

**BEFORE THE HEARINGS PANEL**

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

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

**19 SEPTEMBER 2023**

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## INTRODUCTION

1. My name is Maria Bartlett. My evidence-in-chief dated 23 November 2022 outlines my qualifications and experience relevant to the matters in this brief of evidence.
2. I have prepared this evidence following discussions with Michael Bathgate, Ailsa Cain and Ben Farrell.
3. My evidence is focussed on the implications of the National Policy Statement for Indigenous Biodiversity (NPSIB) in relation to Māori land owners. The purpose of my evidence, on behalf of the three Ngāi Tahu ki Murihiku Rūnanga, is to build on the Kāi Tahu case presented in the non-FPI hearing, but “go further” in a manner that supports the thrust of Cain whānau evidence, and to provide an additional perspective to that of Mr Bathgate on this matter. For clarity, my evidence does not represent the views of all Kāi Tahu parties.

## MĀORI LAND OWNERS

4. The definition of ‘mana whenua’ in the proposed Otago Regional Policy Statement (pORPS) references the Resource Management Act (RMA) definition, as follows:

*“means customary authority exercised by an iwi or hapū<sup>1</sup> in an identified area”.*

5. I note that this definition does not reference whānau who are beneficial owners of Māori land, including lands granted under the South Island Landless Natives Act 1906 (SILNA), not all of which were granted to Ngāi Tahu whānau.
6. In this process Ms Cain is representing particular whānau who are beneficial owners of a discrete area of Māori land in the Otago region and is therefore able to provide a valuable perspective to the hearing panel on the practical application of the NPSIB in the context of the pORPS.
7. The NPSIB clause 3.18(1) states (with underlining added for emphasis):

*“Local authorities must work in partnership (which includes acting in good faith) with tangata whenua and owners of specified Māori land to develop, and*

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<sup>1</sup> I have added the macron on the word ‘hapū’, which is missing from the RMA definition and from the Interpretation section of the pORPS. I consider it would be appropriate to add the macron to ensure consistent use of te reo Māori within the document.

*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.”*

8. To my knowledge Otago Regional Council (ORC) has not worked in partnership with owners of Māori land in Otago to develop the provisions of the pORPS that address maintenance and restoration of indigenous biodiversity, and protection of Significant Natural Areas (SNAs) and identified taonga, on specified Māori land (as it is defined in the NPSIB). In order for the pORPS to appropriately give effect to the NPSIB this needs to occur. As described in my evidence in chief, the pORPS has been drafted in partnership with Papatipu Rūnaka and those representing Papatipu Rūnaka interests through the entities of Aukaha and Te Ao Mārama. These entities do not represent beneficial owners of Māori land.

9. Te Rūnanga o Ngāi Tahu (TRONT) represents all Ngāi Tahu members, in accordance with the Te Rūnanga o Ngāi Tahu Act 1996 (TRONT Act), which states in section 15(1) (with macrons added):

*“Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui.”*

10. In the Interpretation section of the TRONT Act the phrase ‘Ngāi Tahu Whānui’ is defined as follows:

*“means the collective of individuals who descend from the primary hapū of Waitaha, Ngāti Mamoe, and Ngāi Tahu, namely Kāti Kuri, Kāti Irakehu, Kāti Huirapa, Ngāi Tūāhuriri ,and Kāi Te Ruahikihiki.”*

11. Within this process to date, my understanding is that the only voices that can claim to represent owners of specified Māori land are those of TRONT<sup>2</sup> and the Cain whānau specific to consideration of the implications for Cain whānau land. In my opinion, neither can fully satisfy the requirements of the NPSIB clause 3.18(1). It is my view that a further process step is required to enable appropriate partnership with owners

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<sup>2</sup> I note that TRONT itself is a Māori land owner, as are papatipu rūnaka, so I am specifically differentiating the level of whānau here as compared to iwi or hapū.

of specified Māori land in the development of pORPS provisions. I can see two options that would satisfy this requirement:

(1) introducing a procedural step in this hearing process that reserves decision on matters pertaining to maintenance and restoration of indigenous biodiversity, and protection of Significant Natural Areas (SNAs) and identified taonga, on specified Māori land, subject to ORC approaching owners of specified Māori land directly for comment on draft provisions and providing the results of that engagement to the hearing panel in order to inform the decision; or

(2) providing for a partnership approach between ORC and owners of specified Māori land through the pORPS provisions themselves, including opportunity to amend provisions as a consequence of discussions.

12. In support of the second option, I have proposed some include initial drafting in my **Attachment One** to assist the hearing panel in their consideration of this matter. It would likely benefit from additional work and the expertise of other planners in this process to help refine my thinking. My proposed amendments focus on the MW and ECO chapter provisions where something additional is required to appropriately apply clause 3.18(1) of the NPSIB. I find scope for these amendments in submission points FS00223.117 and FS00223.119<sup>3</sup>.
13. I observe that clause 1.4(2) of the NPSIB indicates that where there is conflict between the New Zealand Coastal Policy Statement (NZCPS) and the NPSIB, then the NZCPS prevails. Such conflict would only arise if Māori land is mapped within the coastal environment in accordance with CE-M1. Māori land outside of the coastal marine area may be excluded from the coastal environment through appropriate application of MW-M1, MW-M2, MW-M4 and MW-M5 if needed in order to realise the intent of MW-P4<sup>4</sup>.

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<sup>3</sup> Te Ao Mārama partially supported the primacy wording offered in the Cain whānau submission, and my read is that the wording by its nature pulled in all provisions of the RPS relevant to addressing the submission point. I signalled in my EiC on the non-FPI that I was open to exploring wording brought forward by Cain whānau. In this evidence I go further to supply some additional wording relevant to application of the NPSIB.

<sup>4</sup> Amendment to CE-P2(1)(g) that adds the phrase “excluding Māori land,” after the comma would also provide certainty that the regime of the NPSIB applies to Māori land

**ATTACHMENT ONE: Drafting that applies clause 3.18(1) of the NPSIB**

The following recommended drafting has not yet been formatted to differentiate my recommendations as distinct from Mr McLennan's evidence. A formatted version can be supplied.

**Māori land owners**

means owners of Māori land, as such land is defined in this RPS

**Papakāika**

“ ... by mana whenua and Māori land owners ...”

**MW-O1 – Principles of Te Tiriti o Waitangi**

“ ... a partnership approach between councils and papatipu rūnaka and Māori land owners to ensure that what is valued by mana whenua and Māori land owners ...”

**MW-P2 – Treaty principles**

“(1A) recognising the status of Māori land owners and facilitating the involvement of Māori land owners in decision-making that affects Māori land.”

**MW-P4 – Sustainable use of Native Reserves and Māori land**

“Kāi Tahu and Māori land owners are able to ...”

**MW-M1A – Partner with Māori land owners**

Local authorities must work in partnership with Māori land owners regarding management of Native Reserves and Māori land.

**ECO-P13 – Managing indigenous biodiversity on Native reserves and Māori land**

- (1) This policy applies to management of indigenous biodiversity on Native Reserves and Māori land such that where there is conflict between application of this policy and other ECO policies, this policy prevails.
- (2) Local Authorities shall work in partnership (which includes acting in good faith) with Māori land owners to manage indigenous biodiversity on Native reserves and Māori land to:
  - (a) ensure decision-making processes are developed in accordance with tikanga and in a manner that is commensurate with the capacity and capability of landowners to be actively engaged and represented,

- (b) enable land owners to occupy, subdivide, use and develop their land to maintain their connection to their whenua and enhance their social, cultural or economic well-being, including through using resources for mahika kai and developing papakāika, marae and ancillary facilities associated with customary activities,
- (c) in accordance with mātauraka, enable land owners to develop and lead alternative approaches to maintaining and restoring indigenous biodiversity, and protecting significant natural areas and identified taonga on their land, to the extent practicable,
- (d) recognise and respond to the fact that:
  - (i) there may be no or limited alternative locations for *mana whenua* and Māori land owners to occupy, subdivide, use, and develop their lands, and
  - (ii) *mana whenua* and Māori land owners have faced historical barriers to occupation, use and development of their ancestral lands.

#### **ECO-M4D - Native reserves and Māori land**

Local authorities must work in partnership (which includes acting in good faith) with mana whenua and owners of native reserves and Māori land to develop, and include in district plans and regional plans, and this regional policy statement, objectives, policies, and methods that:

- (a) ensure decision-making processes are developed in accordance with tikanga and in a manner that is commensurate with the capacity and capability of landowners to be actively engaged and represented,
- (b) enable land owners to occupy, subdivide, use and develop their land to maintain their connection to their whenua and enhance their social, cultural or economic well-being, including through using resources for mahika kai and developing papakāika, marae and ancillary facilities associated with customary activities,
- (c) in accordance with mātauraka, enable land owners to develop and lead alternative approaches to maintaining and restoring indigenous biodiversity, and protecting significant natural areas and identified taonga on their land, to the extent practicable,
- (d) recognise and respond to the fact that:
  - (i) there may be no or limited alternative locations for *mana whenua* and Māori land owners to occupy, subdivide, use, and develop their lands, and

(ii) *mana whenua* and Māori land owners have faced historical barriers to occupation, use and development of their ancestral lands.