

BEFORE THE OTAGO REGIONAL COUNCIL

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

AND

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

**STATEMENT OF EVIDENCE OF AILSA MARGARET CAIN
ON BEHALF OF THE CAIN WHĀNAU
IN RESPONSE TO OTAGO REGIONAL COUNCIL EVIDENCE ON
NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY**

19 September 2023

INTRODUCTION

1. My name is Ailsa Margaret Cain. My qualifications and experience are set out in my evidence in chief dated 23 November 2022 (**EIC**).
2. This supplementary evidence responds to the evidence of the Otago Regional Council (**ORC**) in relation to the implications of the National Policy Statement for Indigenous Biodiversity (**NPSIB**) for the non-freshwater provisions of the proposed Otago Regional Policy Statement (**ORPS**).
3. The key documents that I have referred to in preparing this supplementary evidence include:
 - a. the supplementary evidence of Andrew MacLennan, 8 September 2023
 - b. Statement of Evidence of Kelvin Michael Lloyd, 8 September 2023
 - c. the NPSIB
 - d. the NPSIB Information for Tangata Whenua.
4. The Cain Whānau submission is one of two submissions on the ORPS from Māori landowners¹, and the only one that specifically refers to issues relating to Māori land. Therefore, the Cain Whānau submission provides the Hearing Panel with an Otago case to consider the NPSIB in relation to Māori land.
5. My submission traverses two matters regarding Maranuku and the NPSIB:
 - a. Local authorities working in partnership with owners of specified Māori land
 - b. Sustainable customary use.
6. In 1868, the Maranuku reserve (see **Appendix A**) was granted on the basis that the land was to be absolutely inalienable for ever, and that the Governor-in-Council 'shall have no power to consent to an alienation by lease or otherwise'. Yet the land was taken by the Crown 40 years later. It was subsequently returned to owners in 1998 via Treaty Settlement legislation but the Crown refused to remove the scenic reserve status it bestowed after the land was taken. Additionally, the use of Maranuku by owners is heavily restricted due to decades of national, regional, and local decisions by authorities that have failed to engage and provide for owners' rights and interests.

¹ The second being Te Rūnanga o Ngāi Tahu who holds Treaty Settlement assets on behalf of Ngāi Tahu Whānui.

7. In my EIC, I outlined the alienation of owners from Maranuku and the impacts that has had on development and economic opportunities, and the direction sought in the ORPS for redress and equity. I discussed issues for the Cain Whānau from expert opinions embedded in the status quo that are contrary or at odds with Ngāi Tahu paradigms, expectations, and aspirations as well as ideas of what is or is not appropriate at place.

LOCAL AUTHORITIES WORKING IN PARTNERSHIP WITH OWNERS OF SPECIFIED MĀORI LAND

8. The legal submission by ORC notes that there are no scope impediments to seeking alignment with the NPSIB but the submission is silent on if the necessary work has been done by ORC in partnership with owners of specified Māori land to include any proposed changes in the policy statement.
9. Section 3.18 Specified Māori land of the NPSIB states:
 - (1) Local authorities must work in partnership (which includes acting in good faith) with tangata whenua and owners of specified Māori land to develop, and include in policy statements and plans, objectives, policies, and methods that, to the extent practicable:
 - (a) maintain and restore indigenous biodiversity on specified Māori land; and
 - (b) protect SNAs and identified taonga on specified Māori land.
 - (2) Objectives, policies, and methods developed under this clause [in partnership with tangata whenua and owners of specified Māori land] must:
 - (c) enable new occupation, use, and development of specified Māori land to support the social, cultural, and economic wellbeing of tangata whenua; and
 - (d) enable the provision of new papakāinga, marae and ancillary community facilities, dwellings, and associated infrastructure; and
 - (e) enable alternative approaches to, or locations for, new occupation, use, and development that avoid, minimise, or remedy adverse effects on SNAs and identified taonga on specified Māori land, and enable options for offsetting and compensation; and

(f) recognise and be responsive to the fact that there may be no or limited alternative locations for tangata whenua to occupy, use, and develop their lands; and

(g) recognise that there are circumstances where development will prevail over indigenous biodiversity; and

(h) recognise and be responsive to any recognised historical barriers tangata whenua have faced in occupying, using, and developing their ancestral lands

10. The NPSIB deliberately introduces a shift in the management of indigenous biodiversity by recognising tangata whenua and owners of specified Māori land.

11. This approach is a notable matter for the ORPS as it is founded on recognition and engagement with mana whenua and Kāi Tahu. Consultation to date by ORC on the ORPS has been with Te Rūnanga o Ngāi Tahu, as the iwi authority, and Aukaha and Te Ao Marama Inc on behalf of the Kāi Tahu Papatipu Rūnanga with shared interests in Otago. There is no partnership by ORC with owners of specified Māori land nor have they been proactively engaged by ORC regarding the NPSIB. Kāi Tahu Papatipu Rūnanga and their environmental entities, Aukaha and Te Ao Marama Inc, do not represent owners of specified Māori land in Otago nor have the mandate to act on behalf of all owners.

12. The deliberate inclusion of 'owners of specified Māori land' in the NPSIB is partly due to definitions. The definition for mana whenua in the ORPS has the same meaning as the Resource Management Act 1991, being: 'customary authority exercised by iwi or hapū in an identified area'. Tangata whenua, in relation to a particular area, is defined as meaning 'the iwi, or hapū, that holds mana whenua over that area'. Maranuku is held and transferred through individual whakapapa, therefore not meeting the definition of tangata whenua or mana whenua. Hence, the need in the NPSIB to recognise owners of specified Māori land.

13. ORC has not worked in partnership with landowners of Maranuku to develop, and include in policy statements and plans, objectives, policies, and methods to maintain and restore indigenous biodiversity on their land. The amendments proposed for the ORPS in the supplementary evidence of Mr Maclennan, which prevent Māori landowners from being involved in the preparation of the ORPS provisions affecting indigenous biodiversity and Māori land, are not in keeping with the intent of the NPSIB.

14. The rush to include the NPSIB in the ORPS risks undermining the deliberate shift in the management of indigenous biodiversity. As I discussed in my EIC and during my oral submission, the owners of Maranuku have been subjugated to centuries of inequitable and ignorant land and resource decision making by authorities. In my opinion, this rush by ORC to include NPSIB will result in yet more unnecessary and inappropriate layers of regulation and bureaucracy on the Cain Whānau and owners of Maranuku.

15. Part 4 of the NPSIB allows for time to be taken to get these provisions right for owners of specified Māori land. I not aware of ORC undertaking the necessary work and information requirements to include provisions for specified Māori land. Even in ORC's evidence on the NPSIB, there are gaps in expertise such as mātauranga Māori. Therefore, I consider that these amendments should not be made to the ORPS until that work is done in good faith and in partnership.

16. The Ministry for the Environment advises that:

The NPSIB recognises the historical barriers tangata whenua have faced in occupying, using and developing their lands and the disproportionate extent of indigenous biodiversity on that land compared to general land. The NPSIB includes specific provisions to acknowledge the implications of these historic differences.²

17. With regards to these historical barriers to Māori land, 'management approaches must recognise and be responsive...this includes allowing development to take higher priority than protection of indigenous biodiversity in some situation.'³

18. ORC and owners of Maranuku must be certain that the ORPS allows for that development and management of indigenous biodiversity while providing the redress and equity sought by the Cain Whanau in its submission.

SUSTAINABLE CUSTOMARY USE

19. The NPSIB uses the term 'sustainable customary use'. In Mr Maclennan's supplementary evidence, he uses the term 'sustainable use of mahinga kai'. I recommend that 'sustainable' be deleted.

² Ministry for the Environment (2023) *National Policy Statement for Indigenous Biodiversity: Information for tangata whenua*, p. 3

³ Ibid.

20. Sustainable is a Western construct and mahinga kai is a fundamental Kāi Tahu practice that comes with its own tikanga, kawa, and mātauranga. I have experienced experts inappropriately using western constructs to determine if mahinga kai can be practiced at place. By including 'sustainable' there is an unnecessary risk that experts define sustainability and what that means in relation to mahinga kai thus colonising the cultural practice. I do not think the ORPS benefits from the inclusion of 'sustainable' but I do believe that Kāi Tahu Whānui are disadvantaged by its inclusion.

21. Mahinga kai is referenced multiple times in the ORPS and its inclusion is not driven by the NPSIB nor does the NPSIB manage all aspects of mahinga kai. Mahinga kai is a Kāi Tahu practice that is defined in the Ngāi Tahu Claims Settlement Act 1998 and Iwi Management Plans. Thus, mahinga kai is not determined by the NPSIB nor submissive to the term 'sustainable customary use'.



Ailsa Cain

19 September 2023

APPENDIX A: MAP OF MARANUKU RESERVE

