for Māori Land.

b. The goal of this policy is to provide for the use of Māori Land. Using this policy to summarise goals from other parts of the pORPS undercuts both this policy and the policies it summarises. In an integrated document, both can stand alone.

c. I disagree that the method does not impact on the implementation of the policy. This is the purpose of the methods under the RMA[43]. Method MW-M5 clearly contemplates that there may be adverse effects from the use of Māori Land and states the principle for how those should be addressed.

5.4. Final recommendation

78. I do not recommend any further amendments.

[41] Brief of evidence of James Henry Adams: MW – Mana Whenua, para [60]
[42] Environmental Defence Society Inc v New Zealand King Salmon Co Ltd [2014] NZSC 38, para [129]
[43] Resource Management Act 1991, s62(1)(e)

6. MW-M4 – Kāi Tahu rakatirataka

6.1. Introduction

79. MW-M4 is a method for facilitating Kāi Tahu involvement in resource management processes.

80. MW-M4 was discussed in section 4.13 of the s42A report, with my analysis in paragraphs [210] to [213].

81. The recommended version of this provision currently reads:[44]

> **MW-M4 – Kāi Tahu rakatirataka involvement in resource management[45]**
>
> *Local authorities* must facilitate Kāi Tahu involvement in resource management (including decision making) to the extent desired by mana whenua, including[46] by:
>
> (1) including accredited Kāi Tahu commissioners on hearing panels for *resource consent* applications, notices of requirements~~,~~[47] plan changes or plans where Kāi Tahu values may be affected,
>
> (2) resourcing Kāi Tahu participation in resource management decision making, including funding,
>
> (3) joint management agreements and full or partial transfers of functions, duties or powers from *local authorities* to iwi authorities in accordance with section 33 of the RMA ~~1991~~,[48] and
>
> (4) entering into a Mana Whakahono ā Rohe with one or more iwi authorities.

6.2. Submissions and evidence

82. In legal submissions for Dunedin City Council, Mr Michael Garbett questioned whether the pORPS had jurisdiction to require resourcing under subclause 2. This issue is discussed above under jurisdictional issues.

83. Two additional issues arose during the hearing:

a. Whether the introduction of the words "to the extent desired by mana whenua", from my s42A report[49] gives Kāi Tahu too much control over council processes.

b. There is an apparent natural justice issue in subclause 1, as the wording suggests that Kāi Tahu commissioners may be required to be decision makers on their own resource consent applications.

[44] This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.
[45] 00226.052 Kāi Tahu ki Otago
[46] 00223.034 Ngāi Tahu ki Murihiku
[47] 00223.034 Ngāi Tahu ki Murihiku
[48] Clause 16(2), Schedule 1, RMA
[49] James Adams s42A Hearing Report: MW- Mana Whenua, para [294]

6.3. Analysis

84. The inclusion of the words "to the extent desired by mana whenua" was recommended not to give control over council processes, but to allow Kāi Tahu to protect themselves from being overwhelmed by an influx of resource management work. While Kāi Tahu need to be able to participate, the volume of work is such that they need to have the flexibility to choose the processes that are most pertinent for them to be involved in.

85. I am not convinced that the concerns regarding council processes would arise. Local authorities will retain their statutory functions, powers, and duties under the RMA. I do not consider that the pORPS is able to alienate those responsibilities. The RMA provides various mechanisms by which mana whenua can participate in resource management processes and decisions. The wording used indicates that those avenues are to be used to the extent that mana whenua are willing and able to accommodate.

86. Nonetheless, clarity is important, and I accept that the phrasing is open to misunderstanding, notwithstanding its actual effect. To be an effective vehicle for partnership, any further change to the wording needs to allow Kāi Tahu the flexibility to determine which decisions to be involved in without creating the same issue as the current recommended wording. A possible rewording is:

"*Local authorities* must facilitate Kāi Tahu involvement in resource management (including decision making), to the extent mana whenua consider themselves able to accommodate[50], including by:[…]"

87. This wording makes the purpose more explicit. The introduction of the words "able to accommodate" focuses the provision more on Kāi Tahu's capacity, and the wording "consider themselves" puts determining that capacity under mana whenua control. The construction focuses more on the mechanism's aim to provide an important protection for Kāi Tahu within resource management processes. It also encourages more active relationships with Kāi Tahu (one of the underlying purposes of the MW chapter) by expressly inviting a conversation with Kāi Tahu about their needs, priorities, and capacity. I consider it is consistent with the intent of the original submission.

88. I acknowledge the potential issue with the existing wording in subclause 1. In practice, Kāi Tahu already have a process in place to ensure this issue does not occur, by having a pool of available commissioners who are not Kāi Tahu and who are instead accredited by Kāi Tahu to hear issues pertaining to Kāi Tahu values.

89. On legal advice, I suggest alternative wording that I consider resolves this issue and fits with existing practice:

"(1) ~~including accredited Kāi Tahu commissioners~~ including accredited commissioners approved or nominated by Kāi Tahu on hearing panels for *resource consent* applications, notices of requirements~~,~~[51] plan changes or plans where Kāi Tahu values may be affected,"

[50] 00223.034 Ngāi Tahu ki Murihiku
[51] 00223.034 Ngāi Tahu ki Murihiku

90. I consider these to be minor changes for clarification[52].

6.4. Final recommendation

91. My final recommended amendments to the notified version of the pORPS are:

> **MW-M4 – Kāi Tahu rakatirataka ~~involvement in resource management~~[53]**
>
> *Local authorities* must facilitate Kāi Tahu involvement in resource management (including decision making), to the extent *mana whenua* consider themselves able to accommodate,[54] by:
>
> (1) ~~including accredited Kāi Tahu commissioners~~ including accredited commissioners approved or nominated by Kāi Tahu [55] on hearing panels for *resource consent* applications, notices of requirements~~,~~[56] plan changes or plans where Kāi Tahu values may be affected,
>
> (2) resourcing Kāi Tahu participation in resource management decision making, including funding,
>
> (3) joint management agreements and full or partial transfers of functions, duties or powers from *local authorities* to iwi authorities in accordance with section 33 of the RMA ~~1991~~,[57] and
>
> (4) entering into a Mana Whakahono ā Rohe with one or more iwi authorities.

7. MW-M5 – Regional plans and district plans

7.1. Introduction

92. Method MW-M5 sets out requirements for amending regional and district plans to implement the policies in this chapter.

93. MW-M5 was discussed in section 4.14 of the s42A report, with my analysis in paragraphs [221] to [227].

94. The recommended version of this provision currently reads:[58]

> **MW-M5 – Regional plans[59] and district plans**
>
> Local authorities must amend their regional plans[60] and district plans to:

[52] Resource Management Act 1991, Schedule 1, Clause 16(2).
[53] 00226.052 Kāi Tahu ki Otago
[54] 00223.034 Ngāi Tahu ki Murihiku
[55] Clause 16(2), Schedule 1, Resource Management Act 1991.
[56] 00223.034 Ngāi Tahu ki Murihiku
[57] Clause 16(2), Schedule 1, RMA
[58] This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.
[59] Clause 16(2), Schedule 1, RMA
[60] Clause 16(2), Schedule 1, RMA

(1) take into account ~~Iwi Management Plans~~ iwi management plans and address resource management issues of significance to Kāi Tahu ~~(RMIA) into account~~,[61]

(2) provide for the use of native reserves and Māori[62] land in accordance with MW-P4,[63] and, if such use may have adverse effects on a matter of national importance, enable development of alternative approaches, led by Kāi Tahu, to preserving the values protected by this Regional Policy Statement,[64]

(3) incorporate active protection of areas and resources recognised in the NTCSA ~~1998~~[65] ~~.~~, and[66]

(3A) provide for the outcomes of settlements under the Māori Commercial Claims Aquaculture Settlement Act 2004. [67]

7.2. Submissions and evidence

95. I note Ainsley Mcleod's comments that this method provides for the use of 'Māori land' and allows adverse effects on the National Grid in a manner that does not give effect to the NPSET.[68]

96. Ms Tanya Stevens, appearing for Kāi Tahu, says that subclause 3A should be amended by inserting the words "and enable" after "provide for", as follows:

"(3A) provide for and enable the outcomes of settlements under the Māori Commercial Claims Aquaculture Settlement Act 2004."[69]

97. This amendment is intended to support the purpose of the Māori Commercial Claims Aquaculture Settlement Act 2004 (The Aquaculture Settlement Act).

98. It was noted during the hearing that the wording in the MW-M5(3A), both as presented following supplementary evidence, and with the amendment suggested by Ms Stevens, is not consistent with the wording used in the policy it supports, MW-P2(8A):

MW-P2 – Treaty principles

Local authorities exercise their functions and powers in accordance with the principles of Te Tiriti o Waitangi ~~Treaty principles~~[70], by:

[…]

[61] 00223.035 Ngāi Tahu ki Murihiku
[62] 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau
[63] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00234.010 Te Rūnanga o Ngāi Tahu
[64] 00226.047 Kāi Tahu ki Otago, 00226.048 Kāi Tahu ki Otago, 00234.009 Te Rūnanga o Ngāi Tahu, 00010.004 Cain Whānau
[65] Clause 16(2), Schedule 1, RMA
[66] Clause 10(2)(b)(i), Schedule 1, RMA – Consequential amendment arising from 00234.010 Te Rūnanga o Ngāi Tahu
[67] 00234.010 Te Rūnanga o Ngāi Tahu
[68] Ainsley McLeod, for Transpower, para [6.33c]
[69] Tanya Stevens, for Te Rūnanga o Ngāi Tahu, paras [63]-[64]
[70] 00226.046 Kāi Tahu ki Otago

(8A) *regional plans* and *district plans* recognising and providing for aquaculture settlement outcomes identified under the Māori Commercial Aquaculture Claims Settlement Act 2004.[71], and […]

99. An issue also arose regarding whether the word "enable" conferred too much responsibility on Councils to put aside space for potential settlements before they have properly been considered through a resource consent process.

100. Ms Sandra McIntyre proposes amendments to MW-M5(2)[72] as an alternative to the amendments I recommend in my supplementary evidence[73] directed at the implementation of MW-P4. These amendments are intended to provide more effectively 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, while recognising the need to manage adverse effects:

"(2) provide for the use of native reserves and *Māori*[74] *Land* in accordance with MW-P4,[75] and recognise Kāi Tahu rakatirataka over this land by enabling mana whenua to lead approaches to manage any adverse effects of such use on the environment. [76]

7.3. Analysis

101. Regarding Ms McLeod's concerns, I understand she considers these issues are best addressed in the EIT chapter, so I have not addressed them in any detail here. I do note however, that the NPSET appears to be silent on the application of Treaty principles.

102. Regarding provision for aquaculture, Otago's Regional Plan: Coast is an old plan, having become operative in 2001. Resource consents are still required for aquaculture space under the Aquaculture Settlement Act. The Regional Plan: Coast predates the Act and has not been updated to provide for the processes in the Act. I consider it would not be appropriate for the intentions of the Aquaculture Settlement Act to be frustrated because the Regional Plan Coast is out of date.

103. The method provides a straightforward activation of the policy, by requiring it to be included in District and Regional Plans. I agree that, in that case, the wording should be consistent between the two. I consider aligning the wording is a reasonable response to the original submissions.

104. I supported the introduction of the term "enable" in my introductory comments to the Panel. However, I have reconsidered my view in the light of comments during oral evidence. Given a resource consent still needs to be applied for, I consider "enable" may

[71] 00234.008 Te Rūnanga o Ngāi Tahu
[72] Sandra McIntyre, for Kāi Tahu ki Otago, para [72(c)]
[73] Brief of evidence of James Henry Adams: MW – Mana Whenua para [64]
[74] 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau
[75] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00234.010 Te Rūnanga o Ngāi Tahu
[76] 00226.047 Kāi Tahu ki Otago, 00226.048 Kāi Tahu ki Otago, 00234.009 Te Rūnanga o Ngāi Tahu, 00010.004 Cain Whānau

indicate that that process should be biased towards granting the consent. I am not convinced this is appropriate. "Recognise and provide for" is an established phrasing that requires decision-makers to make actual provision for settlement processes. I think this is the appropriate approach, as it requires the Aquaculture Settlement Act process to be provided for, even if this is not explicit in the Regional Plan: Coast. I consider that it provides the required assurance. Introducing this wording into MW-M5(3A) also makes it consistent with MW-P4(8A), and I recommend amending the provision accordingly.

105. I consider these changes to provide a more effective and efficient framework for achieving objective MW-O1 by improving integration between the policy and method, and providing more clarity on the effect of the Aquaculture Settlement Act.

106. Finally, I prefer Ms McIntyre's proposed wording for subclause 2 to the drafting I put forward in my supplementary evidence. The underlying reasoning remains the same.[77]

7.4. Final recommendation

107. My final recommended amendments to the notified version of the pORPS are:

> **MW-M5 – Regional plans[78] and district plans**
>
> *Local authorities* must amend their *regional plans*[79] and *district plans* to:
>
> (1) take into account ~~Iwi Management Plans~~ iwi management plans and address resource management issues of significance to Kāi Tahu ~~(RMIA) into account~~,[80]
>
> (2) provide for the use of native reserves and *Māori*[81] *land* in accordance with MW-P4, and recognise Kāi Tahu rakatirataka over this land by enabling *mana whenua* to lead approaches to manage any adverse *effects* of such use on the *environment*,[82]
>
> (3) incorporate active protection of areas and resources recognised in the NTCSA ~~1998.~~,[83] and[84]
>
> (3A) recognise and provide for the outcomes of settlements under the Māori Commercial Claims Aquaculture Settlement Act 2004.[85]

[77] Brief of evidence of James Henry Adams: MW – Mana Whenua para [63]-[64]
[78] Clause 16(2), Schedule 1, RMA
[79] Clause 16(2), Schedule 1, RMA
[80] 00223.035 Ngāi Tahu ki Murihiku
[81] 00234.009 Te Rūnanga o Ngāi Tahu, 00226.053 Kāi Tahu ki Otago, 00010.002 Cain whanau
[82] 00226.047 Kāi Tahu ki Otago, 00226.048 Kāi Tahu ki Otago, 00234.009 Te Rūnanga o Ngāi Tahu, 00010.004 Cain Whānau
[83] Clause 16(2), Schedule 1, RMA
[84] Clause 10(2)(b)(i), Schedule 1, RMA – Consequential amendment arising from 00234.010 Te Rūnanga o Ngāi Tahu
[85] 00234.010 Te Rūnanga o Ngāi Tahu

8. Minor changes and points of clarification

108. Parties now agree on several matters raised in evidence. This results in some changes, corrections, and points of clarification that I consider constitute minor amendments within the scope of submissions (as noted), or that otherwise come within Schedule 1, Clause 16(2) of the Resource Management Act 1991.

109. These clarifications and changes apply across the MW chapter and I have collated them below, accompanied by a short explanation.

8.1. Recommendations and explanations addressing minor changes and clarifications

110. In my introductory statement, I incorrectly identified an issue Ms Maria Bartlett raised in evidence regarding timeframes for MW-M1. For clarity, this is not an issue.

111. I note that reference to taoka tuku iho in MW-O1, MW-E1 and MW-AER2 should be marked as recommended for deletion, as indicated in my supplementary evidence.[86]

112. In my s42A report, I recommended not accepting a submission to insert the term "hauora" into MW-P3,[87] because I was "wary of whether the nuances of meaning it holds will be recognised when it comes to be used and defined in a regulatory or legal context."[88] Following prehearing discussion, I recommended adding a section on hauora to the Kāi Tahu Values section.[89] However, I neglected to revisit MW-P3 with that change in mind. Ms McIntyre has rightly pointed out that, now the term is described, it is appropriate to incorporate the term into MW-P3.[90]

113. While considering these changes, I found the words "of Kāi Tahu" after "relationships" in subclause 1 to be superfluous and recommend removing them.

114. I recommend the following amendment:

> **MW-P3 – Supporting Kāi Tahu ~~well-being~~ hauora[91]**
>
> The natural environment is managed to support Kāi Tahu ~~well-being~~ hauora[92] by:
>
> (1A) recognising that Kāi Tahu hold an ancestral and enduring relationship with all whenua, wai māori and *coastal waters* within their takiwā,[93]
>
> (1) protecting customary uses, Kāi Tahu values and relationships ~~of Kāi Tahu~~ as identified by Kāi Tahu[94] to resources and areas of significance, and restoring these uses and values where they have been degraded by human activities,

[86] Brief of evidence of James Henry Adams: MW – Mana Whenua, para [28]
[87] 00226.047 Kāi Tahu ki Otago
[88] James Adams s42A Hearing Report: MW- Mana Whenua, para [140]
[89] Brief of evidence of James Henry Adams: MW – Mana Whenua, para [32]
[90] Sandra McIntyre, for Kāi Tahu ki Otago, para [76a]
[91] 00226.047 Kāi Tahu ki Otago
[92] 00226.047 Kāi Tahu ki Otago
[93] 00226.277 Kāi Tahu ki Otago
[94] 00226.047 Kāi Tahu ki Otago

(2) safeguarding the mauri and life-supporting capacity of natural resources, recognising the whakapapa connections of Kāi Tahu with these resources as taoka, and the connections to practices such as *mahika kai*, and[95]

(3) working with Kāi Tahu to incorporate mātauraka ~~in~~ into[96] resource management processes and decision-making.[97]

115. Ms McIntyre also seeks to add clarity to the scope of Kāi Tahu relationships with te taiao in MW-P2(4), by adding "and waters" after "ancestral lands".[98] I recommend accepting these amendments. I consider Kāi Tahu have the prerogative to define these relationships and, moreover, this reflects the wording of RMA s6(e).

116. I recommend the following amendments:

MW-P2 – Treaty principles

Local authorities exercise their functions and powers in accordance with the principles of Te Tiriti o Waitangi ~~Treaty principles~~[99], by:

(1) recognising the status of Kāi Tahu as *mana whenua*[100]and facilitating Kāi Tahu involvement in decision-making as a ~~Treaty~~ partner under Te Tiriti o Waitangi,[101]

(2) including Kāi Tahu in resource management processes, ~~and~~ implementation and decision-making to the extent desired by *mana whenua*,[102]

(3) recognising and providing for Kai Tahu values, and addressing resource management issues of significance to Kāi Tahu, as identified by *mana whenua*, in resource management processes and plan implementation,[103]

(4) recognising and providing for the relationship of Kāi Tahu culture and traditions with their ancestral lands and waters, ~~*water,*~~ encompassing wai māori and wai tai, significant sites, *wāhi tūpuna*, wāhi tapu and wāhi taoka, and other taoka by ensuring that Kāi Tahu have the ability to identify these relationships and determine how best to express them,[104]

(5) ensuring that *regional plans*[105] and *district plans* recognise and provide for Kāi Tahu relationships with Statutory Acknowledgement Areas, tōpuni, *nohoaka* and customary fisheries identified in the NTCSA ~~1998~~[106], including by actively protecting the mauri of these areas,

[95] 00226.047 Kāi Tahu ki Otago
[96] 00223.029 Ngāi Tahu ki Murihiku
[97] 00226.047 Kāi Tahu ki Otago
[98] Sndra McIntyre, for Kāi Tahu ki Otago, para [77c]
[99] 00226.046 Kāi Tahu ki Otago
[100] 00226.046 Kāi Tahu ki Otago
[101] 00226.046 Kāi Tahu ki Otago
[102] 00226.046 Kāi Tahu ki Otago
[103] 00223.029 Ngāi Tahu ki Murihiku
[104] 00226.046 Kāi Tahu ki Otago
[105] Clause 16(2), Schedule 1, RMA
[106] Clause 16(2), Schedule 1, RMA

(6) having particular regard to the responsibility ~~ability~~ of Kāi Tahu to exercise their role as kaitiaki ~~kaitiakitaka~~ as an expression of mana and rakatirataka,[107]

(7) actively pursuing opportunities for:

(a) delegation or transfer of functions to Kāi Tahu, and

(b) partnership or joint management arrangements, ~~and~~ [108]

(8) taking into account iwi management plans when making resource management decisions~~.~~, and[109]

(8A) *regional plans* and *district plans* recognising and providing for aquaculture settlement outcomes identified under the Māori Commercial Aquaculture Claims Settlement Act 2004[110], and

(8B) recognising and providing for mātauraka and tikaka in environmental and resource management.[111]

117. Sandra McIntyre lists some minor amendments for accuracy to the wording in the list of Native Reserves (Table 1):[112]

a. Spelling of Hawksbury to be corrected in the comments column of the row for Matainaka and Hawksbury Fishing Easement.

b. In the recommended additional row relating to the Hawea-Wanaka block, amend the recommended text in the second column, to use the word "enacted" rather than "legislated". On reconsidering this wording, I recommend the term "set out" as more appropriate than either of these terms.

118. I recommend the following amendments:

Location	Comments	Reserve Type
Tautuku	Southern block of Tautuku sections	South Island Landless Natives Act
	Northern sections are Reserved lands	Native Reserve
Glenomaru	Located south of Kaka Point	South Island Landless Natives Act
Maranuku	Granted in 1844 as part of the ~~Otakou~~ Ōtākou[113] Purchase. Originally called Te Karoro, split into two reserves	Native Reserve

[107] 00226.046 Kāi Tahu ki Otago
[108] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00234.008 Te Rūnanga o Ngāi Tahu
[109] Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00234.008 Te Rūnanga o Ngāi Tahu
[110] 00234.008 Te Rūnanga o Ngāi Tahu
[111] 00234.008 Te Rūnanga o Ngāi Tahu
[112] Sandra McIntyre, for Kāi Tahu ki Otago, para [77b]
[113] 00226.041 Kāi Tahu ki Otago

Clarendon	Located inland from Taieri Mouth	Clarendon Half Caste Reserve
~~Taieri~~ Taiari[114]	Granted in 1844 as part of the ~~Otakou~~ Ōtākou[115] Purchase Deed. Split into three reserves; A, B and C	Native Reserve
Lake Tatawai	Located on the ~~Taieri~~ Taiari[116] Plain, south of ~~the~~[117] Dunedin, includes lake that is now drained.[118]	Native Reserve and Landing Reserve
~~Lake Tatawai~~[119]	~~Lake that is now drained~~	~~Landing Reserve~~
Otago Heads Native Reserve	Granted in 1844 as part of the Ōtākou Purchase Deed. Split into four reserves	Native Reserve
Port Chalmers	Granted in 1848 as part of the Ōtākou Purchase Deed. A further grant adjacent to the Reserve was made in approximately 1888	Native Reserve
Aramoana	This reserve resulted from the ~~Purakaunui~~ Pūrākaunui[120] Half Caste grant	Half Caste Reserve
~~Purakaunui~~ Pūrākaunui[121]	Granted in 1848 as part of Kemp's Purchase Deed. Further allocations were made in 1868 at Wharauwerawera	Native Reserve
Brinns Point	Granted in the latter part of the nineteenth century	Half Caste Reserve
~~Karitane~~ Karitāne (~~Waikouaiti~~ Waikōuaiti[122] Native Reserve)	Granted in 1848 as part of Kemp's Purchase Deed	Native Reserve
Matainaka and Hawksbury Fishing Easement	Two fishing easements fall under this reserve, Matainaka, located at ~~Hawkesbury~~ Hawksbury[123] Lagoon at ~~Waikouaiti~~ Waikōuaiti[124] and the Forks Reserve located inland from ~~Karitane~~ Karitāne.[125] The legal description for the	Fishing Easement

[114] 00226.041 Kāi Tahu ki Otago
[115] 00226.041 Kāi Tahu ki Otago
[116] 00226.041 Kāi Tahu ki Otago
[117] Clause 16(2), Schedule 1, RMA
[118] 00226.329 Kāi Tahu ki Otago
[119] 00226.329 Kāi Tahu ki Otago
[120] 00226.041 Kāi Tahu ki Otago
[121] 00226.041 Kāi Tahu ki Otago
[122] 00226.041 Kāi Tahu ki Otago
[123] Resource Management Act 1991, Schedule 1, Clause 16(2)
[124] 00226.041 Kāi Tahu ki Otago
[125] 00226.041 Kāi Tahu ki Otago

	latter reserve is Section 1N Town of Hawksbury	
Hawksbury	Located north of ~~Waikouaiti~~ Waikōuaiti,[126] in the vicinity of Goodwood	Hawksbury Half Caste Reserve
Moeraki	Granted in 1848 as part of Kemp's Purchase Deed. Further awards were made in 1868	Native Reserve
Kuri Bush	10 acre reserve of timber	Native Reserve
~~Kakanui~~[127]	~~Granted in 1848 as part of Kemp's Purchase Deed. By 1853, this Reserve was noted as being abandoned and the 75 acre allocation was added to the southern edge of the Moeraki Native Reserve~~	~~Native Reserve~~
Korotuaheka	Located south of the Waitaki River mouth. Now Reserved as an ~~urupa~~ urupā.[128] It appears this originated as an occupational reserve and Fishing Easement	~~Partitioned in 1895~~ ~~Possibly awarded as part of the 1868 awards~~ Native Reserve Fishing Easement[129]
Punaomaru	376 acre reserve located approximately 14 miles from the Waitaki River mouth on the south bank of the river	Native Reserve
Lake Hāwea	Reserve of 100 acres situated in the western extremity of the middle arm of Lake Hāwea near a Lagoon. Part of the Reserve was taken for power development in 1962 and the balance of the land was alienated by the Māori Trustee in 1970	Fishing Easement
Hāwea-Wānaka block (Wānaka Plantation Reserve)[130]	Known as Sticky Forest and being 50.7 hectares more or less to be vested in the Successors as defined in and pursuant to Section 15 of the Deed of Settlement 1997 between Te Rūnanga o Ngāi Tahu and the Crown, and as set out in Part 15 of the Ngāi Tahu Claims Settlement Act 1998.[131]	South Island Landless Natives Act

[126] 00226.041 Kāi Tahu ki Otago
[127] 00226.329 Kāi Tahu ki Otago
[128] 00226.041 Kāi Tahu ki Otago
[129] 00226.329 Kāi Tahu ki Otago
[130] 00234.005 Te Rūnanga o Ngāi Tahu
[131] 00226.329 Kāi Tahu ki Otago

119. Ms McIntyre also requests that the KMana whenua – local authority relationships section, in the first sentence under "Kāi Tahu relationships with Local Authorities", would be more accurately rendered "There are a number of relationship agreements between Kāi Tahu ~~ki Otago~~ papatipu rūnaka …".[132] I consider this increases accuracy and is a change of minor effect.

120. I recommend the following amendments:

> **Kāi Tahu relationships with local authorities**
>
> There are a number of relationship agreements between Kāi Tahu ~~Ki Otago~~ papatipu rūnaka[133] and *local authorities* in Otago. These include:
>
> - Memorandum of Understanding and Protocol between Otago Regional Council, Te Rūnanga Ngāi Tahu and Kāi Tahu ki Otago for Effective Consultation and Liaison (2003)
> - Te Roopū Taiao Otago Charter and Hui (ORC, QLDC, DCC, WDC, CDC, CODC)
> - He Huarahi mō Ngā Uri Whakatupu – Charter of Understanding ~~signed with~~ 2016 between Te Ao Marama ~~Inc.~~ Incorporated, representing Ngāi Tahu ki Murihiku, and ~~Southland Rūnanga (2016)~~ councils.[134]
>
> Kāi Tahu and Otago Regional Council use the Mana to Mana forum as a means to build a strengthened relationship between the two entities.
>
> He Huarahi mō Ngā Uri Whakatupu[135] is the Charter of Understanding between Ngāi Tahu ki Murihiku (Awarua Rūnanga, Waihopai Rūnanga, Ōraka-Aparima Rūnanga and Hokonui Rūnanga) and ~~the~~ local authorities~~.~~, including Otago Regional Council, ~~and~~ QLDC and Clutha District Council. ~~are signatories to Huarahi mō Ngā Uri Whakatupu as it applies in their areas of jurisdiction.~~[136]

121. Finally, Ms McIntyre requests a minor change to MW-E1 to better reflect the rakatirataka and kaitiakitaka role of Kāi Tahu as described by the cultural witnesses.[137] I agree that the wording (including amendments from my 42A recommendations) "ensure mana whenua engagement with and participation in resource management in partnership with local authorities" could suggest that Kāi Tahu may only have a role in resource management in partnership with local authorities. This can be resolved by replacing "in partnership" with "including through partnership" as Ms McIntyre suggests, and I recommend making this change. I consider this alteration is within the scope of submission 00235.017 OWRUG.

122. I recommend the following amendments:

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[132] Sandra McIntyre, for Kāi Tahu ki Otago, [77a]
[133] Resource Management Act 1991, Schedule 1, clause 16(2)
[134] 00223.027 Ngāi Tahu ki Murihiku
[135] Available from https://www.es.govt.nz/repository/libraries/id:26gi9ayo517q9stt81sd/hierarchy/about-us/plans-and-strategies/regional-plans/iwi-management-plan/documents/The%20Charter%20of%20Understanding.pdf (accessed 26 May 2021)
[136] 00223.027 Ngāi Tahu ki Murihiku
[137] Sandra McIntyre, for Kāi Tahu ki Otago, para [77b]

MW-E1 – Explanation

The policies in this section are designed to achieve MW-O1 by setting out the actions that must be undertaken by *local authorities* to ensure the principles of Te Tiriti o Waitangi are given effect in resource management processes and decisions, and *mana whenua* values and taoka tuku iho are actively protected, supporting Kāi Tahu wellbeing.[138] The policies also require the development and implementation of planning tools and other mechanisms that[139] ~~which~~ recognise the role of Kāi Tahu in resource management and ensure *mana whenua* engagement with and participation in resource management including through[140] partnership with *local authorities*.[141]

[138] 00223.036 Ngāi Tahu ki Murihiku
[139] 00223.036 Ngāi Tahu ki Murihiku
[140] FS00226.344
[141] 00235.017 OWRUG.