

**BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA**

**ENV-2018-CHC-26 to 50**

**IN THE MATTER** of the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of appeals under clause  
14 of Schedule 1 to the  
Act relating to the  
proposed Southland  
Water and Land Plan

**BETWEEN** **WAIHOPAI RŪNAKA,  
HOKONUI RŪNAKA,  
TE RŪNANGA O  
AWARUA, TE  
RŪNANGA O ORAKA  
APARIMA, and TE  
RŪNANGA O NGĀI  
TAHU (collectively  
NGĀ RŪNANGA)**

**Appellants in ENV-  
2018-CHC-47**

**AND** **SOUTHLAND  
REGIONAL COUNCIL**

**Respondent**

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**STATEMENT OF EVIDENCE OF AILSA CAIN  
ON BEHALF OF NGĀ RŪNANGA**

**Culture and Policy**

**20 December 2021**

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## **INTRODUCTION**

1. My name is Ailsa Margaret Cain.
2. My whakapapa, qualifications and experience are set out in my statement of evidence for the Proposed Southland Water and Land Plan (**pSWLP** or **Plan**) appeals (Topic A), dated 15 February 2019.

## **CODE OF CONDUCT**

3. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and I agree to comply with it. I confirm that the issues addressed in this statement are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
4. My whānau have long associations with Murihiku and I whakapapa to Waitaha, Kāti Mamoe and Ngāi Tahu. My expertise is partially derived from those cultural associations. I note that whilst I am Ngāi Tahu, I am required to be impartial and unbiased in my professional opinions expressed.
5. For the avoidance of any perceived conflicts, I advise that my husband, Ben Farrell, is providing planning evidence for Fish and Game New Zealand, and the Royal Forest and Bird Protection Society of New Zealand.

## **SUMMARY OF EVIDENCE**

6. In my evidence, I have:
  - (a) Provided commentary on what matters could be considered in the policy and rule development to progress towards hauora.
  - (b) Reinforced the significance of wetlands to Ngāi Tahu ki Murihiku.
  - (c) Outlined how cultural identity and the characteristics of waterbodies are entwined, specifically with reference to drain clearances.

7. In my evidence, I have referred to:
- (a) Joint Witness Statements for Science, Farm Management, Ecology, and Planning (November-December 2021);
  - (b) Final report on cultural indicators of health (29 November 2019);<sup>1</sup>
  - (c) Draft Murihiku Southland Freshwater Objectives: Providing for hauora, the health and well-being of waterbodies in Murihiku Southland, 2020;
  - (d) Ngāi Tahu ki Murihiku Environmental and Resource Management Plan, 2008 (also referred to as **Te Tangi a Tauira**); and
  - (e) Evidence and reports from WAI27.

## NGĀI TAHU CONTEXT FOR TOPIC B

8. Counsel opened the case for Ngā Rūnanga in 2019 with a statement that has remained relevant and unrefuted throughout this Environment Court process:<sup>2</sup>

For Ngā Rūnanga, the relationship with the takiwā is one of whakapapa and ahi kā with extensive occupation and use patterns. As kaitiaki, Ngā Rūnanga are bound to ensure the wairua and mauri of the land and water in Southland are maintained. Degradation of the waterways and land negatively impacts on the mana of individuals and their hapū and iwi, as well as their collective cultural identity.

9. The Opening Statement concluded with:<sup>3</sup>

Given the history outlined in the evidence for Ngā Rūnanga, and the very real concerns that are held, there is a considerable burden and duty felt by the current generation to ensure that a cultural and environmental tipping point is not reached, and that the ability to achieve restoration of both the environment and cultural identity is not lost.

10. I have raised these points again to summarise the ongoing narrative that has been expressed to date in both my evidence and that of Mr Michael Skerrett as well as that of the other Ngā Rūnanga experts. Also, that this cultural and historical

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1 The report was Appendix A to a memorandum of counsel for Nga Runanga, filed on 29 November 2019.

2 Opening Statement on behalf of Ngā Rūnanga (4 June 2019) at [2].

3 At [25].

evidence follows on from the previous generations of Ngāi Tahu whānui who have expressed similar statements and concerns in enquiries, tribunals, hearings, and legal proceedings.

11. In the historical evidence for the Ngāi Tahu Land Claim WAI27, Alan Ward notes:<sup>4</sup>

The [Ngāi Tahu] adjustment to the new economic order, begun well before 1840, likewise proceeded. Following the government land purchases, this process of adjustment and realignment of traditional patterns of political and economic organisation continued in the expectation, not that it was the first step in the tribe's subjugation to European political and economic realities, but that the promises conveyed by the Treaty, the purchase deeds and the words of government agents would be interpreted in a liberal spirit and provide for the tribe's future welfare. As the passage of time made it clear that Ngāi Tahu expectations far exceeded the Crown's willingness to preserve or provide resources, a deep sense of grievance developed. Settlers had over run the country, draining the swamps, burning off the native plants, fencing, stocking and otherwise altering the landscape to the detriment of Ngāi Tahu's traditional lifestyle.

...In the latter half of the nineteenth century Ngāi Tahu vigorously pressed their claim against the Crown, demanding a place in the new world. The Crown responded with a series of investigations into the condition of the tribe and the allegations of unfulfilled promises, none of which served to assuage the sense of grievance or substantially increase the amount of land and resources with which the tribe was endowed.

12. The experiences of past generations has made Ngāi Tahu ki Murihiku sceptical of grand ideas without the clear and sound means of implementation. The management of land and water in Southland in the twenty first century raises similar concerns. There is a crucial need for the rules in the proposed Southland Water and Land Plan to support the directive of the Objectives and Policies, both in a practical sense of plan implementation and for Te Mana o te Wai.

## TOPIC B REFLECTING THE TOPIC A DECISION

13. The first interim decision of Topic A stated that 'this plan has the potential to deliver vital change in the way land and water resources are managed'<sup>5</sup> and that it 'redirects the usual RMA focus on the scale and significance of effects of resource use onto

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4 Ward, A. (1989) A Report on the Historical Evidence, The Ngāi Tahu Claim WAI27, page 331.

5 *Aratiatia Livestock Limited and Ors v Southland Regional Council* [2019] NZEnvC 208 at [6].

the mauri or life force of water and the enquiry becomes how do users of resources protect the water's mauri and health.<sup>6</sup>

14. In my opinion, this decision aligns with my earlier evidence and as such, I reiterate that my understanding of mauri, hauora, ki uta ki tai and their role in the pSWLP is unchanged, in that:<sup>7</sup>

The pSWLP states that it is to reinforce Ki Uta Ki Tai and the national significance of Te Mana o te Wai. Ki Uta Ki Tai reflects the mātauranga that all environmental elements are connected and must be managed as such. Te Mana o te Wai is the integrated and holistic well-being of a freshwater body. The pSWLP, therefore, is predicated on an integrated and holistic approach. The Objectives through to the Rules should support this approach.

15. I refer to the summary of the Topic A interim decisions in paragraphs 16 to 19 of the planning Joint Witness Statement (**JWS**),<sup>8</sup> and the following paragraph 20 that draws from the Memorandum of Counsel for Ngā Rūnanga regarding Cultural Indicators of Health.<sup>9</sup> Paragraph 21 of the planning JWS consolidates the interim decisions and evidence I have previously put before the Court regarding Te Mana o te Wai. It is my opinion that these six paragraphs of the planning JWS are significant in understanding the context for Topic B discussions and considering amendments to any rule or policy.

16. I strongly agree with paragraph 21 of the planning JWS that I assisted with drafting, that states:<sup>10</sup>

Ngai Tahu ki Murihiku understand Te Mana o te Wai to be a process as well as an outcome and the way it is conducted. Te Mana o te Wai is not considered to be a 'tick box' of having been done or not. The term has high status and contains inherent meanings, mātauranga and tikanga that have been reflected or provided for in its expression as a modern RMA policy in the NPS-FM 2020.

17. In considering the outstanding matters before the Topic B hearing, it is important to note that the policies and rules in the pSWLP were formulated in 2014-16 to slow degradation and 'hold the line'; a phrase commonly used by Environment Southland during the development of the pSWLP. However, the Topic A interim decisions clarified and strengthened the role of Te Mana o te Wai and hauora in the pSWLP.

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6 *Aratiatia Livestock Limited and Ors v Southland Regional Council* [2019] NZEnvC 208 at [7].

7 Statement of Evidence of Ailsa Cain (15 February 2019) at [18].

8 Dated 10 December 2021.

9 Memorandum of Counsel for Ngā Rūnanga regarding Cultural Indicators of Health (29 November 2019).

10 Planning JWS at [21].

18. Therefore, any amendments to policies and rules need to reassess what best practice is in the context of the Topic A decision and to improve and maintain water quality and quantity to hauora. As articulated in the JWS – Water Quality and Ecology (Rivers and Lakes), 3-4 September 2019:

Hauora is not just a reference to one’s health but to a state of health. Hauora is defined in English as meaning ‘fit, well, healthy, vigorous, robust.’ A human analogy for hauora is that you can take a knock, such as have a cold, and have the resilience to bounce back to a healthy and vigorous state.

19. Policy and rule development should reflect the intent of the Topic A decision, ki uta ki tai and Te Mana o te Wai. There was no disagreement about this point in any of the 2021 Joint Witness Statements. In my opinion, to do so includes utilising tools already in the pSWLP, such as Ngāi Tahu Indicators of Health, and demonstrating how any amendments to the policies or rules provide for hauora.
20. The clarification of the national importance of Te Mana o te Wai in the Topic A interim decisions and consequential inclusion of the Interpretation Statement has resulted in flipping the focus of the pSWLP on how hauora can be achieved and maintained,<sup>11</sup> thus, moving the purpose of the policies and rules away from considering degradation to that of hauora.
21. The flip in focus can be expressed in the tone and wording of the rule, as suggested in the planning JWS for mapping.<sup>12</sup> However, the key point is that flip shifts the emphasis of the rule, in particular, what the subject of the rule is, as this requires reconsideration of what is being managed and how it provides for hauora and the first priority of freshwater management, the wellbeing of the waterbody. Consideration is then given respectively to the second and third priorities.
22. In the science JWS, experts agreed that defining “degraded” (as has been done in previous JWSs) does not conversely define hauora. It notes that “Hauora is closer to a natural state, whereas we consider a degraded state is far from natural.”<sup>13</sup> They also noted that hauora requires narrative and numerical

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11 Referred to as the hauora envelope in the Draft Murihiku Southland Freshwater Objectives: Providing for hauora, the health and well-being of waterbodies in Murihiku Southland

12 Planning JWS at [26].

13 Question 6, Science/water quality JWS – 26 November 2021.

attributes.<sup>14</sup> These points are important in considering how a rule or policy supports directional change in Southland, ensuring the region’s water and land is actively moving towards hauora under the korowai of Te Mana o te Wai, and how within that rule, it responds to the policy intent.

23. This shift requires a new way of thinking and rule drafting. In Southland, I consider that this new thinking has been greatly assisted by the technical report *Draft Murihiku Southland Freshwater Objectives: Providing for hauora, the health and well-being of waterbodies in Murihiku Southland* (the **technical report**).<sup>15</sup> This technical report was written after the Topic A decision.

24. The primary purpose of the technical report is to describe draft freshwater objectives that reflect qualities of hauora that support the health and wellbeing of waterbodies within Southland, following national direction and regional direction for freshwater management.<sup>16</sup> It is also intended to assist decision makers to express “what” state is desired to be achieved for waterbodies.<sup>17</sup>

25. Of relevance to my evidence is the understanding of hauora and the development of related principles in the technical report. Hauora principles require consideration of a combination of waterbody attributes that provide for hauora, understanding that nationally directed attributes on their own do not provide a holistic picture of the health and well-being of waterbodies.<sup>18</sup>

26. A fundamental assumption of the technical report is that:<sup>19</sup>

...waterbodies are at their most healthy and resilient in a largely unimpacted state, with mauri intact. As pressures come to bear, cumulatively and over time, waterbodies can shift from a state of hauora, or healthy resilience, into a degraded state that no longer supports natural processes, populations of species, or human activities and uses that were once associated with the waterbody.

27. The technical report lists six hauora objectives with a descriptive narrative. The hauora principles are:

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14 Question 3, Science/water quality JWS – 26 November 2021.

15 Bartlett, M., Kitson, J., Norton, N., Wilson, K. (2020) *Draft Murihiku Southland Freshwater Objectives: Providing for hauora, the health and well-being of waterbodies in Murihiku Southland*.

16 At page 3.

17 At page 8.

18 At page 6.

19 At page 25.

- (a) **Principle A:** A state of hauora will be the result of the interaction of a combination of attributes, including Ngāi Tahu Indicators of Health.
- (b) **Principle B:** The nature and behaviour of particular waterbodies is important to understand when considering attributes.
- (c) **Principle C:** Nationally directed attributes alone cannot describe a state of hauora for waterbodies, so additional measures are needed, including assessing against Ngāi Tahu Indicators of Health.
- (d) **Principle D:** Where a water quality attribute is associated with risk of people getting sick, this risk will be reduced to the lowest possible level.
- (e) **Principle E:** Where a water quality attribute is assessing levels of toxicity or aspects of harm to aquatic species, in order to avoid harm to these species this risk will be reduced to the lowest possible level.
- (f) **Principle F:** Hauora is most likely to be provided for when waterbodies are closest to their natural condition, so an understanding of natural state or reference state is needed to help decision-makers.

28. Ideally, the technical report would have been published prior to the drafting of the pSWLP and informed its development as the technical report provides clearer parameters for freshwater management and the collective outcomes sort. However, it is still of importance to deliberations around the pSWLP policies and rules, specifically for what state is to be achieved when implementing the rules package. The technical report notes that the “how” and “by when” are matters to be considered through the Freshwater Management Unit process.
29. I believe the technical report aids planning experts in their reframing of policy responses to understand what the subject of a rule is to support hauora, and assists with the enquiry of the pSWLP.
30. In my opinion, ki uta ki tai and Te Mana o te Wai require all aspects of the rules to work together with the policies to support the pSWLP Objectives. There can be no “carve outs”, exemptions or softer approaches for particular activities. As Mr Skerrett stated in his evidence ‘we cannot continue leave this matter for future generations to tidy up – our generation taking from the next, leaving nothing for



them. Strong leadership is needed to turn the ship in the right direction and that takes a strong plan.<sup>20</sup>

### **SIGNIFICANCE OF REPO / WETLANDS TO NGĀI TAHU**

- 31.** The historical and contemporary significance of wetlands to Ngāi Tahu ki Murihiku has been covered repeatedly in all the evidence of Ngā Rūnanga and its memorandum regarding Cultural Indicators of Health. This significance is referenced in the Introduction of the pSWLP. The significance of wetlands is outlined in Te Tangi a Taura, the Ngāi Tahu Freshwater Policy, and the 2019 values report *Wai: Ngāi Tahu ki Murihiku*. Wetlands were commonly referenced in the WAI27 evidence and most of the Ngāi Tahu Claims Settlement Act 1998 Statutory Acknowledgements in Southland refer to wetlands.
- 32.** Simply, it is my view that there are no grounds for any party in this process or engaging in the takiwā of Ngāi Tahu not to know the significance of wetlands to Ngāi Tahu.
- 33.** Ngāi Tahu ki Murihiku do not have qualifiers or criteria to remove or downplay the significance of wetlands. They regard wetlands as important natural and cultural resources, that should be rich in biodiversity and important sources of mahinga kai.
- 34.** Wetlands have been an ongoing focus of the Ngā Rūnanga case, and indeed for other work I have been engaged in outside this process. In my opinion, the statement by Ms. Davidson in paragraph 21 of her evidence regarding 'SWLP provisions for diversions from natural wetlands are more restrictive than the NESF' is appropriate given the evidence of Dr Kitson in paragraphs 18 to 21, and the well-known significance of wetlands to Ngāi Tahu ki Murihiku.

### **CULTURAL IDENTITY AND THE CHARACTERISTICS OF WATERBODIES**

- 35.** The interdependence between cultural identity and the characteristics of waterbodies for Ngāi Tahu ki Murihiku had been discussed and demonstrated in the evidence of Ngā Rūnanga and its memorandum regarding Cultural Indicators of Health. It is also mentioned in paragraph 53 of the First Interim Decision for Topic A.

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20 Statement of Evidence of Michael Skerrett (15 February 2019) at [96].

- 36.** Tā Tipene O'Regan notes that the acknowledgement of a person or persons, either by themselves through pepeha or by others, is:<sup>21</sup>

to the land and to the region, especially to the major geographic features of a place: the mountain, the river, the coast. These are the landmarks associated by tradition with ancestry and tribe. We frequently do not name an individual on the marae but refer instead to his or her mountain or coast or tribe. These things are part of the person...They are the symbols of the group and therefore of kinship and self-view. The tie is whakapapa.

- 37.** This introductory practice reinforces the connection of one's identity and whakapapa to the whenua and waters, and thus, a person is distinguished by the characteristics and condition of those geographical features. When a waterbody is degraded, that person is constantly associated with that state, and carries that with them every time they introduce themselves. I cannot stress enough how Ngāi Tahu culture and identity is entwined with the natural environment, and any negative impacts on the environment have direct, consequential impacts on cultural identity and the mana of hapū and individuals.

- 38.** Characteristics of waterbodies also effect mahinga kai, a cornerstone of Ngāi Tahu society. As I have previously stated:<sup>22</sup>

Water is a significant feature in mahinga kai due to its use in habitat, cultivation, harvesting, manufacturing and transport as well as for human consumption. The characteristics of the waterbody (smell, shape, bed, flow, etc) have a direct impact on its health and surrounding lands, and what is harvested from it and when. Preferential sites for mahinga kai tend to be hāpua (estuaries, lagoons), repo (wetlands) and the riparian zones of rivers, streams and lakes.

- 39.** River straightening and drain maintenance have become increasingly problematic for Ngāi Tahu ki Murihiku as both practices indiscriminately alter the characteristics of a waterbody and have a direct impact on the health of the waterbody and taonga species. Dr Kitson discusses these impacts in more detail in paragraphs 22 to 29 of her evidence.

- 40.** These impacts have flow on effects to the ability to practice mahinga kai in certain areas as mahinga kai are not a one-off resource. For an area to be used and a species harvested, the collective parts must be able to sustain themselves within a

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21 Wilson, J ed. (1987) From the Beginning: The Archaeology of the Maori, page 23

22 Statement of evidence of Ailsa Cain (15 February 2019) at [45].

specified cycle.<sup>23</sup> Clearing drains disrupt the ability of the system to sustain itself and therefore, the place and species need to be rested to recover, if they can. Consequently, Ngāi Tahu ki Murihiku lose yet another place in Southland to practice mahinga kai, albeit temporary in the “best case” scenario.



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**Ailsa Cain**

**20 December 2021**

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<sup>23</sup> At [46].