



Te Kura **Taka Pini**

TE TIRITI AUDIT REPORT

Prepared for the Otago Regional Council

Prepared by Te Kura Taka Pini Ltd

June 2024



Otago Regional Council Te Tiriti o Waitangi Audit Report

Executive Summary

Te Kura Taka Pini Limited (TKTP) has been engaged by the Otago Regional Council (the Council) to report on progress towards its goals of meaningful engagement with mana whenua (per Te Tiriti o Waitangi principles) and its progress as a bi-cultural organisation.

In preparing this report we have engaged with the Council and with mana whenua representatives. This engagement has shown considerable mutual respect exists and there is a willingness to see the relationship continue to mature and advance. This will invariably lead to improved outcomes for both the Council and mana whenua. Positive outcomes for the regional community and ratepayers will also continue to be realised through efficient and effective engagement between the Council and mana whenua. However, our findings show that further work is required to move beyond engagement towards the partnership aspirations of both the Council and mana whenua.

The Council is continuing its journey as a bi-cultural organisation. While mana whenua are supportive of this objective, particularly where it enhances the Council's partnership capability, it was noted that priority of mana whenua is for progress to be made in relation to the Council's partnership objective.

We make a number of recommendations arising from our findings:

Responsive/reactive engagement to proactive partnership

- A. The Council and mana whenua commit to move from predominantly an engagement model to a model that also includes partnership arrangements that enable mana whenua to contribute to the Council's decision-making and exercise the rights, responsibilities and obligations of rakatirataka in their takiwā. This will elevate meaningful engagement between the Council and mana whenua.
- B. The Council and mana whenua jointly explore possible partnership arrangements and opportunities. The Audit recommends that Council and mana whenua agree specific areas of focus where the parties can work together in effective partnership to enable mana whenua to exercise the rights, responsibilities and obligations of rakatirataka in their takiwā for the benefit of the environment and Otago community. Potential issues to explore could include, but are not limited to, the following:
 - Delegation for decision-making on certain issues to the Council Committees with mana whenua representation.
 - Co-designing relevant Council committee terms of reference with mana whenua to ensure a common understanding of mana whenua priorities.
 - Investigating if the transfer of Council's functions, powers or duties (under the Resource Management Act 1991) is desirable, e.g mana whenua monitoring of waterways and the harbour.
 - Identifying joint projects and initiatives between the Council and mana whenua, e.g. 'state of the takiwā monitoring' and catchment action plans.
 - Opportunities to engage mana whenua contractors in the delivery of the Council's operational work, including training and capacity building opportunities, to support increased supplier competition and ratepayer savings.
 - The appointment of mana whenua commissioners to consent and plan hearing panels.

Mana whenua are soon to commence a review of their Natural Resources Management Plan. This review provides an opportunity for the parties to identify specific areas where the exercise of rakatirataka could enhance environmental outcomes in the Otago region.

It is also recommended that a clear implementation plan is co-developed to operationalise any agreed initiatives so that Council and mana whenua can work together efficiently, in a mana enhancing manner, to realise these shared objectives and monitor progress.



Development and embedding of relationship to support the partnership

- C. The Council considers further structural mechanisms at an operational level to support and grow the strength of relationships, e.g. via a Chief Executives' annual hui across the Council, Papatipu Rūnaka, Aukaha and Te Ao Marama.
- D. The governance and operational relationship is further formalised through a co-designed Mana Whakahono ā Rohe agreement between the Council and mana whenua or a Mana Whenua Strategic Framework is prepared that records the objectives, initiatives and implementation plan agreed between the partners.

Building capability

- E. Council continues to build its knowledge of mana whenua to help the Council better partner with mana whenua. Ensure this knowledge is across a number of Council staff rather than held by a few.
- F. Implement the Council's commitment to make mātauraka Kāi Tahu an integral part of its decision-making e.g. by developing the next stage of cultural capability training with mana whenua and exploring options for further marae visits/noho.

Organisational advancements

- G. In order to advance its bi-cultural objective, the Council should ensure that all senior leadership team members have specific accountability for this objective. Additionally, ensure dedicated funding for kaumātua/kuia/kaikōrero role/s within Council to help uphold cultural safety and tikanga processes consistently and reduce reliance on this being delivered on a voluntary basis.

Part 1

1. Introduction and scope

1.1 The Otago Regional Council (the Council), with the tautoko of mana whenua, commissioned this audit to measure its progress towards its goals of:

- 1.1.1. meaningful engagement with mana whenua, based on the principles of Te Tiriti o Waitangi (Te Tiriti); and
- 1.1.2. operating as a bi-cultural¹ organisation.

1.2 The Audit has focussed on the Council as an organisation and did not directly review the relationship between mana whenua and democratically elected councillors. The role of the elected Council is mentioned in this Report where relevant to the operation of the Council as an organisation and its relationship with mana whenua.

1.3 The Council appointed Te Kura Taka Pini Limited (TKTP) to conduct the Audit.

TKTP is the freshwater management group within the Te Rūnanga o Ngāi Tahu (Te Rūnanga). It is important to note that we have used the Kāi Tahu tribal dialect in this report. The <ng> is replaced by the <k> eg: Ranginui is Rakinui in this dialect.

2. Objectives of the Audit

2.1 The key objectives of the Audit, as set out in the Terms of Reference², were to ascertain whether the Council, as an organisation:

- 2.1.1. is operating in a manner consistent with its commitment to partner with mana whenua, including in accordance with the Foundational Documents (listed in the Terms of Reference); and
- 2.1.2. demonstrates and practices a bi-cultural approach within its organisation, including in accordance with the Foundational Documents.

¹ The Council sees biculturalism as two cultures working effectively together. The "ism" is how well the Council has worked (past), work now (present) and will work (future) to accomplish this goal.

² Refer to Schedule 1 for the full Terms of Reference.



3. About Kāi Tahu

Overview

- 3.1** Kāi Tahu is takata whenua within its Takiwā (area)³. Under Kāi Tahu tikaka, status as mana whenua can only be held by takata whenua. References in this Report to mana whenua are to Kāi Tahu on the basis Kāi Tahu is takata whenua.
- 3.2** A Kāi Tahu individual stands within their whānau. That whānau lives within a hapū. Collectively, in its simplest form, the various hapū come together and unite as an iwi.
- 3.3** In the case of Kāi Tahu, 18 Papatipu Rūnaka are spread throughout Te Waipounamu (South Island). They exist to uphold the mana of their people over the land, the sea and the natural resources. No rūnaka is the same, each has opportunities and challenges shaped by the land, the environment, the towns and cities and the people that make the region home. The Papatipu Rūnaka is the face of Kāi Tahu at a regional level.
- 3.4** Each of the 18 Papatipu Rūnaka appoints a tribal member to represent its interests at Te Rūnanga), the representative body corporate of Kāi Tahu Whānui established 24 April 1996. Te Rūnanga was created to manage the collective assets of the iwi and in doing so support Papatipu Rūnaka in a way that allows each of them to exercise their rakatirataka so they can build and sustain their communities for generations to come.

Kāi Tahu in the Otago region

- 3.5** The Takiwā of Kāi Tahu covers the entire Otago region. Seven Papatipu Rūnaka have interests in the region:

3.5.1 Otago mana whenua rūnaka (Kāi Tahu Ki Otago), are:

- Te Rūnanga o Moeraki;
- Kāti Huirapa Rūnaka ki Puketeraki;
- Te Rūnanga o Ōtākou; and

3.5.2 Southern mana whenua rūnaka (Ngāi Tahu ki Murihiku), are:

- Hokonui Rūnanga;
- Awarua Rūnanga;
- Waihopai Rūnaka; and
- Ōraka-Aparima Rūnaka.

- 3.6** The mana, rakatirataka and Te Tiriti partnership and relationship in the Otago region ultimately lies with individual Otago and Southern rūnaka.
- 3.7** At an operational level, however, Kāi Tahu Ki Otago are represented by Aukaha Limited and Ngai Tahu ki Murihiku are represented by Te Ao Marama Incorporated. These Papatipu Rūnaka consultancy services provide a first point of contact for the Council and facilitate Kāi Tahu engagement on a range of matters, including resource management processes. From time to time, Te Rūnanga may be the appropriate first point of contact for Council (for example, on matters relevant to the Ngāi Tahu Claims Settlement Act 1998), or legislation which requires engagement with the iwi authority.

4. About the Otago Regional Council

- 4.1** The Council is responsible for sustainably managing Otago's natural resources on behalf of its community. It is also responsible for promoting the economic, social, cultural and environmental wellbeing of the region. The Council is governed by 12 councillors, elected by the residents of Otago every three years.

5. Values, duties and aspirations of parties

Kāi Tahu

- 5.1** Kāi Tahu do not see their existence as separate from Te Ao Tūroa, the natural world, but as an integral part of it. Through whakapapa, genealogy, all people and life forms descend from a common source. Whakapapa binds Kāi Tahu to the mountains, forests and waters and the life supported by them, and this is reflected in their approach to the natural world and resource management.

³ The Takiwā of Kāi Tahu is described in section 5 of the Te Rūnanga o Ngāi Tahu Act 1996.



5.2 Whakawhanaukataka, the process of maintaining relationships, embraces whakapapa, through the relationship between people, and between people and the environment. The nature of these relationships defines people's

rights and responsibilities in relation to the use and management of resources. All things have the qualities of wairua, spiritual dimension, and mauri, life force or life supporting capacity, and have a genealogical relationship with each other.

5.3 Mauri provides the common centre between the natural resources, taoka, the people or guardians who care for the taoka, the kaitiaki, and the management framework, tikaka, of how taoka are to be managed by the kaitiaki. It is through kawa, protocol, that the relationship between taoka, tikaka and kaitiakitaka is realised. Each Papatipu Rūnaka has its own takiwā determined by natural boundaries such as headlands, mountain ranges and rivers. This political and operational authority over an area is undertaken by takata whenua and encompasses kaitiakitaka and rakatirataka. An integral element of the concepts of kaitiakitaka and rakatirataka is the recognition that Kāi Tahu have their own traditional means of managing and maintaining resources and the environment. This system of rights and responsibilities is inherited from previous generations and has evolved over time. The resources in any given area are a point of prestige for the people who reside there and are a statement of identity. Traditionally, the abundance or lack of resources directly determines the welfare of every tribal group, and so affects their mana.

5.4 Within that context, the following is an overview of Kāi Tahu values as they relate to its relationship with the Council. It is not a complete or absolute list of Kāi Tahu values:

- 5.4.1 Ki Uta Ki Tai** is a Kāi Tahu term that has become synonymous with the way Kāi Tahu think about natural resource management. Ki uta ki tai, from the mountains to the sea, is the concept used to describe holistic natural resource management. Ki uta ki tai is the Kāi Tahu way of understanding the natural environment, including how it functions, how people relate to it and how it can be looked after appropriately.
- 5.4.2 Rakatirataka** is about the exercise of authority in accordance with Kāi Tahu tikaka and kawa, including in the management of the natural world. The rakatirataka of Kāi Tahu existed prior to Kāi Tahu signing Te Tiriti. It is inherent in Kāi Tahu and does not derive from the Crown or New Zealand Parliament.⁴ The rakatirataka of Kāi Tahu resides within the Papatipu Rūnaka. It is located at distinct but mutually reinforcing scales within the tribe. It is something to be protected and enhanced for future generations: mō tatou ā mō ngā uri ā muri ake nei.
- 5.4.3 Kaitiakitaka** is the exercise of guardianship by Kāi Tahu of an area in accordance with tikaka Māori in relation to natural and physical resources and includes the ethic of stewardship. This statutory definition of kaitiakitaka is, however, a starting point only for Kāi Tahu, as kaitiakitaka is a much wider cultural concept than guardianship. Kaitiakitaka entails the active protection and responsibility for natural and physical resources by Kāi Tahu. Kaitiakitaka is fundamental to the relationship between Kāi Tahu and the environment. The objectives of kaitiakitaka are to protect the life supporting capacity of the environment and to pass the environment on to future generations in an enhanced state. For Kāi Tahu, kaitiakitaka is not passive custodianship, nor is it simply the exercise of traditional property rights, but it entails an active exercise of responsibility in a manner beneficial to the resource.
- 5.4.4 Tikaka Māori** encompasses the beliefs, values, practices and procedures that guide appropriate codes of conduct, or ways of behaving. In the context of natural resource management, observing tikaka is part of the ethic and exercise of kaitiakitaka. It is underpinned by a body of Mātauraka Māori, Māori knowledge, and is based on a general understanding that people belong to the land and have a responsibility to care for and manage the land. It incorporates forms of social control to manage the relationship of people and the environment, including concepts such as tapu, noa and rāhui. Tikaka is based on traditional practices but is dynamic and continues to evolve in response to different situations.
- 5.4.5 Taoka** encompasses all natural resources, air, land, water, and indigenous biological diversity. Taoka are treasured resources that are highly valued by Kāi Tahu, derived from the atua, gods, and left by the tūpuna, ancestors, to provide and sustain life. In the management of natural resources, it is important that the habitats and wider needs of taoka species are sustainably managed and enhanced.
- 5.4.6 Mahika Kai** is one of the cornerstones of Kāi Tahu cultural identity. Mahika kai is a term that literally means “food workings” and refers to the customary gathering of food and natural materials and places where those resources are gathered or produced. The term also embodies the traditions, customs and collection methods, and the gathering of natural resources for cultural use, including raraka, weaving, and rokoā, traditional medicines. Maintaining mahika kai sites, gathering resources, and continuing to practice the tikaka that governs each resource, is an important means of passing on cultural values and mātauraka Māori, traditional knowledge, to the next generation.

⁴ Kāi Tahu rangatiratanga was confirmed (not created) by Te Tiriti (1840), Te Kēreme (1997) and the Ngāi Tahu Claims Settlement Act 1998.



- 5.5** A key aspiration of Kāi Tahu relates to their ability to exercise rakatirataka. Kā rūnaka have exercised their rights, responsibilities and obligations of rakatirataka in their takiwā from before 1840 to the present day, however, the exercise of that rakatirataka has been continually encumbered and constrained by the Crown and local government over time.
- 5.6** Just as the Crown and local government exercise kāwanataka, Kāi Tahu exercises rakatirataka. Where kāwanataka and rakatirataka should operate together, kā rūnaka will exercise their rakatirataka in good faith alongside the Crown and local government.
- 5.7** An aspiration of Kāi Tahu is for legislation governing environmental management and local government to be amended over time to unencumber the ability of Kāi Tahu to exercise rakatirataka.⁵ In the short-term, however, there is much that can be done within the existing system through continuing to work constructively with Council (and vice versa) to enhance the rakatirataka of rūnaka in their takiwā.

Otago Regional Council values, duties and aspirations

(This section will need to be confirmed with Council)

- 5.8** The Council's vision is "Otago's communities, through engagement, trust us to make well-informed decisions and enable solutions".⁶ This is informed/underpinned by its six values that guide its daily interactions. The Council sets out its values on its website as follows:
- 5.8.1 Caring, Kākau Māhaki:** We take great care in all we do, using resources appropriately and being responsive to the needs of our communities. We value the opinions and diversity of others and take time to connect with people.
- 5.8.2 Trustworthy, Matatika:** We do the right thing even when it's not the easy thing. We act ethically and with mana in everything we do. We will ask for help when it's needed, and we do all of this to enable the best outcomes for our communities.
- 5.8.3 Open and honest, Pono:** We encourage openness and honesty, especially when the conversations are challenging. We believe in active listening and being approachable. We speak with integrity, seeking feedback from our community and stakeholders. We bring a "no surprises" approach to our interactions with each other, our stakeholders, and our community.
- 5.8.4 Collaborative, Mahi Kātahi:** We believe in actively building constructive relationships and networks to support our 'one team' approach to collaboration. We support our partners, and each-other, by sharing knowledge and resources to achieve common goals. Building these relationships helps us to achieve great things for the people of Otago.
- 5.8.5 Accountable, Noho Haepapa:** We believe in taking the initiative and understanding the role we play in our community. We encourage honest, constructive conversations and having clear roles and responsibilities. We are objective and we own our decisions.
- 5.8.6 Creative, Wairua Auaha:** We are creative in our problem solving, challenging the 'status quo'. We are bold and curious in our thinking, always seeking better ways of doing things, and challenge our peers to do the same. We have the courage to leave things better than we found them.⁷
- 5.9** Specifically in relation to mana whenua, the Council has a range of legislative requirements to engage and involve Māori in local decision-making, as well as take into account the principles of Te Tiriti. The Council recognises the status of Kāi Tahu as Te Tiriti partners in the region.
- 5.10** The Council's aspiration, as stated on its website, is to go beyond statutory responsibilities to ensure meaningful engagement with mana whenua that is based on the principles of Te Tiriti and to benefit from the value that engagement with mana whenua adds through the sharing of their knowledge and wisdom. This aspiration encompasses its commitment to make mātauranga Kāi Tahu an integral part of its decision-making and continue its journey to involve mana whenua more effectively in decision-making.

⁵ There is a duty on the Crown to actively consider such enabling of rangatiratanga. Cabinet Circular 19(5), in operation since 22 October 2019, sets out guidelines agreed to by Cabinet for policy-makers to consider the Treaty of Waitangi in policy development and implementation. Paragraphs 47 to 54 require officials to consider whether a proposal should allow for the exercise of rangatiratanga while recognising the right of the Crown to govern.

⁶ <https://www.orc.govt.nz/our-council-our-region/our-council/strategic-directions>

⁷ <https://joinus.orc.govt.nz/working-with-us#our-values>



5.11 The Council's website also describes the following as its commitment to partner with mana whenua:

Our commitment is to partner with mana whenua and make mātauranga Kāi Tahu an integral part of our decision-making. This recognises the status of mana whenua as the Treaty partner in the Otago region and the need to continue the journey that Council has begun to more effectively involve Māori in decision making.⁸

6. Process followed by Audit

6.1 TKTP carried out a review of the Foundational Documents and Relationship Channels listed in the Terms of Reference to understand the nature of the commitments, obligations and structures currently existing between mana whenua and the Council.

6.2 Information addressing the Audit's objectives was then gathered primarily through a series of interviews with key individuals identified by mana whenua rūnaka and the Council. This included:

- 6.2.1 Mana-to-Mana Group members;
- 6.2.2 Kā Rūnaka members;
- 6.2.3 Aukaha and Te Ao Marama;
- 6.2.4 The Council Chief Executive;
- 6.2.5 The Council's Executive Leadership Team; and
- 6.2.6 Council third tier managers.

6.3 Further information was also collected through the use of publicly available sources.

6.4 Councillors' views, as well as additional information relating to the Terms of Reference, was gathered via email.

7. Overview of Foundational Documents

7.1 The Terms of Reference for the Audit identified a broad range of Foundational Documents underpinning the relationship between the Council and mana whenua. The following section of the Report provides a brief description of those documents.

7.2 Te Tiriti o Waitangi

- 7.2.1 Te Tiriti is one of New Zealand's founding documents. It is an agreement, in Māori and English, made between the British Crown and Māori rangatira (chiefs). It establishes Te Tiriti partnership between the Crown and Kāi Tahu referred to throughout this Report.
- 7.2.2 Legislation, such as the Resource Management Act 1991 and the Local Government Act 2002, recognise the Crown's responsibilities under Te Tiriti and impose corresponding obligations on local government.

7.3 Ngāi Tahu Deed of Settlement and Ngāi Tahu Claims Settlement Act 1998

- 7.3.1 The Ngāi Tahu Deed of Settlement (Deed of Settlement) and Ngāi Tahu Claims Settlement Act 1998 (NTCS Act) settle the historical grievances of Ngāi Tahu against the Crown under Te Tiriti.
- 7.3.2 The Deed of Settlement and NTCS Act confirm the rangatiratanga of Ngāi Tahu and its relationship with the natural environment and whenua within its takiwā. The NTCS Act also states that the Crown seeks to enter into a new age of co-operation Ngāi Tahu.⁹
- 7.3.3 The NTCS Act also identifies some taoka species, establishes tōpuni, statutory acknowledgements, dual place names and nohoaka sites, recognising the special association of Ngāi Tahu with these areas and resources. Local authorities are required to have regard to statutory acknowledgements in resource consent processing in deciding whether Te Rūnanga is a person who may be adversely affected by the granting of a resource consent for activities within, adjacent to or impacting directly on the statutory area.¹⁰
- 7.3.4 Along with Te Tiriti, these documents define the contemporary relationship between the Crown and Ngāi Tahu. They form a binding legal and constitutional relationship between Ngāi Tahu and the Crown and entrench Ngāi Tahu rangatiratanga and Te Tiriti partnership.

⁸ <https://www.orc.govt.nz/our-council-our-region/our-council/partnership-with-kai-tahu>

⁹ Ngāi Tahu Claims Settlement Act 1998, section 6, paragraph 8.

¹⁰ Ngāi Tahu Claims Settlement Act 1998, section 208.



7.4 Te Rūnanga o Ngāi Tahu Act 1996

- 7.4.1 Te Rūnanga o Ngāi Tahu Act 1996 prescribes, amongst other things, the status of Te Rūnanga, the members of Ngāi Tahu Whānui and their entitlements, the papatipu rūnanga that are members of Te Rūnanga and the provisions for electing Representatives.

7.5 Memorandum of Understanding – Kāi Tahu mana whenua ki Otago

- 7.5.1 Effective from 22 January 2003, the Memorandum of Understanding and Protocol between Otago Regional Council, Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago for Effective Consultation and Liaison (the MoU) sets out mechanisms intended to support effective consultation and liaison between the parties on a range of matters, including resource consents and Regional Plan changes.
- 7.5.2 The MoU also recognises the Council's need to consult with Otago mana whenua rūnaka and Te Rūnanga on specific matters and establishes an iwi liaison role (Kaitakawaenga) to help facilitate this.
- 7.5.3 In accordance with the MoU, the Council has entered into a Partnership Protocol with Aukaha Limited.

7.6 Charter of Understanding with Te Ao Marama Inc.

- 7.6.1 Dated March 2016, He Huarahi mō Ngā Uri Whakatupu, The Charter of Understanding (the Charter) is between Environment Southland, Invercargill City Council, Southland District Council, Gore District Council, Queenstown Lakes District Council, Clutha District Council and Otago Regional Council and Te Ao Marama Inc.¹¹ This Charter provides for the ongoing relationship between the signatories in the context of the Resource Management Act 1991, the Local Government Act 2002 and the Local Electoral Act 2001. The signatories agree a common goal of the sustainable management of the region's environment and for the social, cultural economic and environmental needs of communities, for now and into the future.
- 7.6.2 The Charter sets out a number of mechanisms to support this goal, including establishing quarterly meetings of a political level governance group made up of elected representatives from each of the Council signatories and the Murihiku papatipu rūnanga (Te Rōpū Taiao).¹²
- 7.6.3 Consistent with the objectives in the Charter, the Council has entered into a Partnership Protocol with Te Ao Marama Incorporated.

7.7 He Mahi Rau Rika, Otago Regional Council Significance, Engagement and Māori Participation Policy

- 7.7.1 Dated 2022, He Mahi Rau Rika (the Policy) sets out, at a high-level, the Council's approach to engagement with mana whenua, stakeholders and the community.
- 7.7.2 The Policy confirms the Council's commitment to partnering with mana whenua, outlines a range of existing relationship arrangements and sets out key factors it considers when determining a matter's significance to mana whenua.

7.8 Partially operative Otago Regional Policy Statement 2019

- 7.8.1 The Partially operative Otago Regional Policy Statement 2019 (RPS 19) is a high-level policy framework for the sustainable integrated management of resources, identifying regionally significant issues, the objectives and policies that direct how natural and physical resources are to be managed and setting out how this will be implemented by the region's local authorities.
- 7.8.2 The Council developed the RPS 19 in consultation with Kāi Tahu and creates general guidance for engaging with Kāi Tahu on resource management matters by setting out Kāi Tahu values and interests.

One of the five outcomes sought by the Council in the RPS 19 is for: Kāi Tahu values, and interests to be recognised and kaitiakitaka to be expressed.

Mana whenua feedback noted that the change of leadership at Chief Executive Officer level influenced a marked change in the relationship, which fed into positions on the 'policy committee'.and helped ensure positive input to the development of RPS 19.

7.9 Otago Regional Council Proposed Regional Policy Statement 2021

- 7.9.1 The Proposed Otago Regional Policy Statement 2021 (RPS 21) identifies the significant resource management issues for the region, explains how national direction on resource management will be applied in Otago, and provides direction on how to balance potentially conflicting requirements. Its role is to provide high-level guidance and establish the framework for Otago's regional and district plans in which more specific resource management policies, objectives and rules will sit.

¹¹ Te Ao Marama Inc is authorised to represent Te Rūnaka O Awarua, Hokonui Rūnanga, Ōraka/Aparima Rūnaka, and Waihōpai Rūnaka.

¹² The Charter, clauses 2.3.1 & 2.7.2.2.



7.9.2 The Council takes the objectives and policies set out in iwi management plans¹³ into account when developing RPS 21.

7.10 Otago Regional Council Long Term Plan 2021-31 and Otago Regional Council Annual Plan 2022-23

7.10.1 The Otago Regional Council Long Term Plan 2021-31 (LTP) provides direction for Council decision-making and sets the Council's work programme priorities. In its most recent LTP, the Council confirmed its commitment to work in partnership with mana whenua and committed to processes and initiatives to help give effect to this commitment, for example:

- building mana whenua participation in Council decision-making through a Treaty based partnership approach in engagement; and
- developing Target Integrated Catchment Action Plans (CAPs) in collaboration with iwi and community.

7.10.2 The Council's Annual Plan 2022-2023 (AP) sets out adjustments, if any, that are adopted to the Council's LTP. The Council made no significant adjustment to the AP relating to its commitment to work in partnership with mana whenua.

8. Overview of Relationship Channels

8.1 The Audit Terms of Reference identify a number of Relationship Channels committed to by the Council in its engagement with mana whenua. The following section of the Report outlines these channels.

8.2 Mana-to-Mana Group

8.2.1 The Mana-to-Mana Group is a governance level forum between the Council and Kāi Tahu ki Otago Papatipu Rūnaka aimed at strengthening collaboration between the parties around environmental management and provide a forum for structured and robust governance level engagement. It builds on the MoU between the two parties that was signed in 2003.

8.2.2 The parties of the Mana-to-Mana Group are:

- the Council represented by its Chairperson and all Councillors; and
- Kāi Tahu Papatipu Rūnaka represented by the Chairperson (or delegate) of:
 - Te Rūnanga o Moeraki;
 - Kāti Huirapa Rūnaka ki Puketeraki;
 - Te Rūnanga o Ōtākou; and
 - Hokonui Rūnanga.
- Due to shared interests, Southern rūnanga are also invited to all meetings and are able to participate as full members.

8.2.3 The Mana-to-Mana Group Terms of Reference state that the Chief Executives of the Council and Aukaha and the Kaupapa Taiao Manager of Te Ao Marama Inc. shall attend meetings in a supporting capacity.

8.3 Council Committee representation

8.3.1 Under the Local Government Act 2002, council can appoint non-elected members to its committees.¹⁴ The Council has invited Kāi Tahu to be members of the following committees:

- **The Environmental Science and Policy Committee** has two Kāi Tahu members, including Co-Chair. The remit of this Committee is to provide advice and guidance to Council on the development of Otago's environmental (water, land, air, biodiversity and biosecurity) plans, policies and strategies under the Resource Management Act 1991, Biosecurity Act 1993 and other national directions. It also helps ensure the Council partnership with Kāi Tahu is reflected in these matters.
- **The Regional Leadership Committee** has one Kāi Tahu member. The remit of the Committee is to provide recommendations and advice to Council on Regional Leadership activities set out in the LTP. It also monitors governance, communications, and regulatory functions of Council and champions the Council's partnership with Kāi Tahu.

8.3.2 Neither Committee currently has general decision-making or financial delegations from the Council but can make recommendations to the Council.

13 There are four iwi planning documents lodged with the local authorities in the Otago Region: Te Rūnanga o Ngāi Tahu Freshwater Policy 1999; Kāi Tahu ki Otago Natural Resources Management Plan 2005; Te Tangi a Tauira: Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008; and Waitaki Iwi Management Plan 2019.

14 Refer Schedule 7, clause 31(3).



8.4 Land and Water Regional Plan Governance Group

8.4.1 Mana whenua are represented on this Council appointed working group that is responsible for:

- safeguarding the integration of the fundamental concept Te Mana o Te Wai, and its articulation, in the National Policy Statement for Freshwater Management as well as the objectives, policies and the Freshwater Management Unit/Rohe visions in the Proposed Regional Policy Statement; and
- overseeing the project management-related aspects of the development of the Land and Water Regional Plan.

8.5 Internal cultural awareness training/induction

8.5.1 The Council has developed and implemented a programme of cultural awareness and competency training for its staff. This includes offering training in Te Reo Māori, Te Tiriti and tikanga from a Kāi Tahu perspective. Since 2021, this training has included, for example:

- a Bicultural Competency Certificate offered through Otago Polytechnic developed with input from mana whenua; and
- bespoke training offered for particular roles, including training with mana whenua (e.g. the Council's Science and Policy directorate undertook a noho marae visit in 2021 to learn about cultural values relevant to water planning and noho marae visits for newly elected councillors).

8.6 Engagement with mana whenua: Aukaha and Te Ao Marama

8.6.1 At an operational level, Papatipu Rūnaka consultancy services provide a first point contact for the Council on a range of matters relevant to mana whenua, including resource management processes. Kāi Tahu Ki Otago are represented by Aukaha Limited and Ngāi Tahu ki Murihiku are represented by Te Ao Marama Incorporated.

Part 2

Findings

1.1 The following section of the Report outlines the key findings of the Audit in relation to each key objective set out in the Terms of Reference. Recommendations as a result of these findings are set out in Part 3 of the Report.

1.2 Objective 1: Is the Council, as an organisation, operating in a manner consistent with its commitment to partner with mana whenua, including in accordance with the Foundational Documents (partnership objective)

1.3 Overall findings

- 1.3.1 Overall, the relationship between the Council and mana whenua is robust and constructive. The Council shows a strong willingness to partner with mana whenua and is continually taking action aimed at strengthening this relationship.
- 1.3.2 The Council's commitment is reflected in the Foundational Documents, its public facing information (e.g. website) and in the, generally, positive interactions between mana whenua and the Council.
- 1.3.3 Overall, the Council recognises mana whenua as Te Tiriti partner in the region (not simply a stakeholder) and repeats its commitments to go beyond legislative obligations in its partnership with mana whenua and more effectively involve Māori in decision-making.
- 1.3.4 The next step towards the Council realising its commitment to partner with mana whenua is to shift its focus from consultation and engagement to [further] enabling Papatipu Rūnaka to exercise rights, responsibilities and obligations of rakatirataka and decision-making in their takiwā.
- 1.3.5 While there is structure underpinning the relationship between mana whenua and the Council at the governance or strategic level (primarily the Mana-to-Mana Group), the relationship at the operational level (beyond statutory requirements for consultation) relies heavily on the commitment, good will and discretion of individuals. This can make the Council's progress on its partnership objective sporadic.
- 1.3.6 The relationship between Council and mana whenua is currently strongest at the governance and the Papatipu Rūnaka consultancy service levels. There is a common desire to embed and strengthen relationships at an operational level and identify opportunities for mana whenua to exercise rakatirataka.

1.4 A number of challenges were identified during the Audit relevant to the Council realising its partnership objective. Key challenges identified include:



- 1.4.1 Capacity – both mana whenua and the Council acknowledged that mana whenua may have limited capacity to engage on all issues raised by the Council within Council/statutory timeframes. This can apply at both an operational level and the rūnaka level due to competing demands from central and local government on the same few individuals.
 - 1.4.2 Lack of certainty – there is a lack of certainty from the Council about the most effective next steps to take to realise its partnership objective and deepen relationships with rūnaka.
 - 1.4.3 The nature of a local government means that there are some clear distinctions (and limitations) on what can be pursued at an organisational versus elected level.
- 1.5** In assessing whether the Council is meeting its partnership objective, the Terms of Reference directed the Audit review the following areas:
- 1.5.1 Alignment of values and aspirations**
 - 1.5.1.1 On their face, there is no apparent conflict between the Council's values and aspirations and those of mana whenua.
 - 1.5.1.2 However, the Council's values (outlined at paragraph 5.8 above) are expressed at a conceptual level and there is no specific alignment of values relating to the ability of mana whenua to exercise rakatirataka and decision-making. As mana whenua and the Council continue to work together, the parties will need to ensure they are aligned on what partnership looks like in practice (e.g. ensure consultation and meaningful engagement are not used as a substitute for partnership and the exercise of rakatirataka) and what concrete steps will help realise their aspirations.
 - 1.5.2 The effectiveness of the Foundational Documents and whether obligations and commitments are being upheld**
 - 1.5.2.1 The Foundational Documents listed in the Terms of Reference vary widely in nature from Te Tiriti to legislation to Council policy documents. Accordingly, the documents were considered from the following perspectives:
 - 1.5.2.1.1 Legislative consultation requirements – the parties acknowledged that meeting statutory consultation timeframes can be challenging for mana whenua due to capacity restraints, but no general issues were raised about the Council from a relationship perspective around legislative consultation requirements. It is acknowledged that neither the Council nor mana whenua have control over these statutory consultation requirements.

Relationship agreements (the MoU and Charter) – the overall intent of these relationship agreements is being honoured by the parties. The strengthening and growth in sophistication in the relationship between mana whenua and the Council has meant that a small number of mechanisms in these agreements no longer need to be utilised (e.g. the Kaitakawaenga role has been vacant since November 2009). Resource could potentially be spent reviewing and updating these agreements to address these minor matters. However, the Audit found that the efforts of the parties would be better focused on advancing the partnership between the parties through concrete actions to advance the partnership.

 - 1.5.2.1.2 Council policy documents (e.g. RPS 19 and LTP) – no specific concerns were identified about the high-level obligations and commitments identified in these documents.

More specifically, the Audit found that the Council met its performance measures set out in the LTP relating to the goal of building mana whenua participation in Council decision-making through a treaty-based partnership approach in its engagement.¹⁵

It should also be noted that the recent *Report and recommendations of the Non-Freshwater and Freshwater Hearings Panels to the Otago Regional Council* on RPS 21 recognised the Council's efforts to engage with mana whenua on the development of RPS21 (efforts that were also recognised by Kāi Tahu).¹⁶ The report acknowledged that the Council had “made genuine and repetitive efforts in the preparation of the [RPS21] and in the hearing of submissions to

15 The Council measured its performance against: work done in partnership with iwi by increasing the number of outputs and groups working together on projects; and building the bicultural competency of its staff through number of participants in a programme (refer <https://www.orc.govt.nz/media/15717/annual-report-2022-2023-web.pdf>).

16 Otago Regional Council. (2024). *Proposed Otago Regional Policy Statement 2021: Report and recommendations of the Non-Freshwater and Freshwater Hearings Panels to the Otago Regional Council*. Page 30, [106-108].



engage in a meaningful manner with Kāi Tahu entities and individuals”,¹⁷ resulting in few major issues impacting mana whenua that the Panel needed to consider.

There is an ongoing need to ensure alignment between mana whenua and the Council on what realisation of some of the partnership commitments looks like in practice. Opportunities were also identified to engage mana whenua earlier in the formation of some these documents, rather than consultation on their content, so that mana whenua are not simply “fitting-in” to the Council’s structure and processes.

1.5.3 The Council’s engagement with mana whenua across the organisation, including the effectiveness of the Relationship Channels

1.5.3.1 The Audit Terms of Reference specify a broad range of Relationship Channels, the most significant findings of the Audit in relation to the Relationship Channels are that:

- 1.5.3.1.1 The Council’s engagement at the governance and senior levels is the strongest and is underpinned by the structure of the Mana-to-Mana Group. Overall, this mechanism was viewed as positive and a respectful forum that works well. It was noted that not all Councillors attend this forum which can negatively impact buy-in from the Council on matters discussed. However, overall the Mana-to-Mana Group is a critical mechanism underpinning the relationship between the mana whenua and the Council and provides a forum to engage on key and strategic issues.
- 1.5.3.1.2 Appointment of mana whenua representatives on two Council Committees, including a co-chair role, was viewed as a positive step by mana whenua and provided an opportunity to advise and participate at a strategic level. It was noted by mana whenua that the work required by members of these committees was significant and it was vital that communications channels about the planning and outcomes of these meetings are robust. However, the current lack of delegated decision-making to the Council Committees means membership provides an opportunity for engagement, rather than an ability to exercise rakatirataka.
- 1.5.3.1.3 A lack of structured mechanism for engagement between mana whenua and the Council at an operational level (outside the resource management area) was identified. Engagement at this level relies heavily on the staff members involved and its effectiveness can be sporadic.
- 1.5.3.1.4 There were clear channels for engagement between the Council and Aukaha and Te Ao Marama, as first points of contact on operational matters.
- 1.5.3.1.5 The Council has a range of cultural awareness training available for staff that can improve staff awareness of how to engage with mana whenua. Since 2021, over 150 staff have participated in some form of the cultural capability training offered by the Council. There is opportunity to build on this training with an increased focus on the Council’s partnership obligations and build knowledge of Kāi Tahu tikaka and mātauraka across all staff. The Council acknowledged that mana whenua capacity will be required to deliver this effectively.

1.5.4 Guidelines and mechanisms in place to assist Council staff with mana whenua engagement

1.5.4.1 The Audit found that the Council has limited guidelines and mechanisms in place to assist staff’s engagement with mana whenua. Some high-level guidance does exist, including, for example:

- 1.5.4.1.1 He Mahi Rau Rika sets out the Council’s approach to engagement with mana whenua (as well as stakeholders) but is a publicly facing document rather than internal guidance for staff.
- 1.5.4.1.2 Council policy documents such as the LTP outline the key priorities of mana whenua as they relate to the Council. This content was drafted with mana whenua and can provide a useful starting point for staff to understand issues of significance to mana whenua.

1.5.4. The lack of official guidance and mechanisms to assist staff to engage with mana whenua at an operational level is consistent with/mirrors the lack of structured relationship mechanisms at this level, as discussed earlier in the Report.

1.6 Does the Council demonstrate and practice a bi-cultural approach within its organisation, including in accordance with the Foundational Documents (bi-cultural approach objective)

1.6.1 The Audit found that the Council has taken a range of concrete steps towards practising a bi-cultural approach in its day-to-day operations including:



- 1.6.1.1 providing cultural capability training for staff, as committed to in a range of the Foundational Documents (e.g. LTP);
- 1.6.1.2 recently employing a Senior Advisory Iwi Partnerships and Engagement Advisor to further uplift internal capability;
- 1.6.1.3 involving mana whenua in the design of new Council headquarters and strategic directions refresh; and
- 1.6.1.4 incorporating the use of te reo Māori in its day-to-day operations.
- 1.6.2 The Council also clearly acknowledges its commitment to partner with mana whenua on its website, in key strategic and public facing documents and in its recruitment material.
- 1.6.3 The Council is at the beginning of its journey in terms of its bi-cultural approach objective. Achievements towards this objective are likely to create a more culturally relevant and safe space for staff, potentially improving the Council's ability to recruit and retain Māori staff. The Audit did not find anything in the Council's values, as listed on its website, that would prevent its ability to continue on its journey towards a bi-cultural organisation.
- 1.6.4 However, some concerns and areas for awareness were raised during the Audit that, if unaddressed, could impact the Council's progress towards realising this objective, including:
 - 1.6.4.1 There is an ongoing need to ensure that the Council's commitment to, and responsibility for, a bi-cultural approach is embedded throughout the organisation and does not sit with one team or one individual.
 - 1.6.4.2 A need to grow internal Te ao Māori capability and not be reliant on community leaders and others volunteering their time.
 - 1.6.4.3 That growth of internal Māori capability with Council does not replace direct engagement with mana whenua but can support and complement it.
- 1.6.5 Overall, the Audit found that the focus and priority for mana whenua is on how the Council (and its staff) understands and implements its commitment to partner with mana whenua, not on its ability to practice a bi-cultural approach. While some measures towards a more bi-cultural approach may support the Council's ability to partner with mana whenua (e.g. training and guidance specific to understanding better Kāi Tahu history, values, priorities), it should be clear that they are distinct objectives. The priority of mana whenua is for progress to be made in relation to the Council's partnership objective.

Part 3

Recommendations

Based on our findings we make the recommendations below within 'theme' areas identified for the overall package of recommendations.

Responsive/reactive engagement to proactive partnership

- A. The Council and mana whenua commit to move from predominantly an engagement model to a model that also includes partnership arrangements that enable mana whenua to contribute to the Council's decision-making and exercise the rights, responsibilities and obligations of rakatirataka in their takiwā. This will elevate meaningful engagement between the Council and mana whenua.
- B. The Council and mana whenua jointly explore possible partnership arrangements and opportunities. The Audit recommends that Council and mana whenua agree specific areas of focus where the parties can work together in effective partnership to enable mana whenua to exercise the rights, responsibilities and obligations of rakatirataka in their takiwā for the benefit of the environment and Otago community. Potential issues to explore could include, but are not limited to, the following:
 - Delegation for decision-making on certain issues to the Council Committees with mana whenua representation.
 - Co-designing relevant Council committee terms of reference with mana whenua to ensure a common understanding of mana whenua priorities.
 - Investigating if the transfer of Council's functions, powers or duties (under the Resource Management Act 1991) is



desirable, e.g. mana whenua monitoring of waterways and the harbour.

- Identifying joint projects and initiatives between the Council and mana whenua, e.g. 'state of the takiwā monitoring' and catchment action plans.
- Opportunities to engage mana whenua contractors in the delivery of the Council's operational work, including training and capacity building opportunities, to support increased supplier competition and ratepayer savings.
- The appointment of mana whenua commissioners to consent and plan hearing panels.

Mana whenua are soon to commence a review of their Natural Resources Management Plan. This review provides an opportunity for the parties to identify specific areas where the exercise of rakatirataka could enhance environmental outcomes in the Otago region.

It is also recommended that a clear implementation plan is co-developed to operationalise any agreed initiatives so that Council and mana whenua can work together efficiently, in a mana enhancing manner, to realise these shared objectives and monitor progress.

Development and embedding of relationship to support the partnership

- C. The Council considers further structural mechanisms at an operational level to support and grow the strength of relationships, e.g. via a Chief Executives' annual hui across the Council, Papatipu Rūnaka, Aukaha and Te Ao Marama.
- D. The governance and operational relationship is further formalised through a co-designed Mana Whakahono ā Rohe agreement between the Council and mana whenua or a Mana Whenua Strategic Framework is prepared that records the objectives, initiatives and implementation plan agreed between the partners. .

Building capability

- E. Council continues to build its knowledge of mana whenua to help the Council better partner with mana whenua. Ensure this knowledge is across a number of Council staff rather than held by a few.
- F. Implement the Council's commitment to make mātauraka Kāi Tahu an integral part of its decision-making e.g. by developing the next stage of cultural capability training with mana whenua and exploring options for further marae visits/noho.

Organisational advancements

- G. In order to advance its bi-cultural objective, the Council should ensure that all senior leadership team members have specific accountability for this objective. Additionally, ensure dedicated funding for kaumātua/kuia/kaikōrero role/s within Council to help uphold cultural safety and tikanga processes consistently and reduce reliance on this being delivered on a voluntary basis.