

Reply Report

Proposed Otago Regional Policy Statement 2021

**5B: RMIA – Resource management issues of significance to
iwi authorities in the region**

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1. 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. Two issues from the RMIA chapter are in the FPI part of the pORPS, and so are not considered here. They are:
 - a. RMIA-WAI-I1-The loss and degradation of water resources through drainage, abstraction, pollution, and damming has resulted in material and cultural deprivation for Kāi Tahu ki Otago
 - b. RMIA-WAI-I3 – The effects of land and water use activities on freshwater habitats have resulted in adverse effects on the diversity and abundance of mahika kai resources and harvesting activity.
3. These are two of five issues in the RMIA-WAI section describing Kāi Tahu concerns relating to fresh water. These two relate directly to freshwater quality and quantity, whereas the other three issues relate to management, Kāi Tahu participation and values rather than the freshwater resource itself.
4. This report addresses:
 - a. Provisions that were still in contention at the time of hearing.
 - b. Issues raised through the hearing process
5. A regional policy statement must state the resource management issues of significance to iwi authorities in the region.¹ Only mana whenua can make such statements with authenticity in Otago.
6. Iwi consultancies Aukaha and Te Ao Marama Incorporated (as agents of, and in consultation with, Otago’s mana whenua) have led preparation of the corresponding section of the pORPS. The issues presented represent Kāi Tahu’s key concerns with resource management in Otago.
7. I understand that issues with this section have largely been resolved through my s42A report and supplementary evidence. The remaining issues are minor amendments proposed to:
 - a. RMIA-WTA-I2, to specify physical constraints to accessing nohoaka sites;
 - b. RMIA-AA-I1, to reference wāhi tūpuna;
 - c. RMIA-CE-I5, to reference wāhi tūpuna.

¹ Section 62(1)(b) of the RMA

8. No other parties appear to have opposed these changes. Note that I have not included summary descriptions of the issues, because I consider the issue titles themselves are sufficient for this purpose.
9. This report does not address the following provisions because I do not consider there are any additional matters to address as a result of the hearing:
 - RMIA-WAI-I1, RMIA-WAI-I2, RMIA-WAI-I3, RMIA-WAI-I4 and RMIA-WAI-I5
 - RMIA-MKB-I1, RMIA-MKB-I2, RMIA-MKB-I3, RMIA-MKB-I4, RMIA-MKB-I5 and RMIA-MKB-I6
 - RMIA-WTU-I1
 - RMIA-WTA-I1
 - RMIA-CE-I1, RMIA-CE-I2, RMIA-CE-I3 and RMIA-CE-I4
 - RMIA-PO-I1
10. I consider the remaining issues with the RMIA section of part 2 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.

2. Links with FPI provisions

2.1. Introduction

11. The pORPS was drafted to function as an interdependent whole. However, RMA processes require the pORPS to be heard in two parts: the FPI and non-FPI parts. To assist with reconciling decisions between the two processes, this section records my recommendations regarding the two issues that are part of the FPI: RMIA-WAI-I1 and RMIA-WAI-I3.

2.2. RMIA-WAI-I1 – The loss and degradation of water resources through drainage, abstraction, pollution, and damming has resulted in material and cultural deprivation for Kāi Tahu ki Otago

12. I recommended retaining this issue as notified. The issue was supported by four submitters. Two submitters sought changes to the issue; however, I did not consider these changes reflected Kāi Tahu values and concerns.

2.3. RMIA-WAI-I3 – The effects of land and water use activities on freshwater habitats have resulted in adverse effects on the diversity and abundance of mahika kai resources and harvesting activity

13. I recommended amending this issue as follows:

Mahika kai is the gathering of foods and other resources, the places where they are gathered, and the practices used in doing so [...] It represents a significant loss

for mana whenua and a diminishing of rakatirataka and² of mana. Mahika kai continues to be degraded through the effects of land and water use activities on freshwater habitats. Activities such as the construction of barriers to fish passage, drainage, altered flow regimes, reduced water quality and removal of riparian vegetation all impact on access to and use of resources. Inadequate regulation of commercial fishing of tuna (eels) and inaka (whitebait) has also exacerbated the impacts of degradation and loss of habitat from land and water use activities on remaining populations of these species.³

14. The issue was supported by four submitters.
15. Kāi Tahu ki Otago and Ngāi Tahu ki Murihiku sought amendments to improve clarity and provide further explanation about the combination of factors contributing to loss of mahika kai. I recommended accepting these changes, which are incorporated above.
16. Two other submitters sought either amendments to the issue, or new issue content. I did not consider these changes reflected Kāi Tahu values and concerns and recommended declining these submissions.

3. RMIA-WTA-I2 – Access to wāhi tapu and wāhi taoka and the ability to undertake customary activities on these sites has been impeded

3.1. Introduction

17. RMIA-WTA-I2 was discussed in section 3.9.6 of the s42A report, with my analysis in paragraphs [580] to [581]. This issue is also discussed in my brief of supplementary evidence (11 October 2022) at paragraph [13].
18. The recommended version of this provision currently reads:⁴

RMIA-WTA-I2 – Access to wāhi tapu and wāhi taoka and the ability to undertake customary activities on these sites has been impeded

Access to culturally important sites has been impeded in many ways, affecting the ability of mana whenua to carry out customary activities and maintain relationships with wāhi tapu and wāhi taoka.⁵ Many sites are privately owned and cannot be accessed. Some sites no longer exist, or the customary activities associated with them⁶ cannot be undertaken. ~~for~~ For⁷ example, nohoaka sites associated with ~~mahika kai~~ mahika kai gathering cannot be used if ~~the mahika kai mahika kai is no longer there.~~ there is no way to reach the site or no safe way to harvest when at

² FPI030.014 Kāi Tahu ki Otago

³ FPI030.014 Kāi Tahu ki Otago

⁴ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

⁵ 00223.051 Ngāi Tahu ki Murihiku

⁶ 00223.051 Ngāi Tahu ki Murihiku

⁷ 00223.051 Ngāi Tahu ki Murihiku

~~the site.~~⁸ A limited number of *nohoaka* sites were granted to Kāi Tahu through the ~~Ngāi Tahu Claims Settlement Act 1998~~ NTCSA⁹ as redress for loss of traditional sites. Some of these were traditional sites, but others were in new locations. Some *nohoaka* have also become dissociated from their customary use due to *land* use change, freshwater management practices,¹⁰ and hazard management. For example, if the *river* channel has moved and the *nohoaka* has not, whānau visiting the *nohoaka* are not able to fish there.

3.2. Submissions and evidence

19. Sandra McIntyre, giving evidence for Kāi Tahu ki Otago, recommends that the fourth sentence of this provision should specifically reference physical constraints to accessing mahika kai sites.¹¹ I consider there is scope for this inclusion under submission 00223.051 from Ngāi Tahu ki Murihiku, which requests amending this provision “to recognise that wāhi tapu and wāhi taoka include nohoaka sites and therefore freshwater management as well as land use matters and matters of access are significant issues.”¹²

3.3. Analysis

20. This addition is a direct expression of Kāi Tahu concerns. I therefore recommend accepting this submission for the reasons Ms McIntyre set out in her evidence. I consider this a minor change that does not require re-evaluation under RMA s32AA.¹³

3.4. Final recommendation

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

RMIA-WTA-I2 – Access to wāhi tapu and wāhi taoka and the ability to undertake customary activities on these sites has been impeded

Access to culturally important sites has been impeded in many ways, affecting the ability of *mana whenua* to carry out customary activities and maintain relationships with wāhi tapu and wāhi taoka.¹⁴ Many sites are privately owned and cannot be accessed. Some sites no longer exist, or the customary activities associated with them¹⁵ cannot be undertaken. ~~for~~ For¹⁶ example, *nohoaka* sites associated with ~~mahika kai~~ *mahika kai* gathering cannot be used if ~~the mahika kai is no longer there.~~ there is no way to reach the site or no safe way to harvest when at the site because of physical constraints.¹⁷ A limited number of *nohoaka* sites

⁸ 00223.051 Ngāi Tahu ki Murihiku

⁹ Clause 16(2), Schedule 1, RMA

¹⁰ 00223.051 Ngāi Tahu ki Murihiku

¹¹ Sandra McIntyre for Kāi Tahu ki Otago, para [77](d) and Appendix 1, page 12

¹² 00223.051 Te Ao Marama

¹³ Clause 16(2), Schedule 1, RMA

¹⁴ 00223.051 Ngāi Tahu ki Murihiku

¹⁵ 00223.051 Ngāi Tahu ki Murihiku

¹⁶ 00223.051 Ngāi Tahu ki Murihiku

¹⁷ 00223.051 Ngāi Tahu ki Murihiku

were granted to Kāi Tahu through the ~~Ngāi Tahu Claims Settlement Act 1998~~ NTCSA¹⁸ as redress for loss of traditional sites. Some of these were traditional sites, but others were in new locations. Some *nohoaka* have also become dissociated from their customary use due to *land* use change, freshwater management practices,¹⁹ and hazard management. For example, if the *river* channel has moved and the *nohoaka* has not, whānau visiting the *nohoaka* are not able to fish there.

4. RMIA-AA-I1 – The cultural impacts of discharges to air are poorly recognised in resource management

4.1. Introduction

22. RMIA-AA-I1 was discussed in section 3.9.23 of the s42A report, with my analysis in paragraphs [678] to [680].
23. Note that both the discussion of submissions and evidence, and the section on analysis, also applies to similar amendments that I recommend making to RMIA-CE-I5 and is repeated there for clarity and ease of reference.
24. The recommended version of this provision currently reads:²⁰

RMIA-AA-I1 –The cultural impacts of *discharges* to air are poorly recognised in resource management

The cultural impacts of air pollution and *discharges* to air are poorly understood and seldom recognised. *Discharges* to air can adversely affect health and can be culturally offensive. Clean air is important to the health of ~~maḥika kai~~ maḥika kai²¹ and people, and odour and other emissions impact on the tapu of wāhi tapu sites. Air emissions can also reduce the visibility of cultural landscape features and of the moon, stars, and rainbows.

Specific concerns include:

- Potential impacts of climate change which could ~~potentially~~ negatively affect taoka such as wai māori māori and wai tai,²² ~~maḥika kai~~ maḥika kai²³ and biodiversity, wāhi tūpuna, wāhi tapu, and wāhi taoka, the coastal environment²⁴ and²⁵ the well-being of all people, and the environment as an integrated system.²⁶

¹⁸ Clause 16(2), Schedule 1, RMA

¹⁹ 00223.051 Ngāi Tahu ki Murihiku

²⁰ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

²¹ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

²² 00226.077 Kāi Tahu ki Otago

²³ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

²⁴ 00226.077 Kāi Tahu ki Otago

²⁵ Clause 16(2), Schedule 1, RMA

²⁶ 00226.077 Kāi Tahu ki Otago

- Insufficient data has been collected and distributed about the *effects of discharges* to air.
- The *effects of discharges* to air on the health of people and ~~māhika kai~~ *māhika kai*²⁷, including *discharges* from industrial or trade premises, agrichemical spray drift, vehicle emissions and emissions from domestic fires in built up areas prone to inversion layers.
- Culturally offensive *discharges* from crematoriums, if located in close proximity to ~~māhika kai~~ *māhika kai*²⁸ and wāhi taoka.
- Adverse *effects* of vegetation burning on the integrity and the tapu of wāhi tapu sites.
- Impacts of odour on wāhi tapu, ~~māhika kai~~ *māhika kai*²⁹ sites and *nohoaka*.
- Impacts of urban settlement and *discharges* to air on the visibility of the sky and *wāhi tūpuna* features.
- The impact of dust on the integrity of rock art sites.

4.2. Submissions and evidence

25. Maria Bartlett, giving evidence for Ngāi Tahu ki Murihiku, recommends that references to cultural landscapes be amended to reference wāhi tūpuna so that all pORPS provisions are consistently using the term wāhi tūpuna when addressing issues associated with cultural landscapes.³⁰ I consider there is scope for amendment under submission 00223.006 from Ngāi Tahu ki Murihiku requesting that the pORPS “Provide further clarification within the pORPS provisions regarding the terms cultural landscapes and wāhi tūpuna”.³¹

4.3. Analysis

26. I agree that Ms Bartlett’s suggestion makes sense. The term cultural landscape is only used once in this provision and does not provide a meaningful distinction from wāhi tūpuna. Using the term wāhi tūpuna here provides consistency in the provision and throughout the pORPS. It is a direct expression of Kāi Tahu values. I recommend accepting this change for the reasons set out in Ms Bartlett’s evidence. I consider this a minor change that does not require re-evaluation under RMA s32AA.³²

4.4. Final recommendation

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

²⁷ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

²⁸ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

²⁹ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

³⁰ Maria Bartlett for Ngāi Tahu ki Murihiku, para [34]

³¹ 00223.006 Te Ao Marama

³² Resource Management Act 1991, schedule 1, clause 16(2).

RMIA-AA-I1 –The cultural impacts of *discharges* to air are poorly recognised in resource management

The cultural impacts of air pollution and *discharges* to air are poorly understood and seldom recognised. *Discharges* to air can adversely affect health and can be culturally offensive. Clean air is important to the health of ~~māhika kai~~ *māhika kai*³³ and people, and odour and other emissions impact on the tapu of wāhi tapu sites. Air emissions can also reduce the visibility of ~~cultural landscape~~ *wāhi tūpuna*³⁴ features and of the moon, stars, and rainbows.

...

Specific concerns include:

- Potential impacts of climate change which could ~~potentially~~ negatively affect ~~taoka such as wai Māori māori and wai tai,~~ ³⁵ ~~māhika kai~~ *māhika kai*³⁶ and biodiversity, *wāhi tūpuna*, *wāhi tapu*, and wāhi taoka, the coastal environment³⁷ and³⁸ the well-being of all people, and the environment as an integrated system.³⁹
- Insufficient data has been collected and distributed about the *effects* of *discharges* to air.
- The *effects* of *discharges* to air on the health of people and ~~māhika kai~~ *māhika kai*⁴⁰, including *discharges* from industrial or trade premises, agrichemical spray drift, vehicle emissions and emissions from domestic fires in built up areas prone to inversion layers.
- Culturally offensive *discharges* from crematoriums, if located in close proximity to ~~māhika kai~~ *māhika kai*⁴¹ and wāhi taoka.
- Adverse *effects* of vegetation burning on the integrity and the tapu of wāhi tapu sites.
- Impacts of odour on wāhi tapu, ~~māhika kai~~ *māhika kai*⁴² sites and *nohoaka*.
- Impacts of urban settlement and *discharges* to air on the visibility of the sky and *wāhi tūpuna* features.
- The impact of dust on the integrity of rock art sites.

³³ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

³⁴ 00223.006 Te Ao Marama

³⁵ 00226.077 Kāi Tahu ki Otago

³⁶ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

³⁷ 00226.077 Kāi Tahu ki Otago

³⁸ Clause 16(2), Schedule 1, RMA

³⁹ 00226.077 Kāi Tahu ki Otago

⁴⁰ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

⁴¹ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

⁴² Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

5. RMIA-CE-I5 – Wāhi tapu and wāhi tūpuna values in the coastal environment are poorly recognised and protected

5.1. Introduction

28. RMIA-CE-I5 was discussed in section 3.9.29 of the s42A report, with my analysis in paragraph [706]. Note that both the discussion of submissions and evidence, and the section on analysis, also applies to similar amendments that I recommend making to RMIA-AA-I1 and is repeated there for clarity and ease of reference.
29. The recommended version of this provision currently reads:⁴³

RMIA-CE-I5 – Wāhi tapu and wāhi tūpuna values in the coastal environment are poorly recognised and protected

The coastal environment is the domain of Takaroa and includes the *coastal waters* of Te ~~Tai o Ara~~ Te Uru Tai – o – Araiteuru⁴⁴ as well as the adjoining land. Tauraka waka (waka landing places) occur up and down the coast in their hundreds and wherever a tauraka waka is located there is also likely to be a *nohoaka*, fishing ground, kaimoana resource, or rimurapa (seaweed) with the sea trail linked to a land trail or ~~mahika kai~~ *mahika kai*⁴⁵ resource. Burial sites and other wāhi tapu are also associated with these *wāhi tūpuna*. Seascapes such as reef systems also form part of *wāhi tūpuna*.

Wāhi tapu and the broader *wāhi tūpuna* can be adversely affected by inappropriate activities and developments on coastal land and in the *coastal marine areas*.

Specific concerns include:

- Damage to and disturbance of wāhi tapu resulting from coastal erosion and the impacts of climate change,⁴⁶ earthworks associated with *subdivisions*, and development of coastal walkways.
- The *effects* of *land* fragmentation on access to sites of significance.
- Loss of the integrity of cultural landscapes by *reclamation* and the inappropriate location of *structures* and activities associated with aquaculture, tourism activities, *infrastructure*, and vessel moorings.
- Disturbance from mining of the seabed and foreshore.
- Restriction of access to tauraka waka and associated trails due to *land* development.
- The cumulative *effect* of incremental, uncoordinated *subdivisions*, *land use* change and building within the coastal environment.

⁴³ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements.

⁴⁴ 00226.083 Kāi Tahu ki Otago

⁴⁵ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

⁴⁶ 00226.083 Kāi Tahu ki Otago

- Failure to recognise and provide for the *effects of climate change and*⁴⁷ of changing sea levels on coastal landscapes.

5.2. Submissions and evidence

30. Maria Bartlett, giving evidence for Ngāi Tahu ki Murihiku, recommends that references to cultural landscapes be amended to reference wāhi tūpuna so that all pORPS provisions are consistently using the term wāhi tūpuna when addressing issues associated with cultural landscapes.⁴⁸ I consider there is scope for amendment under submission 00223.006 from Ngāi Tahu ki Murihiku requesting that the pORPS “Provide further clarification within the pORPS provisions regarding the terms cultural landscapes and wāhi tūpuna”.⁴⁹

5.3. Analysis

31. I agree that Ms Bartlett’s suggestion makes sense. The term cultural landscape is only used once in this provision and does not provide a meaningful distinction from wāhi tupuna. Using the term wāhi tupuna here provides consistency in the provision and throughout the pORPS. It is a direct expression of Kāi Tahu values. I recommend accepting this change for the reasons set out in Ms Bartlett’s evidence. I consider this a minor change that does not require re-evaluation under RMA s32AA.⁵⁰
32. In *Reply report 8: CE – Coastal environment*, and in response to a submission by Kāi Tahu ki Otago and Mr Bathgate’s evidence for the submitter, Mr MacLennan recommends incorporating an addition to CE-O1 which refers to ‘te hauora o Te Tai o Arai Te Uru.’ This conflicts with the amendment sought by Kāi Tahu ki Otago to RMIA-CE-I5, which is to replace ‘Te Tai o Ara Te Uru’ with ‘Te Tai-o-Araiteuru’. There are inconsistencies in the way this term is expressed across the Statutory Acknowledgement and the Kāi Tahu ki Otago Natural Resources Management Plan 2005. After discussing with Kāi Tahu ki Otago, I recommend retaining the notified wording which is consistent with the Statutory Acknowledgement.

5.4. Final recommendation

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

RMIA-CE-I5 – Wāhi tapu and wāhi tūpuna values in the coastal environment are poorly recognised and protected

The coastal environment is the domain of Takaroa and includes the *coastal waters* of Te Tai o Ara Te Uru as well as the adjoining land. Tauraka waka (waka landing places) occur up and down the coast in their hundreds and wherever a tauraka waka is located there is also likely to be a *nohoaka*, fishing ground, kaimoana

⁴⁷ 00226.083 Kāi Tahu ki Otago

⁴⁸ Maria Bartlett for Ngāi Tahu ki Murihiku, para [34]

⁴⁹ 00223.006 Te Ao Marama

⁵⁰ Resource Management Act 1991, schedule 1, clause 16(2).

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resource, or rimurapa (seaweed) with the sea trail linked to a land trail or ~~māhika kai~~ *māhika kai*⁵¹ resource. Burial sites and other wāhi tapu are also associated with these *wāhi tūpuna*. Seascapes such as reef systems also form part of *wāhi tūpuna*.

Wāhi tapu and the broader *wāhi tūpuna* can be adversely affected by inappropriate activities and developments on coastal land and in the *coastal marine areas*.

Specific concerns include:

- Damage to and disturbance of wāhi tapu resulting from coastal erosion and the impacts of climate change,⁵² earthworks associated with *subdivisions*, and development of coastal walkways.
- The *effects of land* fragmentation on access to sites of significance.
- Loss of the integrity of ~~cultural landscapes~~ *wāhi tūpuna*⁵³ by *reclamation* and the inappropriate location of *structures* and activities associated with aquaculture, tourism activities, *infrastructure*, and vessel moorings.
- Disturbance from mining of the seabed and foreshore.
- Restriction of access to tauraka waka and associated trails due to *land* development.
- The cumulative *effect* of incremental, uncoordinated *subdivisions*, *land use* change and building within the coastal environment.
- Failure to recognise and provide for the *effects of climate change* and⁵⁴ of changing sea levels on coastal landscapes.

⁵¹ Clause 10(2)(b)(i) – consequential amendment arising from 00226.038 Kāi Tahu ki Otago

⁵² 00226.083 Kāi Tahu ki Otago

⁵³ 00223.006 Te Ao Marama

⁵⁴ 00226.083 Kāi Tahu ki Otago