

BEFORE THE FRESHWATER HEARING PANEL

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

**SUPPLEMENTARY EVIDENCE OF MARIA BARTLETT
ON BEHALF OF WAIHŌPAI RŪNAKA, ŌRAKA-APARIMA RŪNAKA AND TE
RŪNAKA O AWARUA**

18 August 2023

INTRODUCTION

1. My name is Maria Bartlett and my evidence-in-chief dated 28 June 2023 outlines my qualifications and experience relevant to the matters in this brief of evidence.
2. I have prepared this supplementary evidence following discussion with Sandra McIntyre as part of the coordinated Kāi Tahu case.
3. I support the overall position of the S42a reporting officer with regard to the implications of the NPSIB for the FPI parts of the pORPS, whilst supporting additional recommendations made in the supplementary evidence of Ms McIntyre. This statement of evidence should be read as complementary to the supplementary statement of Ms McIntyre, with a primary focus on the matter of wetlands.

APPLICATION OF NPSIB

4. The National Policy Statement for Indigenous Biodiversity (NPSIB) applies to indigenous biodiversity in the terrestrial environment, including natural inland wetlands (clause 1.3(2)(c)), which may also be included within significant natural areas (SNAs) (clause 1.3(2)(e)).
5. Where there is conflict between the NPSIB and national direction on freshwater management,¹ the freshwater-specific national direction prevails (clause 1.4(3)).

MAURI

6. Prioritisation of the mauri, intrinsic value and well-being of indigenous biodiversity is one of the decision-making principles that must inform implementation of the NPSIB (clause 1.5(3)(a)). My position on the prioritisation of mauri was addressed in the (non-FPI) hearing on the Integrated Management (IM) chapter of the pORPS². Whether it is the mauri of the natural environment that is prioritised,³ or the mauri of ecosystems,⁴ the existing relevant drafting within the IM chapter generally supports this decision-making principle of the NPSIB⁵. For natural inland wetlands, this means prioritising the

¹ National Policy Statement for Freshwater Management 2020 and Resource Management (National Environmental Standards for Freshwater) Regulations 2020.

² Rebuttal evidence dated 14 December 2022.

³ As per the notified version of IM-P2 supported by Ngāi Tahu ki Murihiku and Kāi Tahu ki Otago.

⁴ As per the s42a provisions dated 2 June 2023.

⁵ Unless otherwise stated in specific provisions of the pORPS, which will need to be reviewed in relation to the non-FPI parts of the pORPS in order to give effect to the NPSIB, as far as that is provided for in submissions.

mauri of indigenous biodiversity associated with them, in accordance with giving effect to the NPSIB (and IM policy), as well as prioritising the mauri of these waterbodies in a holistic sense when giving effect to Te Mana o te Wai in accordance with the NPSFM and LF-WAI-O1.⁶

7. As noted in my evidence in chief, the presence of indigenous vegetation in association with waterbodies is a Ngāi Tahu Indicator of Health,⁷ and when these indicators are improved, the mauri of waterbodies is protected and restored⁸.
8. Ms Boyd has identified an internal inconsistency in the NPSIB with respect to the restoration of natural inland wetlands (clause 3.21(2)(d)) and the pasture exclusion definition in the NPSFM⁹. She identifies that this creates vulnerability for degraded wetlands that have already lost more than 50% of their indigenous vegetation. I agree that the decision-making principles of the NPSIB should apply to these wetlands, including prioritisation of the mauri of the indigenous biodiversity of natural inland wetlands¹⁰. I also agree with Ms Boyd that these wetlands are waterbodies and that the NPSFM can therefore also be relied upon to prioritise the mauri of those waterbodies, in accordance with Te Mana o te Wai.¹¹ I principally look to the NPSFM to address the vulnerability that Ms Boyd has identified, whilst also acknowledging that the intent of the NPSIB for restorative actions, including an increase in indigenous vegetation, should be supported in the pORPS.
9. Prioritisation of mauri in a more holistic sense under the NPSFM, through the application of mātauraka, will necessarily reference the presence of indigenous vegetation and indigenous species that would naturally be associated with a natural inland wetland, as indicators of the health of the waterbody. Prioritisation of mauri in a more holistic sense under the NPSFM is not limited to natural inland wetlands but applies more broadly to natural wetlands as a waterbody type. Kāi Tahu have identified that wetlands are wāhi tūpuna and a valued waterbody type associated with taoka species and mahinga kai values.¹² As Ms Boyd points out, the applicability of the NPSFM to natural wetlands more broadly has already been recognised in the provisions of the FPI parts of the pORPS, such as in LF-FW-O9, and significantly LF-

⁶ Clause 1.3(1).

⁷ EiC, para 41.

⁸ EiC, para 30.

⁹ Evidence of Felicity Boyd dated 11 August 2023, para 69.

¹⁰ Ibid. para 71.

¹¹ Ibid. para 74.

¹² Resources of significance to Kāi Tahu, Wāhi tūpuna, p66, and APP7, Table 9, Repo Raupō.

FW-P10¹³ which requires an increase in the extent and condition of habitat for indigenous species to the greatest extent practicable. In that regard, I consider that LF-FW-O9 and LF-FW-P10 provide for the intent of the NPSIB to achieve restoration of the indigenous biodiversity of natural inland wetlands, and in particular, an increase of indigenous vegetation cover, whilst also giving effect to Te Mana o te Wai, through prioritising the protection of mauri and applying mātauraka.

TANGATA WHENUA

10. There are a number of decision-making principles in the NPSIB that draw on the relationship of tangata whenua with indigenous biodiversity (clauses 1.5(3)(b), (c), (d), (f) and (g)).
11. Consistent with s 8 of the Resource Management Act (RMA), the NPSIB requires that the principles of Te Tiriti o Waitangi are taken into account. These include core principles established by the Courts,¹⁴ such as kawanataka and rakatirataka as the foundations of partnership and the principle of active protection,¹⁵ which applies to the active protection of natural wetlands as wāhi tūpuna, taoka and mahika kai. The whakapapa relationships of tangata whenua with indigenous biodiversity are to be recognised in decision-making under the NPSIB, as are the kaitiaki responsibilities of tangata whenua. This is similar to the principle of kaitiakitanga that guides decision-making under the NPSFM, incorporating responsibilities for restoration and enhancement of waterbodies for the benefit of present and future generations.¹⁶
12. The NPSIB enables the application of te ao Māori and mātauranga Māori as a decision-making principle. There is a difference between the NPSIB and the NPSFM in this regard. Rather than being a decision-making principle, the NPSFM enables application of mātauraka as a matter of implementation when giving effect to Te Mana o te Wai¹⁷. Regardless, both instruments provide for the use of mātauraka, including Ngāi Tahu Indicators of Health, when understanding how to protect and restore the mauri of natural inland wetlands and their indigenous biodiversity, and natural wetlands more broadly in the case of the NPSFM.

¹³ Ibid. para 49.

¹⁴ See [He Tirohanga o Kawa ki te Tiriti o Waitangi \(waitangitribunal.govt.nz\)](https://www.waitangitribunal.govt.nz/).

¹⁵ MW-O1 requires that what is valued by mana whenua is actively protected. All natural resources are described as taoka that are highly valued by Kāi Tahu, linked to the people through whakapapa, and left by tūpuna to provide for and sustain life (Kāi Tahu values section of the pORPS, p65).

¹⁶ Te Mana o te Wai encompasses six principles that inform the NPSFM and its implementation, including the principle of Kaitakitanga under clause 1.3(4)(b).

¹⁷ Clause 3.2(2)(d) of the NPSFM.

13. Forming strong and effective partnerships with tangata whenua is a further decision-making principle of the NPSIB. This principle reinforces the importance of decision-makers heeding the position of Kāi Tahu on the management of indigenous biodiversity associated with natural inland wetlands. Partnership is, of course, a core principle of Te Tiriti o Waitangi, which is also supported by the recognition of authority in both the mana whakahaere and governance principles encompassed by Te Mana o te Wai,¹⁸ and therefore is applicable to the management of natural wetlands more broadly.

CLIMATE CHANGE

14. Ms Boyd has not discussed clause 3.6 of the NPSIB regarding climate change resilience. Clause 3.6(2) of the NPSIB requires that local authorities must recognise the role of indigenous biodiversity in mitigating the effects of climate change. Proposed LF-FW-O1A(7) in the FPI part of the pORPS references improving resilience to the effects of climate change alongside providing for the health and well-being of waterbodies. I understand that wetland protection and restoration, including the indigenous biodiversity associated with them, can have a role in mitigating the effects of climate change in a variety of ways, including in relation to the hydrological function of connected waterbodies (e.g. slowing the movement of water in times of high flows) or habitat provision (e.g. shading and refuge habitat). The Ngāi Tahu ki Murihiku reasons for submission include support for provisions that assist with a coordinated response to climate change.¹⁹

RECOMMENDED AMENDMENTS

15. I agree with Ms Boyd that the definition of natural wetland needs to be amended in order to address the identified vulnerability for degraded natural inland wetlands, ensuring some protection for them and that restoration activities improve their condition. This is consistent with a submission point of Ngāi Tahu ki Murihiku that has not been assigned a reference number in the summary of submissions, which requests use of an inclusive definition of natural wetlands that aligns with Te Tangi a Taurira policy.²⁰ I also note that vulnerability exists for natural inland wetlands before they are identified, given the complexities in identifying them that have been highlighted by Ms

¹⁸ Clause 1.4(4)(a) and (d) of the NPSFM.

¹⁹ Attachment One to the Ngāi Tahu ki Murihiku submission on the FPI parts of the pORPS, para 22.

²⁰ Attachment One to the Ngāi Tahu ki Murihiku submission on the FPI parts of the pORPS, p9. Relevant Te Tangi a Taurira policy includes Kaupapa 3.4.12.5 (p127), Issue 3.5.10 (Protection of the mauri and wairua of rivers, lakes and wetlands), Kaupapa 3.5.18.1, 3.5.18.3 and 3.5.18.4 and Issues identified on p166.

Boyd.²¹ This is an example of the issue raised by Ngāi Tahu ki Murihiku in submissions regarding the need to provide clear guidance about how to achieve objectives, including those in the MW chapter²² and IM chapter,²³ in situations where mapping is intended but has not yet occurred²⁴. I consider that the proposed amendment to the definition aligns with LF-WAI-O1 and my recommended amendments to LF-WAI-AER2 in support of the Ngāi Tahu ki Murihiku submission²⁵ and recognises the reasons for that submission²⁶.

16. I support the amendment put forward by Ms McIntyre to address issues with the change to LF-FW-P9(1) proposed by Ms Boyd, and the reasoning for that amendment. I note that reversibility of damage to a natural wetland, which would not be avoided under the wording promoted by Ms Boyd, provides for uncertain outcomes. The existing degradation of natural wetlands that has occurred over decades is arguably reversible through hydrological restoration, native re-vegetation and native species re-stocking, but in the meantime (i.e. over future decades) damage can be expected to have a level of adverse effect on ecological function of the wetland and its connection to other waterbodies. The wording of Ms McIntyre addresses this concern by instead referencing ecological integrity as the test.

²¹ Evidence of Felicity Boyd dated 11 August 2023, para 66-67.

²² Relevant to MW-O1 and associated policies and methods, MW-P2 and MW-P3, and MW-M1.

²³ Relevant to protection of mauri under IM policy and climate change objectives and policies (IM-O4, IM-P8, IM-P10, IM-P13 and IM-P14).

²⁴ Submission point FPI042.016 and non-FPI submission point 00223.003.

²⁵ EIC, paras 35-37.

²⁶ Para 13 of the Ngāi Tahu ki Murihiku submission on the FPI parts of the pORPS, and Attachment One to that submission, also para 13.