

**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

**STATEMENT OF EVIDENCE OF AILSA CAIN
ON BEHALF OF NGĀ RŪNANGA – TRANCHE 3**

Culture and policy

1 August 2022

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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.
3. In June 2022, I was newly appointed for a five-year term as the Ngāi Tahu representative on the Guardians of Lakes Manapōuri, Te Anau and Monowai.

CODE OF CONDUCT

4. 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.
5. 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.
6. 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.

SCOPE OF EVIDENCE

7. My evidence first focuses on the Waiau and the context that shaped the general reasons for the Ngā Rūnanga appeal. I then provide detailed and contextual cultural policy information for the specific parts of the relief sought by Ngā Rūnanga.
8. Within this evidence, I have predominantly used nohoanga in examples regarding the impacts of the pSWLP and water quality and quantity on the Ngāi Tahu redress mechanisms from Treaty Settlements. Other redress provisions

such as taonga species and customary fisheries are still relevant. My approach here is to build a more detailed picture of the impacts on mahinga kai using a continuous, recognisable thread, nohoanga. Nohoanga also provide useful spatial reference points throughout the region to consider ki uta ki tai and the impacts of the pSWLP policies and rules.

9. In my evidence, I have referred to:

- (a) Final report on cultural indicators of health (29 November 2019);¹
- (b) Draft Murihiku Southland Freshwater Objectives: Providing for hauora, the health and well-being of waterbodies in Murihiku Southland, 2020;
- (c) Ngāi Tahu ki Murihiku Environmental and Resource Management Plan, 2008 (also referred to as **Te Tangi a Tauira**);
- (d) Evidence and reports from WAI27;
- (e) Ngāi Tahu ki Murihiku cultural impact assessments for the Waiau;
- (f) Statement of evidence of Dr Jane Kitson (1 August 2022); and
- (g) Statement of evidence of Ms Treena Davidson (1 August 2022).

EXECUTIVE SUMMARY

10. The Interim Decisions for Topic A have shifted my thinking about the Plan's ability to realise Te Mana o te Wai, but I remain concerned that through consideration of the policies and rules in Topic B, existing practices that do not improve and maintain hauora and the mauri of freshwater could be embedded. Nominal or marginal shifts in practice will not achieve what is needed to protect the mauri of the water.

11. The Waiau is culturally degraded, and I acknowledge that the mauri of the waterbodies might take generations, if ever, to be restored. However, as kaitiaki, Ngāi Tahu ki Murihiku are bound to do everything in their power to protect and

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

restore its mauri. Equity is needed in considering what actions are required from water users to restore the mauri and hauora of the Waiau given the disproportional effects from hydro-electric generation.

12. Equity is an important consideration throughout the pSWLP. My evidence focuses on what is needed in policies and rules to provide for equity in consideration of Te Ao Māori, specifically Ngāi Tahu ki Murihiku paradigms, relationships, associations and cultural practices. I also note and comment on issues stemming from the Ngāi Tahu Claims Settlement Act 1998 coming into effect 35 years after the Manapōuri – Te Anau Development Act 1963, and seven years after the first wave of plans and consents under the Resource Management Act 1991.
13. The 1998 Ngāi Tahu Treaty Settlement has a redress package that includes tangible mechanisms to enable Ngāi Tahu to access lands and waters and engage in cultural practices. These mechanisms are not contrary to the national direction that also promotes this relationship and cultural practices by Ngāi Tahu ki Murihiku. An ongoing issue, however, is how these mechanisms are included in plans and consents.
14. Given these ongoing issues, it is my opinion that the pSWLP needs to better reflect the national direction and Treaty Settlements by providing clear policies and rules with regards to Ngāi Tahu ki Murihiku matters and cultural practices.
15. Ngāi Tahu ki Murihiku does not discourage hydro-electric generation and renewable energy but does provide strong direction about what needs to be taken into account given the impact of those activities on the mauri and mana of a river, and mahinga kai. In my opinion, if balance between renewable energy and mauri is not sought in the pSWLP then any benefit from renewable energy is questionable.

O TE WAI, O TE WHENUA – NGĀI TAHU PARADIGMS AND APPROACHES

16. In 2017, Gail Thompson stated during the Council Hearing for the pSWLP that “unless we have got good clean water, we just are going to continually lose all those connections we have with our past and we won’t have a future.”²

² Gail Thompson - Cultural Evidence (in video format) presented on behalf of Ngāi Tahu at the Council Hearing, 2017.

17. Ms Thompson’s opinion dovetailed that of Muriel Johnstone who at the same hearing noted, “there is no use having pristine beautiful mountains where we have made a mess of the whenua that the rivers and the waters have to run over to actually come down to the sea.”³
18. I think these two points are of particular importance to Tranche 3 issues as they provide a useful, intentional context in which to consider policies and rules. The quotes personalise the Ngāi Tahu ki Murihiku understanding of how water should be revered and managed, as stated in Te Tangi a Taurira: ⁴

Water is a taonga, or treasure of the people. It is the kaitiaki responsibility of tangata whenua to ensure that this taonga is available for future generations in as good as, if not better quality.

Water has the spiritual qualities of mauri and wairua. The continued wellbeing of these qualities is dependent on the physical health of the water. Water is the lifeblood of Papatūānuku and must be protected. We need to understand that we cannot live without water and that the effects on water quality have a cumulative effect on mahinga kai and other resources.

19. I understand the opinions of both Ms Thompson and Ms Johnstone to also articulate their deep understanding of ki uta ki tai. Ki uta ki tai is about standing on the land and knowing the effects, both positive and negative, in every direction, and the impacts on one’s past and that of future generations.
20. My Evidence in Chief for Topic A,⁵ coupled with that of Michael Skerrett, outlined many key Ngāi Tahu principles, world views, and experiences that are relevant to Tranche 3. We also detailed overarching outcomes sought by Ngāi Tahu ki Murihiku in the management of Southland’s environment. I made references to these points again in my Evidence in Chief for Topic B.⁶ Rather than repeat those points in the body of my evidence, I have provided a summary in **Appendix A**.
21. In Topic A, I stated that that the Decisions version of the pSWLP seeks to maintain the status quo, and that the status quo will not make the improvements

3 Muriel Johnstone - Cultural Evidence (in video format) presented on behalf of Ngāi Tahu at the Council Hearing, 2017.

4 Ngāi Tahu ki Murihiku (2008) The Cry of the People Te Tangi a Taurira, p.147.

5 Statement of Evidence of Ailsa Cain (15 February 2019).

6 Statement of Evidence of Ailsa Cain (20 December 2021).

to water quality, quantity and management as sought by Ngāi Tahu ki Murihiku and Ngā Rūnanga.

22. The Interim Decisions from the Environment Court for Topic A have shifted my opinion and I acknowledge that the pSWLP now has the potential to deliver improvements for the mauri and hauora of freshwater if the amendments to the policies and rules in Topic B reflect the decisions of Topic A and Te Mana o te Wai. I remain concerned that, in Topic B, the rules may be considered by parties without having sufficient regard to the Interpretation Statement and the Objectives, rather again focusing on embedding existing practices or making nominal or marginal shifts, inconsequential to improving and maintaining the mauri and hauora of freshwater.
23. In my opinion, and based on the evidence to date, including that of Dr Kitson regarding hauora and Ngāi Tahu indicators of health, embedding existing practices, or making nominal or marginal shifts will not achieve what is needed in protecting the mauri of the water, nor restoring and preserving the balance between the water, the wider environment, and the community.⁷ At regional and local levels, I do not think shifts of this nature would align with the ‘system reset’ promoted in the recommendations of the Southland Regional Forum.⁸

MAURI AND MANA OF THE WAIU

24. Paragraphs 50-69 of my evidence in chief for Topic A covered the Ngāi Tahu ki Murihiku Historical and Modern Contexts for Water and Land. The patterns and trends I outlined apply to the Waiau. The archaeological records and oral histories are substantial for this area, as are the remaining known traditional place names given that it is major route to and from the inland lakes, mahinga kai (including pounamu), nohoanga and kaika to the Foveaux Coast. Its Ngāi Tahu historical and contemporary associations and relationships are well known and reasonably well documented.

⁷ National Policy Statement for Freshwater Management 2020, clause 1.3 (1).

⁸ For example, see Regional Forum Recommendations Report to Environment Southland and Te Ao Mārama Inc. Board (June 2022) <https://waterandland.es.govt.nz/regional-forum> at 8. The Southland Regional Forum was set up by Environment Southland to consider specific policies as well as on-ground initiatives required to make change and improve Southland’s water and land for generations to come. The Forum has been operating for three years.

25. I concluded that section by using the Waiau as an example of cultural degradation:

The Waiau River, once so powerful that it was known to tragically sweep mokihi (reed/flax canoes) out to sea and tip canoes in its rapids, has been sorrowfully regarded as a 'shadow of its former glory' since the 1970s.⁹ These modifications affect the histories and associations whānau have with these rivers as well as the functionality, amenity, riparian biodiversity and mauri to the point where Te Mana o te Wai is diminished.

26. My evidence had drawn on a number of sources, notably the reports for WAI 27, two cultural impact assessments, one from 1993, and a draft assessment from 2018, and Te Tangi a Tauria. I have drawn on these sources again, and considered the Draft Murihiku Southland Freshwater Objectives, Wai Report 2019, and Ngā Rūnanga Report on Cultural Indicators of Health.¹⁰ My evidence now focuses on the mauri and mana of the Waiau rather than the occupation and use of the area that I have already discussed in previous evidence. For completeness, Dr Kitson's evidence discusses hauora in paragraphs [12]-[13].

27. When kaumatua were asked in 1993 about the mauri of the Waiau River, they stated:¹¹

The Waiau River is a living river, it has a mauri, a life essence or living component. Because of this, it is essential that the river is treated with respect to ensure that its mauri remains healthy. The best way to do this is to not interfere with its natural processes.

The Waiau River was once a "mighty" river. It had mana. However, since the Manapōuri Power Scheme, built in the early 1970s, this has changed. The river has lost its mana and is now but a shadow of its former glory. Some say that the mauri of the river is slumbering, others believe the mauri is dying.

With its reduced flow the Waiau River can no longer do the job it was 'naturally' supposed to do. The artery [referring to the veins of Papatūānuku] has been clamped, at both weir sites. A large proportion of its lifeblood has been lost, diverted to where nature never intended it to go.

9 Corry, S., Puentener, R. (1993) Tikanga Maori Cultural, Spiritual and Historical Values of the Waiau River: A Report for the Iwi Task Group of the Waiau River Working Party, p. 9.

10 Attached to the Memorandum of Counsel for Ngā Rūnanga regarding cultural indicators of health (29 November 2019).

11 Corry, S., Puentener, R. (1993) Tikanga Maori Cultural, Spiritual and Historical Values of the Waiau River: A Report for the Iwi Task Group of the Waiau River Working Party, p. 9.

The decline in water quantity and quality has diminished the mauri of the river. It has also negatively affected the cultural values and uses of the river, particularly mahinga kai resources. In Māori terms all these problems are attributable to the diminishing mauri. For the tangata whenua, the Waiau River is not a healthy river.

28. In this context, Charles Barlow states that ‘everything has a mauri, including people, fish, animals, birds, forests, land, seas, and rivers; the mauri is that power which permits these living things to exist within their own realm and sphere.’¹²

29. Another assessment on behalf of Ngāi Tahu ki Murihiku in 2018 concluded: ¹³

Cultural health is not simply about absolute numerical values, but rather includes Ngāi Tahu whanui kaitiaki responsibilities and relationship and associations with the catchment. This difference is particularly evident when it comes to describing seminal aspects of cultural health such as mauri and kaitiakitanga. Interviews (past and current) show that kaitiaki find it impossible to consider the health of the catchment from the perspective of the existing reduced-flow state. They cannot recalibrate the mauri of this highly significant awa. Therefore, any further reduction or manipulation of flows or lake levels, however small, is potentially seen as further eroding the mauri and their kaitiakitanga. With the current poor state of cultural values any further degradation is not acceptable to Ngāi Tahu ki Murihiku.

30. In my opinion, there is no question that Ngāi Tahu ki Murihiku regard the Waiau River as culturally degraded, and that work is needed to restore its hauora and mauri. I acknowledge that the question does hang over us as to whether the mauri can ever be fully restored given the current state of the river and its surrounds. Regardless, as kaitiaki, Ngāi Tahu ki Murihiku are bound to do everything in their power to do so. This position is reflected in the management approach sought by Te Ao Mārama Inc and Ngāi Tahu ki Murihiku in the Waiau over the last 15 years, which has focused on the following key issues:¹⁴

Water quality

- The river has reasonable water quality due to large, fast flow – need to protect water quality

Water quantity

- Reductions in flow and impacts on river as habitat
- Maintaining appropriate minimum flow

12 Barlow, C. (1991) Tikanga Whakaaro: Key concepts in Māori culture, p. 83.

13 Kitson, J. (2018) Draft Proposed Lake Operating Guideline Review (Lakes Manapōuri and Te Anau): Cultural Impact Assessment for the Guardians of the Lakes Manapōuri, Monowai and Te Anau, p. 39.

14 Ngāi Tahu ki Murihiku (2008) The Cry of the People Te Tangi a Taura, p. 153.

- Flow levels too low at times

Dams and diversions

- Water takes for hydroelectric generation, and effects on overall river health, flow and natural character
- Changes to the river mouth environment due to changes in flow

Gravel extraction

- Gravels don't get transported down the river as well as they should because of the Mararoa Weir

Mahinga kai and biodiversity

- Commercial jet boating is popular on this river – risk of introducing pests such as didymo

Wāhi tapu

- Protection of culturally significant sites in the catchment

31. The pSWLP is a key instrument in the continuous journey of restoring the mauri of the Waiau and realising Te Mana o te Wai. To be an active and equitable participant on that journey, in my opinion, every action under the plan needs to promote natural processes and populations of species.¹⁵ Mauri requires careful consideration of how to ensure living things exist within their own realm and sphere. The ability of Ngāi Tahu whānui to undertake mahinga kai safely and in accordance with tikanga throughout the region, having optimal site selection, will be a clear measure of the improvements in the hauora and mauri of the waterbody.

EQUITY IN WATER MANAGEMENT

32. In July 2022, the Southland Regional Forum released its recommendations to Environment Southland and Te Ao Mārama Inc regarding water and land management. I agree in principle with their statements that a system reset is needed to manage Southland's freshwater resources, and that collaborative effort does not demand equal input from every user but rather involves principles of equity:¹⁶

The principle of equity (or fairness) suggests that those responsible for a greater environmental impact on freshwater will be expected to make a greater contribution

¹⁵ Draft Murihiku Southland Freshwater Objectives, p. 25.

¹⁶ Southland Regional Forum (2022) Achieving the Community's Aspirations for Freshwater, p.8.

towards restoring the health and wellbeing of waterbodies. Thus, there is an expected correlation between the level of risk to waterbodies from particular land use activities and landscape settings, and the level of contribution to waterbody health expected from those resource users.

33. I believe that equity needs to be carefully considered throughout the pSWLP, and that its presence in the plan architecture is more easily gauged by examining the rules. For example, examination of the rules with regards to the consumptive and extractive uses of water that diminish the use of water in situ for cultural practices. As Dr Kitson and I have discussed, mahinga kai is a matter of water quality and quantity, in situ presence of a range of taonga species, and functioning, healthy ecosystems. Knowledge is transferred between generations through the active participation of Ngāi Tahu whānui.
34. Many of the cultural redress provisions in the Ngāi Tahu Claims Settlement Act 1998 (**NTCSA**), such as nohoanga, are associated with water use, availability and access. Water should be in a state for Ngāi Tahu to undertake mahinga kai. Equity is needed in the pSWLP to allow for the active practice of mahinga kai, not just the idea or value of it, as it has been largely absent from freshwater management under the Resource Management Act 1991 (**RMA**); an afterthought at best.
35. Traditionally, hapū rights and responsibilities guide mahinga kai, and hapū are expected to manage the resource so that it will be available for future generations.¹⁷ As a society that worked within the limits of the physical environment, Ngāi Tahu cultural and social systems evolved according to those limits.¹⁸
36. The oral and written histories where Ngāi Tahu talk about mahinga kai and its management are in what I regard as a time of plenty, where preferential and optimal sites were selected. Some of these were mapped by European explorers such as William Mantell, C. J. Nairn and W. J. Stephen, as well as by Hōri Kerei Tairaroa. I now regard Ngāi Tahu ki Murihiku as being in a time of 'making do' with what traces are left and functioning to a level that allows for aspects of mahinga kai. Many of the sites where whanau can go are not optimal or even aesthetically pleasing, including nohoanga on the Waiau.

17 Dacker, B. (1990) *The People of the Place: Mahika kai*, p.16.

18 Corry, S., Puentener, R. (1993) *Tikanga Maori Cultural, Spiritual and Historical Values of the Waiau River: A Report for the Iwi Task Group of the Waiau River Working Party*, p.28.

37. Equity is a central matter for the Waiau and its surrounds, especially when considering the actions of users to restore the mauri of the river. Dr Kitson refers in her evidence, paragraphs [16]-[19], to the disproportional effects on cultural degradation from how hydroelectricity is generated in the Waiau. In my opinion, this disproportional effect shifts land and water management from equal responses by all users and interested parties to one of what policies and rules are required to provide for equity in management and use. I also think the management response needs to provide visibility of those interests otherwise overshadowed by the current dominant use.

NGĀI TAHU RIGHTS AND INTERESTS

38. Article 2 of Te Tiriti o Waitangi/Treaty of Waitangi provides Ngāi Tahu ki Murihiku the authority and right to make decisions over resources and taonga, and it does so using ki uta ki tai.¹⁹ This point was not contested in Topic A.
39. In redressing breaches of the Treaty of Waitangi, the Crown provided Ngāi Tahu with an apology in 1997 that included:²⁰

[...]

- 2 The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu's use, and to provide adequate economic and social resources for Ngāi Tahu.

- 3 The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu's use and ownership of such of their land and valued possessions as they wished to retain.

[...]

40. With the apology came a cultural and economic redress package that included tangible mechanisms to enable Ngāi Tahu to access lands and waters, and engage in cultural practices; for example, nohoanga. Nohoanga are included in the NTCSA as part of a series of provisions aimed at recognising the mana of

19 EIC 17 April 2020, para 29

20 Ngāi Tahu Claims Settlement Act 1998, section 6.

Ngāi Tahu on the landscape and restoring the ability of Ngāi Tahu to give practical effect to kaitiaki responsibilities.²¹ Nohoanga provide Ngāi Tahu Whānui with the means and opportunity to experience the landscape as their tūpuna once did, and to promote customary practices associated with mahinga kai.²²

- 41.** These nohoanga are renewable entitlements over Crown-owned land that are to be within 20 metres of a waterway. They are created and granted for the purpose of permitting members of Ngāi Tahu Whānui to occupy temporarily land close to waterways on a non-commercial basis, so as to have access to waterways for lawful fishing and gathering of other natural resources.²³
- 42.** In achieving the purpose of RMA, it is a matter of national importance for all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga.²⁴
- 43.** The reason I refer to these instruments is twofold:

 - (a) there is clear direction to enable Ngāi Tahu ki Murihiku to practice mahinga kai in its takiwā; and
 - (b) the Crown apology to Ngāi Tahu and Settlement package came after the establishment of hydro-electric generation on the Waiau.
- 44.** I often find that 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. It is my opinion that it is not a 'nice to have' to include these mechanisms in the plan architecture and consenting, but a necessity to ensure alignment with Treaty Settlement legislation relevant to Southland. The redress mechanisms are also aligned with section 6(e) of the

²¹ <https://ngaitahu.iwi.nz/ngai-tahu/the-settlement/settlement-offer/cultural-redress/>, accessed 25 July 2022.

²² Ngāi Tahu ki Murihiku (2008) *The Cry of the People Te Tangi a Tauria*, p.103.

²³ Ngāi Tahu Claims Settlement Act 1998, section 256.

²⁴ Resource Management Act 1991, section 6.

RMA and the relationships Ngāi Tahu ki Murihiku hold and/or want to re-establish following colonisation, land alienation, and/or having been invisible in RMA processes and decisions.

- 45.** It is incorrect to assume or imply that Ngāi Tahu ki Murihiku has had fair and equal representation and influence in the implementation of the RMA or its predecessors,²⁵ including plan preparation, consenting and related conditions.
- 46.** For example, special legislation was passed in 1963 for the purpose of validating an agreement for the utilisation by the Crown of the water resources of Lakes Manapōuri and Te Anau and of the Waiau and Mararoa Rivers for the generation of electrical power for industrial and other purposes.²⁶ The Manapōuri – Te Anau Development Act 1963 includes operating guidelines for the lake levels aimed to protect the existing patterns, ecological stability, and recreational values of their vulnerable shorelines and to optimise the energy output of the Manapōuri power station.²⁷ The operating guidelines are based on recommendations submitted to the Minister of Conservation by the Guardians of Lakes Manapōuri, Te Anau and Monowai.
- 47.** For 35 years, Ngāi Tahu did not have a voice or representation on the protection of the shorelines and the effects of Manapōuri power station. It took the NTCSA in 1998 to establish two positions for Ngāi Tahu on the Guardians.²⁸ However, it is my opinion that by 1998 much of the current operating practice and consenting regime was embedded and the influence of those Ngāi Tahu positions is not as great as it could have been from 1963 or if the special legislation was passed today.
- 48.** Renewals of consents for existing activities is often the first time Ngāi Tahu ki Murihiku has an opportunity to undertake its assessments and provide comment. As such, the cultural policy response has been to redraft regional plan policies and rules to ensure that Ngāi Tahu paradigms and cultural redress mechanisms such as nohoanga and taonga species are front and centre in future consenting considerations, and that the consenting pathway provides for this. Iwi management plans have not always been as effective in achieving this.

25 See paragraphs [29] to [32] and [104] to [108] of the Resource Management Review Panel Report (2020) New Directions for Resource Management in New Zealand, p. 20 and 73,

26 Manapouri – Te Anau Development Act 1963.

27 Manapouri – Te Anau Development Act 1963, section 4A(1).

28 Ngāi Tahu Claims Settlement Act 1998, section 274.

49. The relief sought by Ngā Rūnanga to Rule 52A is important in the consideration of the NTCSA as well as ki uta ki tai. As I have discussed before, the NTCSA and RMA have different definitions of freshwater, with the definition in the NTCSA (from the Conservation Act 1987) being:

- a) all waters of rivers, streams, lakes, ponds, lagoons, wetlands, impoundments, canals, channels, watercourses, or other bodies of water whether naturally occurring or artificially made;
- b) all waters of estuaries or coastal lagoons;
- c) all other fresh or estuarine waters where freshwater fish indigenous to or introduced into New Zealand are found; and
- d) all waters in the mouth of every river or stream, and the mouth of every river and stream shall be deemed to include every outlet thereof and the seashore between those outlets and the waters of the sea or lying within a distance of 500 metres from any place where at low tide the waters of a river or stream meet the waters of the sea.

50. The narrower definition of freshwater in the RMA is limiting and problematic when Ngāi Tahu ki Murihiku works with Environment Southland to express and recognise its rights and interests in freshwater and to exercise kaitiaki responsibilities, especially in the Waiau where the restricted and reduced flows have affected the river and estuarine system (see the statement of evidence of Dr Kitson, at paragraphs [14]-[19]).

51. In light of these shortcomings, it is important for Rule 52A to provide clear guidance to the reader on matters such as mahinga kai, taonga species, values and beliefs. This will not only ensure a greater impetus in improving the hauora of the Waiau but ensure a more consistent approach with the NTCSA.



Confluence of the Waiiau and Mararoa rivers before the weir, Hocken collection, 24507

HYDRO-ELECTRIC GENERATION AND RENEWABLE ENERGY

52. With regards to Policies 26 and 26A of the pSWLP, section 3.3.11 Hydro Development/Generation in Te Tangi a Taurira²⁹ notes that:

Hydro development, if managed appropriately, can provide a cleaner source of energy than fossil fuels. However, such projects have the potential to impact significantly on Ngāi Tahu ki Murihiku cultural values and beliefs, including the spiritual value of water, mahinga kai, terrestrial vegetation, aquatic biota, and water quality.

53. Provision for hydro-electric generation is a delicate point when coupled with the providing for the mauri, and hence the mana, of the river. It is my understanding that for Ngāi Tahu ki Murihiku it is not a matter of picking one over the other but considering what the waterbody needs and requires to be in a state of hauora.

29 Ngāi Tahu ki Murihiku (2008) *The Cry of the People Te Tangi a Taurira*, p. 97-98.

- 54.** As such, the related policies in the Murihiku iwi management plan do not discourage hydro-electric generation, but provide strong direction on what needs to be taken into account:³⁰
- (a) Require that hydroelectric development consideration, feasibility studies, and project management in Fiordland recognises and gives effect to the principle of ki uta ki tai (mountains to sea).
 - (b) Avoid compromising mahinga kai as a result of damming, diversion or extraction of freshwater resources.
 - (c) Ensure that activities in the upper catchments do not have adverse impacts on mahinga kai resources in the lower catchments.
 - (d) Ensure that all native fish species have uninhibited passage between lakes, rivers and sea, where such passage is a natural occurrence, through ensuring continuity of flow ki uta ki tai, and fish passageways within dam structures.
 - (e) Require that adverse effects associated with the discharge of sediments on aquatic and terrestrial ecosystems are avoided.
 - (f) Require the development and implementation of monitoring regimes to ensure that any adverse effects (including existing or potential loss of tuna/eel) on the health of mahinga kai resources and/or their habitats are identified and addressed.
 - (g) Require, if deemed necessary, that companies provide opportunities for iwi representatives to participate in monitoring.
 - (h) Require that monitoring provisions are present in all aspects of hydropower development scheme operations.
 - (i) Ensure that Ngāi Tahu ki Murihiku are involved in the setting of consent conditions (during consultation) associated with any and all resource consents for hydro power development activities.

30 Ngāi Tahu ki Murihiku (2008) *The Cry of the People Te Tangi a Taurira*, p.97-98.

- (j) Avoid taking any more water from the Waiau River for the purposes of hydroelectric power generation.
 - (k) Require the active mitigation of tuna/eel loss in the turbines of power generation schemes.
 - (l) Require that the costs of elver transfer are met by the electricity generator where there is a cause-effect link.
- 55.** On the broader topic of renewable energy (wind, biofuels and solar energy), Te Tangi a Tauria continues its balance between supporting alternatives to fossil fuels but not at the expense of the environment.³¹
- 56.** As I saw at the Murihiku Science and Innovation Wānanga in November 2021, opportunities continue to grow for renewable energy, especially hydrogen, with the emergence of new technologies alongside considerations of scale, storage, and performance.
- 57.** I think the pSWLP needs encourage renewable energy but not at the expense of the mauri and hauora of the water. It also needs to consider that renewable energy generation could occur in and adjacent to other waterbodies in the future, not just in the Waiau Freshwater Management Unit. If that balance is not sought through regulatory tools, then in my opinion, any benefit from renewable energy is questionable. Renewable energy, both existing and yet to be developed, cannot continue to diminish the relationships and associations of Ngāi Tahu ki Murihiku with its waters, lands and cultural practices.

CONCLUSION

- 58.** A clear suite of policies and rules is required in the pSWLP to improve the hauora of the Waiau and restore its mauri. Clarity includes how these rules deliver the objectives and policies of the pSWLP, as well as providing visibility to Ngāi Tahu Treaty Settlement mechanisms and their consideration in consenting. It cannot be assumed that Ngāi Tahu paradigms and interests will be considered or appropriately provided for by RMA decision makers. This has not been the case in the past.

31 Ngāi Tahu ki Murihiku (2008) The Cry of the People Te Tangi a Tauria, p.117.

59. The Waiau highlights numerous competing interests, with some, such as hydro-electric generation, well established both physically and within the consenting regime. This dominance by one use does not mean that other interests should not be provided for or diminished. Equity is critical to restoring the mauri of the Waiau and considering the current and future actions and interests of users, Environment Southland, the community, and Ngāi Tahu ki Murihiku.



Ailsa Cain

1 August 2022

Appendix A

Summary of Ngāi Tahu ki Murihiku points relevant to Tranche 3

This appendix captures points raised previously in evidence by Ms A Cain and Mr M Skerrett for Ngā Rūnanga. The matters include: water management, Te Tiriti o Waitangi Treaty of Waitangi, ki uta ki tai, cumulative effects, Te Mana o te Wai, Ngāi Tahu Indicators of Health, mahinga kai, and taonga species.

Matter	Related Points	Reference
Water Management	Outcome sought - active protection and prioritisation of the mauri of the water, halting of further degradation and improvement of the health of the water where degraded.	Evidence of A Cain, 17 April 2020, para 24
	Cultural contexts are crucial to understanding cultural concepts and their appropriate application in resource management.	Evidence of A Cain, 17 April 2020, para 71
	The traditional Ngāi Tahu system of resource allocation and control contained and reflected all of those beliefs and practices which were important to society's welfare and identity. In this way, the physical environment and the Ngāi Tahu interaction with it was an unbroken combination of the past, the present and the unfolding future.	Evidence in Chief of M Skerrett, 15 February 2019, para 38
	Water, land and people are eternally bound. As kaitiaki, Nga 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 oneself and their hapu and iwi, as well as their collective cultural identity.	Evidence in Chief of M Skerrett, 15 February 2019, para 22
	TAMI has been articulating since its inception that Environment Southland needs to halt declining water quality in Southland, and Ngāi Tahu has been raising its concerns about the impacts of land use change on water quality with the Crown since 1849.	Evidence in Chief of A Cain, 15 February 2019, para 83
	Ngāi Tahu ki Murihiku is primarily focused on strategic and integrated freshwater management, including advocating for complex interdependencies such as mahinga kai, and embodies an intergenerational and long-term approach to planning.	Evidence in Chief of A Cain, 15 February 2019, para 102
Te Tiriti o Waitangi Treaty of Waitangi	Article 2 of Te Tiriti o Waitangi/Treaty of Waitangi recognises and protects both a management right and philosophy.	Evidence of A Cain, 17 April 2020, para 10
	For Ngāi Tahu ki Murihiku, that includes the environmental philosophy of ki uta ki tai. Article 2 does not restrict the manner in which the possession or chieftainship is exercised.	Evidence of A Cain, 17 April 2020, para 17

Matter	Related Points	Reference
	Ngāi Tahu is the only iwi with mana whenua status in Southland. The Deed of Settlement, Ngāi Tahu Claims Settlement Act 1998 and Te Tiriti o Waitangi/Treaty of Waitangi should all be referenced when explaining how the Treaty Principles were taken into account in the pSWLP.	Evidence of A Cain, 17 April 2020, para 51
	Treaty Principles are not a “tick box” against the inclusion of key words, such as mechanisms from the Settlement Act. It is my opinion that to account for Treaty Principles is to protect the tikanga and iwi/hapū philosophies related to their management practices and interests in the outcomes of RMA plans and provide equal opportunity for Ngāi Tahu ki Murihiku to express its tino rangatiratanga.	Evidence of A Cain, 17 April 2020, para 62
Ki uta ki tai	Estuaries and waterbodies have been significant to Ngāi Tahu for centuries to reside, traverse and practice mahinga kai. They continue to be so and kaitiaki exercise their responsibilities using Ki Uta Ki Tai, not differentiating between legal definitions and agency jurisdiction.	Evidence in Chief of A Cain, 15 February 2019, para 114
Cumulative Effects	Cumulative effects (death by 1000 cuts) are the biggest issue of all. That is why getting the pSWLP right is so important. 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.	Evidence in Chief of M Skerrett, 15 February 2019, para 96
Te Mana o te Wai	Te Mana o te Wai is most effective and authentic when it is connected to its whakapapa. The Murihiku whakapapa of Te Mana o te Wai is characterised by tikanga and cultural heritage unique to Murihiku.	Evidence of A Cain, 17 April 2020, para 21.
	Te Mana o te Wai disrupts the regulation of the status quo by RMA tools as it makes the mana of water, its health and status, the paramount priority. It gives reverence to water, rather than regarding it solely as a commodity to benefit land-based production, economic development, and land use change.	Evidence in Chief of A Cain, 15 February 2019, para 85
	Te Mana o te Wai would significantly shift how water and land was managed in Southland to prioritise the mauri of water – water first, use second – and for that to be achieved and measured through the hauora of the taiao, wai and tangata.	Evidence of A Cain, 17 April 2020, para 42.
	The encapsulation of three hauora – taiao, wai and tangata – within Te Mana o te Wai implicitly aligned with the culturally relevant and prominent measures of those outcomes.	Evidence of A Cain, 17 April 2020, para 25.

Matter	Related Points	Reference
	Hauora aligns culturally relevant and prominent measures with the outcomes Te Mana o te Wai seeks and shifts the management of water and land in Southland to one of active protection and the prioritisation of mauri.	Evidence in A Cain, 17 April 2020, para 73.
Ngāi Tahu Indicators of Health	The inclusion of Ngāi Tahu Indicators of Health is significant for the application of Te Mana o te Wai and the Freshwater Management Unit process (Policies 44 and 47) as well enabling Ngāi Tahu to develop conditions for resource consents that would provide for and monitor species and other indicators of significance to Ngāi Tahu (Policy 40).	Evidence in Chief of A Cain, 15 February 2019, para 88
	The inclusion of Ngāi Tahu Indicators of Health strengthens the pSWLP and its application of Ngāi Tahu concepts and definitions.	Evidence in Chief of A Cain, 15 February 2019, para 90
Mahinga kai	Healthy and replenishing resources in situ, in multiple sites across Southland, continue to be important to Ngāi Tahu in practicing mahinga kai and for its cultural identity and wellbeing.	Evidence in Chief of A Cain, 15 February 2019, para 15.
	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.	Evidence in Chief of A Cain, 15 February 2019, para 45.
	For centuries, Ngāi Tahu have been repeatedly stressing the importance of mahinga kai to our cultural identity, survival and health. In agreeing to sign Te Tiriti, tūpuna thought, and had every right to think, that mahinga kai would be protected through the signing of the Treaty – the kupu (words) of Article II gave that assurance... Treaty Settlement was about restoring those rights and having our interests in mahinga kai legally recognised, restored and respected.	Evidence in Chief of M Skerrett, 15 February 2019, para 50

Matter	Related Points	Reference
	<p>It is wrong to have a diminishing number of mahinga kai sites across the district, nor should there be only a few sites left on a river. Such limitations have significant impacts on our cultural identity. Intensification of land and intensive land use seems to be reducing the number and quality of the sites and the taonga that reside there. The land is not coping with the activities taking place on it and the mauri of the water and land is diminishing with our sites. ES needs to pay attention to what the water and land is telling it.</p>	<p>Evidence in Chief of M Skerrett, 15 February 2019, para 84</p>
	<p>We do not exercise many of our customary rights to harvest taonga due to the health of the populations, which have been affected by to pests and the loss of habitat. This impacts on mātauranga, transfer of knowledge, social cohesion and the survival of our culture, and of species significant to Ngāi Tahu. The ethic of kaitiakitanga can only be taught properly through exercising customary practices with tamariki and mokopuna.</p>	<p>Evidence in Chief of M Skerrett, 15 February 2019, para 61</p>
<p>Taonga Species</p>	<p>Taonga species were included in the Settlement due to their fundamental importance in practicing mahinga kai. Taonga species are part of mahinga kai, both as indicators of the health of the resources and of the wellbeing of the people.</p>	<p>Evidence in Chief of M Skerrett, 15 February 2019, para 56</p>