

**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 MARGARET CAIN

**ON BEHALF OF NGĀ RŪNANGA (WAIHOPAI RŪNAKA, TE RŪNANGA O
AWARUA, TE RŪNANGA O ŌRAKA APARIMA, AND HOKONUI RŪNAKA) AND TE
RŪNANGA O NGĀI TAHU**

Culture and Policy

15 February 2019

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MAY IT PLEASE THE COURT

INTRODUCTION

Toitu te marae o Tane

Toitu te marae o Tangaroa

Toitu te Iwi

When the land and waters are strong, so are the people.

1. This powerful whakatauki is an instruction as well as a message to look after the land and water. The realms of land, water and people are interconnected by presence, acknowledgement and whakapapa. The interconnections maintain the hauora (health and wellbeing) of people. Elements of this whakatauki are in many of our sayings and mātauranga (knowledge, learnings).
2. This whakatauki was used by Te Ao Marama Incorporated (**TAMI**) in November 2014 when presenting its evidence for the Water and Rural Land/Soil chapters of the proposed Southland Regional Policy Statement. As the proposed Southland Water and Land Plan (**pSWLP**) stems from that document, this whakatauki is as relevant now as it was then.

Ko Hananui te mauka tūpuna

Ko Te Ara a Kiwa te moana

Ko Mata-au te awa

Ko Ruapuke, Papatea, Taukihepa nga motu

Ko Waitaha, Kāti Mamoe, Ngāi Tahu nga iwi

No Murihiku ahau

Ko Ailsa Cain ahau

3. My name is Ailsa Margaret Cain.
4. My whānau have long associations with Murihiku from Waitaha to the later arrival of Kāti Mamoe and Ngāi Tahu. My tūpuna, Kohuwai and Honekai, were married in the 1700s to establish an armistice between Kāti Mamoe and Ngāi Tahu. Their grandson and my tūpuna, Tuhawaiki, later signed the Treaty of Waitangi at Ruapuke in 1840. Today, my whānau have land holdings in Southland at Waimumu, Tukurau, the Catlins, South-west Southland, Riverton,

Ruapuke, Rakiura/Stewart Island and surrounding islands. I currently exercise my father's rights to harvest tītī on the Parata Manu of Taukihepa/Big South Cape.

5. I have Bachelor of Arts (History and Politics) from the University of Otago, and a Post Graduate Certificate in Heritage and Museum Studies from Victoria University of Wellington. I have 18 years' experience working in New Zealand cultural heritage, specifically policy and operational delivery, for central and local government, and iwi.
6. I am the director of a consultancy, Kauati, that specialises in heritage and environmental research and policy. I provide heritage and environmental policy advice for the Murihiku Case Study of *Ngā Kete o te Wānanga: Mātauranga Māori, Science and Freshwater Management* research programme, co-led by Dr Jane Kitson and funded by the Ministry of Business, Innovation and Employment. I currently contract to Te Rūnanga o Ngāi Tahu to deliver heritage advice.
7. Previously, I worked at TAMI as the Iwi Policy Officer from 2013 to 2015. During this time, I worked on the Water and Land 2020 project,¹ the drafting of the pSWLP, and the Ministry for the Environment's Te Mana o te Wai Case Study.
8. This evidence has been prepared in accordance with the collective mātauranga (knowledge), experiences, values and mana of Ngā Rūnanga. However, it is my evidence and, while based on my understanding of the cultural values and experiences of Ngā Rūnanga, the opinions I express are mine.
9. 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. My qualifications are set out above. I confirm that the issues addressed in this statement of evidence 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.

¹ The broader Environment Southland project out of which the pSWLP has emerged.

10. 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.
11. 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

12. My evidence will address key Ngāi Tahu concepts, how they were intended to be incorporated into the pSWLP, and how they now function within the pSWLP. More specifically, I will discuss the following matters:
 - (a) Ngā Rūnanga involvement in the pSWLP development process;
 - (b) Ngā Rūnanga definitions of key concepts, including: water, Ki Uta Ki Tai, Te Mana o te Wai, Kaitiakitanga, and mahinga kai;
 - (c) Historical and contemporary contexts for these concepts; and
 - (d) How the Plan deals with key concepts and their linkages.
13. In preparing my evidence I have reviewed:
 - (a) Ngāi Tahu Deed of Settlement;
 - (b) Ngāi Tahu Claims Settlement Act 1998 (**NTCSA**);
 - (c) Ngāi Tahu 2025;
 - (d) The Cry of the People Te Tangi a Tauria (**Te Tangi**);
 - (e) Ngāi Tahu Freshwater Policy;
 - (f) Cultural Impact Assessments for the proposed Rakiura National Park, Waiau, Manapouri/Te Anau;
 - (g) Evidence submitted by Ngāi Tahu as part of WAI27;
 - (h) Previous evidence of Ngā Rūnanga submitted during the Hearing;
 - (i) Evidence of Matthew McCallum-Clark and Rebecca Robertson for Environment Southland;
 - (j) Southland Water Strategy 2013; and
 - (k) Te Mana o te Wai Case Study, 2015.

EXECUTIVE SUMMARY

14. Ngā Rūnanga seeks to ensure that the pSWLP is true to the Ngāi Tahu values, philosophies and definitions woven through it. Ngāi Tahu has expressed its aspirations for freshwater and the fundamental importance of mahinga kai repeatedly and consistently for the last two centuries. Ngāi Tahu does not want further degradation in water quality or quantity in its takiwā, which includes Southland.
15. The nomadic lifestyle of Ngāi Tahu ki Murihiku with an expansive reach and wide-spread kaika and nohoanga differ to settlement patterns in the rest of New Zealand. Oral and written histories coupled with archaeological records show a preference for sites around freshwater and estuarine waterbodies. 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.
16. The cultural and policy evidence explains key Ngāi Tahu concepts and how they were intended to be incorporated into the introductory sections, Objectives and Policies of the pSWLP. I have defined four of these terms (water, Ki Uta Ki Tai, mahinga kai and Kaitiakitanga), outlined related issues and the manner in which they were to be imbedded in the pSWLP. I also provide my critique of how these concepts have been affected by Environment Southland's decision to add qualifiers and insert additional text in the Objectives and Policies.
17. The historical and modern contexts for Ngāi Tahu ki Murihiku are outlined to demonstrate how Ngāi Tahu understand and apply the concepts in the SWLP.
18. 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.
19. Te Mana o te Wai puts the 'spotlight' on water while Physiographics focuses on the functionality and responses of land in regards to water. The absence of

a 'Te Mana o te Whenua' principle in a National Policy Statement should not take away from the significance of land in RMA management regimes, both for its own health and its primary relationship with freshwater. Te Mana o te Wai and Physiographics are needed together in the pSWLP. These two concepts are bound together by Ki Uta Ki Tai.

20. Te Mana o te Wai aligns management tools with values. A gap identified in the development of the pSWLP was management tools that align with Ngāi Tahu values and aspirations. The inclusion of Ngāi Tahu Indicators of Health is significant for the application of Te Mana o te Wai, the Freshwater Management Unit process, and resource consenting.
21. The amended wording of Policy 47 removes the ability to apply Te Mana o te Wai at a waterbody scale. This amendment has impacts on Waituna and its inclusion in the Maitara FMU.

ROLE IN THE PLAN DEVELOPMENT PROCESS

22. Ngā Rūnanga has a multi-faceted input in any development of Resource Management Act 1991 (**RMA**) planning tools – as Treaty Partner, citizens, residents, ratepayers, kaitiaki, tangata whenua and mana whenua. The pSWLP has seen Ngā Rūnanga participate in all these roles, continuing the legacy of Ngāi Tahu ki Murihiku working with Environment Southland on resource management, specifically water quality and soil health.
23. In Southland, the partnership between local authorities and mana whenua is formalised through *He Huarahi mō Ngā Uri Whakatupu The Charter of Understanding, 2016* (see Mr Skerrett's evidence, paragraphs 31-33 and Appendix B). The Charter is seen to have regionally significant status and develops a relationship of mutual benefit between councils and mana whenua in the context of the RMA and Local Government Act 2002. Ngāi Tahu ki Murihiku works with all the local authorities in Southland for the agreed common goal of 'the sustainable management of the region's environment for the social, cultural, economic, and environmental needs of communities, for now and into the future.'²

² *He Huarahi mō Ngā Uri Whakatupu The Charter of Understanding, 2016, p. 4*

Te Ao Marama Incorporated

24. TAMI was established in 1996 and works on behalf of Ngāi Tahu ki Murihiku with councils in Murihiku on matters relating to the RMA and Local Government Act 2002. TAMI's priorities and activities occur within the context of the mandate provided by Papatipu Rūnanga. Day-to-day working relationships between Ngāi Tahu and local authorities are undertaken by TAMI and council staff.
25. TAMI is partially funded by annual set contributions from regional and local councils. The target funding helps councils meet their legislative requirements and facilitate tangata whenua input into plans, policies, etc. TAMI also has a fixed-term contract with the Ministry of Health (environmental health – Māori) and receives entity funding from Te Rūnanga o Ngāi Tahu.
26. TAMI applies the natural resource framework that was developed by and for Ngāi Tahu Whānui, *Ki Uta Ki Tai*. A hierarchy of agreements, Acts, policies, plans and values help inform TAMI's policy development, views and expectations (**Appendix A**). TAMI was instrumental in the development of the Ngāi Tahu ki Murihiku Iwi Management Plan, as outlined in Mr Skerrett's evidence, and two Water Plans for Southland, the 2010 operative Plan and the 2016 proposed Plan.
27. TAMI has been actively engaged in freshwater management since 1996 and applies a hierarchy of policies and plans, from the Te Tiriti o Waitangi, through its Treaty Settlement to the application of the Local Government Act, RMA, Ngāi Tahu Claims Settlement Act 1998 (**NTCSA**) and Heritage New Zealand Pouhere Taonga Act 2014. TAMI is consistent with the O Te Wai and O Te Whenua policies in *The Cry of the People Te Tangi a Tauira: Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 (Te Tangi)* as well as the Ngāi Tahu Freshwater Policy.
28. In 2014, as part of the *Water and Land 2020 & Beyond* project, TAMI reaffirmed its aspirations for freshwater to Environment Southland staff and Councillors (**Appendix B**). The four aspirations in the document were explained using statements previously published by Ngāi Tahu. This approach was taken to demonstrate that Ngāi Tahu aspirations for freshwater are

consistent, through many RMA and Crown processes, and form the basis of all of discussions between Ngāi Tahu, the Crown and Environment Southland.

- 29.** TAMI has voiced its concerns repeatedly about the management regime for freshwater. In the 2015 Case Study for Te Mana o Te Wai, funded by the Ministry for the Environment, TAMI highlighted four key issues impacting on the full expression of Ngāi Tahu ki Murihiku rights, interests and values for water in Murihiku, being:³
- (a) Leadership, within both Rūnanga and Councils. Specifically, the willingness of and understanding of Councils to make decisions on the incorporation of iwi rights, interests and values;
 - (b) Relationships with Local Government and Crown;
 - (c) Ki Uta Ki Tai versus silos and fractured regulatory management of water; and
 - (d) Follow through and delivery (including compliance, monitoring and accounting) of legislation, plans, and policies.
- 30.** As I will explain in this evidence, I consider that these issues remain centrally relevant in considering Environment Southland's decisions on the pSWLP and the manner in which they provide appropriate recognition of Ngāi Tahu ki Murihiku rights, interests, and values for water in Southland.
- 31.** TAMI was involved at staff and governance levels in the development of the pSWLP but all decision making remained with Environment Southland.

Kai Tohutohu / Iwi Policy Officer

- 32.** TAMI and Environment Southland co-funded an Iwi Policy Officer role in 2013 and I was the first person to fulfil that new role. My purpose was to extend the capability of TAMI as a proactive partner with Environment Southland in the policy development process and ensure that the voice of mana whenua was reflected in the policies and plans adopted by the Council.
- 33.** I was involved in the development of pSWLP as a TAMI staff member and later, as a consultant to TAMI. In the development of pSWLP from 2014 to 2016, I had three functions:

³ Te Runanga o Ngai Tahu (2015) Summary Report Te Wai Pounamu Te Mana o Te Wai Case Study, p.64

- (a) Weave the paradigms and aspirations of Ngāi Tahu ki Murihiku through the pSWLP;
- (b) Inform Ngāi Tahu ki Murihiku of what was drafted in the pSWLP and coordinate their feedback to Environment Southland (outside the Councillors/TAMI workshops); and
- (c) Review the pSWLP and provide policy advice to Ngāi Tahu ki Murihiku.

34. My cultural and policy evidence, with that of Mr Skerrett and Dr. Kitson, articulates the concepts and mātauranga that was intended to be included in the pSWLP and how those concepts and mātauranga are perceived by Ngāi Tahu. Ms. Davidson provides planning expertise on the form in which those concepts are currently included in the pSWLP and implications of this in regard to the RMA.

NGA RŪNANGA DEFINITIONS OF KEY CONCEPTS

35. Four key terms used in the evidence of Ngā Rūnanga are defined below. These terms are also used in the pSWLP and have been 'integrated through this Plan to reinforce the Ngāi Tahu philosophy of Ki Uta Ki Tai.⁴ Therefore, understanding how Ngāi Tahu defines and values these terms is fundamental to this evidence as well as the pSWLP.

36. The definitions are based on their application in Southland by Ngāi Tahu whānau. Further details of terms are found throughout this evidence and are also discussed in the evidence of Dr Kitson, Mr Skerrett and Ms Davidson.

Wai/Water

37. In Murihiku, which includes Southland, the role and value that is placed on water is well described in the following excerpt:⁵

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.

⁴ Environment Southland (2016) *Proposed Southland Water and Land Plan*, p. 8.

⁵ Ngāi Tahu ki Murihiku (2008) *The Cry of the People Te Tangi a Tauira* p.147.

Water has the spiritual qualities of mauri and wairua. The continued well-being 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.

38. Ngāi Tahu has a holistic and seamless approach to water and there is no differentiation in Kaitiakitanga between freshwater or the coastal environment; its management is integrated. Additionally, there are two definitions of freshwater within the regulatory context in which TAMI operates:

(a) In the Conservation Act 1987⁶ and the Ngāi Tahu Claims Settlement Act 1998 (**NTCSA**),⁷ *freshwater* means –

- 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.

39. The RMA, however, defines *freshwater* as *all water except coastal water and geothermal water*,⁸ and *coastal water* as *seawater within the outer limits of the territorial sea, including:*

- (a) Seawater with a substantial fresh water component; and
- (b) Seawater in estuaries, fiords, inlets, harbours, or embayments.

⁶ Section 2.
⁷ Section 8.
⁸ Section 2.

Ki Uta Ki Tai

40. Ngāi Tahu understands Ki Uta Ki Tai as:⁹

a paradigm and an ethic. It's a way of understanding the natural environment, including how it functions, how people related to it and how it can be looked after appropriately...

Ki Uta Ki Tai gives reference to the Ngāi Tahu understanding of the natural world and the belief that all things are connected – a belief shared by many other iwi and indigenous people. It also highlights the central importance of mahinga kai, the traditional seasonal food gathering rituals of Ngāi Tahu and the role this played in the traditional understanding and management of natural resources.

While being founded on traditional values and understanding, Ki Uta Ki Tai is also a modern management framework that involves the creation of a number of tools, such as natural resource management plans, monitoring and reporting processes and resource inventories and their associated strategies to address the continuing challenges and threats faced by all aspects of the natural environment from the mountains to the sea – ki uta, ki tai.

...Ki Uta Ki Tai, as a concept, comes from the traditions, customs and values of Ngāi Tahu Whānui in relation to the natural environment, and in particular the custom of mahinga kai and transferred between generations through purakau, whakatauki, waiata, korero and on-going practices is the foundation upon which this modern Ngāi Tahu natural resource management framework is built.

41. *Ki Uta ki Tai* is similar to the RMA term 'integrated management' and reflects the mātauranga that all environmental elements are connected and must be managed as such.

⁹ Kauapapa Taiao (2003) *Ki Uta Ki Tai: Mountains to the Sea Natural Resources Management*, p. 9-10.

Mahinga Kai

42. The NTCSA defines mahinga kai as ‘the customary gathering of food and natural materials, and the places where those resources are gathered.’ Mahinga kai is more broadly explained in Te Tangi as being about: ¹⁰

places, ways of doings things, and resources that sustain the people. It includes the work that is done (and the fuel that is used) in the gathering of all natural resources (plants, animals, water, sea life, pounamu) to sustain well-being. This includes the ability to clothe, feed and provide shelter.

43. Over the centuries, Ngāi Tahu has developed a complex calendar for mahinga kai that is based on the moon, life-cycles, migratory patterns, seasons and spatial locations. There are regional and hapū variations to the calendar based on what else is happening at the time, what needs to be prepared and where the hapū would be.
44. Mahinga kai requires people to travel seasonally, usually to multiple sites a year for extended periods of time. Ngāi Tahu historian Bill Dacker notes that the movements of Ngāi Tahu ‘were according to the seasons – following the life cycles of the animals and the growth cycles of the plants. They would seek the same foods at different times in different places, depending on variations in climate and locality.’¹¹
45. 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.
46. It is very important to note that 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 specified cycle. This cycle also determines the types and quantities of resources that can be harvested during that season.

¹⁰ Ngai Tahu ki Murihiku (2008), p. 126

¹¹ Dacker, B. (1990) *The People of the Place: Mahika Kai*, p. 6

Hapū rights and responsibilities guide mahinga kai¹² and hapū are expected to manage the resource so that it will be available for future generations.

Kaitiakitanga

47. Te Tangi describes kaitiakitanga as ‘the exercise of guardianship/stewardship by the tangata whenua of an area and resources in accordance with tikanga Māori.’¹³
48. Kaitiakitanga has been explained in the Introduction of the pSWLP. On page 8, the pSWLP states: ¹⁴

Kaitiakitanga is central to Ngāi Tahu and is key to their mana whenua. By exercising kaitiakitanga, Ngāi Tahu ki Murihiku actively work to ensure that spiritual, cultural and Mahinga kai values are upheld and sustained for future generations. Kaitiakitanga in this context includes ensuring the protection, restoration and enhancement of the productivity and life-supporting capacity of mahinga kai, indigenous biodiversity, air, water, land, natural habitats and ecosystems, and all other natural resources valued by Ngāi Tahu ki Murihiku.

49. In my view, this statement is an accurate reflection of the Ngāi Tahu view of kaitiakitanga. However, written definitions in the pSWLP provide only part of their recognition. Ensuring consistency with the definitions throughout the pSWLP and their authentic application is of equal or greater importance. I see no benefit or justification in the definitions just being given ‘lip service’.

Historical and Modern Context for Water and Land

50. The historical associations of Ngāi Tahu with water and land are evident in the names of the landscape, whakatauki (proverbs), waiata (songs), purakau (stories), archaeological sites, and principal practices and ideologies of the iwi.
51. Herries Beattie noted that no lake was too remote or too insignificant to be without a Māori name.¹⁵ Ngāi Tahu had protocols for place names and many

¹² Dacker, B. (1990) p.16

¹³ Ngāi Tahu ki Murihiku (2008), p. 42

¹⁴ Environment Southland (2016), p. 8

of the lakes and rivers have names relating to their state, characteristics or the available resources. Place names along with karakia, skills, intergenerational knowledge and preparation demystified large tracks of land and enabled Ngāi Tahu to travel extensively and confidently throughout Southland for centuries.

- 52.** In Murihiku, the Ngāi Tahu population has been historically sparse compared to that of the northern half of the South Island, and North Island. Settlements and mahinga kai could be hundreds of kilometres apart, and at certain times of the year, kaika (villages) looked abandoned as people travelled as part of their regular activities.
- 53.** Inland routes from the coast to the mountains tended to follow land features and utilise the waterways. Nohoanga (camping areas) along these routes were usually located around a lake or waterbody.¹⁶ People were also heavily reliant on resources being found in specific areas along the route to either consume or harvest for future use. Kaumātua Muriel Johnstone notes that for mahinga kai *'you can't just isolate a little part and say "oh, that is good for growing whatever", it's on the way there that is just as important.'*¹⁷ Ngāi Tahu were very aware of the resources within Southland and their state, condition and location.
- 54.** A nomadic lifestyle based on mahinga kai meant that a person's association with the land and waterbodies and use of resources was vast, rather than confined to a small spatial area. Some cultural practices can take place in many locations along the river but others had specific associations with a particular area, possibly due to the characteristics of the river, water, or species, or the takiwā of the whānau.¹⁸
- 55.** A total of 431 archaeological sites have been recorded along the Foveaux Strait coastal area in the last 50 years.¹⁹ Many more sites are thought to have been damaged by fossickers, erosion and development. There will also be sites that have not been recorded.

¹⁵ Beattie, H. (1945) *Maori Lore of the Lake, Alp & Fiord: Folk Lore, Fairy Tale, Tradition & Place names of the Scenic Wonderland of the South Island*, p. 18

¹⁶ Ritchie, N. (1986) 'Archaeology and Prehistory in the Upper Wakatipu', *Journal of Pacific Archaeology*, p.245

¹⁷ Quote from Muriel Johnstone cited in the *Video Evidence for the proposed Southland Water and Land Plan (2017)*.

¹⁸ Tipa, G. (2011) *Our Uses: Cultural Uses in Murihiku*, p. 6.

¹⁹ Jacomb C., Walter R., Jennings C. (2010) 'Review of the Archaeology of Foveaux Strait', *Journal of the Polynesian Society*, p. 33.

56. In their evaluation of these sites, archaeologists Chris Jacomb, Richard Walters and Chris Jennings found that ‘the majority of prehistoric sites in the study area are small and of short duration providing little evidence of permanent or repeated occupation. These include all the single event sites plus the camp sites which collectively make up 80 percent of the sites.’²⁰ The single event sites were predominantly around tidal estuaries and harbours.²¹
57. The personal accounts submitted as part of the cultural evidence for the Council Hearing²² had built upon these historical references and brought the uses and associations of Ngāi Tahu into the modern era. Those accounts were similar to those given by Ngāi Tahu during WAI27 and deliberations with the Crown that were the basis of the Ngāi Tahu Deed of Settlement and NTCSA. The personal accounts were also similar to those submitted to the Native Land Court and the Native Land Purchases Commission during the 1800s with the exception that there has been further degradation and additional Treaty and social issues since that time.
58. During a hearing of the Native Land Purchases Commission in 1879, it was noted that:²³
- “Mahinga Kai”, two words upon which the Maoris attach very great importance as according to them Mahinga Kai embraces all the land from which they obtained the natural products of the soil, such as cabbage tree root, fern root, woodhens, forest berries, etc. It is remarkable how closely the story of one witness resembles that of another in the main particulars.*
59. The personal accounts showed close similarities in the way people talk of water being ‘everything’, it is life. Water is a taonga and central to maintaining the health of the environment and people. The desires of people are inconsequential when water becomes unable to support the life within it and sustain itself. Water is not valued by Ngā Rūnanga as an extractable or flushing commodity but as the lifeblood of the whenua that, when in a healthy state, supports the land, humans and species to live and flourish.

²⁰ Jacomb (2010), p. 37.

²¹ Jacomb (2010), p. 36.

²² <https://www.youtube.com/watch?v=AepG5Tb4ujM&feature=youtu.be>

²³ NATIVE LAND PURCHASES COMMISSION AT KAIAPOI. (PER NORTH OTAGO TIMES SPECIAL WIRE.) Christchurch, May 13., North Otago Times, Volume XXVIII, Issue 2195, 14 May 1879.

60. The principles and values behind the historical references have not diminished in the modern era but in most cases their application has changed. Change is the result of land use, environmental condition, legislation and modernisation.
61. The Ngāi Tahu Treaty Settlement formalised customary uses such as nohoanga and taonga species, and created management tools such as mātaítai. Prior to the Settlement, species were not collectively classified. Now they are termed 'taonga species' to indicate that they are species of a great significance to Ngāi Tahu and the need of additional recognition in the advent of the aggressive introduction of exotic species and threats to their habitat, health and breeding cycles.
62. Nohoanga are no longer informal, 'freedom camping' sites, but specified land parcels with specific legislative requirements, established adjacent to lakes and rivers to facilitate customary fishing and the gathering of other natural resources.²⁴ Many historic kaika (villages), nohoanga and mahinga kai are now known by place names²⁵ and as sites of significance, archaeological sites and/or wahi tapu/tūpuna.
63. The formal approach is the result of a hard-fought battle undertaken by many tūpuna over generations and known by Ngāi Tahu as *Te Kereme* which is referenced throughout the evidence of Nga Rūnanga. The approach seeks to ensure that Ngāi Tahu can experience their environment as their tūpuna did and undertake mahinga kai practices.
64. As noted in the Cultural Impact Assessment for the proposed Rakiura National Park:²⁶

Mokopuna are not taught the values of their tūpuna in lectures and classrooms but through active experience of the relationship between people and their surrounding ecology via gathering, hunting and fishing activities with their elders, parents, and grandparents. Without mahinga kai, takata whenua will continue to face loss of knowledge of the resources used by our tūpuna and the methods by which they sustained a balanced relationship between people and the environment.

²⁴ Ngai Tahu ki Murihiku (2008), p. 102.

²⁵ The Ngai Tahu Atlas, Kā Huru Manu, was recognised by the New Zealand Geographic Board in September 2018 as an authoritative source. The names and references, including historical accounts, from Kā Huru Manu are being included in the New Zealand Gazetteer with some place names being made official through that process. Kā Huru Manu currently contains approximately 1,500 of the 6,000+ names collected and plotted by Te Runanga o Ngai Tahu.

²⁶ Te Ao Marama Inc (2000) *Cultural Impact Assessment for the Proposed Rakiura National Park*, p. 17.

65. Mahinga kai persists with Ki Uta Ki Tai and Kaitiakitanga as the basis of Ngāi Tahu long-term planning and its environmental ethos today. The environment and the pressures on it have changed over the last century ‘so we have to look at new ways of combatting pollution and of learning new ways to break down the material that we put into our dumps and into our rivers and along our coastline.’²⁷

66. Loss, frustration, uncertainty, pessimism and the restricted use of the environment and mahinga kai are common messages from whānau, and within personal accounts. George Te Au wrote in 1988 that:²⁸

In the Waihopai (Invercargill) estuary alongside the rifle range we used to drag our nets for the patiki and occasionally we would get the odd trout... Along the rock wall at the wharf we would catch our tuna by tramping up and down on the spot and they would come up to breath and we would just take as many as was required. But now because of the pollution cause by the sewerage, waste from the wool-scours at Kennington, Rosdale and Clifton plus from our local tip we can no longer take our patiki or tuna from these areas.

67. Pollution in waterbodies is a significant issue for Ngāi Tahu. Tiny Metzger talked of the impact pollution has had on the quantity and quality of rimurapa (bull kelp). Rimurapa is deemed by whānau to be one of the best indicators of pollution. Contaminants in the freshwater plume weaken the kelp, making it unusable or cause it to become scarce.²⁹ Rimurapa at Omaui was once sought after for poha (kelp bags) but in the last decade, according to Tiny, it become so unfit for purpose that whānau are forced to travel out of the district to find suitable rimurapa. While rimurapa exists in the marine environment, its health reflects the connection with freshwater and demonstrates the concept of Ki Uta Ki Tai. The health of one part of a catchment is not looked at in isolation.

68. Characteristics of waterbodies have significantly changed over time. Many wetlands in Southland were deliberately drained through the Waste Lands Act 1858 and subsequent land conversions to make the land more ‘productive’.

²⁷ Quote from Jane Davis cited in the *Video Evidence for the proposed Southland Water and Land Plan* (2017).

²⁸ Te Au, G. (1988) *Mahinga Kai Murihiku Submission for the Ngai Tahu Claim before the Waitangi Tribunal*, p. 5.

²⁹ Tiny Metzger (2017), unpublished personal communication.

Unfortunately, this historic attitude to wetlands appears to still be prevalent today today, and Ngā Rūnanga struggles to understand why wetlands are not valued and treasured. Wetlands are renowned mahinga kai; they are rich in biodiversity and provide important ecosystem services such as filtering contaminants from water and soils.³⁰

69. Many waterbodies in Southland continued to be modified for flood control, infrastructure and modern agricultural practises. 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.³¹ 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.

HOW THE 2016 pSWLP DEALT WITH KEY CONCEPTS

70. Historically, there was a direct correlation for Ngāi Tahu between the state of the water, what it was used for, and peoples' associations and values with that water. As the mauri and wairua of the waterbodies has declined, it is my opinion that there is now a disjunct between state, use, association and value. State, associations and uses are threatened and undermined in Southland due to the deteriorating health of the water and soil. Therefore, the intangible values of freshwater have an increased importance as drivers for kaitiaki, and for the maintenance and restoration of the state of waterbodies.
71. For Ngāi Tahu, water was one of the first elements in the universe. Degradation of the waterways and land negatively impacts on the mana of oneself and their hapū and iwi, as well as their collective cultural identity. Mr Skerrett outlines this paradigm in greater detail in his evidence.
72. Kaitiakitanga is not a responsibility taken lightly by Ngā Rūnanga; it is a driver to continue working with Environment Southland despite unsatisfactory environmental outcomes and a continuous decline in water quality.

³⁰ Ngāi Tahu ki Murihiku (2008), p. 166.

³¹ 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.

73. In providing policy advice on behalf of TAMI in the development of the pSWLP, I was to acknowledge water as a taonga; the wairua and mauri of the water was to be healthy and strong. The Ngāi Tahu Deed of Settlement and the provisions of the NTCSA were to be upheld. Most importantly, I was to ensure that Ngāi Tahu was enabled to continue its cultural practices, specifically, mahinga kai and the revitalisation of sites and species. The water had to be drinkable where it once was, and whānau were to be safe when undertaking mahinga kai and not risk their health by harvesting in water or consuming kai from the water.
74. TAMI and Ngāi Tahu ki Murihiku were very concerned about a non-regulatory approach being taken by Environment Southland given that water quality and quantity was continuing to decline in Southland. This matter is discussed in more detail by Mr Skerrett.

Water

75. TAMI had to navigate several issues in the development of the pSWLP with regards to:
- (a) the definition of water
 - (b) the aspirations of Ngāi Tahu ki Murihiku and its perceptions of current water quality/quantity in Southland
 - (c) the rights and interests of Ngāi Tahu, and application of the Ngāi Tahu Claims Settlement Act and its provisions
 - (d) its desire for Environment Southland to be strong leaders in freshwater management by following through with the implementation of the operative 2010 Water Plan, specifically its target of 10% improvement in water quality
 - (e) what was being managed; what was the baseline for maintain and improve.
76. At the high level was the complexity of two legal definitions for freshwater. Conservation lands and waterbodies comprise of 53% of Southland³² and there are 14 freshwater and two coastal marine³³ Statutory Acknowledgements

³² Environment Southland & Te Ao Marama Inc. (2010) *Our Health: Is our water safe to play in, drink and gather kai from? Part 1 of Southland Water 2010: Report on the State of Southland's Freshwater Environment*.

³³ Te Mimi o Tū Te Rakiwhānoa (Fiordland Coastal Marine Area) and Rakiura/Te Ara a Kiwa (Rakiura/Foveaux Strait Coastal Marine Area).

in Southland and 11 nohoanga. The NTCSA areas are mapped in the Southland Regional Policy Statement. These lands, sites and waterbodies are characterised by a legal definition for freshwater that includes the river plume.

- 77.** The narrow 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. I could not have regard only to the RMA definition in seeking to uphold the Kaitiakitanga and Te Tiriti o Waitangi in the pSWLP. The narrow RMA freshwater definition does not meet the Ngāi Tahu Treaty Settlement obligations so, in my opinion, it was critical that a Ki Uta Ki Tai approach be taken.
- 78.** The integration between the Coastal Plan and the Water Plan was at the forefront of legislative issues for TAMI. The inclusion of estuaries in the pSWLP and FMUs, and recognition and monitoring of the cumulative impacts of water quality and quantity through to the plume of rivers, as mentioned in paragraph 30 of Ms. Robertson's evidence, was seen as a positive step. The inclusion demonstrated Environment Southland working with its iwi partner as well as Ki Uta Ki Tai (integrated management in this context) and meeting Treaty obligations.
- 79.** Setting FMUs was discussed in a workshop with TAMI and Environment Southland. With regards to Waituna, my recollection of events matches that of paragraph 15 of Ms. Robertson's evidence. For TAMI, there were arguments each way as how Waituna could be included. In the end, it came down to the risk of divide and rule, and adequate resourcing of the FMU by Environment Southland. With Waituna in the Matura FMU, it was thought that Waituna would have a greater impact on the management of the catchment.
- 80.** The early agreement to set the FMUs by catchment meant that my focus during these discussions was not the individual waterbodies but the policies supporting tangata whenua and the community in assigning values, attributes, tools and limits.
- 81.** The appropriate date from which the baseline for maintaining and improving water quality was to be set at was a constant issue between Ngāi Tahu and Environment Southland in the development of the pSWLP. At the last

workshop on the matter with Ngāi Tahu ki Murihiku and Environment Southland on 17 December 2015, TAMI stated that it thought the baseline should be 2010 when the Regional Water Plan came into effect and the State of the Environment monitoring was undertaken. The debate was heated. TAMI reluctantly noted that Environment Southland, who retained sole decision-making, was not going to retain the 2010 baseline or the target of 10% improvement from the operative Water Plan in the pSWLP.

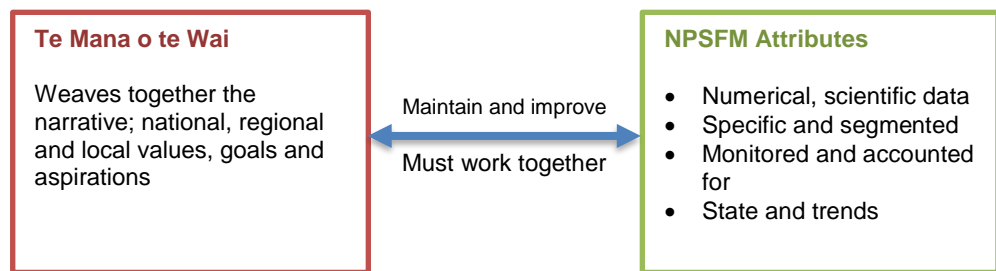
- 82.** Out of frustration and great concern about the continuing decline of water quality and quantity, especially its impacts on the receiving environments, and in the absence of a baseline date and improvement target, TAMI pushed for the pSWLP to be notified as soon as possible so as to draw 'a line in the sand'.
- 83.** I was present during these discussions, and I note that this push by TAMI was not intended as support for maintaining current water quality where degraded. 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 1849.³⁴

Te Mana o te Wai

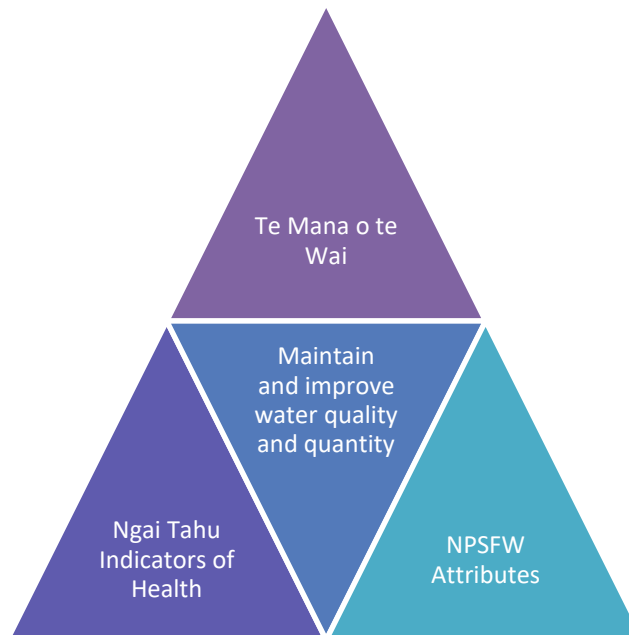
- 84.** Te Mana o te Wai has been a matter of national significance since it was first introduced in the NPSFM in 2014. The NPSFM refers to Te Mana o te Wai as the integrated and holistic well-being of a freshwater body.
- 85.** The description of Te Mana o te Wai in the NPSFM resonated with Ngāi Tahu ki Murihiku, who regarded it as a korowai or overarching principle for freshwater management and supported its development and application in Southland to meet expectations and aspirations for freshwater. In my opinion, 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.

³⁴ In 1849 the Ngāi Tahu rangatira Matiaha Tiramorehu made the first formal statement of Ngāi Tahu grievances about the land purchases. His letter to Lieutenant Governor Edward Eyre urged the Crown to set aside adequate reserves of land for the iwi as agreed to under the terms of its land purchases. Another 18 letters are known to be sent to the Crown from leading Ngāi Tahu rangatira between 1849 and 1887.

- 86.** In August 2014, I first outlined Te Mana o te Wai as explained in the NPSFM, to Papatipu Rūnanga and Environment Southland staff. After discussing the principle with technical experts advising Iwi Leaders and other Māori resource management practitioners, I explained that Te Mana o te Wai was the tool that wove together different threads to create the picture of what tangata whenua and each community aspires to for their waterbodies. The technical information of the NPSFM Attributes needs to inform these discussions but sits behind the Attributes to calculate how we are tracking towards the values of Te Mana o te Wai.



- 87.** My interpretation of Te Mana o te Wai discussed with Te Rōpū Taiao in Colac Bay in early 2015 and supported by the southern Councils (includes: Environment Southland, Invercargill City Council, Gore District Council and Southland District Council).
- 88.** It was this approach that was adopted for the pSWLP with the addition of Ngāi Tahu Indicators of Health. Te Mana o te Wai aligns management tools with values. A gap identified in the development of the pSWLP was management tools that align with Ngāi Tahu values and aspirations. 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).



- 89.** Ngāi Tahu Indicators of Health are similar to NPSFM Attributes in the sense that they create culturally relevant measures to assess progress towards and impacts on aspirations, values, associations, uses and connections with water and land. The Attributes and Indicators of Health are discussed in Dr Kitson’s evidence in her section entitled *Water Quality and Ecosystem State and Changes from a Ngāi Tahu Paradigm*.
- 90.** I maintain the view that, from a policy and cultural perspective, this is the correct reflection of the relationship between the NPSFM Attributes and Te Mana o te Wai. The inclusion of Ngāi Tahu Indicators of Health strengthens the pSWLP and its application of Ngāi Tahu concepts and definitions.
- 91.** Te Mana o te Wai is outlined at the introductory section of the pSWLP, Objective 3, and Policies 44 and 47 relating to the FMU process. Te Mana o te Wai puts the mauri of the waterbody and its ability to provide for te hauora o te tangata (the health of the people), te hauora o te taiao (health of the environment) and te hauora o te wai (the health of the waterbody) to the forefront of freshwater management for Southland.

- 92.** The 'Te Mana o te Wai' section of the pSWLP gives more detail regarding the application of Te Mana o te Wai by explaining that is influenced by five key factors:³⁵
- (a) the values that are determined for the waterbody and how they are weighed locally;
 - (b) the current state of the waterbody;
 - (c) the timeframes tangata whenua and the community establish to achieve defined objectives, and quality and quantity;
 - (d) the mechanisms and tools used to achieve defined objectives, and quality and quantity states; and
 - (e) the quality and availability of technical information.

Linking Te Mana o te Wai and Physiographics

- 93.** Te Mana o te Wai puts the spotlight on water, and in the absence of a Te Mana o te Whenua principle in a National Policy Statement, I assessed that Physiographics was the best available tool to provide the 'spotlight' for land in pSWLP.
- 94.** Matching land use with land capability is the basis of Ngāi Tahu's approach to land management. TAMI supported the approach of physiographic zones in the pSWLP as it is based on a similar land management approach in Te Tangi. This point is discussed further in Mr Skerrett's evidence. Taking an approach consistent with what the land can withstand allows the land to regenerate, support life and filter contaminants.³⁶ Ngāi Tahu supports discharge of contaminants to land but only when the suitability and capability of the receiving environment has been assessed.³⁷
- 95.** With regards to the suitability of the land, Ngāi Tahu ki Murihiku seek to avoid discharges that have adverse effects on Ngāi Tahu values (mauri, wairua, etc) and places (mahinga kai, wāhi tapu).³⁸ As Ngāi Tahu lived nomadically, there are many known archaeological and wāhi tapu sites, both recorded and unrecorded, along waterways and across Southland. The 2010 Water Plan made sound attempts at recognising wāhi tapu and sites of significance to

³⁵ Environment Southland (2016), p. 6.

³⁶ Ngāi Tahu ki Murihiku (2008), p. 136.

³⁷ Ngāi Tahu ki Murihiku (2008), p. 137.

³⁸ Ngāi Tahu ki Murihiku (2008), p. 140.

Ngāi Tahu in its rules and most of these were brought through to the pSWLP and updated.

96. Te Mana o te Wai and Physiographics put the spotlight on water and land rather than human use and consumption, and it is Ki Uta Ki Tai that holistically binds and integrates these principles within the pSWLP. When the characteristics and health of the waterbodies are modified and soils put under increasing stress, the cumulative effects become more obvious and consequential. Ki Uta ki Tai is about standing on the land and knowing the effects, both positive and negative, in every direction. As Muriel Johnstone noted during the Council Hearing, *'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.'*³⁹

Mahinga Kai

97. Great consideration was given by TAMI and Papatipu Rūnanga as how mahinga kai was to be included in the pSWLP, including how it was the fundamental basis of any comment or decision they made. The difficulty and risks lay in the compartmentalisation of mahinga kai, historical preference given to primary industry and land owners in Southland, and that more than one agency and legislation had a direct impact on mahinga kai.
98. Rather than just insert the term and then in practice there to be no protection or meaningful consideration be given to mahinga kai by Council staff when considering individual resource consents or the FMU process, the directive given to me by Papatipu Rūnanga was to look for triggers and indicators that could be included in the pSWLP. The triggers and indicators were to be incorporated into the pSWLP in a way that were meaningful to Ngāi Tahu ki Murihiku. Consequently, Ngāi Tahu Indicators of Health, taonga species and modern sites (mātaitai, nohoanga, etc) were deliberately included in the pSWLP.
99. Modern Ngāi Tahu sites provided a reference point along the waterbodies to measure and assess key factors such as soil health (including bank stability), discharges and cumulative effects, and ecosystem health. For example, point source discharges immediately above a nohoanga could affect the amenity

³⁹ Quote from Muriel Johnstone cited in the *Video Evidence for the proposed Southland Water and Land Plan* (2017).

and cultural values and use of the site. Therefore, the discharge directly impacts on the provisions of the NTCSA and the intent of nohoanga.

100. As a policy expert rather than a planner, I promoted these triggers and indicators at the Objective and Policy level with trust in the partnership that Environment Southland staff and consultants would embed the mahinga kai components in the Rules, using the appropriate RMA mechanisms.

Current pSWLP Approach for Ngāi Tahu Concepts

101. Prior to the decision on the pSWLP arising from the Council Hearing, TAMI had stated since 2015 that it generally supported the Objectives and Policies of the pSWLP but had issues with its Rules. After the decision, I assessed that the amendments to the Objective and Policies of the pSWLP undermined Ki Uta Ki Tai.
102. 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. This approach is sometimes at odds with industry specialists and other submitters on the pSWLP.
103. I have observed that it is the impression of Papatipu Rūnanga that Environment Southland is predisposed towards the compartmentalised, commodity-based approach asserted by industry. This bias is evident in the rules framework that outlines permitted activities for farming and prioritises the welfare of domesticated, land-based species (i.e., cattle, sheep, deer) and their modified habitats over water-based species (i.e. watercress, whitebait, freshwater mussels, eels) and natural habitats. This structure makes it innately problematic for Papatipu Rūnanga to achieve their aspirations and values for freshwater.
104. Ki Uta Ki Tai is to be reinforced through the application of pSWLP, from the Objectives through to the Rules. In my opinion, the additional qualifiers and insertions in the pSWLP move away from the intent of pSWLP as outlined in its Preamble and introductory section. I find Mr McCallum-Clark's comments in the Background of his evidence (para 16 to 27) limited as they do not acknowledge the fundamental basis of Ki Uta Ki Tai in the pSWLP.

- 105.** The pSWLP states that: *The Southland Regional Council (Environment Southland is the brand name of the Southland Regional Council) seeks to manage water and land resources in a way that encompasses the Ngāi Tahu philosophy of “ki uta ki tai”.*⁴⁰ This philosophy has not been assessed in Mr McCallum-Clark’s evidence nor has the impact on Ki Uta Ki Tai of the additional qualifiers and insertions, as discussed by Ms. Davidson, to the Objectives and Policies of the pSWLP.
- 106.** Qualifiers and insertions to other Objectives also undermine Objective 3 by giving preference to primary industry and infrastructure over Te Mana o te Wai. Te Mana o te Wai sets local values for the waterbody and their weighting; however, the national significance of Te Mana o te Wai is to be upheld. Greater consideration is given to the mauri of waterbodies not specific activities. This consideration is outlined in the NPSFM, Objective 3 of the pSWLP and in paragraph 21 of Mr McCallum-Clark’s evidence.
- 107.** A baseline from which to measure water quality and quantity is critical, especially for the FMU process. Te Mana o te Wai aligns management tools with values and aspirations to maintain and improve both water quality and quantity. Tangata whenua and the community need to know the state of the waterbody to apply appropriate management tools and to establish timeframes to achieve defined objectives, and water quality and quantity.
- 108.** Te Mana o te Wai, as stated in the pSWLP and NPSFM, can be applied at different scales in the waterbody and catchment. Amendments to Policy 47 to focus to the FMU scale, ‘and where appropriate at a catchment or sub-catchment level’, again shift the focus of the pSWLP from hauora to the status quo.
- 109.** I disagree with Mr McCallum-Clark (at paragraph 262) that the Council or the Southland community would not benefit from different planning regimes between FMUs. Te Mana o te Wai puts the spotlight on the mana of the water. Physiographics highlights the functionality and responses of land in regards to water. Te Mana o te Wai and Physiographics coupled with the diverse profiles of the FMU catchments, land uses, receiving environments and issues, provide

⁴⁰ Environment Southland (2018) *Proposed Southland Regional Water and Land Plan*, p 5.

clear evidence that different responses may be required between FMUs and at different scales.

- 110.** Waituna is an example of the implications amendments to Policy 47 have for a waterbody-specific approach to Te Mana o te Wai. With the original wording of Policy 47, I was indifferent to Waituna being its own FMU or not as the mechanisms were in place through Te Mana o te Wai to assign values, attributes, tools and limits to the waterbody. These tangata whenua and community assigned values etc would then impact on the decisions made for the FMU.
- 111.** If the amendments to Policy 47 remain, it is my opinion that Policy 46 has to be amended. In that scenario, Waituna needs to become its own FMU as it cannot be considered and managed at a waterbody scale within the Maitara FMU. This amended Policy 47 has implications for all receiving environments and other high needs waterbodies. A piecemeal approach to the management of Southland waterbodies could result in separating high needs waterbodies into their own FMU and further undermine Ki Uta Ki Tai as well as create an unnecessary resource burden on tangata whenua and respective communities.
- 112.** To give effect to the NPSFM, the pSWLP must aim to maintain and improve water quality. Some practices and activities such as mahinga kai are intimately aligned with improved water quality; therefore, Ngāi Tahu has an interest in improving water quality. However, with no baseline, Environment Southland has encouraged regulation of the status quo by considering only how activities will degrade freshwater quality and quantity further from 2016, not the improvements required, or how the status quo activities need to be managed, for water quality or quantity to reflect Te Mana o te Wai.
- 113.** Leaving decisions such as a baseline to the FMU is problematic due to uncertainty around budgets, resources and timelines to be set by the Council. The burden of fiscal and environmental decision-making that this approach would have on tangata whenua and the community through the FMU processes due to an absence of a 'hold the line' position or baseline, seems unjustifiably high considering the role of Environment Southland in freshwater management. Ultimately, the liability of freshwater management lies with Environment Southland, not tangata whenua or the community.

CONCLUSION

114. 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.
115. It was my role in the pSWLP, on behalf of TAMI, to promote the historical and contemporary values, uses and associations, as well as the whakapapa of water and cultural paradigms of Ngāi Tahu. The opinions I have outlined in this evidence stem from my involvement in the development of the pSWLP, and the assessment of its amendments and gaps for TAMI.
116. I believe that the coupling of Te Mana o te Wai with Ngāi Tahu Indicators of Health is a great outcome in the pSWLP. As illustrated, Ngāi Tahu Indicators work with NPSFM Attributes and Te Mana o Te Wai to maintain and improve water quality and quantity in a culturally relevant manner. Environment Southland was an early adopter of Te Mana o te Wai and I acknowledge its continued commitment.
117. Many compromises were made with Environment Southland before the pSWLP was notified and it is my opinion this version moves further away from the fundamental principles of Ki Uta ki Tai and Te Mana o te Wai by introducing qualifiers in the Objectives and Policies (refer to Ms Davidson's evidence at paragraphs 13 and 52-127). Environment Southland has not used Ki Uta ki Tai in its analysis when assessing the impacts of its amendments to the pSWLP. This flawed analysis undermines the principles of the pSWLP. The pSWLP states right from the start it is based on a holistic and integrated management approach to water and land. It needs to see this approach through to the end.

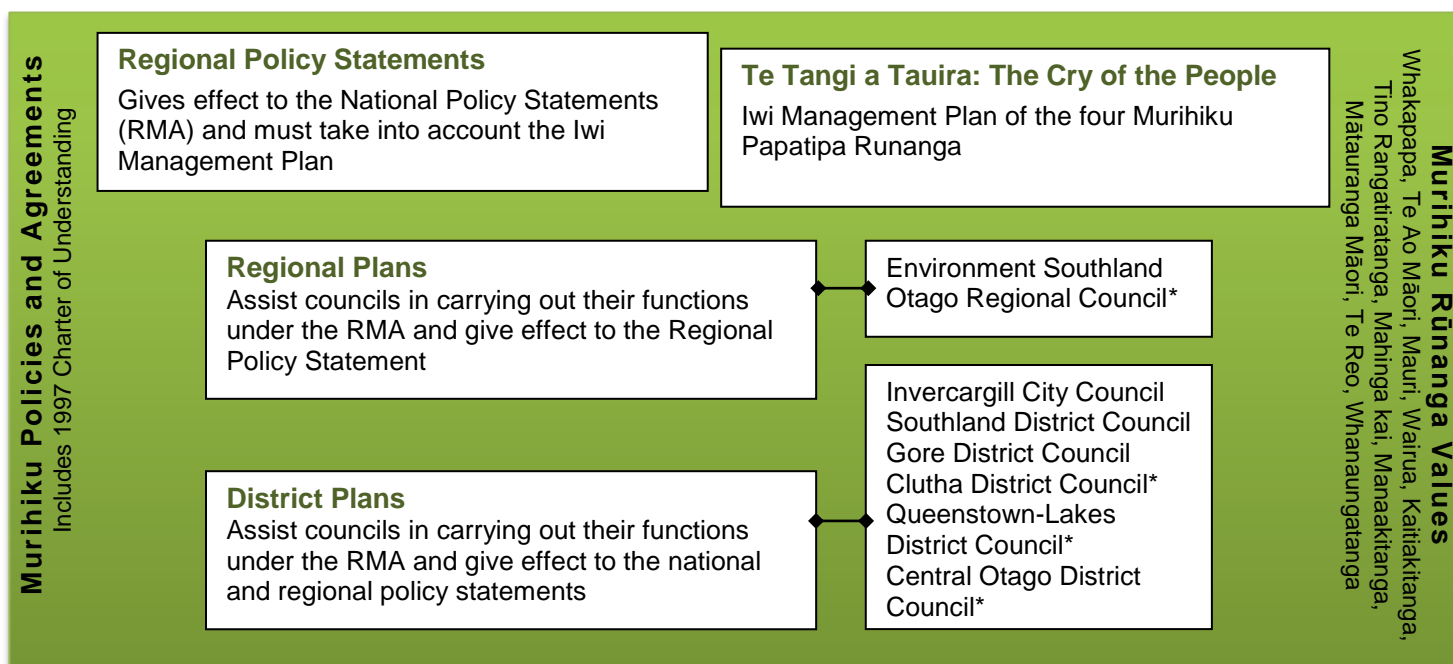
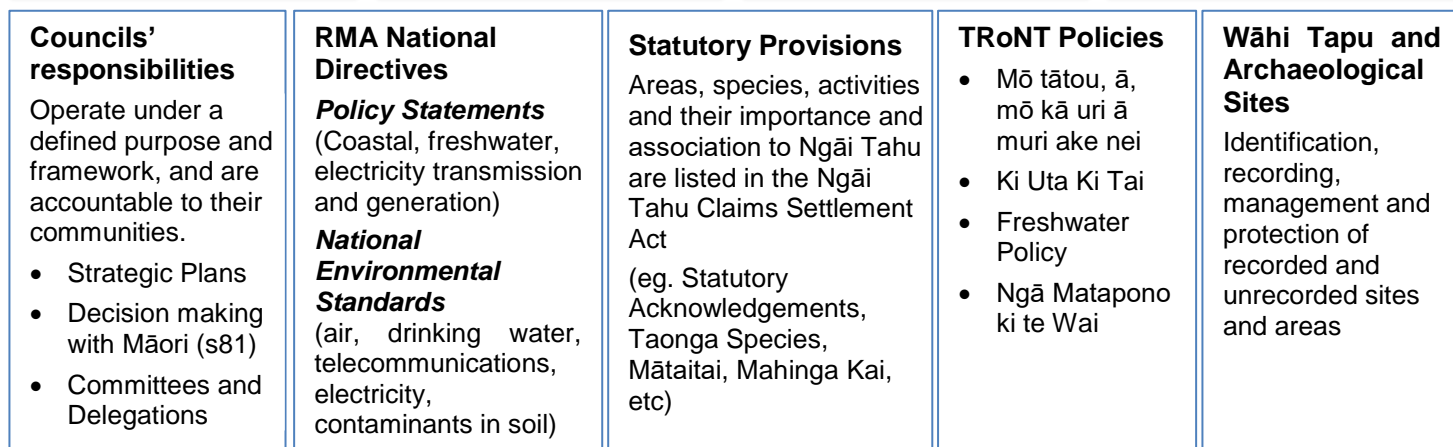
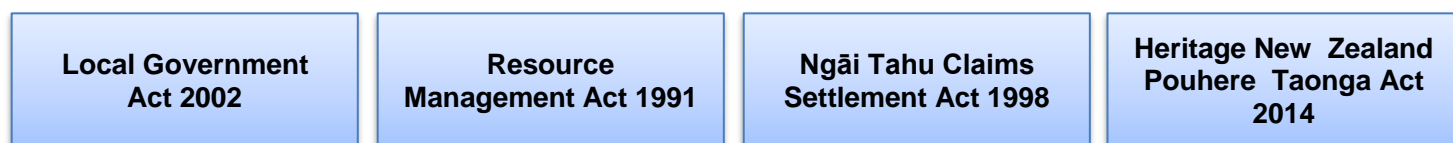
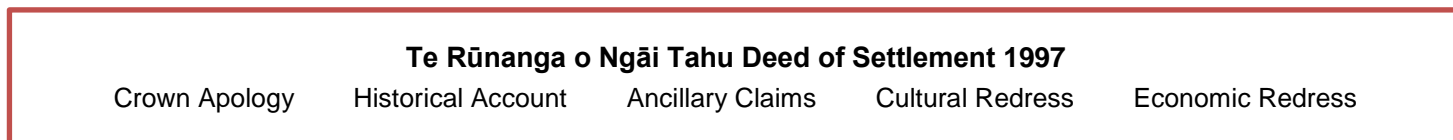
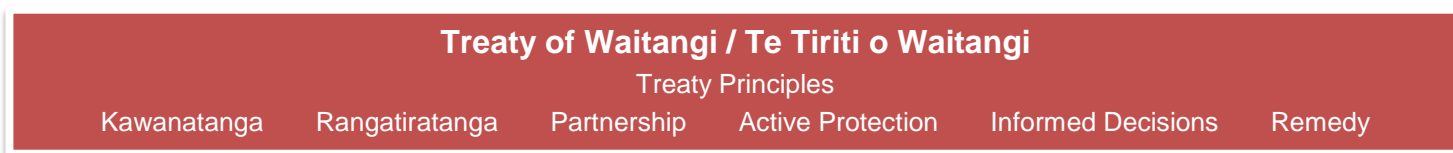


Ailsa Margaret Cain

15 February 2019

Appendix A
Regulatory and Iwi Context for Te Ao Marama Incorporated

This diagram outlines the hierarchy of agreements, acts, policies, plans and values that help inform TAMI's policy development, views and expectations for resource management in Murihiku.



Murihiku takiwā covers part of the Council's territorial area = *

Nohoanga and Statutory Acknowledgements are included in the NTCSA as part of a series of provisions aimed at restoring the ability of Ngāi Tahu to give practical effect to kaitiaki responsibilities and experience the landscape as their tūpuna did.

Appendix B
Ngā Rūnanga Pātipu ki Murikihu's Aspirations for Freshwater

*Ki ngā kōrero o ngā Tupuna ko ngā awaawa ngā uaua a Papatūānuku
In the words of our ancestors, the rivers are the veins of the Earth Mother*

Rivers, lakes, estuaries, wetlands and other waterbodies continue to be a critical element in Ngāi Tahu's way of life and identity. For generations, concerns have been raised by rūnanga about the changing shape and quality of the waterways. From what rūnanga have seen, or not seen as the case may be, in their waterways and mahinga kai, and recent scientific reports have reinforced these long held concerns.

Ngā Rūnanga Papatipu ki Murikihu and Ngāi Tahu have high aspirations and expectations for the management of freshwater in Murihiku. This document summaries what has been said to date by Ngāi Tahu about its expectations for freshwater. This document also hopes to provide decision makers with an appreciation of rūnanga views and values to help inform deliberations on Southland's response to the state of freshwater in the region.

Aspirations for Freshwater

Ngā Rūnanga Papatipu ki Murikihu have expressed their aspirations and expectations for the management of freshwater within their takiwā through different mediums, mostly notably in *Te Tangi a Tauria The Cry of the People: Iwi Management Plan, 2008*. Their aspirations and expectations are summarised below into four key statements:

1. The waterways are to meet their respective cultural expectations/values through maintenance or restoration. No water body within Murihiku can have further degraded water quality.

- Ensure the protection, restoration and enhancement of the productivity and life supporting capacity of mahinga kai, indigenous biodiversity, air, water, land, natural habitats and ecosystem, and all other natural resources values by Ngāi Tahu ki Murihiku. *Te Tangi a Tauria, p. 35*
- Strive for the highest possible standard of water quality that is characteristic of a particular place/waterway, recognising principles of achievability. This means that we strive for drinking water quality in water we once drank from, contact recreation in water we once used for bathing or swimming, water quality capable of sustaining healthy mahinga kai in waters we use for providing kai. *3.5.13 Water Quality, Te Tangi a Tauria, pp. 158-9*
- Ensuring the health and wellbeing of freshwater is a prerequisite for ensuring the continued health and wellbeing of mahinga kai resources and ultimately the people. *TRoNT Freshwater Policy, p. 22*

2. In exercising kaitiakitanga, we work actively to ensure that spiritual, cultural and mahinga kai values of the takiwā are upheld and sustained for future generations.

- Water is central to all Māori life. It is a taonga left by ancestors to provide and sustain life. It is for the present generation, as tangata tiaki, to ensure that the taonga is available for future generations in as good as, if not better quality. *TRoNT Freshwater Policy 1997, p. 5*

- There is a mutual understanding of iwi and local authority values and responsibilities with respect to the environment, effective management of resource by councils, and effective performance of kaitiaki by Ngāi Tahu ki Murihiku. *Te Tangi a Tauira*, p. 34

3. Ensuring skills, activities and knowledge relating to freshwater and mahinga kai are fostered and passed on to future generations.

- Mō tātou, a mō ka uri a muri ake nei – for us and our children after us. *Ngāi Tahu whakataukī*
- Ensure the protection, restoration and enhancement of the productivity and life supporting capacity of mahinga kai, indigenous biodiversity, air, water, land, natural habitats and ecosystem, and all other natural resources values by Ngāi Tahu ki Murihiku. *Te Tangi a Tauira*, p. 35
- Ngāi Tahu ki Murihiku do not believe we should be granting consents for activities where we do not know what the effects may be over the long term. Anything over 25 years is essentially making decisions for the next generation. *Te Tangi a Tauira*, p. 139
- Water management needs to recognise and accommodate places specific uses as such sites and the cultural values and uses they sustain cannot be relocated to other locations in the catchment. *Our Uses: Cultural Use in Murihiku*, p. 6

4. Imbed cultural values throughout freshwater management from defining the issues to value setting and monitoring. Narrative, visual and cultural indicators are key management tools.

- Water is a holistic resource. The complexity and interdependency of different parts of the hydrological system should be considered when developing policy and managing the water resource. *TRoNT Freshwater Policy*, p.8
- Resource management agencies do not always appreciate the depth and value of traditional environmental knowledge held by members of the Ngāi Tahu whānui... In many resource management forums, scientific and technical expertise is seen to be superior to traditional knowledge and tikanga. *TRoNT Freshwater Policy*, p. 24
- By developing an informative and highly visual resource for Ngāi Tahu whānui and the wider community, we have made it possible to explore a historical landscape in an open and non-confrontational context for information sharing, thus utilising publicly available data and private sources of knowledge (such as whānau, hapū and iwi archives). This resource can hopefully serve as ‘common ground’ for catchment-level thinking and management. *Bringing the past into our future—using historic data to inform contemporary freshwater management by Gail Tipa*, <http://www.tandfonline.com/doi/pdf/10.1080/1177083X.2013.837080>
- Specificity is needed in value setting. *A Freshwater Strategy that delivers opportunities for Ngāi Tahu whānui*, Gail Tipa, internal presentation, 2010
 - For example: “Flows need to protect mahinga kai”
 - Indicators:
 - Oxygen – higher flows oxygenate deeper water. Colder waters hold oxygen.
 - Food
 - Habitat
 - Temperature – species have optimal temperature ranges for survival

- Cover – debris in stream; vegetation in and beside stream; pools and overhang banks; etc
 - Life cycle stages – triggered by freshes
 - Gathering – methods, fishing experience and catch rates change
 - Transportation / accessibility
 - Turbidity – amount is dependent on velocity and turbulence
 - Sediment in stream
- Indicators used by tangata whenua to assess stream health. *Te Tangi a Taurira*, p. 150
- Shape of the river
 - Sediment in the water
 - Water quality in the catchment
 - Flow characteristics
 - Flow variations
 - Flood flows
 - Sound of flow
 - Movement of water
 - Fish are safe to eat
 - Uses of the river
 - Safe to gather plants
 - Indigenous vs. exotic species
 - Natural river mouth environment
 - Water quality
 - Abundance and diversity of species
 - Natural and extent of riparian vegetation
 - Use of river margin
 - Temperature
 - Catchment land use
 - Riverbank condition
 - Water is safe to drink
 - Clarity of the water
 - Is the name of the river an indicator?

Ngāi Tahu and the Crown's Relationship over Freshwater

After years of negotiations, legislation was passed in 1998 that put into effect the terms and redress package agreed to by Ngāi Tahu and the Crown to mitigate and remedy breaches of the Treaty of Waitangi made by the Crown. The Ngāi Tahu Claims Settlement Act 1998 includes a definition for freshwater, and several mechanisms specifically designed to be used in implementing other legislation such as the Resource Management Act 1991.

In the Settlement Act **freshwater** is defined as meaning—

- 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:
- 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.

The mechanisms in the Settlement Act include nohoanga sites and statutory acknowledgements for rivers and lakes (see Appendix 3 “Areas identified by the Ngāi Tahu Claims Settlement Act 1998” for sites in Southland District). Descriptions of river catchments, Ngāi Tahu’s cultural associations and significant resource management issues, as identified in 1998, are summarized on pages 152 to 156 of *Te Tangi a Tauira* (see Appendix 4).