Written Submission on Proposed Otago Regional Policy Statement 2021

To: Otago Regional Council (rps@orc.govt.nz)

1. This is a submission by the "**Cain whānau**" as actual and traditional owners of Maranuku[1] (including Te Ture Whenua land) on the Proposed Otago Regional Policy Statement 2021. In making this submission, the landowners:

- **a.** Could not gain an advantage in trade competition through this submission.
- **b.** Are directly affected by an effect of the subject matter of the submission that adversely affects the environment; and does not relate to trade competition or the effects of trade competition
- **c.** May wish to be heard in support of my submission
- **d.** Will consider presenting a joint case with them at a hearing if others make a similar submission

2. The owners seek, on behalf of themselves and their children thereafter:

- **a.** Amendments to all the provisions of the RPS in accordance with but not limited to the changes set out in the Table below;
- **b.** Any alternative or other amendments to address the matters raised in this submission, and to achieve the intent of this submission; and
- **c.** Any similar, alternative, consequential and/or other relief as necessary to address the issues raised in this submission.

3. This submission has been prepared by Cue Environmental on behalf of multiple landowners. Further details about some of the land owned by the submitter is provided overleaf. This land is not the only land owned by the submitters. Some of the landowners are mana whenua of land in and throughout Otago (they hold customary authority on the land).

Submitter Details
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[1] There are multiple owners in the Maranuku blocks, not just the Cain whānau.

#	Provision	Position	Comment	Specific Decision Sought
1	**List of Māori Land Reserves**	Support	The owners have shared ownership interest in land identified on the list and support this listing. However, the list should be expanded to capture land subject to ancillary claims and where relevant, the provision of its return to whanau in the near future.	Retain the list of Māori Land Reserves and amend to include land subject to be returned to landowners under ancillary claim provisions.
2	**Definition of Papakāika or papakāinga**	Support in part	The definition of Papakāika or papakāinga should be amended to: • clarify that use and development is not restricted to mana whenua (for example allow for tenants, development arrangements between landowners and private companies) • clarify the term captures resources, not just land • provide for subdivision and commercial purposes, not "limited" commercial purposes • remove the word "sustain" as it has no practical meaning in the context of the RPS • refer to "in general accordance" with "tikanga", as use of "in accordance with" "tikanga Māori" is not necessary and could have inadvertent consequences.	Retain and amend definition of Papakāika or papakāinga as follows: ***Papakāika or papakāinga*** *means subdivision, use and development by mana whenua or others as allowed by mana whenua, of ancestral or tribal lands and resources to provide for ~~sustain~~ themselves and others in general accordance with tikanga ~~Māori~~, which may include residential activities and non-residential activities for cultural, social, recreational, environmental or ~~limited~~ commercial purposes.*

3	**MW-P4**	Support in part	The policy can be improved by amending the wording to better align with Te Ture Whenua Māori Act 1993 and Māori Land Act 1993. It is unreasonable to require activities to avoid adverse effects on the health and safety of people. There is an inherent danger in many activities in day-to-day life. There are areas of indigenous forested land where removal of vegetation may be required or desired by landowners to utilise the land. Such vegetation removal could be considered by some practitioners (especially ecologists) as being "significant", particularly in locations where that vegetation provides the only remnant forest in certain areas – for example Kaka Point where rural land use has resulted in significant deforestation with the forested Māori land yet to be utilised. Similarly, there is much Māori land located in ONFLs or within the coastal environment or alongside waterbodies. Mana Whenua provisions, or at least MW-P4, should have primacy over other provisions in the RPS in the event that a conflict arise. Potential for conflicts in the provisions, of particular concern to the submitter, are provisions which protect or restrict clearance of indigenous vegetation, and otherwise restrict use and development opportunities, including the need to protect land from natural hazard risk, including land and coastal marine area	Retain and amend MW-P4 as follows: ***MW–P4 – ~~Sustainable~~ Protection, development and use of Māori land and resources*** *Kāi Tahu are able to protect, subdivide, occupy, develop, and utilise ~~protect, develop and use land and resources within~~ native reserves and land held under Te Ture Whenua Māori Act 1993 for the benefit of its owners, their whānau, and their hapū ~~in a way consistent with their culture and traditions and economic, cultural and social aspirations, including for papakāika, marae and marae related activities,~~ while:* *(1) recognising and providing for the primacy of ahi kā, reconnection with the whenua and continuation of mahinga kai* *(2) avoiding significant adverse effects on the health and safety of people,* *(3) ~~avoiding significant~~ minimising adverse effects on matters of national importance, and* *(4) avoiding, remedying, or mitigating other adverse effects.* *MW-P4 shall be given primacy over any other provision in this RPS.* Or as an alternative to inserting the term "*MW-P4 shall be given primacy over any other provision in this RPS*": • Include a provision which gives primacy to all MW provisions of

#	Provision	Position	Comment	Specific Decision Sought
			that is or may be deemed "outstanding", "highly valued", "significant", or subject to "significant natural hazard risk". Alternatively, all provisions could be amended as required to ensure landowners are not discernibly restricted from protecting, subdividing, using and developing their land for a range of uses.	other non-MW provisions in the RPS; or • Amend any provision necessary to ensure the owners can protect, occupy, subdivide, develop, and use their resources (inclusive of land, freshwater, coastal water and coastal marine area) to their benefit.

#	Provision	Position	Comment	Specific Decision Sought
4	**MW–M1**	Support in part	Kāi Tahu may not seek or desire some places, areas or landscapes of cultural, spiritual or traditional significance to be identified or mapped. Alayna Renata research for her thesis on Seeking Cultural Polyvocality in Landscape Policy showed that the most important landscapes for Kāi Tahu are those that are associated with whānau and whakapapa. It also showed the least important landscapes to Kāi Tahu were those which contained middens. Middens are very easy to map while the complex interrelationships between places within the landscape and metaphysical and physical elements are not. This point illustrates that mapping is somewhat limited and does not adequately record the countless and timeless linkages criss-crossing the region. Mapping alone cannot identify all matters referenced in this provision nor suitably provide, in a Te Ao Māori context, for their protection.	Retain and amend as follows: ***MW–M1 – Collaboration with Kāi Tahu*** *Local authorities must collaborate with Kāi Tahu to:* *(1) identify and ~~map~~ record places, areas or landscapes of cultural, spiritual or traditional significance to them, using methods and tools meaningful to mana whenua,* *(2) ~~protect~~ assess such places, areas, or landscapes, and the values and tikanga that contribute to their significance and management approach,* *(3) require Te Ao Kāi Tahu paradigms and mātauraka to be included the landscape assessment and the 'appropriate' test* *(4) identify indigenous species and ecosystems that are taoka in accordance with ECO–M3, and* *(5) identify and map outstanding natural features, outstanding natural landscapes and seascapes, and highly valued natural features, outstanding landscapes and seascapes and record their values.*

#	Provision	Position	Comment	Specific Decision Sought
5	**MW–M5**	Support in part	As stated above Mana Whenua provisions, or at least MW-P4, should have primacy over other provisions in the RPS in the event that a conflict arise. Potential for conflicts in the provisions, of particular concern to the owners are likely to include any provisions which seek or direct preservation or protection of: • indigenous flora or fauna • people or property from natural hazard risk • the coastal environment • natural character, landscape and amenity values • historic heritage • significant infrastructure Other provisions of concern could relate to requirements to connect development to reticulated infrastructure (for example), which is unlikely to be feasible in many situations. Alternatively, all provisions could be amended as required to ensure landowners are not discernibly restricted from protecting, subdividing, utilising and developing their land for a range of uses.	Retain and amend as follows: ***MW–M5 – Regional and district plans*** *Local authorities must amend their regional and district plans to:* *(1) Take Iwi Management Plans and resource management issues of significance to Kāi Tahu (RMIA) into account,* *(2) Recognise Ancillary Claims in the Otago Region* *(2) provide for the occupation, development and utilisation ~~use~~ of native reserves and land held under Te Ture Whenua Māori Act 1993 in accordance with MW–P4, and* *(3) incorporate active protection of areas and resources recognised in the NTCSA 1998, and act in accordance with the purpose of the redress provisions.* *When preparing plans or making decisions on applications under those plans (if applicable) MW-P4 shall be given primacy over any other provision in this RPS.*

The
Ngai Tahu
Ancillary Claims Report 1995

(Wai 27)

Waitangi Tribunal Report: 8 WTR

Wellington 1995

Chapter 5

Murihiku Ancillary Claims

5.1 The Tribunal has found that the reserves set aside by Walter Mantell in Murihiku as part of the purchase of the block were inadequate for the tribe's present and foreseeable needs, that the Crown failed to honour its obligations to many Ngai Tahu 'half-caste' people, and that the landless natives legislation was but a cruel hoax, enacted to appease its conscience.

The history behind Ngai Tahu's ancillary claims reveals that even the paltry and unproductive land reserved for the tribe has been eaten into by public works, the individualisation of title, and the impact of developing towns. Ngai Tahu of Murihiku have considerably less land today than the Tribunal's 1991 report detailed.

Research on the Murihiku ancillary claims was undertaken by Crown witness David Alexander and presented to the Tribunal in November 1988. Supplementary research on many of the claims was presented the following month. Mr Alexander stated that he was assisted by Trevor Howse, Sydney Cormack, and the deputy registrar of the Christchurch Maori Land Court, Simon Hadfield. Some of the claims, however, were not addressed by the Crown witness or acknowledged in the ancillary claim schedule prepared by the Tribunal in 1991. Maori Land Court records have provided an insight into many of these grievances, but gaps in the history of some claims remain.

5.2 Claim no: **56**
Claim area: **Maranuku**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack claimed that in 1909 the Crown took 122 acres 1 rood for a scenic reserve under the Public Works Act 1908 without consulting the owners (E16:3).**

5.2.1 The Maranuku or Te Karoro reserve at Willsher Bay lies just south of the Kaka Point township in south Otago. The reserve was originally set aside by Mantell under the terms of the Kemp deed. Entitlement to the area was determined by the Native Land Court in 1868, although title to the sections was not granted until 1893 (AB24:1, 7).[1] Karoro A, section 48, block IV, Glenomaru survey district (406 acres 2 roods 36 perches), was vested in Alfred and Ellen Kihau, Haimona Papaoke, Eruiti Kinihi, Henrietta Whaitiri, and Mary Hood. It is the subject of this particular claim. Karoro B, section

47 (402 acres 30 perches), was similarly granted to Haimona Rangireke, Roto Pikaroro, Rawiri Takata Huruhuru, Rawiri Koroko, Teone Te Ururaki, and Ihaia Potiki. Contained within Karoro B is section 49, a one-acre area used by Ngai Tahu as a burial ground. It was specifically provided on both Crown grants 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' (AB24:1, 7).[2]

Background to the alienation

5.2.2 In 1905 scenery preservation commissioners recommended the acquisition of 100 acres of section 48 for scenic purposes (P6:62).[3] It was envisaged that the forest-clad slopes of the reserve on the north side of Karoro Stream and abutting the sea would be exchanged for two Crown land sections, amounting to some 133 acres. The Commissioner of Crown Lands Dunedin was instructed to implement the exchange.

The Crown lands ranger, however, considered that the proposed exchange would not be equitable. He argued that the Crown lands were of higher value and that:

> the more advantageous way would be to take the 100 acres from section 48, either by arrangement with the Natives or under the Public Works Act. (P6:63)[4]

According to the ranger, none of the original grantees lived in the district. The commissioner agreed with the ranger's proposal but nothing further was done about the matter (P6:64).[5]

In March 1908 'an attempt . . . to get the milling rights to the timber from some of the Maoris' again spurred the Crown into action (P6:65).[6] The Commissioner of Crown Lands Dunedin was advised of the Government's decision to take the land under the Public Works Act 1905:

> Will you please have the land surveyed as soon as practicable, and . . . see that the best boundaries and most picturesque portion of the bush are included in the reserve. . . .
>
> If you are aware of the names of the principal owners of the Native Reserve, it would be as well to notify them of the intention of the Government, and arrange that they may go over the land with the surveyor in order that, if possible, mutually satisfactory boundaries may be agreed upon. It is always desirable to avoid any likelihood of friction in such cases. (P6:65)[7]

When the survey was carried out the following March, it was reported that:

> With regard to the principal owners of this Native Reserve, there is some doubt as to who these are, but the surveyor was accompanied on the ground by some of the resident Natives who professed to have some authority in the matter and were favourable to the idea of the area being made a scenic reserve. (P6:66)[8]

In October 1909, 122 acres 1 rood 20 perches of section 48 were proclaimed taken under the Public Works Act 1908 for scenery preservation purposes (P6:67–68).[9]

Compensation

5.2.3 On 25 February 1910 a solicitor acting for one Miss Kihau, the daughter of Alfred Kihau, inquired about payment for the land taken. A figure of £4 10s per acre was mentioned as having been fixed (P6:70).[10] The Under-Secretary for Lands replied that the question of compensation would be decided by the Native Land Court (P6:71).[11]

In October 1910 a Maori resident of Kaka Point, Kini Ruru, objected to the erection of a fence at the seaward end of the scenic reserve:

> As the Government have not paid for the land, nor take the trouble to see me, I am not going to allow any one to go on my land and put fences up. My price is (£4) an acre. (P6:72)[12]

The Native Land Court heard the application for compensation in November and December 1910 (P6:73–79).[13] The owners of the land were represented by a Mr Moffett. The first hearing was adjourned at his request so that a valuation on behalf of the owners could be prepared. The Government valuation was assessed at £122. It is interesting to note that the 'forest-clad slopes' were now referred to by counsel for the Public Works Department as 'a face of cliff covered with scrub and light timber of no marketable value'.

At the December sitting the court heard further valuation evidence from Public Works Department witnesses, most of whom were local farmers. Their opinions were largely based on the agricultural value of the land. None of the owners were called upon for evidence. Mr Moffett commented that the land was taken without the owners' consent and that taking the frontage had depreciated the section as a whole. The owners, he said 'are quite prepared to give the whole block to the Crown at the rate of £1 per acre'. In the result, compensation was fixed at £150, on the understanding that a road would be made on the northern boundary of the land taken to give the owners access to the beach from the remaining part of section 48. The money was paid to the Public Trustee, to be distributed to the individuals specified by the court.

Mr Alexander submitted that it does not appear that any formal consultation with the owners took place or that any attempt to consult them was made. He stated that some of the owners were notified of the impending alienation, but it is possible that this was advanced as a foregone conclusion and not as a matter for negotiation. Mr Alexander seemed to imply that this may account for the lack of protest about the taking of the land.

Mr Alexander noted that the land currently has the status of a scenic reserve under the Reserves Act

1977 (AB35:46).

The Tribunal's conclusion

5.2.4 The Tribunal refers to its earlier comments on the manner in which Maori-owned lands were taken for public works (see claims 1, 18, and 51). Again we find the lack of notification given to the owners of section 48 to be in breach of the principle of partnership and the protection of Ngai Tahu rangatiratanga over their lands as guaranteed in article 2 of the Treaty. The Tribunal also voices its concern that there are so many instances in which Ngai Tahu's small reserves have been reduced by the Crown's compulsory public works acquisitions without notice, consultation, or consent. We shall deal collectively with this process in the concluding chapter of this report.

5.3 Claim no: **57**
Claim area: **Maranuku**
Claimant: **Sydney Cormack (E16)**
Claim:

> **Mr Cormack claimed that in 1940 another part of section 48, the open sandhill country between the scenic reserve and the sea, was taken by the county for a recreation ground. Again, he maintained, there was no negotiation with the owners about the alienation of the land (E16:3).**

5.3.1 The first suggestion that the sandhills should become public land arose from the Willsher Domain Board's 1936 proposal to gain control of the Maranuku scenic reserve. The domain board controlled a recreation reserve on the south side of Karoro Creek, and wished to develop the waterway as a boating and swimming amenity (P6:80).[14] In order to have the necessary jurisdiction to do this, it needed control over the land on the north side of the creek; that is to say, the scenic reserve proclaimed in 1909. The proposition to vest control of the land in the board was viewed favourably, both by the Under-Secretary for Lands and by the Marine Department, with the latter also being prepared to vest control of the foreshore of the creek bounding the domain in the board. Furthermore, the under-secretary wrote to the Commissioner of Crown Lands Dunedin:

> I should be glad to be advised whether you consider it would not be also advisable to add to the Domain the land lying to the north of the Domain and between the scenic reserve and the sea, as shown as sandhills on the tracing. (P6:83)[15]

It was assumed that this area was Crown land, and the field inspector, for one, was very enthusiastic:

> The sand hills as shown on attached tracing are of no scenic value, and further the acquisition of them would not be of any benefit to the Reserve.

> These sand hills lie between the formed road and the sea and would undoubtedly be of value to the Domain Board as a parking area, and general play ground for children, during the holiday season.
>
> Should the Domain Board accept the offer I have no fear but that in a few years the area will be a much improved and useful asset to the Domain. (P6:84)[16]

The domain board was equally keen to get control of this area. It resolved in July 1936 that:

> My board would especially like control of that area of Crown land lying immediately to the North and consisting mainly of Sand hills and would respectfully urge the Dept to incorporate this in the Domain. (P6:86)[17]

However, the following month the Under-Secretary for Lands was informed by the chief surveyor that the northern area was in fact part of the Maranuku Maori reserve (P6:87).[18] It had been separated from the rest of section 48 by the scenic reserve. Thereafter, interest in adding the land to the domain appears to have waned, although the control of the foreshore in front of the land, along with other foreshore areas, was vested in the Willsher Domain Board on 29 September 1937 (P6:89).[19]

Figure 7: Willsher Bay reserves

Land for a camping ground

5.3.2 In 1938 the Clutha County Council was anxious to establish a camping ground in the district. The area of sandhills north of Karoro Creek was proposed (P6:90).[20] On this occasion it was thought that the land was part of the scenic reserve. In May 1939 the Commissioner of Crown Lands informed the Willsher Bay Scenic Board that the proposed camping site was part of the Maranuku Maori reserve and he declined to take further action (P6:91).[21]

The council remained undeterred and suggested that the area required, of about five acres, also be taken for recreation purposes and later classified as a domain (P6:94–95).[22] The council was willing to pay any compensation awarded to the owners by the Native Land Court, 'provided the amount was reasonable'.

The Native Department was asked for its opinion. The Under-Secretary for Lands supported the alienation but was concerned about the lack of access to the sea from the remainder of the Maori-owned section (P6:98).[23] Although the access road to the coast across the scenic reserve at its north-eastern corner (as promised by the Public Works Department at the 1910 compensation hearing) had been marked on a lithograph of the area, this roadway did not in fact exist.[24]

In November 1939 the Department of Lands and Survey received a list of the landowners from the Native Land Court. However, the court's registrar could provide only eight addresses for the 26 owners and advised that 'most of the owners are probably dead and no successors have yet been appointed' (AB32:203–204).[25] The Under-Secretary for Lands referred the matter to his colleague in the Native Department, remarking that it seemed 'that a circular letter to the owners would not be of any great use in ascertaining whether there is any real objection to the taking of the land' (AB32:205).[26] The Under-Secretary of the Native Department replied in December 1939 that the taking should proceed, 'subject to the provision for access to the beach being made for the Natives along the Northern boundary of section 48, if that is practicable' (AB32:206).[27] The Native Minister consented to this course in January 1940 (AB32:207).[28] At the beginning of February 1940 the Under-Secretary for Lands communicated to the Commissioner of Crown Lands Dunedin the Minister's agreement and the requirement that direct access to the beach be created for the remainder of the Maori land (P6:99).[29] A total of 5 acres 2 roods 11 perches was proclaimed taken for a recreation ground under the Public Works Act 1928 in June 1940 (P6:100),[30] and added to the Willsher Domain one month later (P6:101).[31] The road was proclaimed taken the following year (P6:102).[32]

Compensation

5.3.3 The Native Land Court heard the application for compensation for the land taken in Dunedin in January and in Picton (where it gave its decision) in February 1941. At neither sitting were the owners present or even represented. The first hearing was adjourned because no valuation certificate was available. At Picton on 19 February only the Government valuation certificate was presented and, in

the absence of any owners, the court ordered that compensation of £18, plus 5 percent interest per annum from the date of taking, be paid to the South Island District Maori Land Board on behalf of the owners (P6:103–106).[33] As had been agreed in advance, the Clutha County Council paid the compensation due.

Section 4 of 16

5.3.4 In August 1987 the Maori Land Court at Christchurch received an inquiry about the recreation reserve from one Mr K M A Cain, who had seen the area advertised for sale in 1983 (AB24:31–32).[34] Of concern to the correspondent was why the original owners of the area had not been given the first option to buy back the reserve when it was no longer needed for the purpose for which it was taken. He claimed that the advertisement had been withdrawn when the then Commissioner of Crown Lands Dunedin had been questioned about the issue. He also claimed that none of the owners had received the compensation for the 1940 acquisition.

However, what Mr Cain had in fact seen was an advertisement placed by the Commissioner of Crown Lands Dunedin advertising for public comment his intention to dispose of a part only of Willsher Bay recreation reserve, section 4 of 16, block VII, South Molyneux survey district (AB32:208).[35] This section is separated from part section 48 by Nuggets Road, section 3 of 16 (also reserved for recreation purposes), and Karoro Creek. Mr Alexander explained that section 4 of 16 had been purchased by the Crown from a European in 1902 (AB32:209; AB35:48).[36] Despite this, Mr Cain's inquiry was followed up on the basis that the land in question was part section 48. The registrar of the Maori Land Court in Christchurch referred the matter to the Ministry of Works, which could offer no assistance (AB24:35).[37] The court informed Mr Cain that compensation had indeed been paid for the land after its taking in 1940 (AB24:34).[38]

Nevertheless, the revocation of the reservation and sale of section 4 of 16 did not proceed. In April 1984 the Maranuku Maori Advisory Committee informed the Department of Lands and Survey that there were Maori graves on the section (AB32:212).[39] Mr Alexander explained that the graves are marked on Otago Survey Office plan 7072, dated 1901, but noted that the department's inquiries resulting from the committee's advice found that the evidence for Maori graves was equivocal (AB35:48). Long-standing residents felt there may well have been Maori graves in the area, but only the graves of two German sailors could be confirmed (AB32:211).[40] In light of the uncertainty about burials on the land, the Commissioner of Crown Lands eventually decided that the land should be retained in public ownership (AB35:214).[41]

The matter of section 4 of 16 arose again in 1993. By this time the Department of Conservation proposed to vest both this land and the adjoining section 3 of 16 in the Clutha District Council. The regional conservator approved a recreation classification, 'subject to consultation with iwi, ie I want to know if they have any objection before I sign the *Gazette* notice' (AB32:215–216).[42] To this end, the regional conservator wrote to the Maranuku Lands Trust in August 1993 seeking any comments (AB32:217).[43] Mr Alexander's advice was that no reply had been received to this inquiry by 1 October

1993 (AB35:49).

Recent developments

5.3.5 Mr Alexander noted that, at about the same time as the disposal of section 4 of 16 was being considered (with the resultant confusion with part section 48), there was some activity with respect to part section 48 itself. As required by the Reserves Act 1977, the land had to be classified. The Department of Lands and Survey felt that the area of recreation reserve west of Nuggets Road should be incorporated into the adjacent Willsher Bay scenic reserve and classified for scenic purposes. Because of this proposed change in status, a public notice was placed in the *Otago Daily Times* in August 1982 (AB32:220).[44]

In response to the notice, Naina Kihau Russell of Invercargill requested the return of the land to its former owners through her member of Parliament, Whetu Tirikatene-Sullivan, who in turn approached the Minister of Lands on her behalf (AB32:221).[45] The Minister replied that he did not consider that 'there is a case to revoke the reservation in order to return the land to the Maranuku owners', but he noted that Mrs Russell had been in touch with his department in Dunedin and that 'it appears likely that a compromise can be reached if it is left to be resolved locally' (AB32:222).[46] The Commissioner of Crown Lands Dunedin met Mrs Russell in Invercargill on 11 November 1982, and reported that:

> [my] feeling from the discussion with Mrs Russell is that she would like to see the 2 hectares revested but I think that she would be happy if in our management we did something to recognise the early Maori occupation. (AB32:223–224)[47]

The research officer at the department's head office concluded that:

> It seems to me that it can be argued that as the land was taken for a particular purpose and is no longer required for that purpose, then in accordance with Government policy we should renegotiate with the former owners for the use of part for scenic purposes.

In view of this report, the Director-General of Lands informed the Commissioner of Crown Lands Dunedin that 'classification of this reserve should not proceed until Mrs Russell's concern has been satisfactorily resolved' (AB32:225–226).[48]

In June 1983 the department approached Mrs Russell once more to ascertain whether she still wished to object to the reclassification of the area west of the road. The Commissioner of Crown Lands mentioned the possible erection of 'a suitable interpretive plaque . . . featuring the Maori history' (AB32:227–228).[49] Mrs Russell replied that the matter concerned other people and that it should be held over until a meeting of the owners had taken place (AB32:229–231).[50]

However, it seems that nothing more came of the matter until 1989, when the Department of Conservation's senior conservation officer in Owaka observed that the matter required further

consideration. He noted the long-standing grievance of local Maori with respect to the land and recommended that consideration be given to revoking the reservation and returning it to its former owners, adding that its 'removal from crown protection is warranted given the low conservation value in scenic, ascetic [sic], botanical or recreation terms' (AB32:232–233).[51] The regional conservator sought and received the head office's views (AB32:234–237),[52] but after that the matter seems to have lapsed. The question of the reserve was revived again in 1992 when a request was received from a member of the public for the lease of the land to establish a camping site there (AB32:240).[53] The opinion of the senior conservation officer (statutory management) was that the department could not justify retaining the land for conservation purposes and that it should be declared surplus and offered back to former owners under the Public Works Act. This official noted that the 'present lease proposal, desirable as it may be, would in my view create a local political scrap' (AB32:238–239).[54] Subsequently, the department's Kaupapa Atawhai manager became involved. He consulted with the iwi and identified an undiminished desire for the land to be returned to the descendants of the former owners (AB32:242).[55]

Mr Alexander's last understanding of the situation (as at 1 October 1993) is that the Department of Conservation was waiting for a response from the descendants of the original owners of Te Karoro A, which would allow negotiations to commence (AB35:51). Crown counsel confirmed in October 1994 that this situation remained unchanged. The land continues to have the status of a recreation reserve under the Reserves Act 1977. The Clutha District Council has also noted that Nuggets Road, which bisects the reserve, is currently free from erosion but may in future require some form of sea protection work outside the immediate area of the road reserve (AB60).

The Tribunal's conclusion

5.3.6 Mr Alexander admitted that until relatively recently there had been no indication of any attempt by the Crown to identify, let alone consult or negotiate with, the Ngai Tahu owners of the block. The Tribunal concurs with this view. Once again we find that the lack of notification or consultation constitutes a breach of the principles of the Treaty (see claims 1, 18, and 51). The grievance is upheld. We note the Department of Conservation's recent efforts to negotiate with the descendants of the former owners for the return of the land. We commend this course of action and recommend that the land be returned to the Ngai Tahu owners entitled by using the provisions of section 134 of Te Ture Whenua Maori Act 1993.

5.4 Claim no: **58**
Claim area: **Maranuku**
Claimant: **Emma Potiki Grooby-Phillips (C5)**
Claim:

> **Mrs Grooby-Phillips claimed that the best of the timber has been taken from the reserve in the last 30 years. She maintained that the owners were unaware of both the milling and who received the payment for it.**

5.4.1 Interest in the Maranuku reserve forest, comprised of mixed rimu, matai, kahikatea, and miro, was first expressed by the Lanshaw Sawmilling Company Ltd in June 1962 (AB24:22).[56] Although primarily concerned with the millable timber on part sections 47 and 48, the company was prepared to obtain the freehold of both blocks if necessary. An application was subsequently lodged by the company to call a meeting of owners to consider selling both the land (some 675 acres) and the timber in part sections 47 and 48, block IV, Glenomaru survey district (P6:116).[57] The price was to be set at the Government valuation for the land and the Forest Service appraisal for the timber.

A small hiccup in the proceedings occurred when it was revealed that Maranuku A (Karoro A or section 48) had been partitioned in 1887, although the boundaries of A1 and A2 had never been defined (AB24:4).[58] The problem posed by the partition was that, while all of the addresses of the owners of Maranuku A1 were known to the court, the same could not be said of Maranuku A2. Thus a meeting of owners to consider the proposed alienation of the block could not proceed. In order to overcome this obstacle an application was lodged to have the partition order cancelled. This was ordered by the court on 22 May 1964 (AB24:5).[59]

The Crown, too, had been interested in purchasing the land, exclusive of the timber, 'for some years'. In June 1964 the Forest Service indicated its desire to acquire the land in order to establish a pulp mill. It was envisaged that the land would be cleared and replanted (P6:118).[60] The Board of Maori Affairs approved the Crown's application for the land, for the sum of £5500 or the amount of a special Government valuation, whichever was the greater (P6:116).[61]

The sale of timber on section 48

5.4.2 In August 1965 a meeting of the owners of part section 48 was called by the Maori Land Court. Three propositions regarding this section were to be discussed:

- that the land be sold to the Lanshaw Sawmilling Company at a Government valuation price plus the Forest Service valuation of the millable timber on the land;
- that the timber be sold on a royalty basis to the company; or
- that the land be sold to the Crown, exclusive of the timber, for £740 or a special Government valuation, whichever was the greater (P6:114).[62]

The meeting was held in Invercargill on 1 September 1965. Five owners were present, and another five were represented by proxy (P6:120–122).[63] The owners' lawyer was also in attendance. The Lanshaw Sawmilling Company, the Department of Lands and Survey, and the Forest Service were also represented. The owners had already decided that they had no wish to sell the land and were concerned only with the sale of the timber and the method of payment. Mr Latham for the Department of Lands and Survey emphasised that the Crown's interest was in the land only, and then only on condition that the adjoining part section 47 could be purchased as well. On learning of the owners' intention not to sell, he did not pursue the matter further. Another sawmilling company had also expressed interest in buying the timber rights, although the application had not yet been received by the court. The owners, of course, were interested in hearing the new applicant's offer and asked that the meeting be adjourned for two months to make this possible.

The matter was concluded at a meeting of owners held at Invercargill on 26 January 1967 (P6:123).[64] Five of the owners were present, namely Iwi Paewhenua, James Russell, Mere Cain, Naina Russell, and Rena Fowler, and another six were represented by proxy. The two timber companies competing for the timber rights, the Lanshaw Sawmilling Company Ltd and the Clutha Timber Company Ltd, still wished to acquire the land as well. The owners, however, were resolved that the land was not for sale. In the result, the owners accepted the Clutha Timber Company's offer of 30 shillings per hundred feet board measure for the timber. The decision was later confirmed by the Maori Land Court, subject to two conditions designed to safeguard the interests of the owners (P6:126).[65]

Logging proceeded on part section 48 for the next two years. The Clutha Timber Company paid a total of $18,390 in royalties and this was distributed by the Maori Trustee to the owners (P7:38). Evidence of this includes Naina Kihau Russell's ledger card, which shows that royalty payments for Maranuku A were paid on 22 November 1968 and 5 January 1969. Her card also reveals that royalty payments for Maranuku A2 were paid out on 5 July 1969 and 1 February 1971 (P6:129).

In 1976 it was reported that the timber left on part section 48 was ‘not of merchantable value’

(P6:130).[66] It is not known whether section 47 was ever milled. Although the initial expression of interest in 1964 concerned both sections, the subsequent meeting of owners was concerned only with part section 48. In 1976 the Conservator of Forests reported that:

> Of the 162 hectares in Section 47 only some 32 hectares carries high forest containing some merchantable trees. A walkover estimate of this area indicates that there may be some 900 cubic metres of millable podocarp logs. This is not a very attractive milling proposition and the value of the sawn logs may be less than $2,000. (P6:130)[67]

Mr Alexander concluded that, while the Maori Land Court and the owners were fully involved with the logging of part section 48 and the payment of royalties, there was little or no involvement with any logging that may have occurred on section 47. The paucity of official records on section 47 means that it is not clear whether or not logging has occurred on this section over the last 30 years. Mr Alexander stated that:

> If logging did occur and if timber royalties were paid, then this was an arrangement made without the safeguards which Maori Land Court endorsement can provide. (P7:38)

The Tribunal's conclusion

5.4.3 It is clear that a meeting of owners of part section 48 did take place to consider the sale of timber on the section. Payment for the timber was dispersed to the owners. Regarding section 47, the Tribunal has been unable to discover whether milling did in fact occur and what happened to any proceeds thereof. In any event, the Tribunal does not consider that this would constitute a claim against the Crown, but rather may result in an action being brought to recover compensation from those persons who may have milled the timber. On the evidence presented and available to this Tribunal, there does not appear to be any breach of Treaty principles by the Crown in this claim.

5.5 Claim no: **59**
Claim area: **Maranuku**
Claimant: **Emma Potiki Grooby-Phillips (C5)**
Claim:

> **Mrs Grooby-Phillips blamed a road construction over part of the Maranuku urupa for the recent exposure of bones there. She claimed that land was taken for the road under the Public Works Act 1928 and that no compensation was awarded.**

5.5.1 The urupa is situated on the edge of a cliff, just south of the Reomoana school on the Maranuku reserve. It was formally known as section 49, block IV, Glenomaru survey district. Known Ngai Tahu and Ngati Mamoe burials took place in this cemetery between 1871 and 1951 (AB24:14).[68] On 24 August 1981 the Maori Land Court heard an application to have the urupa made a Maori reservation.

The applicant confirmed that the cemetery had been used for many years and that the bodies were interred close to the sea (P6:110).[69] In 1982 it was set aside as a Maori reservation under section 439 of the Maori Affairs Act 1953 (P6:111).[70]

In 1928 a roadline was surveyed south from the Kaka Point township along the coastal frontage of the Maori reserve. In 1929 some five acres (including 17.8 perches of the coastal side of the urupa site) were taken from sections 47 and 48 for the roadworks under the Public Works Act 1928 (P6:112–113).[71]

Mrs Grooby-Phillips attributed the relatively recent exposure of bones to this early road formation. Moreover, she alleged that no compensation was awarded for the land taken for the road. Mr Alexander was unable to find any evidence that compensation was awarded to the owners.

The Tribunal's conclusion

5.5.2 This would seem to be another instance of land taken under the Public Works Act 1928 without provision for proper notification and objection from owners. In this case, there would have been added impetus for consultation with the owners in order to safeguard the urupa. It is noted, however, that it was not until 1981 that an application was made to the court to have the section set aside as a Maori reservation and gazetted as such. Unfortunately, the information available to the Tribunal is not sufficient to establish whether the owners were in fact notified and whether any compensation was awarded. The Tribunal makes the general observation that it has made in previous matters concerning the inadequacy of the public works legislation but can make no specific finding on the factual situation of this case because of the paucity of evidence. There is provision under section 319 of Te Ture Whenua Maori Act 1993 for compensation still to be sought, but obviously a good deal of further detailed research would need to be made for the purposes of that application.

5.6 Claim no: **60**
Claim area: **Tautuku**
Claimant: **Taare Hikurangi Bradshaw (E8A)**
Claim:

> **Mr Bradshaw claimed that the construction of a carpark and lands and survey picnic area on top of an urupa at Tautuku is but one example of the unjustifiable acquisition of Maori land under the Public Works Act 1928.**

This matter was also alluded to very briefly in Mr Cormack's submission. He also claimed that the area was a Maori urupa.

5.6.1 The Crown witness, David Alexander, was aware of only one cemetery in the vicinity of Tautuku, this being on the north side of the Tautuku River mouth and, therefore, outside the Tautuku reserve, which

Parties

TE RŪNANGA O NGĀI TAHU

and

HER MAJESTY THE QUEEN

in right of New Zealand

DEED OF SETTLEMENT
SECTION 14

TABLE OF CONTENTS

14.19.2 Access to be Provided to Tautuku Site

The Crown agrees that in order to provide access to the Tautuku Site it will, upon application by the owners or trustees, as appropriate, grant an easement in accordance with section 59A of the Reserves Act 1977, notwithstanding sections 17S to 17W, 17Y(1)(a), 17Y(1)(2) and 17Z(3) of the Conservation Act 1987, in the form set out in *Attachment 14.11,* in favour of those owners or trustees and their invitees over an undefined area being part Section 1, Block XIII Tautuku Survey District, [(ML Plan 239)]. Subject to survey as shown on *Allocation Plan A223, Sheet 2 of 2 (SO 24737).* [Part Gazette Notice 529733 (New Zealand Gazette 1979 page 3308)].

14.19.3 Crown's Obligation in Relation to Access

The Crown agrees that it will take reasonable steps, notwithstanding section 129B of the Property Law Act 1952 but otherwise in accordance with existing legislation, to provide legal access to any section within the Tautuku Land if the owners of the piece of land to which access is sought can establish that:

(a) the Crown's past purchase, acquisition or dealing with part of the Tautuku Land resulted in access being unavailable to the land in question;

(b) at the time of the Crown's purchase, acquisition or dealing with that part of the Tautuku Land the Crown made an undertaking to provide access to the land in question; and

(c) the Crown still retains ownership and control of the Tautuku Land which was subject to the Crown's purchase, acquisition or dealing and resulted in access becoming unavailable to the land in question.

14.19.4 Limit of the Crown's Commitment

Te Rūnanga and the Crown agree that the Crown's commitment in *clause 14.19.3* does not of itself extend to forming, or providing funding for the forming of any physical access to the Tautuku Land.

14.20 CLAIM 56 (MARANUKU)

Preamble

A. The substance of the claim to the Waitangi Tribunal was that in 1909, despite the fact that the land was said to be inalienable, the Crown took 122 acres of land from the reserve under the Public Works Act without notifying the owners of the land.

B. The Tribunal found that the taking of Māori land under the Public Works Act without notification given to the owners of Section 48 to be a breach of Article II of the Treaty.

14.20.1 Property Description

In this *clause 14.20, Substitute Maranuku Site* means the land described as Otago Land District, Clutha District Council, 78.9488 hectares, approximately being: Section 2 of 8 Block II Glenomaru Survey District (SO Plan 521). All of Certificates of Title 27/130. Part Section 7 Block II Glenomaru Survey District, (SO Plans 521, 16842 and Deposited Plan 2651). Balance of Certificate of Title 205/280. Lot 1 DP 18286. All of Certificate of Title 9C/1209, appurtenant hereto is a right of way over Part Section 15 Block II Glenomaru Survey District (CT 9C/1210) shown marked "ROW A" on DP 18286 created by Transfer 615987/2. Subject to survey as shown on *Allocation Plan A 510 (SO 24717)*.

14.20.2 Vesting of Property

The Crown agrees that the Settlement Legislation will provide for the vesting of the fee simple estate in the Substitute Maranuku Site in the Ancillary Claims Trustees.

14.21 CLAIM 57 (MARANUKU)

Preamble

A. The substance of the claim to the Waitangi Tribunal was that in 1909, despite the fact that the land was said to be inalienable, the Crown took a further 5 acres of land from the reserve under the Public Works Act without adequately consulting with the owners of the land.

B. The Tribunal found that the lack of consultation or negotiation with the Ngāi Tahu owners of the block constituted a breach of the principles of the Treaty.

C. At the time of the hearing, the Tribunal noted the Crown's recent efforts to negotiate with the descendants of the former owners for the return of the land and commended this course of action.

14.21.1 Property Description

In this *clause 14.21, Maranuku Site* means the land described as Otago Land District, Clutha District Council, 9500 square metres, more or less, being Section 4, SO Plan 22413. Subject to survey as shown on *Allocation Plan A 191 (SO 24694)*. Part Gazette 423175 (New Zealand Gazette 1974 page 869), and 1.0 hectares, more or less, being Section 1, SO Plan 22413. As shown on *Allocation Plan A 191 (SO 24694)*. Part Gazette 423175 (New Zealand Gazette 1974 page 869).

14.21.2 Public Works Act

Te Rūnanga and the Crown agree that the procedure for identification of Beneficiaries set out in *Attachment 14.2* will be modified in respect of the Maranuku Site to reflect the fact that Part III of the Public Works Act 1981 applies

to any disposal of that property by the Crown. Accordingly, in order to preserve the rights of any persons entitled to have the Maranuku Site offered back to them, the following process shall be followed:

(a) as soon as practicable after the date on which the Ancillary Claims Trust is established, the Ancillary Claims Trustees shall make such inquiries as are necessary to establish the persons from whom the Maranuku Site was taken, and shall report on the outcome of those inquiries to the Commissioner of Crown Lands;

(b) on receipt of the report of the Ancillary Claims Trustees, the Commissioner of Crown Lands shall determine whether he or she agrees with the findings of the Ancillary Claims Trustees. If:

(i) the Commissioner of Crown Lands agrees with those findings, then the Ancillary Claims Trustees shall undertake the procedure outlined in *Attachment 14.2*, except that they shall identify the persons who would be entitled to have the Maranuku Site offered back to them if Part III of the Public Works Act 1981 were invoked in relation to that property, and such persons shall be deemed to be the Beneficiaries for the purposes of that Attachment;

(ii) the Commissioner of Crown Lands does not agree with those findings, then the Commissioner shall invoke the offer back procedure under Part III of the Public Works Act 1981;

(c) if *clause 14.21.2(b)(ii)* applies, and the offer back made by the Commissioner of Crown Lands under Part III of the Public Works Act 1981 is accepted, the Commissioner of Crown Lands shall give notice to that effect to the Ancillary Claims Trustees, and the Ancillary Claims Trustees shall transfer the Maranuku Site to the persons who accepted the offer in accordance with Part III of the Public Works Act 1981 without charge and otherwise in such manner as is specified in the Commissioner's notice;

(d) if *clause 14.21.2(b)(ii)* applies, and the offer back made by the Commissioner of Crown Lands under Part III of the Public Works Act 1981 is not accepted, then the Ancillary Claims Trustees shall undertake the procedure outlined in *Attachment 14.2*.

14.21.3 Settlement Legislation

The Crown agrees that the Settlement Legislation will:

(a) provide for the fee simple estate in the Maranuku Site to be vested in the Ancillary Claims Trustees, notwithstanding Part III of the Public Works Act 1981; and

(b) include such provisions as are required to empower and require the Ancillary Claims Trustees and the Commissioner of Crown Lands to undertake the processes outlined in this *clause 14.21*.

14.22 CLAIM 61 (WAIMUMU)

Preamble

A. The substance of the claim to the Waitangi Tribunal was that:

(i) the Crown acquisition of this land in 1964 under the Public Works Act was done without adequate consultation with the owners;

(ii) the area of land taken was well in excess of the Crown's requirements;

(iii) Ngāi Tahu had requested the return of the "surplus" lands but the Crown had failed to return that area; and

(iv) there was no evidence that the owners had received any compensation from the Crown.

B. In upholding this claim the Tribunal found that:

(i) although the Crown had attempted to notify owners of the proposed taking, too little time was allowed Māori owners to respond to the proposal;

(ii) the claimants were "justified in claiming that the 'national interest' has simply trampled over the rights of Māori owners"; and furthermore

(iii) there would be an ongoing breach of the principles of the Treaty of Waitangi until such time as the 'surplus' land was returned and the issue of compensation determined.

14.22.1 Property Descriptions and Other Definitions

In this *clause 14.22*:

BCL means Broadcast Communications Limited;

RPS

From: Ben Farrell <ben@cuee.nz>
Sent: Friday, 3 September 2021 4:08 p.m.
To: RPS
Cc: Ailsa Cain
Subject: Maranuku owners - submission on Proposed Otago pRPS
Attachments: Submission on Otago pRPS 3 Sept 2021 - Maranuku owners.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: LATE, Submission - Iwi partner

Kia ora, please find attached a submission on the pRPS by Cain whanau for Maranuku owners.

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