BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE

ENV-2024-CHC

IN THE MATTER OF	the Resource Management Act 1991
AND	
IN THE MATTER OF	an appeal pursuant to Clause 14 of the First Schedule of the Resource Management Act 1991
BETWEEN	**CAIN WHĀNAU**
	Appellant
AND	OTAGO REGIONAL COUNCIL
	Respondent

NOTICE OF APPEAL TO ENVIRONMENT COURT

AGAINST DECISIONS ON

THE PROPOSED OTAGO REGIONAL POLICY STATEMENT

Dated: 14 May 2024

TO: The Registrar

Environment Court

Christchurch

1. INTRODUCTION

1.1. The Cain Whānau, as actual and traditional owners of Māori freehold land[1] in Otago, appeals on behalf of its members for its Māori freehold land interests in Otago against parts of the decision of the Otago Regional Council (ORC or Council) in respect of the Proposed Otago Regional Policy Statement 2021 (PORPS).

1.2. The Cain Whānau made a submission on the PORPS.

1.3. The Cain Whānau is not a trade competitor for the purposes of section 308D of the RMA.

1.4. The Decision was received on 28 March 2024.

1.5. The Decision was made by the Respondent.

2. BACKGROUND

2.1. The Cain Whānau hold and exercise rakatirataka, alongside the other respective landowners/shareholders, for its Māori freehold lands in the Otago region.

2.2. The rakatirataka of Māori Land resides with the listed landowners[2], not Te Rūnanga o Ngāi Tahu or Papatipu Rūnanga as defined in the Te Rūnanga o Ngāi Tahu Act 1996. Māori freehold land in the Ngāi Tahu takiwā are not tribal or Papatipu Rūnanga assets to be managed on behalf of Ngāi Tahu Whānui.

2.3. The Māori Land Court understands Māori freehold land to be:[3]

(i) Māori freehold land that has gone through the Māori Land Court (or what was known as the Native Land Court) to be divided into blocks and converted into freehold titles. Converting land into titles was implemented by the settler government to move away from traditional collective guardianship.

[1] As defined in the PORPS.
[2] The lists of Māori Land blocks and their respective owners/shareholders are held by the Māori Land Court.
[3] https://www.xn--morilandcourt-wqb.govt.nz/en/maori-land/legal-terms/, accessed 14 May 2024.

(ii) Māori freehold land blocks often have many owners which have been decided by whakapapa (genealogy/connection) to that whenua. In legal terms, this is referred to as the 'preferred class of alienee'.

2.4. The Cain Whānau, along with owners, hold and exercise rakatirataka and kaitiakitaka on their respective Māori freehold land blocks throughout Otago. It is unclear if owners of Māori freehold land fit under the Resource Management Act 1991 definition of mana whenua, and national direction and regulation, such as the National Policy Statement for Indigenous Biodiversity, is trying to better recognise and provide for this matter.

2.5. The definition for mana whenua in the PORPS has the same meaning as the Resource Management Act, 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'. Māori freehold land is held and transferred through individual whakapapa, therefore creating uncertainty if it meets the definition of tangata whenua or mana whenua.

2.6. The Cain Whānau made a submission on the PORPS on 2 September 2021 that specifically referenced the Maranuku Block[4] (being some of the Māori freehold land owned by the Cain Whānau along with other beneficiary landowners). This block is Māori freehold land that was taken by the Crown and subject to an Ancillary Claim as part of the historic Ngāi Tahu land claims (resulting in the Deed of Settlement and Ngāi Tahu Claims Settlement Act 1998). The Ancillary Claim Report for Maranuku prepared by the Waitangi Tribunal included as part of our original submission, attached as **Appendix B**.

2.7. With regards to Maranuku, the Cain Whānau submission on the PORPS sought:

a) Retention of the list of Māori Land Reserves and amendment to include land subject to be returned to landowners under ancillary claim provisions.

b) Retention and amendment to the definition of Papakāika or papakāinga.

[4] As identified in the Ngai Tahu Ancillary Claims Report 1995, inclusive of Te Ture Whenua land, and depicted as a Reserve Area on page 266 of the PORPS

c) Amendments to Policy MW-P4, to among other things ensure that primacy is given to this policy over other provisions in the PORPS (should there be a policy 'conflict').

d) Amendments to Method MW-M1.

e) Amendments to Method MW-M5.

2.8. A copy of that submission is included as **Appendix B.**

2.9. The Hearing Panel appointed to hear and make recommendations on those submissions did not comment on the Cain Whānau submission, despite evidence being presented by the Cain Whānau in support of its submission, and despite the Cain Whānau relief sought being accepted in part and utilised by the panel to make various amendments to the PORPS provisions. The panel's recommendations were accepted by ORC (Decision). A copy of that Decision is set out at **Appendix C**.

3. REASONS FOR THE APPEAL

General reasons

3.1. General reasons for the appeal are that the provisions affecting Māori freehold land in the PORPS:

a) do not promote the sustainable management of resources in accordance with section 5 of the RMA in that they:

(i) do not manage the use, development, and protection of natural and physical resources which enable people and communities to provide for their social, economic, and cultural well-being and for their health and safety, as required by section 5 of the RMA;

(ii) do not sustain the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, as required by section 5 of the RMA;

b) do not promote the efficient use and development of natural and physical resources;

c) do not recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga;

d) do not recognise and provide for protected customary rights;

e) do not have particular regard to the diversity of how kaitiakitanga is expressed in Otago, specifically regarding Māori freehold lands;

f) do not appropriately take into account the principles of the Treaty of Waitangi and Treaty Settlement provisions;

g) do not include policies and methods that represent the most appropriate way to achieve the objectives of the PORPS, as required by section 32 of the RMA;

h) do not implement NZCPS Objectives 3, 6, 7, and Policies 1, 2, 6.

3.2. It is owners of Māori freehold land who have and exercise authority over their land, not the iwi authority or Papatipu Rūnanga. The PORPS should acknowledge and be explicit about this to ensure, at a minimum, that parties administering or involved in PORPS decision making processes:

a) are aware of and can themselves acknowledge this;

b) are required, as appropriate, to partner or engage with owners of Māori freehold land in respect of any process or decision that might affect Māori freehold land; and

c) fundamentally, help ensure that the PORPS provides for and supports the rights and interests of owners of Māori freehold land, including appropriate equity and redress of historical and ongoing alienation.

Specific reasons

3.3. Without limiting the generality of paragraph 3.1, the Cain Whānau reasons for appealing include:

a) The PORPS should provide for redress and equity where intergenerational alienation has resulted in significant impacts on development and economic opportunities. Owners of ancillary claim and Māori freehold lands should be able to rely on provisions in the PORPS to ensure that primacy (or priority) is given to able them to utilise their lands over provisions that restrict development or make it cost prohibitive to do so due to decades long inequities. Primacy (or priority) is appropriate for ancillary claims to enable post Treaty Settlement

outcomes for whānau to exercise authority over those lands and continue ahi kā and mahinga kai.

b) Typical expert opinions embedded in the status quo tend to be contrary to or at odds with Ngāi Tahu paradigms, expectations, and aspirations as well as ideas of what is or is not appropriate at place.

c) Implementing the NZCPS (particularly Objectives 3,6,7 and policies 1, 2 and 6(d)) together with RMA sections 5, 6(e), 7(a) and s8 (in particular) requires careful recognition of and provision for the unique circumstances affecting owners of Māori land in the region. There is very limited if any directly applicable caselaw to the management of Māori land taking into account the particular circumstances of this case in respect of (for example) the extent and characteristics of the Otago coastal environment, impact of historical alienation of Māori land, Treaty of Waitangi Principles and Treaty settlement obligations, and tikanga.

MARANUKU EXAMPLE

d) 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 Walter Mantell under the terms of the Kemp Deed. Entitlement to the area was determined by the Native Land Court in 1868. Karoro A, section 48, block IV, Glenomaru survey district was vested in our tūpuna Alfred and Ellen Kihau, as well as others.

e) The Maranuku reserve was specifically provided on 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'. However, by way of a complicated backstory outlined in the Ngai Tahu Ancillary Claims Report 1995, the Crown took lands at Maranuku for a public scenic reserve. From when alienation first occurred to Wai 27 in the 1990s, the taking of the land, compensation, and management was an ongoing issue with multiple applications by owners to the Māori Land Court and petitions and letters to government and ministers.

f) The Waitangi Tribunal found that, in 1909, despite the fact that the land was said to be inalienable, the Crown took 127 acres of land at Maranuku reserve the Public Works Act without notifying the owners of the land.[5] 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. It also found that the lack of consultation or negotiation with the Ngai Tahu owners of the block constituted a breach of the principles of the Treaty.

g) The Tribunal voiced its concern during the hearings that there are so many instances in which small Ngāi Tahu reserves have been reduced by the Crown's compulsory public works acquisitions without notice, consultation, or consent.

h) Maranuku is referred to within the Treaty Settlement process as an 'ancillary claim'.[6] Ancillary Claims are the private claims of individual Ngāi Tahu beneficial owners or groups of beneficial owners which were taken to the Waitangi Tribunal at the same time as the Wai 27 hearings were held.

i) These claims arose out of Crown actions when dealing with the individual property rights of members of Ngāi Tahu Whānui in the years following the execution of the original purchase agreements between Ngāi Tahu and the Crown. For this reason, the redress package offered in respect of these claims goes to the descendants of the claimants and does not come to Te Rūnanga o Ngāi Tahu.

j) Maranuku lands were returned as part of the Ngāi Tahu Deed of Settlement and vesting arrangement were specified in the Ngāi Tahu Claims Settlement Act 1998.

k) The Cain Whānau are descendants of the claimants and original owners at Maranuku, and are beneficiary landowners.

[5] Ngāi Tahu Deed of Settlement 1997, section 14.
[6] Ancillary claims are not the same as South Island Landless Natives Act 1906 (SILNA) claims.

CAIN WHĀNAU RELATIONSHIPS AND ASSOCIATIONS FOR MARANUKU

l) The Cain Whānau have long held relationships with the Kaka Point area centuries before and in decades after the vesting of the reserve in Alfred and Ellen Kihau and the alienation of lands. As is the case for many people who find themselves in similar situations with similar stories to Maranuku, our relationship is both with the place and the alienation. While the alienation of the place has dominated our associations with Maranuku for a period, the tangible and intangible relationships of the Cain Whānau with the place and our associated whakapapa continue regardless.

m) Members of the Cain Whānau have spent much time growing up at Kaka Point as had their tūpuna Tuhawaiki, who was born nearby. Melvin Cain is tangata tiaki for the nearby Puna-wai-Tōriki mātaitai, and his mother before her death was actively involved in the local Māori community. Kaka Point and Ruapuke Island where Melvin's mother was raised are closely linked by the sea route and it is common to hear of tūpuna fishing in the Southland Current that flows between the two locations and living at either place.

n) Maranuku and its coastal waters have long been a favourite place for the Cain Whānau to live and practice mahinga kai. However, it was always overshadowed with the sorrow, anger and shame that our lands and waters had been taken without consent. With the return of Maranuku, it is critical to our Whānau that:

(i) ahi kā continue,

(ii) there be physical/built expressions of our presence on the land,

(iii) mahinga kai be practiced,

(iv) economic opportunities be considered, and

(v) the land is not taken, use restricted or alienated again.

o) The Cain Whānau has no confidence that the Crown's breaches will not happen again; there are a number of regulations that when combined with the status quo and western environmental attitudes and expertise

can make ahi kā theoretical rather than actual, in essence alienating owners from their land and use of resources. The Cain Whānau do not support a theoretical existence of ahi kā at Maranuku or mahinga kai being just a value, not to be practiced nor prioritised. The intergenerational, active transfer of knowledge through doing at place is fundamental to ahi kā and kaitiakitanga.

p) The ability of the Cain Whānau to use, access, interpret, live within our takiwā and sustain ourselves as part of the natural environment is fundamental to retaining our mana and ahi kā.

q) Ahi kā is fundamental to land tenure for Māori – it shows the rights of hapū to an area through continuous occupation. Ahi kā is also used to describe the home people – the ones who live on their whenua, who keep the home fires burning, who keep undertaking their practices and connections to place in their takiwā. Ahi kā and kaitiakitangaa are closely intertwined. They include notions of wellbeing, leadership, authority and management of lands, hapū and local issues, economic and social resilience, and cultural and environmental knowledge and practices required to undertake the role.

r) There is an assumption that the ahi kā people will maintain 'home' so that whānau living away always have a place to return to. This point is of particular importance to our whānau as many our our whānaunga live away from the area but look to us to maintain those connections for future generations. Local members of the Cain Whānau personally carry the responsibility to ensure when our cousins return, permanently or temporarily, they can visit and/or live at Maranuku.

MARANUKU AND THE OTAGO REGIONAL POLICY STATEMENT

s) The Cain Whānau submitted that the PORPS recognise and provide 'for the primacy of ahi kā, reconnection with the whenua and continuation of mahinga kai'. We support this position because we think primacy is essential to enable post-Settlement outcomes for Maranuku.

t) Originally, the reserve land was deemed in 1868 to be absolutely inalienable yet it was taken by the Crown 40 years later. It was subsequently returned to owners via Treaty Settlement legislation in

1998, seven years after the Resource Management Act 1991 (RMA) came into effect and the first generation of regional and district plans. The Waitangi Tribunal found that the alienation of Maranuku is a breach of both Article II of the Treaty of Waitangi and Treaty principles.

u) Maranuku is not an isolated, 'one off event' as multiple instances of encroachment and acquisition of Māori reserves were found during Wai 27. Additionally, public perception continues of the land being 'theirs' and for the public good despite ownership being vested back with the owners. This perception can sometimes have a greater impact on what our Whānau can do as the local authorities are swayed or influenced by public opinion, albeit based on factually incorrect information. There are cases where officials in the local authority have also incorrectly thought the land to be a council reserve and managed it accordingly.

v) Maranuku cannot be regarded in the same way as public or privately owned land. A legacy factor of its alienation until 1998 means that the PORPS needs to recognise that Treaty principles have been breached and equity is required in PORPS policies. These reserves are scarce and already heavily restricted due to decades of national, regional, and local decisions by authorities that have failed to ensure and provide for hapū rights and interests.

w) Alienation from Maranuku meant the Cain Whānau could not and cannot (without considerable and prohibitive costs) consider any forms of development or management within or adjacent to the reserve, nor practice mahinga kai when other areas were undergoing land use changes, urbanisation, and increasing intensification. This is not a case of Whānau being 'slow on the uptake' – they were deliberately and unjustifiably removed from any regulatory process until recently and the Cain Whānau have found that we are again having to create appropriate regulatory pathways, pushing against the status quo and the benefits carved out by others.

x) The PORPS needs strong regional direction to ensure visibility and recognition of the issues facing ancillary claims and provide clear guidance to local authorities on how to actively manage redress, ahi kā

and reconnection of beneficiaries and their Whānau with their whenua and resources. This redress includes providing for the physical presence by owners in the landscape and recognition of economic opportunities.

y) For example, an ongoing issue at regional or district levels is that consideration is not given as to what role the RMA tools play in supporting the practice of mahinga kai, and what responses need to be suitably woven through regulatory and non-regulatory processes. Often mahinga kai is mentioned in a plan narrative and tangata whenua chapter but is not adequately understood or supported through the plan provisions. Including these mechanisms in the plan architecture and consenting should be a necessity to ensure alignment with Treaty Settlement legislation relevant to Otago, not be a 'nice to have'.

z) The Treaty Settlement redress mechanisms and relationships Ngāi Tahu hold and/or want to re-establish following colonisation and land alienation have been invisible or curtailed in RMA processes and decisions. How the PORPS deals with this matter across the board has direct consequences for the Cain Whānau submission and Maranuku.

aa) Primacy is a crucial tool to protect Maranuku from cumulative effects of regional and local regulations that in themselves do not prevent and prohibit but collectively mean that development and use of the ancillary land and resources by Whānau is cost prohibitive or that consents cannot be granted. This is the modern equivalent of the Public Works Act taking or alienating Whānau from the reserve. Primacy also provides protection from the ongoing issue (not just historical) of encroachment and land being forcefully taken for other purposes.

bb) The Cain Whānau submission considers primacy with tikanga and what is appropriate at place. Appropriateness is a significant issue for Maranuku and its future uses, relationships, and associations. What is deemed appropriate under tikanga and Ngāi Tahu designed and/or led assessment methods may not be agreed by other experts, especially if compartmentalised or dissociative approaches are applied. Skilful consideration is needed of whakapapa, tikanga, mātauranga and other

matters such as ahi kā by those with the expertise to do so across the region and at place.

cc) Simply, the Cain Whānau submission seeks to enable whānau to use their lands returned under ancillary claims and continue ahi kā. This requires special enabling provisions within the PORPS due to legacy issues and Treaty of Waitangi breaches that restricted any development of Maranuku and the active participation and recognition of owners in previous management decisions.

dd) Clear direction is required in the PORPS for local authorities so they can confidently provide equity for ancillary claims, especially in regards to competing interests, public perception and misinformation. Equity includes valuing methodologies and tools based on Ngāi Tahu paradigms, mātauranga, and tikanga of what is or is not appropriate at place.

MĀORI LAND

3.4. The Cain Whānau carries obligations through our whakapapa to support this and future generations by challenging definitions and terms that are commonly used without a clear understanding of what they do and do not cover. The implications of this complacency in terminology in the PORPS has been most felt by owners of Māori freehold land[7], not just our whānau.

3.5. Through the PORPS and the council hearing decision, authority and engagement over Māori freehold lands such as Maranuku has been inadvertently passed to Te Rūnanga o Ngāi Tahu and Papatipu Rūnanga through poor practice and contrary to the evidence submitted by the Cain Whānau. The unique suite of issues ancillary claim and Māori freehold lands face has also been downplayed and undermined.

3.6. Our focus on the Cain Whānau interests and the Maranuku land are provided as particular case for ease of understanding. Our concerns in principle apply one way or another to Māori freehold land and other types of Māori land throughout Otago.

[7] Two types of Māori land are defined under Te Ture Whenua Māori Act: Whenua Māori korehere Māori freehold land; and Whenua Māori tuku iho Māori customary land. There are also types of lands defined through other legislation such as lands returned/vested/administered under Treaty settlements.

4. RELIEF SOUGHT

4.1. The Cain Whānau seeks the amendments to the specific provisions of the PORPS in accordance with but not limited to the changes set out in the Table in Appendix 1.

4.2. The Cain Whānau also seeks the following generic relief (not limited by the specific relief contained in Table 1) **in respect of provisions that apply to Māori land[8], including methods that direct authorities to establish regional or district plan provisions affecting Māori land**:

a) Amendments to all the provisions of the RPS in accordance with but not limited to the changes set out in the Table in Appendix 1;

b) Any other amendment to the PORPS that gives primacy (or priority) to the MW provisions over other non-MW provisions in the RPS;

c) Any new or other provision necessary to ensure the owners of Māori land can protect, occupy, subdivide, develop, and use their resources (inclusive of land, freshwater, coastal water and coastal marine area) to their benefit.

d) Any alternative or other amendments to address the matters raised in this appeal, and to achieve the intent of this appeal (including as raised in the general and specific reasons given in this appeal); and

e) Any similar, alternative, consequential and/or other relief as necessary to address the issues raised in this appeal.

[8] As defined in the PORPS decision, and inclusive of resources within Māori land

5. ATTACHMENTS

5.1. In addition to the Cain Whānau's original submission (**Appendix B**) and the Decision (**Appendix C**), a list of names and addresses of persons served with this notice is included as **Appendix D**.

DATED this 14th day of May 2014

Signed Ailsa Cain

On behalf of the Cain Whānau.

Address for Service of Appellant:

Address: c/- Cue Environmental Limited
PO Box 1922 or Level 1, The Station Building, Duke Street
Queenstown, 9300

Email: ben@cuee.nz

Contact: Ben Farrell

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Appendix A: Specific relief sought

#	Provision	Relief Sought	Specific Reason
1	**Entire PORPS – references to mana whenua**	Insert "*and owners of Māori freehold land*" alongside all references to "mana whenua".	The amendments are sought for the general and specific reasons stated in this appeal above, namely that it is owners of Māori freehold land who have and exercise rakatirataka over their land, not Papatipu Rūnaka, and fundamentally, to help ensure that the PORPS provides for and supports the rights and interests of owners of Māori land, including appropriate equity and redress of historical and ongoing alienation.
2	**Definition of Papakāika or papakāinga**	Amend definition of "Papakāika or papakāinga" to say: *Papakāika or papakāinga:* *means subdivision, use and development by mana whenua or owners of Māori land and associated resources to provide for themselves and others in general accordance with tikanga ~~Māori for their cultural and traditional purposes~~, which may include residential and non-residential activities for cultural, social, ~~housing~~, educational, recreational, environmental or commercial ~~home occupation~~ purposes.*	The definition of Papakāika or papakāinga should be amended to: • clarify that use and development is not restricted to the benefits of only mana whenua or owners of Māori land, so as to allow for example use of the land or benefits to visitors/guests, tenants, commercial partners/investors) • clarify the term captures commercial or economic purposes because for example it is not helpful or appropriate to exclude commercial or economic use from cultural or social associations. The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga includes economic and commercial matters, not just social, cultural, recreational, educational, and environmental.

#	Provision	Relief Sought	Specific Reason
3	**MW – Mana whenua** **Recognition of hapū and iwi**	Amend this section to acknowledge the status of owners of Māori land in respect of Māori land. Suggested wording is as follows: ***Relationship of Kāi Tahu with their rohe*** *Te Rūnanga o Ngāi Tahu (the iwi authority) is made up of 18 papatipu rūnaka, of which seven have interests in the Otago region. Papatipu rūnaka are a focus for whānau and hapū (extended family groups) who have mana whenua status within their area, except for Māori land where owners exercise rakatirataka for their lands and resources. Mana whenua hold traditional customary authority and maintain contemporary relationships within an area determined by whakapapa (genealogical ties), resource use and ahikāroa (the long burning fires of occupation). Te Rūnanga o Ngāi Tahu encourages consultation with the papatipu rūnaka and owners of Māori land. ~~and takes into account the views of kā Rūnaka when determining its own position.~~* *Three Kāi Tahu ki Otago papatipu rūnaka have marae based in Otago, Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki and Te Rūnanga o Ōtākou, whilst the fourth, Hokonui Rūnanga, is based in neighbouring Southland. Three Ngāi Tahu ki Murihiku Rūnaka – Awarua Rūnanga, Waihopai Rūnanga and Ōraka-Aparima Rūnanga – are based in Southland but also share interests with Kāi Tahu ki Otago in South Otago, the Mata-au Clutha River, and the inland lakes and mountains. The areas of shared interest originate from the seasonal hunting and gathering economy that was a distinctive feature of the southern Kāi Tahu lifestyle.* *Seasonal mobility was an important means by which hāpu and whānau maintained customary rights to the resources of the interior and ahi kā.*	The amendments are sought for the general and specific reasons stated in this appeal above, namely that it is owners of Māori freehold land who have and exercise rakatirataka over their land, not Papatipu Rūnaka, and fundamentally, to help ensure that the PORPS provides for and supports the rights and interests of owners of Māori land, including appropriate equity and redress of historical and ongoing alienation. The relationships between Te Rūnanga o Ngāi Tahu and Papatipu Rūnanga are outlined in Te Rūnanga o Ngāi Tahu Act 1996 and does not need to be simplified here.

#	Provision	Relief Sought	Specific Reason
4	**MW–P2 – Treaty principles**	Amend MW-P2 by inserting the following additional clause: *MW–P2 – Treaty principles* *Local authorities exercise their functions and powers in accordance with the principles of Te Tiriti o Waitangi, by:* *...* *(9) regional plans and district plans recognising and providing for rights and interests of owners of Māori land.*	As above, this amendment is sought for the general and specific reasons stated in this appeal above, namely that it is owners of Māori land who have and exercise rakatirataka over their land, not Papatipu rūnaka, and fundamentally, to help ensure that the PORPS provides for and supports the rights and interests of owners of Māori land, including appropriate equity and redress of historical and ongoing alienation.
5	**MW-P4 and any other provisions in the PORPS that may directly or indirectly restrict owners of Māori land from being able to utilise their land. Examples of such provisions may include IMP-1, IMP-14, CE–O1, CE–O3, CE–O5, CE–P4, CE–P5, CE–P6, CE–P9, CE–P10, CE-P12, CE-M2, CE-M3, CE-M4, LF-FW-P13, ECO-01- ECO-03, ECO-P1- ECO-P12, ECO-M1- ECO-M9, EIT-INF-P12- EIT-INF-P14, EIT-INF-P15, EIT-INF-P16, EIT-INF-P17, EIT-EN-M1- EIT-EN-M2, HAZ-NH-P2, HAZ-NH-P3, HAZ-NH-P7, HAZ-NH-P10, HAZ-NH-M1- HAZ-NH-M4, NFL-P1, NFL-**	Amend MW-P4 so that it says: *MW–P4 – ~~Sustainable~~ Use of Native Reserves and Māori land* *Irrespective of any other provision in this PORPS, Kāi Tahu are able to ~~:(1)~~ protect, develop and use land and resources within native reserves and Māori land, ~~including within land affected by an ONFL overlay~~, in accordance with mātauraka and tikaka, to provide for their cultural, economic, and social aspirations, including for papakāika, marae related activities.* ~~(2) provide for the economic use of their Māori land or native reserves resources subject to the provisions of the RMA, this regional policy statement and any relevant plan, while: (a) avoiding adverse effects on the health and safety of people, (b) avoiding significant adverse effects on matters of national importance, and (c) avoiding, remedying or mitigating other adverse effects.~~ *To avoid any doubt in the case of an actual or potential conflict with any other provision(s) in this PORPS, MW-P4 shall take priority.* OR as an alternative: Include one or more provisions elsewhere in the PORPS that gives primacy (or priority) to MW-P4 and any other provision(s) that support the intention of the above relief.	The policy can be improved by amending the wording to better align with Te Ture Whenua Māori Act 1993 / 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 is no need to refer to "including within land affected by an ONFL overlay" and the panel's insertion of this term unhelpfully focuses the provision of ONFLs. The Maranuku block, for example, is within ONFL, is or is assumed to be an SNA, is partly located within the Coastal Environment, is subject to natural hazards (namely coastal hazards), and is bordered by and traversed by urban environment, local roading, and local electricity distribution lines. 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

#	Provision	Relief Sought	Specific Reason
	P2, NFL-M1- NFL-M3, UFD-P4	OR as a second alternative: Amend any other provision, as necessary, to ensure owners of Māori land can protect, occupy, subdivide, develop, and use their resources (inclusive of land, freshwater, coastal water and coastal marine area) to benefit their social, economic, cultural, educational, recreational, and environmental well-beings.	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 arises. Actual or potential conflicts in the provisions, of particular concern, include provisions that protect or restrict clearance of indigenous vegetation, restrict use and development opportunities including the need to protect land from natural hazard risk including land and coastal marine area that is or may be deemed "outstanding", "highly valued", "significant", or subject to "significant natural hazard risk", provision for development rights for other parties on or near Māori land (including but not limited to local authorities, utility companies / infrastructure providers), nearby rural and urban development that adversely affects or compromises development opportunities on Māori land. 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. The term "sustain" should be removed as it has no practical meaning. Reference to "in accordance with "tikanga" should be amended to say "in general accordance with" because it is not necessary and could have inadvertent consequences such as limiting the ability of landowners to utilise their land.

#	Provision	Relief Sought	Specific Reason
6	**MW–M1**	Amend MW-M1 so that it says: *MW–M1 – Collaboration with Kāi Tahu* *Local authorities must collaborate with Kāi Tahu to:* *(1) manage, in accordance with tikaka, kawa, and mātauraka, those places, areas, landscapes, waters, taoka and other elements of cultural, spiritual or traditional significance to mana whenua by:* *(a) identifying, recording, and assessing these elements using methods determined by mana whenua (which may include mapping), and* *(b) protecting the values of, and mana whenua relationships to, these elements,* *(3) identify indigenous species and ecosystems that are taoka in accordance with ECO–M3,* *(4A) determine appropriate naming for places of significance in Otago, and* *(4B) share information relevant to Kāi Tahu interests.* *<u>(5) require Te Ao Kāi Tahu paradigms, methodologies, and mātauraka to be included in and/or determine the method and expertise employed for landscape assessments</u>* *<u>(6) ensuring landscape assessments involve the identification or management of places, areas, landscapes, waters, taoka and other elements of cultural, spiritual or traditional significance give priority to Te Ao Kāi Tahu paradigms and mātauraka over western paradigms and methodologies, including Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines'</u>	Kāi Tahu may not seek or desire some places, areas or landscapes of cultural, spiritual or traditional significance to be identified or mapped. 'Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines' is not an appropriate methodology or guideline for recognising or providing for landscape values or other matters of importance to Kāi Tahu, and as such is not fit for purpose when considering management of places, areas, landscapes, waters, taoka and other elements of cultural, spiritual or traditional significance to mana whenua. Kāi Tahu research has shown that the most important landscapes for Kāi Tahu are those that are associated with whānau and whakapapa. It also shows 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.

#	Provision	Relief Sought	Specific Reason
7	**MW–M5**	Amend MW-M5 so that it says: *MW–M5 – Regional and district plans* *Local authorities must amend their regional and district plans to:* *(1) take into account iwi management plans and address resource management issues of significance to Kāi Tahu,* *(2) provide for the ~~use~~ occupation, development and utilisation of native reserves and Māori land in accordance with MW–P4 and recognise Kāi Tahu rakatirataka over this land by enabling mana whenua to lead approaches to manage any adverse effects of such use on the environment.* *(3) incorporate active protection of areas and resources recognised in the NTCSA,* including *acting in accordance with the purpose of the redress provisions, and* *(4) provide for the outcomes of settlements under the Māori Commercial Claims Aquaculture Settlement Act 2004.* *(3) Recognise Ancillary Claims in the Otago Region* *(4) in respect of Māori land, ensure MW-P4 is given primacy over other policies and methods should a conflict arise.*	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 arises. 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 restricted from protecting, subdividing, utilising and developing their land for a range of uses.

#	Provision	Relief Sought	Specific Reason
8	**ECO-P1 to ECO P12 and insert a new policy**	Insert a new policy as follows: *ECO-P13 – Managing indigenous biodiversity on Native reserves and Māori land* *(1) ECO-P1 to ECO P12 shall not apply to Native reserves and Māori land. Rather, for Native reserves and Māori land local authorities shall work in partnership (which includes acting in good faith) with owners of native reserves and Māori land to manage indigenous biodiversity on Native reserves and Māori land so that:* *(a) landowners are enabled to 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* *(b) to the extent practicable indigenous biodiversity on native reserves and Māori land is maintained and restored* *(c) to the extent practicable SNAs and identified taoka are protected on native reserves and Māori land*	ECO-P1 to ECO P12 contain various provisions that restrict owners of Māori land from being able to utilise their land, within and outside the coastal environment. For the reasons stated elsewhere in this appeal such restrictions are not necessary, create and reinforce further alienation and costs for landowners.
9	**NFL–P1 – Identification**	Amend NFL-P1 to provide reference to Te Ao Kāi Tahu paradigms and mātauraka, such as *Āpiti Hono Tātai Hono: Ngā Whenua o Ngāi Tahu ki Murihiku:* *NFL–P1 – Identification* *Identify the areas and values of outstanding natural features and landscapes in accordance with Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines', Tuia Pito Ora New Zealand Institute of Landscape Architects, July 2022, except where this does not recognise and provide for or is inconsistent with Te Ao Kāi Tahu paradigms, methodologies, and mātauraka, including Āpiti Hono Tātai Hono: Ngā Whenua o Ngāi Tahu ki Murihiku.*	As above, 'Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines' is not an appropriate methodology or guideline for recognising or providing for landscape values or other matters of importance to Kāi Tahu, and as such is not fit for purpose when considering management of places, areas, landscapes, waters, taoka and other elements of cultural, spiritual or traditional significance to mana whenua.