

**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 MICHAEL RICHARD SKERRETT, QSM, Hon. SIT
Fellow, JP**

**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

15 February 2019

 **Simpson Grierson**
Barristers & Solicitors

J G A Winchester
Telephone: +64-4-924 3503
Email: james.winchester@simpsongrierson.com
DX SX11174 PO Box 2402
SOLICITORS
WELLINGTON 6140

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MAY IT PLEASE THE COURT

INTRODUCTION

Taupara

Nā te pō, ko te ao
Tāna ko te ao mārama
Ka heke iho ko ngā ariki
Ki te whai ao
Ko tēnei tātou ngā whakatupuranga
Kua waihotia ki muri
Hei kaitiaki mō ngā taonga
Kua mahue mai ki muri
Kei runga te ao tūroa
Ka whakamaua kia tina! tina!!
Haumi e
Hui e
Taiki e

1. This powerful tauparapara is about creation from a Māori perspective, from the time of absolutely nothing to the world, this world of light and understanding. The descending of Māori Atua into this world with the responsibility of creating the various elements of flora and fauna, wind and water etc. It is an instruction as well as a message that we, the following generations, have the responsibility as kaitiaki to look after and protect the taonga that have been left on this long standing world.
2. I te tuatahi nei me mihi ki Te Atua, nāna I hanga te Ao Whānui puta ki a mātou te tangata. He whakamoemiti ki aia. Papatūānuku me ōu nei taonga a Tane ngā mihi. Ngā mihi, ka tangi ki a rātou kua ngaro ki tua te Arai, ka hoki mai ki a tātou e huihui nei, tēnā koutou, tēnā koutou tēnā koutou katoa. Ōku rangatira, tū whakaiti mai ahau ki te whakamarama I a koutou ngā whakaaro o Ngāi Tahu ki Murihiku e pa ana ki tēnei Mahere. Aroha mai, ahakoa he mihi poto, he mihi mahana. Kia ora tātou. Te Whare Huihui e tū nei, tū mai tū mai.
3. Firstly we must acknowledge the Almighty, it was he who created the Universe into which we humans emerged. Praises to him. Earth Mother and your treasures

of Tane Mahuta we acknowledge you. We acknowledge and grieve for those who are lost beyond the veil, returning to us gathered here, greetings, greetings, greetings to one and all. My rangatira I humbly stand to enlighten you as to the thoughts of Ngāi Tahu ki Murihiku in regards to the proposed Southland Water and Land Plan (**pSWLP**). Apologies for the briefness of my mihi, although it is a very short acknowledgement of you it is given with warmth. Good health to us all. The Meeting House standing here, stand, stand.

4. My name is Michael Richard Skerrett. I am 76 years of age and I have lived in Murihiku all my life. I was born in Waihopai/Invercargill where I attended primary and secondary school. I was a commercial eeler which enhanced my understanding of eels, their habitat requirements, the importance of water temperature, and the importance of ngā pekenga/tributaries for female elvers.
5. I am Kaiwhakahaere and Upoko of Waihopai Rūnaka and Murihiku Marae. For over 20 years I have been their member and Kaiwhakahaere of Kaitiaki Rōpū o Murihiku which meets with the Department of Conservation every six weeks to provide advice on matters of concern to Ngāi Tahu ki Murihiku.
6. Since 1998, I have been the Waihopai Rūnaka Representative on Te Rūnanga o Ngāi Tahu.
7. From 1996 to 2016, I was employed as Kaupapa Taiao Manager for Te Ao Mārama Incorporated (**TAMI**), Ngāi Tahu ki Murihiku Resource Management Consultants. My key task was to facilitate Ngāi Tahu Ki Murihiku input into the processes required by the Resource Management Act 1991 (**RMA**) and other relevant legislation. TAMI's purpose was to be a proactive partner with Environment Southland (**ES**) in policy development processes. It was also intended that TAMI would ensure the voice of mana whenua was reflected in the policies and plans adopted by the Council.
8. My first task with TAMI was to develop the relationship agreement with Murihiku Councils, *He Huarahi mō Ngā Uri Whakatupu The Charter of Understanding [Appendix B]*. As Kaupapa Taiao Manager, it was my responsibility to drive the development of our Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008, *The Cry of the People, Te Tangi a Tauria (Te Tangi)*.

9. In 2008, TAMI received a Best Practice Award from the New Zealand Planning Institute for Te Tangi, and an Environmental Achiever Award from Te Taiao ES/ Tonga.
10. I have also:
- (a) Been awarded the Department of Conservation's *Conservation Champion* Award in 2010;
 - (b) Been awarded the Queen's Service Medal for services to Māori and the community in 2014;
 - (c) Been a Justice of the Peace for over 20 years; and
 - (d) Undertaken and passed the "Making Good Decisions" course to qualify as a RMA Hearings Commissioner.
11. This evidence has been prepared in accordance with the collective mātauranga (knowledge), experiences, beliefs and mana of Ngāi Tahu ki Murihiku. It is with the greatest respect and integrity that I present this evidence to the Environment Court I Mua I te Kōti Taiao o Aotearoa on behalf of Ngā Rūnanga.

SCOPE OF EVIDENCE

12. My evidence will address our concerns with the pSWLP from a cultural perspective, as tangata whenua, and our whakapapa relationship with our ancestral lands, water, sites, wāhi tapu and taonga. Article II of Te Tiriti o Waitangi guarantees our status and our on-going involvement in environmental management and provision for our role has been made in the RMA and other legislation. More specifically, I will discuss the following matters:
- (a) Who we are as Ngāi Tahu in Murihiku and our relationship with the environment;
 - (b) Important cultural concepts;
 - (c) How the environment has changed to date and why getting the pSWLP right now is so important;
 - (d) Nga Rūnanga involvement in the pSWLP development process; and
 - (e) The regional and local implementation of the pSWLP.
13. In preparing my evidence I have reviewed:

- (a) Te Tangi;
- (b) Ngai Tahu Deed of Settlement;
- (c) Ngai Tahu Freshwater Policy;
- (d) Cultural Impact Assessment for Manapouri/Te Anau;
- (e) Previous evidence of Ngā Rūnanga submitted during the Council Hearing on the pSWLP;
- (f) Evidence of Matthew McCallum-Clark and Rebecca Robertson for ES; and
- (g) *Water Rights for Ngai Tahu*, a 2017 discussion paper by Dr Te Maire Tau.

EXECUTIVE SUMMARY

14. We are very unsettled by the amendments to the pSWLP through Council decisions which weaken it and we believe can only lead to further degradation. Even since the Council Hearing decision on the pSWLP was made a year ago, there is evidence of further degradation in ES's own report that was released recently¹.
15. Implementation of the 2010 Regional Water Plan was weak. The proof is that water quality is deteriorating. ES's own reports (see Dr. Kitson's evidence for full list of reports) confirm how much water quality has deteriorated since 2010, rather than showing signs of improvement.
16. The pSWLP appears to accept and embed declining water quality and does not contain clear language or sufficient tools to ensure that this is halted or turned around, or otherwise effectively managed through the consenting process. In the meantime, there is an absence of guidance or direction in the pSWLP about the outcome of future Freshwater Management Unit (**FMU**) processes, and it is likely that these will take several years to work through following their notification (which could be some way off). No improvement, and indeed further degradation, of water quality and quantity in Southland would not give effect to the National Policy Statement for Freshwater Management (**NPSFW**) nor the needs of mana whenua.

¹ Stevens, L.M. 2018. New River Estuary: 2018 Macroalgal Monitoring. Report prepared by Wriggle Coastal Management for Environment Southland.

17. Strong leadership and a rules framework need to be in place and implemented. We entered into a partnership with ES to develop the pSWLP because we thought it best to actively assist in creating a better regulatory framework and one which took into account our values and interests. Because of our partnership, we agreed to the pSWLP being notified even though compromises had been made on the part of TAMI and Ngā Rūnanga.
18. The Council Hearings process has weakened the pSWLP further. We have no confidence that the pSWLP will support a robust management framework that will maintain and improve water and soil health. The pSWLP seems to give even more weight to supporting existing activities than the 2016 notified pSWLP, with a preference given to primary industries and infrastructure.
19. While it is encouraging that front end scene setting in the pSWLP has been retained, the emphasis in implementation of this has changed and no longer reflects the partnership. I will explain the reasons for these views in further detail in my statement of evidence.

WHO WE ARE AND OUR RELATIONSHIP WITH THE ENVIRONMENT

Mai ea i te pō i te tīmatanga.
Mai ea ki nga hekenga kia Maku.
Otirā, ka kii a ngā puna roimata a Rangi,
ko tona aroha kia Papatūānuku, kia kii
ōna puna hei oranga mona,
me ōna taonga e noho ake nei.
Ko tātou, nga kaitiaki o tēnei taonga tuku iho,
kia kaha i roto i te tapu, kia whai mana
i roto i tona wehi, kia u tona wairua,
ka whakanoa I muri ake nei.

From the void, through the regions of the night,
through the steps of evolution, eventually
arriving at the dampness, indeed filling the pools
of Rangi which overflow eventually as tears of love on Papatūānuku.
In turn her bosom is filled with those tears and she
disperses them evenly to everything that grows on her.
We Tangata Whenua and Te Taiao Tonga have the responsibility

as protectors for this treasure handed down for use in its natural state with prestige, retaining its spiritual wellbeing so that we can continue to use it safely into the future

20. This Ngāi Tahu understanding of how water, land and people came into existence and their genealogical relationships with each other was relayed by Matiaha Tiramorehu² and recorded in 1849. The substantial whakapapa starts with the creation of the universe (from darkness into light), through the primary elements of the world (including water, air and earth) and on to our own human ancestors. In the whakapapa:³
- (a) Water is personified as 'Te Mākū' (literally, 'the dampness' or 'moisture');
 - (b) Earth and air are the omnipresent Rāngi and Papatūānuku; and
 - (c) Eventually descent lines trace themselves to Uenuku, the father of Kahutia-te-raki and ancestor of both Paikea (the whale-rider) and his descendant, Tahu Pōtiki (Ngāi Tahu's eponymous ancestor).
21. Whakapapa binds and reinforces the connections people have to each other, to the lands and waters of their tūrangawaewae (home base), and to the elements and atua (gods). Tā Tipene O'Regan noted that the acknowledgement of a person or persons, either by themselves through pepeha or by others, is:⁴
- to the land and to the region, especially to the major geographic features of a place: the mountain, the river, the coast. These are the landmarks associated by tradition with ancestry and tribe. We frequently do not name an individual on the marae but refer instead to his or her mountain or coast or tribe. These things are part of the person...They are the symbols of the group and therefore of kinship and self-view. The tie is whakapapa.*
22. Therefore, 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.

² <http://www.teara.govt.nz/en/biographies/1t100/tiramorehu-matiaha>

³ Goodall, M. ed (1997) *Te Whakatau Kaupapa o Murihiku: Ngai Tahu Resource Management Strategy for the Southland Region*, p. 24.

⁴ Wilson, J ed. (1987) *From the Beginning: The Archaeology of the Maori*, p. 23.

23. As I will explain in my evidence below, the ongoing degradation of water quality, the mauri of water in Southland, the quality of the environment, and the reduced ability of mana whenua to practice mahinga kai (further detailed by Dr Kitson) and perform kaitiaki responsibilities has had a significant adverse impact on our people. Evidence of these effects and issues, and their impacts on hauora, was presented by various kaumatua and kuia in video format to the ES Hearings Panel.⁵ I rely on that evidence as a powerful statement of cultural effects which supports and provides a foundation for my own evidence to the Court.

NGAI TAHU KI MURIHIKU

24. Ngāi Tahu are the ahi kaa (the people who have kept the fires burning over the centuries) in Murihiku which includes Southland. Only ahi kaa have the right to exercise mana whenua over the natural resources in Māori custom.
25. Ngāi Tahu Whānui is the collective of individuals who descend from the iwi of Waitaha, Ngāti Mamoe and the five primary hapū (sub-tribes) of Ngāi Tahu; namely Kāti Kurī, Ngāti Irakehu, Kāti Huirapa, Ngāi Tūāhuriri and Ngāi Te Ruahikihiki. When we refer to ourselves as Ngāi Tahu we include our Waitaha and Ngāti Mamoe whakapapa.
26. Te Rūnanga o Ngāi Tahu is responsible for the overall governance of Ngāi Tahu assets, and for delivering benefits to Papatipu Rūnanga and Ngāi Tahu Whānui. Te Rūnanga o Ngāi Tahu deal with global tribal policy and issues, while Papatipu Rūnanga manage issues requiring wider or local consultation.
27. The Ngāi Tahu takiwā is defined in section 5 of Te Rūnanga o Ngāi Tahu Act 1996. In general terms it covers the majority of Te Waipounamu excluding a relatively small area in the Nelson/Marlborough region. Southland is within the takiwā of Ngāi Tahu.
28. The respective interests of the 18 Papatipu Rūnanga are detailed in Te Runanga o Ngai Tahu (Declaration of Membership) Order 2001. Four Papatipu Rūnanga are identified as having interests in Southland – Waihopai, Awarua, Oraka-Aparima and Hokonui.

⁵ <https://www.youtube.com/watch?v=AepG5Tb4ujM&feature=youtu.be>

- 29.** In 1996, when I was employed as Kaupapa Taiao Manager for TAMI, my first task was to draft a relationship agreement to give a clear understanding on how the relationship should work between the four Southland Councils and tangata whenua.
- 30.** There was plenty of guidance for this partnership agreement: Te Tiriti o Waitangi, the RMA, other relevant legislation, Waitangi Tribunal Decisions on Treaty Principles, Court decisions on Treaty Principles, and the former Prime Minister, Sir Geoffrey Palmer's work on Treaty Principles.
- 31.** It was obvious to me that our agreement had to be based on a Treaty partnership for it to work properly and make the necessary links between our day-to-day working relationships. The Charter of Understanding was eventually negotiated based on that understanding and was signed by each Council and the four Papatipu Rūnanga, as was Te Tangi (our Iwi Resource Management Plan). Both documents were endorsed by the Iwi Authority, Te Rūnanga o Ngāi Tahu.
- 32.** The common goal of the Charter of Understanding signed by all Southland Councils and mana whenua is *'the sustainable management of the region's environment and for the social, cultural, economic, and environmental needs of communities, for now and into the future.'*
- 33.** The common goal is one we, Ngāi Tahu and the Southland Councils, should always strive for and constantly have in our minds when making decisions. It provides for us to have an active partnership, which should enable us to implement the goal. For all the goodwill of the Charter of Understanding, the local government RMA processes have let Papatipu Rūnanga down though insufficient weighting being given to this common goal and partnership.
- 34.** I would also like to point out that Ngai Tahu ki Murihiku has relationship agreements with other submitters on the pSWLP regarding environmental aspirations and goals:
- (a) Charter of Understanding – Southland District Council, Gore District Council and Invercargill District Council;
 - (b) Relationship Agreement – Meridian Energy (also a Treaty Partner due to their SOE status);

- (c) Treaty Partners – Heritage New Zealand Pouhere Taonga, Department of Conservation; and
- (d) Ngai Tahu Claim Settlement Act – Department of Conservation (Treaty Protocols) and Fish and Game New Zealand.

NGĀI TAHU PARADIGM

Development of Maori Resource Management

- 35. As an island nation Aotearoa is remote and small, and one of the youngest settled countries on Earth. This place was different from anything that Polynesian culture had previously known. It was colder, temperate, not tropical.
- 36. Being on the hinge of the Southern Hemisphere oceanic weather systems, Aotearoa was subject to intense variability within seasons. The first gardeners, planters and harvesters had to adapt, even reverse their horticultural technologies. Moreover, they had to become hunter gatherers and invent innovative techniques of food storage and preservation.
- 37. The founding Māori view of sustainability was probably typical of the East Polynesian culture they brought with them around 800 years ago. On arrival, they modified the environment to the limit of its capacity. As it became evident that this approach was unviable in New Zealand, they evolved into a localised culture and society, now known as Māori.⁶ Iwi developed sophisticated models of regulation for the use of natural resources. Today, those models provide the basis for contemporary Māori tikanga and environmental practices.
- 38. Wāhi Tuatahi – He Kupu Whakataki, the Introduction to Te Tangi starts with text from its predecessor, Te Whakatau Kaupapa o Murihiku 1997. The text succinctly sets out the rights, attitudes and structures behind the development of Māori environmental management:⁷

The Māori system of traditional rights and attitudes towards water, land and natural resources evolved over time to incorporate a unique blend of

⁶ Hirini Mead outlines four periods: Nga Kakano – The Seeds (c. AD 1150-1200), Te Tipunga – The Growth (1200-1500), Te Puawaitanga – The Flowering (1500-1800), Te Huringa – The Turning (post-1800). Athol Anderson outlines 6 periods in Part 1: Te Ao Tawhito: The Old World of *Tangata Whenua: An Illustrated History (2015)* and uses the following times: 3000 BC-AD 1300, AD 1150-1450, AD 1200-1800, AD 1500-1800, AD 1642-1820, AD 1820-30.

⁷ Te Tangi, p. 23.

religious belief, societal structure, the nature of the surrounding environment and people's reliance on that environment.

While retaining traditional values, this framework also absorbed the changes in societal organisation which emerged through adaptation to new environments and the development of a new economy. These changes required the adoption of new skills, new technologies and new methods of resource management, control and labour utilisation.

The water and land resources in a particular area are representative of the people who reside there. They relate to the origin, history and tribal affiliation of that group, and are for them a statement of identity. These natural resources also determine the welfare of the tribal group which owns or controls them.

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.

- 39.** Our resource management models come from centuries of learning; they do not originate from legislation. Our difficulty lies in how well legislation understands and weighs these centuries old practices.

Recognition of Ngāi Tahu Rights and Interests

- 40.** Te Tiriti o Waitangi was a solemn agreement between the Crown and Māori to allow the Crown to govern, and to make the laws while protecting Māori rights and interests.
- 41.** Te Tiriti guarantees and provides for the rights to continue customary practices. Customary rights include mahinga kai. Article II of Te Tiriti o Waitangi specifically guaranteed tino rangatiratanga (real authority) over forests, fisheries, settlements and taonga. Article III, often forgotten but significant, provided Māori with the right of citizenship.
- 42.** The hierarchy under Te Tiriti is that the Crown and Ngāi Tahu are partners. The next strata are Government Departments, Territorial Authorities and Regional

Councils. Through the delegation of the Principle of Active Protection from the Crown to local government, councils have been given a directive and the tools to give effect to the obligations the Crown owes in its capacity as a Treaty Partner.

43. There is an existing legal framework that provides for rights and interests, taking high-level, Treaty principles and agreements and providing direction for their implementation.
44. Our rights and interests are recognised in the Ngāi Tahu Deed of Settlement 1997 and subsequent legislation. In 1907, our tūpuna met at Te Umukaha to discuss *Te Kereme*, the Ngāi Tahu Treaty Claim⁸. Their hui manifesto stated: “*Me whai huri te iwi he whakamana i ngā mahi o Te Kerēme – The people must have determination, in order to give effect to the Claim.*”⁹
45. From the 1997 Deed, the cultural redress elements of the Crown’s settlement offer are aimed at restoring Ngāi Tahu’s ability to give practical effect to its kaitiaki responsibilities.¹⁰
46. The Crown creates the legislation and the legislation makes provision for its Treaty partner; that should ensure that tangata whenua input into decision making is properly weighted. Examples of such legislation include Part II of the RMA, and D1 of the National Policy Statement for Freshwater Management 2014 (**NPSFW**) which provides the direction as to how rights and interests are to be provided for/implemented in freshwater planning tools.
47. Despite a Crown Apology and legal recognition of mahinga kai, our cultural practice is constantly under threat. For example, in the Fiordland and Islands Freshwater Management Unit, the area is predominantly managed as public conservation land, with a large portion of it designated as National Park. The National Park legislation imposes significant barriers preventing Ngāi Tahu cultural use.
48. This is an issue for two reasons;

⁸ For more historical information on Te Kereme, see <https://ngaitahu.iwi.nz/ngai-tahu/te-whakataunga-celebrating-te-kereme-the-ngai-tahu-claim/>

⁹ *Te Karaka Special Edition*, p 4.

¹⁰ *Te Karaka Special Edition*, p. 25.

- (a) the survival of mahinga kai values and activities is heavily reliant on the ability to access these resources; and
- (b) restricting this access means that Ngāi Tahu are confined to the areas in Southland where there are heavier impacts from land-use activities.

Mahinga Kai

- 49.** Mahinga kai refers to the work involved in gathering the resources required for survival. It includes sites for gathering kai, rongoa (resources for health and healing properties), mahi toi (weaving and carving), waka ama (travelling and sport) and spiritual needs. Mahinga kai is of central importance to Ngāi Tahu. It is our identity, mātauranga and social cohesion. Other iwi are renowned for their carving and te reo; we have always been, and continue to be, known for mahinga kai.
- 50.** 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. Every historical and contemporary record shows Ngāi Tahu ki Murihiku practicing seasonal harvests and extensive travel. Treaty Settlement was about restoring those rights and having our interests in mahinga kai legally recognised, restored and respected.
- 51.** The importance of mahinga kai was recognised and acknowledged in the Crown Apology to Ngāi Tahu and provided for within the Ngāi Tahu Claims Settlement Act 1998 (**NTCSA**). Amongst other things, the NTCSA made provisions for the exercise of Kaitiakitanga and mahinga kai through Statutory Acknowledgements, Deeds of Recognition, Tōpuni and Taonga Species.
- 52.** Other statutory mechanisms that recognise the importance of certain waterways to Ngāi Tahu within Southland, include Mātaitai reserves¹¹ and Water Conservation Orders (**Appendix A**).¹²
- 53.** The ability of water bodies to sustain cultural uses is of utmost importance to Ngāi Tahu. Over the centuries in this new land, our tūpuna developed a

¹¹ Fisheries (South Island Customary Fishing) Regulations 1999.

¹² Water Conservation (Oreti River) Order 2008: s4 Outstanding characteristics (d) significance in accordance with tikanga Māori.

sophisticated model of regulation for the use of natural resources which today provides the basis for contemporary environmental and resource management. They developed tools such as rāhui and tapu to conserve resources. They learned from the mistakes of their forbears. They learnt that if you look after Papatūānuku me ōna nei taonga, taonga a Tane, taonga a Tangaroa¹³, then they in turn would look after you.

- 54.** Water quality/quantity and soil health are interrelated to the practice of mahinga kai. In our view of evolution, water is part of our whakapapa, as it is with all other species. In our culture, we are all related and we cannot exist without healthy waters and soils.
- 55.** Waterways are the veins of the land. Quantity and quality of water and resources are of utmost importance to Ngāi Tahu. People, species and waters are interrelated – good, abundant food supports the health and wellbeing of people, and degradation of waterbodies has severe impacts on this. For example:
- (a) Eels are generally considered to be slimy creatures, however at Lake Diamond/Oturu, which is adjacent to conservation lands, the eels are not slimy at all. It appears that eels downstream are slimy because of contamination. This is of concern as it unjustifiably affects perceptions about our taonga species as well as the health of those catching/eating them and the health/quality/quantity of the eel.
 - (b) Watercress requires clean and free-flowing water to thrive. It is becoming rare and people are having travel further to find it. The increasing scarcity of watercress being present, let alone fit to eat, is a major concern.

Taonga species

- 56.** 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.

¹³ Translation/Explanation of Te Reo: If you look after mother earth and her treasures - the treasures of Tane which is all things that require oxygen including plants and trees - the treasures of Tangaroa which is aquatic species and plants.

57. An unexpected adverse effect of signing Te Tiriti, which paved the way for land sales, was the clearance of the land. This not only reduced taonga resources but also our access to the resources, which quickly became very limited. This is contrary to the promise of Te Tiriti which specifically guaranteed authority for access. Many taonga species very quickly became threatened with little emphasis put on their restoration and protection (outside National Parks) – as noted earlier, the NTCSA highlights the significance of some of our taonga species.
58. All our indigenous species are taonga, not just those that are listed in the NTCSA. During Settlement negotiations, the Crown did not recognise all species considered taonga by mana whenua. For example, eels which are obviously important to Ngai Tahu, were not listed as a taonga species in the NTCSA but are recognised via customary fishing. Similarly, not all sites important for mahinga kai were included in the NTCSA provisions.
59. The NTCSA has a very narrow focus – it is about remedying breaches of Te Tiriti o Waitangi. The NTCSA it does not include all Ngai Tahu lands, taonga and sites of significance. It is not the enabling Act of Ngai Tahu whānui but an Act that attempts to enable Ngāi Tahu participation in Crown processes. We have a much broader mandate; a kaitiaki responsibility to restore healthy populations of indigenous species and the habitats required to sustain them.
60. Common Law, the law that the Crown brought with it, legally protects customary rights.
61. 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 (refer to Dr Kitson’s evidence, especially paragraphs 73-124). This impacts on mātauranga, transfer of knowledge, social cohesion and the survival of our culture, and of species significant to Ngai Tahu. The ethic of kaitiakitanga can only be taught properly through exercising customary practices with tamariki and mokopuna.

Customary Fisheries

62. Customary fisheries are recognised fishing rights of tangata whenua for:¹⁴

¹⁴ Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

- (a) traditional and customary practices – for example, traditional management of a fishery; and
 - (b) customary non-commercial food gathering.
- 63.** Customary fishing takes place in a rohe moana (defined customary fishing area) of the tangata whenua. Tangata tiaki, which I am, are guardians appointed by the Minister of Fisheries for a specific rohe moana. Tangata tiaki authorise and manage customary activities, enabling customary fishing and management traditions to continue in the rohe moana.
- 64.** Mātaitai and taiāpure have been included in the pSWLP. We have mātaitai in freshwater, river plumes, estuaries and along the coast. New Zealand’s first freshwater mātaitai is on the Mataura River, near the Mataura Bridge. The mātaitai at Waikawa, is connected with the nohoanga at Māngai Piri (Niagara Falls), the kanakana migrations (also referenced in Dr. Kitson’s evidence), and the long-standing Ngai Tahu settlements in the area. We wanted mātaitai in the pSWLP to connect and recognise the different tools managing water and indigenous species.

IMPORTANT NGAI TAHU CONCEPTS

O Te Whenua

- 65.** An important *take* (core issue) for land use in Southland is matching land use with land capability. *‘This means taking a precautionary approach to land use, to ensure that what we do on land is consistent with what the lands can withstand, and not what we would like it to withstand through utilising external inputs’.*¹⁵
- 66.** Our position is that this approach should not just be for the rural sector, but for the urban sector too.
- 67.** I have personal experience of drainage and its effects. On leaving school in the 1950s, I was approached by my uncle to go and work on his sheep farm at Mokotua in the Waituna catchment. On that farm we did quite a bit of land clearance and drainage, both tile and mole plough drains. My uncle and his

¹⁵ Te Tangi, p. 136

partner had six draglines and were draining the Seaward Moss at that time. It was a Government initiative to create cheap land for farms, particularly for returned servicemen. I vividly remember my uncle telling me that when they first dug the drains they were twelve feet deep. Within a year, they were about three feet and they had to go back and re-dig them.

- 68.** The value of wetlands as the lungs of Papatūānuku and how that affects the health and function of the land was not well understood at that time, but it is now. It is extremely disappointing that drainage of wetlands since that time has escalated and is continuing today (refer to Dr Kitson's evidence, paragraphs 103-107).
- 69.** The waterways have changed significantly since the 1950s. Flood banks now confine the rivers and speed up the flow, with significant effects. Mahinga kai is found in the bends of the river – straightening means these species are no longer found there.
- 70.** Drainage and stop banks have resulted in a huge loss of habitat for instream species. The natural flood plain would usually be a kilometre or so wide, and the rivers would meander across them and often change course during high flows, leaving ox bows linked to the river. These ox bows are hugely valuable habitat for mahinga kai species.
- 71.** Land modification is huge – wetlands and forests have been removed. There is no longer the flora and fauna there once was. A large number of species are now extinct because of loss of habitat and pests. Since colonisation, significant taonga species such as South Island Kokako, Huia, Tutukiwi, bats and reptiles are now extinct, and too large a number are threatened.
- 72.** Both my parents' whānau have a strong relationship with Oue/Sandy Point on the Waihopai/Oreti estuary. On my father's side, our tūpuna Pokene was an nephew of Honekai the ariki (most senior chief) in Murihiku at the time of Captain Cook's arrival, around 1770. My mother's whānau settled there in the early 1870s. A letter of my grandfather's written in the 1930s commented on how the estuary was changing then, due to the reclamation of what now is the Invercargill Airport. Hundreds of acres of was removed – and this would have provided habitat for spawning and rearing the juveniles that would become part of the sea fisheries as they mature. He commented on how whaling ships that drew 8ft

could no longer tie up to the Dolphins near the Stead Street Bridge because of silting. My great grandfather, Te Here, and his brother in law, Kaiporohu, had charted the harbour for the international sailing ships in the 1800s.

- 73.** Most visitor entry to Invercargill is at the airport, and their first view entering Invercargill is the stinking black and dying estuary. The airport has an extensive drainage network, including a pump station which used to be part of the estuary. There are even cows on this land, which is below sea level.
- 74.** There has been a series of human-induced environmental changes over the years which have been either in unsuitable locations or involved unsuitable practices. The environment has changed permanently and important cultural resources and practices have been profoundly affected. Thinking more carefully about the ability of land and resources to accommodate different uses is necessary to enable more sustainable outcomes and over time, restore the ability of mana whenua to exercise kaitiakitanga and practice mahinga kai. This is why the concept and potential use of physiographics in the pSWLP was seen as a positive by Ngā Rūnanga.
- 75.** We support physiographics in the pSWLP because it implements O Te Whenua from Te Tangi by creating a mechanism to link land use with land capability and manage the land and water accordingly. It would be a wasted opportunity if this important and valuable science could not be integrated into the pSWLP and be used as a tool to guide decision-making about use of resources.

Te Ara Taiao

- 76.** The landscape and the environment should be able to sustain you no matter where you travel. In a healthy environment some cultural uses can be undertaken at any place in a catchment. It is inevitable, however, that some cultural uses are place-specific. Food gathering opportunities are often place-specific – for example, the kanakana at the Mataura and the Niagara Fall. Although there are numerous other sites where kanakana are found, these two sites particularly significant because of their natural structure making harvesting easy. Historically, nohoanga would be occupied for the duration of the harvest. Another example is the use of customary lands or lands awarded as reserves, which is an inherited right derived through whakapapa, that cannot be relocated.

77. Water management needs to recognise and accommodate place-specific uses – such as sites that sustain cultural values and uses that cannot be relocated to other locations in the catchment. Although aquatic conditions sufficient to sustain the type of cultural uses may exist elsewhere in the catchment, relocation would only serve to dislocate and deprive the affected use of their cultural context.¹⁶
78. Some species also require a combination of different habitats to support their needs. Eels need different waters for different purposes (including quiet areas, current for migration, feeding and breeding). As an experienced kaituna (eel catcher) I can easily spot a mahinga kai site on the river – on the inside of a bend, in the quiet spot where there is no current. These sites are usually out in the open with a gravelly bed. Some people mistakenly think eels like to be in muddy holes – this is not so; they feed on the gravelly bed.
79. Elvers migrating in from the sea need gravelly beds to rest in and hide from predators. Migrating eels use the current to travel downstream to the estuaries where they stay for a while and undergo metamorphosis to adapt from fresh water to salt water. When eels are not migrating, they like quiet waters – that is why ox bows were such important habitat (refer to Dr Kitson’s evidence, especially paragraphs 42-43).
80. Dams are another issue. They affect the natural movements of migrating species, and the lack of the provision of effective fish passage structures causes many problems for sustainability and survival of species (refer to Dr Kitson’s evidence at paragraphs 141-144). As we recently stated in a Draft Impact Assessment for Proposed Lake Operating Guideline Review of Lakes Manapōuri and Te Anau:¹⁷

any further degradation [to the waterbodies], no matter how minor, will have the potential to impact on important and already degraded values such as mauri, kaitiakitanga, wāhi tūpuna and archaeological sites, awa/ngai wai, mahinga kai and spiritual and cultural health. With the current poor state of cultural values any further degradation is not acceptable to Ngāi Tahu ki Murihiku.

¹⁶

Our Uses: Cultural Use in Murihiku, p. 6

¹⁷

Kitson J. 2018. Proposed Lake Operating Guideline Review (Lakes Manapōuri and Te Anau): Cultural Impact Assessment for the Guardians of the Lakes Manapōuri, Monowai and Te Anau. Draft as of 19 June 2018 [Provided by TAMI].

- 81.** With sites becoming more limited, whakapapa and whānau tikanga and kawa can be undermined. Others may encroach on sites that a particular whānau had used for centuries.

Ki Uta Ki Tai

- 82.** Planning to date has been unbalanced, biased towards intensification, and it is high time there was a more holistic approach to restore balance. Plans should prohibit straightening of rivers and streams and draining of wetlands. There should be a focus on restoration looking for ways and programmes to allow rivers and streams to behave more naturally. The more natural the stream environment is, the more habitat there is for instream values. Natural meandering waterways reduce energy and reduce the impacts of flooding. Dr Kitson discusses the importance of Ki Uta Ki Tai at paragraphs 44 and 45 of her evidence.
- 83.** Species of manu such kereru travel widely for their kai. With so much deforestation the remnant patches of ngahere (forests) have become extremely important. Kowhai leaves are sort after kai for kereru. There used to be lots of indigenous trees such as kowhai along the waterways providing corridors of food sources for manu. Planning should provide for restoration of these important corridors between remnant ngahere. This sort of planning will help restore mahinga kai.
- 84.** 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.
- 85.** We have voiced our concerns for many decades through costly Crown and Council processes. In negotiating the NTCSA, the Crown acknowledged that the RMA was not addressing our concerns, rights and status as tangata whenua, consistent with the principles of Te Tiriti. Hence, Statutory Acknowledgements are included in the NTCSA to improve the effectiveness of participation by Ngāi Tahu in RMA processes and protect areas of significant to Ngāi Tahu. They are also a tool for incorporating Māori values into environmental management.

Section 208 of the NTCSA requires local authorities to have regard to the Statutory Acknowledgements.¹⁸

- 86.** Ki uta ki tai is a culturally based natural resource framework and literally means from the mountains to the sea; not in a literal or hydrological sense but a holistic one:¹⁹

‘[Ki uta ki tai] was developed by and for Ngāi Tahu Whānui and has been identified and advocated as a key tool in assisting Ngāi Tahu achieve more meaningful rangatiratanga and kaitiakitanga in natural resource management. It is about an indigenous understanding of the environment that can be used to help address the wide range of issues rūnanga face with regards to environmental management. Ki Uta Ki Tai is based on the idea that if the realms of Tāwhirimātea (god of the winds), Tāne Mahuta (god of all living things), Papatūānuku (mother earth) and Tangaroa (god of the sea) are sustained, then the people will be sustained.’

- 87.** The pSWLP needs to address cumulative effects properly. The effects gather and build up as you go down the catchment, compounding down the bottom in the estuaries. Therefore, the health of the estuaries is an indication of how well the catchment is managed, including the issues of silting and nutrient loading. Silting and nutrient loading are the result of multiple factors, including overland flow (i.e. land use) and erosion. As such, these issues have been exacerbated over the last 20 years or so with intensification of land use, and in particular increased winter cropping in rolling country. This is a practice considered to be worse than intensive dairy farming. Southland has about 200 days a year when it rains, and winter cropping is considered to be a major contributor to nutrient loss and erosion.
- 88.** Estuaries are impacted by silting, nutrient loads and contaminants. These factors all affect the habitats of species living, spawning, and migrating up and downstream through the estuarine environment, coming from the sea to the headwaters, and back out again (refer to evidence of Dr Kitson, especially paragraphs 111-120). There are significant effects on the health and abundance of species in these areas. For example, the Waihopai/Oreti Estuary was once a

¹⁸ Te Karaka Special Edition (1998) *Crown Settlement Offer: Consultation Document from the Ngāi Tahu Negotiating Group*, p. 33

¹⁹ Te Tangi, p. 24

highly important food source - tuangi (cockles) were large and abundant, and now there are very few which are too small and not considered safe to eat. Toxic gas emissions from black sediments are considered to be a real health risk. ES staff who monitor the estuary have to take extra care to not become ill in doing their mahi. It is now too risky for many to even try and take kai from this area.

89. As I have already discussed, different species need different waters, soil and bed types at different times. To sustain the taonga species, it is crucial to manage all parts of the catchment as one system (also refer to Dr Kitson's evidence, especially paragraphs 44-45).
90. It is my opinion that the previous approaches to freshwater management in Southland did not address cumulative effects, as evidenced by monitoring. Cumulative effects are a big problem and how they are addressed through the pSWLP is critical. In my opinion physiographics is a good tool to help with the assessment of cumulative effects because it looks at how the lands cope with nutrients and impact on freshwater, not just the activity at a regional or catchment scale.
91. Rivers have multiple characteristics and management should be about the whole river and surrounding area, not a single point – ki uta ki tai.

HOW THE ENVIRONMENT HAS CHANGED

92. From our practical observations, the cumulative effects of activities have had significant impacts on the environment. For example, hydro schemes have had significant effects on fish passage for migrating species because of dams and weirs. Other effects include the mortality of migrating species drawn to the turbines because of the diversion of the river flows (refer to Dr Kitson's evidence paragraphs 141-144).
93. Reclamation of land has seriously impacted estuaries with significant reduction of habitat and mahinga kai species, some now seriously threatened.
94. Hundreds of people formerly used the rivers and estuaries for recreation (swimming, boating and fishing) and can no longer do so - favoured sites no longer exist and there are health risk implications for when you are in the water harvesting as Dr Kitson details in her evidence.

- 95.** These impacts result in frustrations and implications for Papatipu Rūnanga. They feel compromised in exercising their Rangatiratanga and Kaitiakitanga responsibilities – the unfulfilled promises of Te Tiriti and an inability to safely harvest mahinga kai.
- 96.** As I identified above, 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.
- 97.** A strength of the RMA is that it provides the opportunity everyone to have input into significant issues such as a plan. However, it is my own personal opinion that it is also a weakness, in that when making decisions on a plan, the Council tends to make compromised decisions, rather than what they have been required to do since 1991 under section 5 of the RMA:

to manage the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

- 98.** It is my opinion, and I believe it is consistent with Ngāi Tahu beliefs and practices, that environmental management cannot be done properly through short term management for short term outcomes, or be focused on a single point. This does not mean 25+ year resource consents but RMA plans that look out 30, 50, maybe 100 years. All of us tend to be short term thinkers in trying to make our way in life – it's not easy and it's understandable that we think that way. Our well-known tribal whakatauki, Mo tatou, a, mo ka uri a muri ake nei' - 'For us, and our children after us', reminds us to think about our legacies and the taonga

we pass on to future generations, our future kaitiaki. We cannot be short-term thinkers as this approach has created incremental degradation that leaves to our children a legacy of cumulative impacts and degrading water quality and quantity.

- 99.** The dramatic environmental changes due to unregulated changes in farming practices (for example the increase in dairying, driven by higher economic returns), are a good example of short term thinking, but with significant and long term consequences.

NGĀ RŪNANGA INVOLVEMENT IN THE PLAN DEVELOPMENT PROCESS

- 100.** All of the factors identified above led Ngā Rūnanga, through TAMI, to look for a different approach so that our long-standing concerns could be better advanced, and our voice more clearly heard. I will set out below the partnership approach that we entered into with ES for this process, why we decided to follow this approach, and explain what our expectations were.
- 101.** We, as tangata whenua, worked on the development of the pSWLP and agreed for the pSWLP to be released for the submission process as discussed by Ms. Cain. We had understood that pSWLP is supposed to 'hold the line' and prevent further degradation as directed by the NPSFW. The version we discussed and developed the foundations of has now been compromised through the Hearings process. These compromised decisions have created a situation in which we have no confidence that the line will be held.
- 102.** My experience is that ES's non-regulatory approach hasn't worked in the past – it has failed miserably. I have worked with at least nine successive ES Councils since the RMA came in. Each Council has taken the same non-regulatory approach and the environment continues to degrade. This approach was the basis of the last Water Plan. In the early stages of developing that Plan the Council acknowledged that water quality had deteriorated and initially proposed setting a 20% improvement in water quality over the life of the Plan – there is nothing wrong with setting a 'stretch' goal.
- 103.** At the time, there was strong opposition from some stakeholders and Council decided a 20% target could not be achieved. In its place a 10% target for improvement was set. Despite our insistence that rules were needed to achieve

that target, ES made a decision to take a non-regulatory approach. Stakeholders insisted that they did not need rules, they were good people, they just needed to be told what was required and they would do it.

- 104.** The same arguments as last time have been raised for the non-regulatory approach. There is nothing wrong with making a mistake as long as you learn from it, rather than repeating it and expecting a different outcome. We believe the non-regulatory approach was a mistake.
- 105.** ES has not stated if the 10% improvement in water quality has been achieved or not. It is silent on the matter, but the goal has been removed from the pSWLP.
- 106.** ES made a decision not to run a collaborative process in the development of the pSWLP. They had previously run a collaborative process in the development of the Coastal Plan and had found it extremely expensive and cumbersome. However, ES staff continued to work with TAMI and Papaitpu Runanga in developing the pSWLP. The ES Director of Environmental Management at that time, Mr Warren Tuckey, requested a meeting with me and asked me to explain why ES should collaborate with us when no one else was, as he needed to be able to justify our collaboration to his Council.
- 107.** I explained that we have a Charter of Understanding signed by all parties that clearly sets out how the relationship is to work as a Treaty partnership relationship. I also spoke about the RMA requirement for Te Tangi, to be taken into account, and the need for our policies in Te Tangi to be fully understood and threaded throughout, not just be stated in a tangata whenua section somewhere in the pSWLP.
- 108.** I also spoke about the important Part II RMA requirements, especially sections 6(e), 7, and 8 and the important principle of shared decision-making. Mr Tuckey suggested that we should develop the pSWLP in partnership, not collaboration. The Regional Council accepted the recommendation from Mr Tuckey and that is how the pSWLP was developed. ES are to be acknowledged for enacting that principle of partnership. To me, it showed that ES took the partnership seriously and genuinely respected the role and views of tangata whenua.
- 109.** In developing the pSWLP we always knew that there would likely be compromises as ES comes under a lot of pressure from stakeholders. During

the process ES did a lot of consulting with stakeholders and the wider community and pressure was put on ES. Also, in a region with a small population like Southland, staff changes have a massive effect on working relationships and best practice. Institutional knowledge, budgets and recognition of our values, rights and interests can be lost over night.

- 110.** When we agreed for the pSWLP to be notified it was less than perfect from our perspective. While our policies were threaded throughout the pSWLP, they were not backed up by appropriate rules that will give effect to them. In agreeing for the pSWLP to be notified, it was our opinion that it could and should be strengthened through the submission and hearings process. This has not turned out to be the case; rather as a result of decisions on submissions, the pSWLP has been further compromised in my opinion.

IMPORTANCE OF REGIONAL AND LOCAL IMPLEMENTATION

- 111.** The failure to appropriately and effectively implement previous plans at a regional and local level is not new. History shows that it is critically important. In this instance, due to the structure and content of the pSWLP, we will be heavily reliant on the Freshwater Management Unit (**FMU**) process to deliver and implement the right outcomes, and ensure that the NPSFW is actually given effect to.
- 112.** The NPSFW puts requirements on the Council to maintain and improve water quality. ES has not come close to achieving that with its previous Plan, and I have little confidence that the decisions version of the pSWLP will enable ES to achieve these goals. Instead we have weakened objectives and are required to wait for the FMU process, with no guarantee that ES decision-making in the meantime will “hold the line”, let alone result in any improvements.
- 113.** When talking about the concept of “holding the line” (which we had understood the current Plan was intended to do), we have repeatedly requested that the ‘line’ be set at 2010 (when the last Water and Land Plan came into effect) or as a minimum, 2011 when the NPSFW came into effect. Without rules and a benchmark, it is difficult to enforce the changes and measure the results that are required. The end result is continuous and ongoing decline in water quality and the quality of the environment.

- 114.** A situation of continuous compromise and a failure to effectively implement planning documents has led to serious adverse environmental outcomes and declining water and soil health, and we now need strong leadership and a deliberately firm and directive policy and regulatory approach to maintain and improve water quality by 10% - the intended goal in the previous Plan.
- 115.** As I noted above, neither I nor senior members of Papatipu Rūnanga have any confidence that the pSWLP in its current form will adequately support the FMU and nutrient allocation process to follow because the rules are not there to back up the policies. It is my opinion that the intended process for defining values by involving representatives of different stakeholders could end up with more compromises, which ES is more than likely to adopt. We all know the values and they are enshrined in te Mana o Te Wai -the mana/prestige and the ability of wai and its mauri to sustain human health, animal health, instream values, riparian values, transport (not transport pollutants) to name a few.
- 116.** FMUs are the localised application of the regional values. It can be likened to the application of tikanga to specific mahinga kai sites – each needs to follow tikanga, but its application depends on the values, state of the site, associations and uses of that site and in particular any limiting factors. That is why the concept and recognition of physiographics is so important in the pSWLP - one size does not fit all. It all goes back to the capacity of the land and cumulative effects. It is critical for effective FMU processes and controls to be in place to manage this and bring about the necessary environmental changes and improvements.
- 117.** With regard to the FMU processes in the future, Councils have been given clear direction with the introduction of the NPSFW to maintain water quality where it is good and improve where it is degraded (and in fact I consider that these directives should be achieved in this Plan process). The NPSFW is a strong legal direction and Councils must give effect to it. That is why this Plan needs to be strong, and to support and provide strong direction to the FMU and nutrient allocation processes to ensure that water quality is maintained and improved.

CONCLUSION

- 118.** ES and Tangata Whenua, Ngai Tahu ki Murihiku, have built a very strong relationship since the RMA came into effect. The relationship was developed as a Treaty Partnership relationship, and was built on trust and good faith, the principles of which are reflected in the Charter of Understanding. Tangata Whenua are absolutely committed to assist ES, and the other Southland Councils, in recognising and implementing the Charter of Understanding.
- 119.** Successive Councils of ES fully entered into the spirit of the partnership, and of late committed significant resources to ensure the policies in Te Tangi are taken into account and included in the pSWLP. However, we were always concerned, as the pSWLP was being developed, that good policies were not backed up by rules.
- 120.** ES is to be acknowledged for developing the draft pSWLP in partnership with tangata Whenua which is consistent with the spirit of Te Tiriti. However, we always recognised that there were likely to be some compromises for us in developing the Plan this way.
- 121.** We approved the pSWLP being notified with the hope that it would be strengthened in the Hearings process. This hasn't happened and the pSWLP had been weakened by word-smithing which we believe reduces the effect of our policies. This is not what we agreed to.
- 122.** As previously stated in spite of all the good work and intentions the RMA processes has led to a seriously compromised Plan which we considered needed strengthening with rules in the first place.



Michael Richard Skerrett

15 February 2019

Appendix A

Mechanisms that recognise the importance and associations with Ngāi Tahu within Southland Freshwater Management Unit

Mechanisms that recognise the importance and associations with Ngāi Tahu whānui	Freshwater Management Unit (including sub-units) ²⁰					Fiordland and Islands
	Mataura	Ōreti	Aparima	Waiau		
Ngāi Tahu Claims Settlement Act 1998						
<i>Statutory Acknowledgements/ Deed of Recognition</i>	Mataura River (Schedule 42)	Ōreti River (Schedule 50)	Aparima River (Schedule 15)	Waiau River (Schedule 69)	Tūtoko (Schedule 66)	
	Waituna Wetland (Schedule 73)	Motupōhue / Bluff Hill Statutory (Schedule 44)	Uruwera/Lake George (Schedule 15)	Manawapopore/Hikuraki (Mavora Lakes) (Schedule 39)	Lake Hauroko (Schedule 29)	
	Rakiura/Te Ara a Kiwa (Rakiura/Foveaux Strait CMA) (Schedule 104)	Rakiura/Te Ara a Kiwa (Rakiura/Foveaux Strait CMA) (Schedule 104)	Rakiura/Te Ara a Kiwa (Rakiura/Foveaux Strait CMA) (Schedule 104)	Moturau (Lake Manapōuri) (Schedule 45)	Whenua Hou (& mgmt. input) (Schedule 108, s331)	
			Te Mimi o Tu Te Rakiwhanoa (Fiordland CMA) (Schedule 102)	Te Ana-au / Lake Te Anau (Schedule 58)	Hananui /Mount Anglem (Schedule 18)	
				Te Mimi o Tu Te Rakiwhanoa (Fiordland CMA) (Schedule 102)	Toi Toi wetland (Schedule 63)	
<i>Tōpuni</i>		Motupōhue / Bluff Hill Tōpuni (Schedule 85)	Takitimu Range Tōpuni (Schedule 89)	Takitimu Range Tōpuni (Schedule 89)		
<i>Nohoanga</i>	Waikaia River: Piano Flat	Ōreti River: Junction of Ōreti River and Irthing Stream		Mavora Lakes		
	Waikawa River			Lake Manapōuri		
	Mataura River: Ardlussa			Lake Te Anau: Mistletoe		
				Lake Te Anau (9 Mile Creek)		

²⁰ From layer in <http://gis.es.govt.nz/index.aspx?app=water-and-land>

Mechanisms that recognise the importance and associations with Ngāi Tahu whānui	Freshwater Management Unit (including sub-units) ²⁰				
	Mataura	Ōreti	Aparima	Waiau	Fiordland and Islands
				Waiau River 1 (Papatotara side)	
				Waiau River 2 (Fish camp road side)	
				Waiau River: Queens Reach	
<i>Dual Place names</i>	Ship Cone/Ōtaupiri	Motupōhue / Bluff Hill	Riverton/Aparima		Mount Anglem/Hananui
			Howells point/Taramea		Port William/Potirepo
			Colac Bay/Oraka		Paterson Inlet/Whaka a Te Wera
					Stewart Island/Rakiura
					East Cape/Koromere
					Lords River/Tutaekawetoweto
					Port Prgagus/Pikihatiti
					South Cape/Puhiwaero
					South Cape/Whiore
					Whenua Hou Nature Reserve (instead of Codfish Island)
<i>Vested land ownership</i>		Invercargill - Vested Fee Simple (Ancillary Claims Trustees)	Taramea / Howell's Point (Vested Fee Simple schedule 7 Part A)	Elfin Bay and Greenstone Stations Ngai Tahu Title leased in perpetuity to Department of Conservation.	Matariki Island and Islet (Fee Simple)

Mechanisms that recognise the importance and associations with Ngāi Tahu whānui	Freshwater Management Unit (including sub-units) ²⁰						
	Mataura	Ōreti	Aparima		Waiau	Fiordland and Islands	
		Waimumu / Hedgehope - Vested Fee Simple (Ancillary Trustees)	Aparima Site 1 - - Vested Fee Simple (Ancillary Trustees)			Rarotoka/Centre Island (Fee simple)	
						Crown Tītī Islands (numerous)	
Maori Land							
<i>Māori Land Blocks</i>	Waikawa	Invercargill	Jacobs Blocks	River Hundred	Rowallan	Rowallan	
	Tautuku (some within Southland Region)	Omaui	Town of Pourakino Blocks		Alton	Waitutu	
	Pt Lot 1 DP 10990	Campbelltown	Oraka blocks	Native Township		Ruapuke	
	Tuturau	Waimumu	Longwood Blocks			Papatea/Green Island	
	Hokonui	Linhurst	Land around Oraka Point (Oraka Roads)			Motuaro/Bird Island	
		Hokonui	Oraka F block			Te Ihu Karara/Topi Island	
		Forest Hill	Kawakaputaputa Reserve (Te Kawhakuputaputa Section 7)	Maori		Te Papa o Te Moroiti/Lee island	
			Te Section 6	Kawhakuputaputa		Hazelburgh Group (including Te Kauwhati o Tamatea)	


Mechanisms that recognise the importance and associations with Ngāi Tahu whānui	Freshwater Management Unit (including sub-units) ²⁰				
	Mataura	Ōreti	Aparima	Waiau	Fiordland and Islands
				Longwood Survey District blocks	Beneficial Titi Islands (numerous)
<i>Rūnanga marae</i> ²¹	and Hokonui rūnanga building and grounds	Awarua marae and rūnanga office	Te Takutai o te Titi marae and land (Ōraka-Aparima)		Port Easy Maori Reserve 9
	O Te Ika Rama marae (Hokonui)	Waihopai Marae and Rūnanga office	Oraka Aparima rūnanga office		Paterson Survey District Blocks (numerous)
Other			Ōkōura wetland in Colac/Oraka (owned by Oraka-Aparima)	Te Koawa Turoa o Takitimu (Oraka-Aparima manages this mahinga kai restoration area for Te Waiau Mahika Kai Trust)	Raggedy River Maori Reserve
			Waka landing building in Riverton/Aparima (owned by Oraka-Aparima)		Anglem Survey District Blocks
					Block II Town of Rakiura
					Native Reserve No 6, Cultivation Point Blocks
					Native Reserve No 5 Horse Shoe Bay
					Lords River Blocks
Mātaitai					
	Mataura River Mātaitai 2005	Oreti Mātaitai 2010			Waitutu Mātaitai 2014
	Waikawa Harbour/Tumu Toka Mātaitai 2008	Motupōhue (Bluff Hill) Mātaitai 2014			Te Whaka a Te Wera Mātaitai 2004

²¹ This denotes that the location of these rūnanga and marae in this FMU. It doesn't preclude that other Murihiku rūnanga may have interests in this FMU

Mechanisms that recognise the importance and associations with Ngāi Tahu whānui	Freshwater Management Unit (including sub-units) ²⁰				
	Mataura	Ōreti	Aparima	Waiau	Fiordland and Islands
					Horomamae Mātaitai 2010
					Pikomamaku Mātaitai 2010
					Kaihuka Mātaitai 2010
Water Conservation Order					
		Water Conservation (Ōreti River) Order 2008 ²²			

²² Significance in accordance with tikanga Māori was listed as one of the outstanding characteristics

Appendix B
He Huarahi mō Ngā Uri Whakatupu
The Charter of Understanding



**The
Charter
of
Understanding**

**He Huarahi mō Ngā Uri Whakatupu
(A Pathway for the Generations Coming Through)**

March 2016



He Huarahi mō Ngā Uri Whakatupu

Mai ea, mai ea, mai ea
Mai ea te tupuranga
Ki te whaiao
Ki te ao marama


E kī anei
Kia mura tonu te ahi
O te hinengaro
Ka oho ake nga uri
Hei tiaki mo
Nga whenua papatupu

Whakamaua kia tina, tina!
Haumi e
Hui e
Taiki e!

From its conception
To its growth
Into this world
To the world beyond

It has been said
Keep the flames of the fire
Burning in the mind
The younger generation will arise
As protectors of
The ancestral lands and taonga

Gather it into place, fix it, fix it!
Bind it in place
Bind it tightly
It is set!



He Huarahi mō Ngā Uri Whakatupu

The Charter of Understanding

Between

Environment Southland
Invercargill City Council
Southland District Council
Gore District Council
Queenstown Lakes District Council
Clutha District Council
Otago Regional Council

and



Te Ao Marama Inc. is authorised to represent:

Te Rūnaka O Awarua
Hokonui Rūnanga
Ōraka/Aparima Rūnaka
Waihōpai Rūnaka

who hold mana whenua over all ancestral lands in Murihiku;

and

as an additional role, has agreed to assist the Local Authorities
through Te Rōpu Taiao in their wider responsibilities
under the Local Government Act.

The Charter is endorsed by Te Rūnanga o Ngāi Tahu.

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Section 1

Setting the Scene – Basis for the Charter

1.1 Purpose

- 1.1.1 The purpose of this Charter of Understanding is to develop a relationship of mutual benefit between the local authorities within the Murihiku rohe Environment Southland (the brand name of the Southland Regional Council), Invercargill City Council, Gore District Council, Southland District Council, Queenstown Lakes District Council, Clutha District Council, and Otago Regional Council) (the “signatory Councils”) and the mana whenua of Murihiku and Te Rūnanga o Ngāi Tahu. Te Ao Marama Inc. will assist the Councils, through Te Rōpu Taiao in their relationship with matawaka living in te takiwa o Murihiku. On that basis, the Charter is seen as having a regionally significant status.
- 1.1.2 The Charter establishes and provides for a clear understanding of the basis and on-going conduct of the relationship between the signatory Councils and the tangata whenua, in the context of both:
- the Resource Management Act 1991 (RMA); and
 - the Local Government Act 2002 (LGA).

1.2 Background

- 1.2.1 The Treaty of Waitangi (Te Tiriti o Waitangi) is the founding document of Aotearoa/New Zealand. It provides for the exercise of Kawanatanga/Governance, by the Crown, while actively protecting Te Tino Rangatiratanga/Full Tribal Authority, of the Iwi in respect of their natural, physical and metaphysical resources.
- 1.2.2 In exercising governance, the Crown has made laws relating to the promotion of the sustainable management of natural and physical resources, and enhancing the role of local government. The relevant legislation requires that in achieving the purpose of those Acts, all persons exercising functions and powers under them shall:
- recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga as a matter of national importance (RMA);
 - have particular regard to Kaitiakitanga (RMA);
 - take into account the principles of the Treaty of Waitangi (RMA);
 - recognise and respect the Crown’s responsibility to take account of the Treaty of Waitangi by complying with Parts 2 and 6 of the LGA 2002; and
 - to maintain and improve opportunities for Māori to contribute to local government decision-making processes (LGA).

1.2.3 The Crown has also created the signatory Councils under the Orders specified in the Local Government Act 2002, and requires them to exercise certain functions and powers in relation to:

- the sustainable management of natural and physical resources (RMA);
- the requirements for local authorities to facilitate participation by Māori in local authority decision-making processes (LGA);
- enable democratic local decision-making and action by, and on behalf of, communities (LGA); and
- enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety (RMA).

1.3 The Parties

1.3.1 Environment Southland, Invercargill City, Gore District, Southland District Council, Queenstown Lakes District Council, Clutha District Council, and Otago Regional Council are represented by their elected Councillors.

1.3.2 With the enactment of Te Rūnanga o Ngāi Tahu Act 1996, Te Rūnanga o Ngāi Tahu is now the legal tribal representative of Ngāi Tahu Whanui, being descendants of the following tribes:

- Ngāi Tahu
- Ngati Mamoe, and
- Waitaha

Ngāi Tahu Whanui are also represented locally in Murihiku by the above mentioned four Rūnanga. It is the practise of Te Rūnanga o Ngāi Tahu that consultation in the first instance is via Papatipu Rūnanga, however, Te Rūnanga o Ngāi Tahu may from time to time be consulted where it is appropriate to do so (for example, on matters relevant to the Ngāi Tahu Claims Settlement Act 1998).

1.3.3 For the purpose of this Charter in Murihiku, tangata whenua are represented by the following organisation:

- Te Ao Mārama Incorporated

This organisation has been authorised to act in this capacity by Te Rūnanga o Ngāi Tahu. In terms of Article II of the Treaty, the tangata whenua hold mana whenua over all ancestral lands within Murihiku and on that basis the Councils will liaise with Te Ao Mārama Inc. The membership of this organisation is made up of the four mana whenua Rūnanga in Murihiku. They are:

- Te Rūnaka o Awarua,
- Hokonui Rūnanga,
- Oraka/Aparima Rūnaka, and
- Waihopai Rūnaka.

- 1.3.4 The LGA refers to all Māori rather than just those who hold mana whenua. This means that no individual or group representing a Māori interest with relevant issues of significance to that interest can be precluded from interacting with local government directly should they wish. To assist and facilitate that interaction, Te Rōpu Taiao, in addition to the primary role of assisting the Councils with their LGA responsibilities, will assist the signatory Councils in their relationship with matawaka living in te takiwa o Murihiku by holding open forum at the commencement of each Te Rōpū Taiao hui. By way of explanation, Te Rōpū Taiao is the political group made up of representatives from each Council and each Rūnanga in Murihiku.

1.4 Common Goal and Objectives

- 1.4.1 The signatory Councils and the tangata whenua of Murihiku have a common goal. It is the sustainable management of the region's environment and for the social, cultural, economic, and environmental needs of communities, for now and into the future.
- 1.4.2 In pursuit of this goal, the signatory Councils and the tangata whenua of the region agree that:
- 1.4.2.1 The relationships are based on good faith, co-operation, and understanding.
 - 1.4.2.2 There is commitment to work towards solutions with reasonableness and honesty of purpose.
 - 1.4.2.3 All parties respect and seek to accommodate different cultural values and ways of working. They recognise a range of philosophies and practices of environmental and local government management and acknowledge that tangata whenua are working to restore an iwi environmental management system.
 - 1.4.2.4 Issues relating to Māori are appropriately addressed in local government decision-making processes.
 - 1.4.2.5 The specific relationship of tangata whenua and their culture, traditions and values with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga where considering all significant decisions in relation to land or water bodies.

1.5 Principles of the Treaty of Waitangi

- 1.5.1 The parties recognise that understanding of the principles of the Treaty of Waitangi is a developing area and new principles may emerge as the meaning and intent of the Treaty is further defined.
- 1.5.2 The principles of the Treaty describe a dynamic relationship between the Treaty partners, recognising that the Treaty is a living document.
- 1.5.3 The signatory Councils and the tangata whenua may, with mutual agreement, decide to develop and adopt further principles.
- 1.5.4 The principle of “The Essential Bargain” is of primary significance for the conduct of the relationship and is to be taken into account under the Resource Management Act. This term has been interpreted to mean the right of the Crown to make laws was exchanged for the obligation to protect Māori interests (Waitangi Tribunal and see also Court of Appeal).
- 1.5.5 The Tribal Self-Regulation principle recognises that the tangata whenua may wish to retain responsibility and control of the management and allocation of their resources.
- 1.5.6 Application of this principle requires those exercising Kawanatanga to recognise the exercise of Rangatiratanga by tribal groups, and for those exercising Rangatiratanga to recognise Kawanatanga.
- 1.5.7 In exercising Rangatiratanga and Kaitiakitanga the tangata whenua rights to development including but not limited to, access to new knowledge and technologies, shall be recognised by the signatory Councils.

1.6 Active Protection

- 1.6.1 The Crown’s duty of active protection of the tangata whenua rights and interests in resource management is not simply a passive one, but is in all senses active to the fullest extent practicable.
- 1.6.2 The signatory Councils will recognise the need for active protection to be considered in all aspects of their business that affect the customary rights and interests of tangata whenua and in particular when developing their RMA and LGA policies and plans.

1.7 Agreement

- 1.7.1 This Charter is freely entered into by all parties in a spirit of goodwill in accordance with the Common Goals and Objectives stated in Clause 1.4. The parties recognise the benefits of the Charter to themselves, to the regional community, the region’s environment, and the effective operation of local government. The Charter is a statement of good intention. Accordingly, the

parties do not intend that this Charter should create legally binding rights and obligations. The Charter is intended to form the basis of a meaningful long-term relationship and may be further amended or expanded by agreement or memorandum between the parties as required.



Section 2

Governance – Looking after the Relationship

2.1 Transfer of Powers

- 2.1.1 The signatory Councils are able to transfer powers under the RMA to other statutory authorities. In these circumstances the duties with respect to tangata whenua are also transferred and the authorised organisation must meet those responsibilities. The signatory Councils recognise their responsibility to monitor whether the transfer of power is exercised in the appropriate manner.
- 2.1.2 The RMA also provides for the transfer of powers to Iwi Authorities. It is one of the few mechanisms available to signatory Councils to recognise Rangatiratanga and Kaitiakitanga.
- 2.1.3 In the course of preparing, withdrawing, changing or reviewing Policy Statements or Plans, the Councils will actively consider, in assessing possible methods of plan implementation, the option of transfer of powers to the Iwi Authority.
- 2.1.4 Where the tangata whenua request the transfer of powers to the Iwi Authority, the signatory Councils will take into account, along with all other relevant matters:
- 2.1.4.1 Their duties under the RMA, concerning Māori values and interests; and
 - 2.1.4.2 The need to assess applications on the grounds of the appropriate community of interest, efficiency and capability (S33(4)(c) of the RMA).
- 2.1.5 The tangata whenua and the signatory Councils may wish to investigate opportunities under the RMA and LGA for joint management of resources as an application of the partnership principle.

2.2 Conflict Resolution

There may be situations where the signatory Councils' Kawanatanga powers and responsibilities conflict with the Rangatiratanga interests of tangata whenua and/or Māori. In such instances, the parties should endeavour to reconcile differences in a non-adversarial manner through dialogue, mediation and negotiation. In the event of an independent facilitator or mediator being required, Te Rōpū Taiao will maintain a list of appropriately qualified, acceptable, mediators. Litigation should always be seen as a last resort.

2.3 Building Capacity

The Local Government Act requires the signatory Council to outline steps to be taken to foster the development of Māori capacity to contribute to signatory

Councils' decision-making processes. The approach from the Councils is to ensure that tangata whenua through Te Rōpū Taiao and Te Ao Marama Inc have that capacity in the first instance but to also make sufficient capacity building capability available to matawaka should it be required.

2.3.1 Organisational Level

The signatory Councils and te tangata whenua o Murihiku have a well-established relationship and understanding for collaboration that has stood the test of time. The relationship and its associated processes evolved primarily through the Resource Management Act duties but has been expanded in scope to cover all aspects of mutual interest, including the Local Government Act 2002. The level of trust and collaboration is such that the interaction between the signatory Councils, te Kaupapa Taiao Manager and the four papatipu Rūnanga representatives, is now a natural part of daily business.

The primary collaborative structure that has been put in place is Te Rōpū Taiao. This political level governance group is made up of elected representatives from each of the signatory Councils, and representatives of the four papatipu rūnanga. This group provides the overarching administrative input to maintaining the collaborative arrangements.

Te Ao Marama Inc. is the management organisation that takes on the role of looking after tangata whenua interests in resource management and other aspects related to local government in Southland. If the issues are of a wider Treaty or of precedent character, there will be a requirement to consult with Te Rūnanga o Ngai Tahu. Te Rūnanga O Ngai Tahu has authorised the four papatipu rūnanga to look after all other issues in Murihiku that affect tangata whenua including Ngai Tahu Claims Settlement Act interests.

To facilitate tangata whenua participation in these matters, Te Ao Marama Inc. is financially supported by the signatories on an annual basis. This support funding is in addition to other funding gained directly by Te Ao Marama Inc. from other sources.

Other opportunities that may be addressed on an ongoing basis include:

- opportunities to assist the Rūnanga contributions to decision making in Murihiku;
- additional resourcing assistance to enable participation in Local Government Act processes;
- an invitation to Rūnanga to discuss the matters they should be involved in and how;
- capacity enhancement to enable Māori to participate in the signatory Council's decision-making process and how that might happen.

2.3.2 Activity Level

The signatory Councils' goal is to ensure that tangata whenua matters are incorporated seamlessly into the normal daily activities and core business of local government in Murihiku.

This Charter of Understanding exists between the Councils and Te Ao Marama Inc. on behalf of te papatipu rūnanga o Murihiku. The Charter forms the basis from which the current relationship is formed. The Councils initially signed the Charter of Understanding with Te Ao Marama Inc. for Resource Management Act matters, and this continues to provide the basis for an ongoing contribution to decision-making on those matters. The Charter has been extended to incorporate the requirements of the Local Government Act 2002 and the Local Electoral Act 2001.

Council staff undertake consultation and discussion with Māori through Te Kaupapa Taiao Manager on a regular basis. In some cases, these are ongoing processes required by legislation (e.g. the Resource Management Act 1991 and the Local Government Act 2002), others are simply a way of recognising the spirit of open partnership inherent in the Treaty of Waitangi.

The signatory Councils in conjunction with tangata whenua over time, have committed to ensuring that tangata whenua are appropriately resourced to enable participation in the matters of common interest. Some examples of these initiatives include:

- assistance for the production of the iwi authority's resource management plan *Te Tangi a Taurā – The Cry of the People*;
- recognising the iwi authority's resource position statements;
- the adoption of a Protocol for Iwi input to Plans and Policy Statements;
- offer of employment opportunities for a tikanga Māori student;
- participation in Hearing Panel deliberations.

Changes to the Resource Management Act mean that the signatory Councils now have responsibilities concerning heritage matters. The Councils will have to establish a strategy for heritage assets in conjunction with all stakeholders. Significant consultation will be needed before any policies are developed, and meetings with Te Ao Marama Inc. are to be organised as the first step in this process.

Cultural awareness programmes are currently being developed and will address cultural awareness training for Councillors and staff, and these will be written in consultation with Te Ao Marama Inc. Training opportunities for iwi will be considered by and offered to iwi as they arise.

These interactions can all be seen to help build Māori capacity to participate in the operational and decision-making processes of the signatory Councils.

2.4 Shared Decision-Making

The intention of the signatory Councils is to meet every and all obligations (mandatory and discretionary) to involve Maori with formal and informal opportunities for sharing or being involved in decision-making. The primary

pieces of relevant legislation below are included as the starting point. There will be other opportunities and options available for a variety of situations and circumstances.

The signatory Councils also have a commitment under their respective *Significance and Engagement Policies* to inform and involve Maori (but not exclusively) in a range of work leading to decision-making, outside of the more formal statutory consultation processes.

Resource Management Act 1991

- 2.4.1 Shared decision-making is a principle implied in the requirement to balance the Kawanatanga role of Article I of the Treaty and the Rangatiratanga role of Article II of the Treaty.
- 2.4.2 The signatory Councils will seek to achieve the principle of shared decision-making within the limitations of the relevant legislation, and the RMA in particular. The options include those representation mechanisms outlined under Representation (Section 2.7), the use of the tangata whenua as consultants to advise the signatory Councils, the appointment of the tangata whenua as Hearings Commissioners, and the transfer of powers under Section 33 of the RMA. However, it is recognised that in the event of tangata whenua trained as Hearing Commissioners being required for a hearing process, the same persons cannot act as consultants in that regard so as to maintain objectivity in decision-making.
- 2.4.3 The signatory Councils will seek to take opportunities to include tangata whenua representatives in decision-making processes under the RMA.
- 2.4.4 The National Policy Statement for Freshwater Management provides an opportunity to involve Maori in decision-making around issues of water management. The NPS-FM recognises the national significance of fresh water to all New Zealanders and Te Mana o Te Wai. There is a direct connection to all the water management related projects of the signatory Councils, such as Water and Land Plans; Regional Policy Statements; 30 year Infrastructure Strategies; and District Plans.

Local Government Act 2002

- 2.4.5 The signatory Councils, within their roles and responsibilities, shall
 - (a) establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority; and
 - (b) consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority; and
 - (c) provide relevant information to Māori for the purposes of paragraphs (a) and (b). (Section 81, LGA)

2.5 Shared Initiatives

- 2.5.1 Te Rōpū Taiao (as referred to in Section 2.7) will meet not less than four times a year. There will be opportunity for additional meetings to be held, at the request of Iwi or the Council representatives.
- 2.5.2 Te Ao Marama Inc. Kaupapa Taiao Manager - The role of the Kaupapa Taiao Manager is to co-ordinate liaison between tangata whenua and the signatory Councils. This will include liaison between individual Councils and/or their staff. The Manager's role is also to provide liaison between individual Rūnanga.
- 2.5.3 Working Parties - Working parties may be established, by mutual agreement of the signatory Councils and the tangata whenua, to facilitate Iwi input into the preparation and review of the Councils' RMA and LGA policies and plans and into the local authority decision-making processes.

2.6 Principles for the Relationship

The principles for the relationship are founded in both legislation and in the acknowledgement of common alignment of natural resources values. The legislation listed below contains the primary principles to be used in the relationship.

Ngāi Tahu Claims Settlement Act 1998

This Act is founded on the principles as contained in the Treaty of Waitangi and has an associated set of Regulations (Ngāi Tahu Claims Settlement (Resource Management Consent Notification) Regulations 1999).

The Resource Management Act 1991

- 2.6.1 The Purpose and Principles (Part II) of the RMA, provide for a Māori dimension to be included in resource management decision-making. Three provisions refer to matters Māori. They are:

- 2.6.1.1 Section 6(e): The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.

This provision is not restricted to lands, water, sites, waahi tapu and other taonga in current Māori ownership, but may extend to include resources that were once owned by the ancestors of the tangata whenua in the past.

The signatory Councils (and all other parties exercising functions and powers) must recognise and provide for this special cultural and traditional relationship as a matter of national importance.

- 2.6.1.2 Section 7(a): Kaitiakitanga - the exercise of guardianship.

Kaitiakitanga is concerned with both the physical and spiritual well-being of the resource. The signatory Councils must have particular regard to kaitiakitanga.

2.6.1.3 Section 8: To take account of the principles of the Treaty of Waitangi.

The RMA recognises the central importance of the Treaty of Waitangi to resource management. The parties consider that this is appropriate, for the mandate to enact the legislation comes ultimately from the Treaty itself. Councils must take account of the Treaty's principles in all decisions under the RMA. The principles of the Treaty which the parties consider to be important at this stage are set out in Section 1.5 of this Charter.

The parties recognise that the protection afforded the Māori interest under Part II of the RMA is not absolute. In all cases, there will be a requirement to balance Māori interest against other interests that must be considered under the RMA.

The Local Government Act 2002

2.6.2 The Local Government Act provides opportunities for Māori to participate in local governance and decision-making. The relevant provisions are:

2.6.2.1 Section 14(1)(d) – a local authority should provide opportunities for Māori to contribute to its decision-making processes.

2.6.2.2 Section 77(1)(c) – take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga where considering all significant decisions in relation to land or water bodies.

2.6.2.3 Section 81(1)(a)-(c) – provision of processes for Māori contributions in decision-making, development of capacity to contribute, and providing information to assist those roles (see also Section 2.4).

2.6.2.4 Section 82 – the established principles of consultation must be followed (see also Section 3.3).

The Local Electoral Act 2001

The Local Electoral Act (Sections 19Z – 19ZH) provides a discretionary opportunity for Councils to create Māori Wards and Constituencies that will assist in providing fair representation for Māori living within the region.

2.7 Implementing the Principles

Representation

- 2.7.1 Representation refers to the mechanisms which provide for individuals and groups authorised to speak for the tangata whenua and Māori generally to participate in the signatory Council's decision-making processes.
- 2.7.2 Iwi representation and participation will be undertaken through the mechanisms listed below. These mechanisms take account of the principles of partnership and shared decision-making, and the independence and diversity of Iwi organisations.
- 2.7.2.1 "One to One" relationship between Iwi and the signatory Councils. The signatory Councils will continue to develop a direct relationship with Iwi.
- 2.7.2.2 Iwi-Council Representative Group (Te Rōpū Taiao). The function of the Iwi-Council representative group is to provide a forum for the exchange of views between the tangata whenua and the Councils. The Group will provide advice to the signatory Councils and contribute to setting strategy and policy directions. Meetings will focus on, but are not limited to, issues affecting the Iwi, and monitoring the effectiveness of the Charter and Council's management policies and plans under both the RMA and LGA.
- 2.7.2.3 The Group will consist of one representative from each Rūnanga and one Councillor representative from each Council. There will be provision for additional Council and Iwi representatives to be present for items of specific interest to them. For the purposes of clarity, the Kaupapa Taiao Manager from Te Ao Marama Inc. and Council staff are in attendance in an advisory capacity only, and shall have no voting rights.
- 2.7.2.4 The parties understand the powers and functions of the Councils to be expressions of Kawanatanga. However, the parties recognise that the Councils are limited by statute in their exercise of Kawanatanga.
- 2.7.2.5 The Essential Bargain is in the nature of an exchange and a recognition of respective rights. The operation of this principle will include "Rangatira to Rangatira" interaction between the signatory Councils and Iwi representatives.
- 2.7.2.6 The Partnership/Mutually Beneficial Relationship principle imposes a duty on both tangata whenua and the signatory Councils to interact in the best possible way with reason and

respect. This is reflected in the Goals and Objectives (referred to in Section 1.4), which set out the parameters of the relationship.

- 2.7.3 Iwi Representation at Council Meetings - Within the framework of the Councils' standing orders, Iwi representatives have the right to address any committee meeting or meeting of the full Council on matters relating to Councils functions and responsibilities. This right is in addition to the right that members of the general public have to make statements at Council meetings. In the event of a matter being discussed at a hearing, then the statutory processes must be followed.
- 2.7.4 Council Representation at Iwi Meetings - In implementing consultation on a "Rangatira to Rangatira" basis, Council and Iwi representatives may meet to discuss matters of mutual importance on the Marae or other venue nominated by the tangata whenua.
- 2.7.5 All parties retain the right to choose their own representatives. Both the tangata whenua and the Councils recognise that those representatives are authorised to speak for their respective organisations.
- 2.7.6 Council staff members or consultants involved in facilitating liaison between the signatory Councils and tangata whenua do not act as representatives of Iwi or Council views.
- 2.7.7 The Secretariat for Te Rōpū Taiao will be provided by Environment Southland.

2.8 Support Funding Arrangement

The signatory Councils provide annual support funding to Te Ao Marama Inc. The funding assists the Councils in meeting their obligations to work alongside Maori, and for Maori to build capacity in order to respond to the requirements of the signatory Councils. The funding supports both Te Ao Marama Inc's Kaupapa Taiao and Te Rōpū Taiao activities.

The support funding amounts are shown in the following schedule with a 2015/16 baseline:

	2015/16 Contribution	Percentage of Total
Environment Southland	\$41,805	22%
Southland District	\$39,753	21%
Invercargill City	\$39,753	21%
Gore District	\$13,122	7%
Queenstown Lakes District	\$39,753	21%
Clutha District	\$13,122	7%
Otago Regional Council	Negotiated	Pending signatory

The percentages used to run the calculation (managed by Environment Southland) provide an equitable arrangement based on the relative size of the

local authority in the context of the Murihiku boundary. It is not intended to be a precise percentage but indicative only.

The Secretariat will invoice each local authority in July each year for their respective contributions, and Te Ao Marama Inc. will invoice the Secretariat quarterly. The Secretariat then pays the support funding on behalf of the local authorities.

Inflation Adjustment

The funding arrangement has previously been adjusted annually following publication of the September quarter Consumer Price Index (CPI) but provided no certainty for forward budgeting. The CPI is not an appropriate index for use in local government. The local authorities currently use *BERL Forecasts of Price Level Change Adjustors*¹ to provide more accurate and sector aligned inflation adjustment figures.

The *Planning and Regulation* category annual inflation adjustment figures are set out (*BERL, page 14*) and are likely to be published in each Long-term Plan. The annual figure from the *Planning and Regulation* category will be used to calculate the annual support funding contributions using the 2015/16 baseline figures. The figures will be reviewed and adjusted from *BERL* reports as necessary when the Charter is reviewed (see Clause 2.11).

2.9 Input into Long-term Plans, Annual Plans and Annual Reports

The Secretariat will provide on behalf of the local authorities, a draft narrative dealing with the Māori and local authority relationship for Te Ao Marama Inc. to consider and approve. The approved narrative can be used by the local authorities for inclusion in their Long-term Plans, Annual Plans and Annual Reports as required.

2.10 Te Roopu Taiao Chairperson

The Chairperson of Environment Southland shall be the Chairperson of Te Roopu Taiao.

A Deputy Chairperson will be appointed by Te Roopu Taiao members from time to time.

2.11 Review

The Charter of Understanding will be reviewed at least once every five years.

¹ *Forecasts of Price Level Change Adjustors* – BERL Economics, September 2015.

Section 3

Operational – Making it Work

3.1 Resources

3.1.1 In recognition of the partnership, consultation and active protection principles the signatory Councils will provide resources to the tangata whenua and Māori capacity to facilitate their involvement and contribution in resource management and local authority decision-making. Resources in the context of this Charter may include the provision of technical advice, expertise, information and financial support.

Resourcing will be mutually agreed and within accountability requirements including those of quality and timeliness.

The local authorities will recognise the resource limitations on tangata whenua and discuss options to resolve or assist with those resourcing limits, depending on the circumstances. Having shared objectives and shared tasking will prove of mutual benefit to all parties.

3.1.2 The signatory Councils and the tangata whenua recognise the limitations and constraints on each partner in respect of resources. Frequently, the tangata whenua do not have the resources, either financial or human, to respond adequately to consultation requirements. For their part, the Councils' resources, derived primarily from ratepayers, are limited. Councils must set priorities and demonstrate accountability.

3.1.3 Appropriate areas where the signatory Councils may agree with the tangata whenua on the provision of resources, for Iwi input are:

3.1.3.1 Preparation and review of RMA and LGA policies and plans.

3.1.3.2 Provision of administrative servicing, travel and meeting allowances for the meetings of the Iwi/Council Representative Group.

3.1.3.3 Provision of technical assistance and advice in the preparation and review of Iwi environmental management plans.

3.1.3.4 General provision of information and advice, and assistance in interpreting and using that information.

3.1.3.5 General provisions for capacity building such as training.

3.1.4 In some circumstances, the signatory Councils and the tangata whenua may see contracting as appropriate. The normal rules of contract and performance criteria would apply. In the case of a dispute, a group made up of tangata whenua and Council nominees would seek resolution. Parties should avoid recourse to legal processes to resolve conflict.

3.2 Protection of Sensitive Data and Information

- 3.2.1 From time to time the tangata whenua may provide the Councils with sensitive and confidential data and information, e.g. concerning waahi tapu or other sites of significance, knowledge, or aspects of tikanga Māori. The signatory Councils will undertake to respect and protect such data and information in its care and restrict access to it, in accordance with the Local Government Official Information and Meetings Act 1987 (S.7) and the RMA (S.42(1)(a)), or the LGA.

Local authorities will discuss and gain approval from the Kaupapa Taiao Manager prior to the use or reproduction of any such data or information.

- 3.2.2 The tangata whenua will undertake to protect any sensitive or confidential information, including restriction of access to it that the signatory Councils may give to them.

3.3 Engagement

The 2014 changes to the Local Government Act 2002 required local authorities to adopt a Significance and Engagement Policy. The engagement element of that policy opens up a range of options for involving Maori in decision-making, beyond the statutory requirements of consultation under the Resource Management Act 1991.

Formal consultation is still a critical requirement for local authorities and Maori when dealing with the mandatory statutory requirements, and this section of the Charter initially addresses consultation, and then moves on to consider the other engagement options available.

Consultation

- 3.3.1 During the preparation, withdrawal, change or review of any proposed policy, Policy Statement, or Plan under the RMA or Section 82, LGA, the signatory Councils have a duty to consult with Māori. The tangata whenua have a reciprocal duty to respond. However, the level of resourcing provided affects how the signatory Councils and the tangata whenua are able to carry out these duties. The Councils need resources to facilitate consultation. The tangata whenua need resources to make a meaningful response. Both the signatory Councils and the tangata whenua benefit if the process is as efficient and effective as possible.

- 3.3.2 Consultation involves:

- A genuine invitation to give advice and a genuine consideration of that advice.

- The provision of sufficient information and time for the consulted party to be adequately informed, to appraise the information and make useful responses.
- The party obliged to consult, keeping its mind open, being ready to change and where feasible, seek consensus.

3.3.3 Consultation is not simply informing the tangata whenua of impending actions. The duty is an active one. The Councils must consult early and in good faith, as is implied in the partnership principle and in terms of the signatory Councils' Significance and Engagement Policies. The signatory Councils will continue to consult with the tangata whenua on various matters, particularly at all stages of the preparation and review of policies and plans, and with regard to resource consents as required.

3.3.4 To facilitate consultation the signatory Councils will:

- acknowledge that, in the framework of the relevant legislation the tangata whenua and Māori have status as Treaty Partner, distinct to that of other interest groups and the general public.
- liaise with Te Ao Marama Inc (which represents members of the Iwi authority) via the Kaupapa Taiao Manager.
- take into account environmental management plans prepared by the Iwi authority and consider the need to support the tangata whenua and Māori in the preparation and review of RMA and LGA policies and plans.
- Provide reasonable and appropriate access to relevant data and information,
- Encourage the presentation of views to the Councils who will receive them with an open mind, and following due consideration, provide to the persons presenting those views, information concerning the relevant decision and the reasons for the decisions.

3.3.5 The signatory Councils will, with regard to consultation over resource consents, and subject to the time constraints contained in the RMA:

- ensure that sufficient information is provided by a resource consent applicant on any potential impacts on the tangata whenua;
- encourage applicants to consult with the tangata whenua as part of the assessment of effects, by directing them to Te Ao Mārama Inc;
- develop a procedure for referral of all resource consent applications to Te Ao Mārama Inc so that they may assess which are of concern to them.

3.3.6 The tangata whenua will endeavour to:

- use the consultation provisions in a positive and pro-active way;
- provide, where resources and time allow, clarification on matters of significance to Iwi relevant to the particular proposal or issue;
- identify appropriate contact persons within Iwi who will gather information to ensure that the Councils are kept adequately informed;
- comply with the time constraints which govern the resource consent application process;
- endeavour to respond to LGA consultation processes in a timely manner.

Other Engagement Options

3.3.7 Local authorities have individual versions of a *Significance and Engagement Policy* that should be referred to. In a general sense, engagement options can vary but there are similarities with most Councils opting to use the International Association of Public Participation (IAP2) options spectrum of inform, consult, involve, collaborate, or empower. Any or a combination of those engagement techniques could be used depending on the topic and the interests.

3.4 Hearings and Pre-hearing Meetings

3.4.1 A hearing is a quasi-judicial process which operates under certain constraints. The signatory Councils will encourage consultation before hearings so that a more flexible approach is possible. The signatory Councils will ensure the following are provided for in RMA consent and plan hearings:

- 3.4.1.1 Recognition and provision for tikanga Māori and te reo Māori, where appropriate.
- 3.4.1.2 Appointment of Māori as Hearing Commissioners (where certification under the *Making Good Decisions Programme* has been achieved), where appropriate.
- 3.4.1.3 Protection of information relating to hearings proceedings that is considered sensitive and confidential by the tangata whenua. The information to be protected may go beyond that presented at the hearing.
- 3.4.1.4 Provision of interpreters where necessary (with five working days advance notice).

- 3.4.2 The signatory Councils will promote the use of pre-hearing meetings to address issues of concern to the tangata whenua, and the use of venues, such as Marae, which provide for tikanga Māori.
- 3.4.3 In deliberations and hearings that may be held under the LGA, the signatory Councils will make every effort in terms of venue, resources, and time to ensure that Māori issues are fully canvassed, prior to a decision being made.

3.5 Input into resource consent and RMA plan processes

Protocols for dealing with resource consents and managing input into plan development and decision-making will be prepared/reviewed and be used to guide iwi involvement in those processes.

3.6 Cultural Impact Assessments and Values Reports

Where cultural investigations and reports are required, the Kaupapa Taiao Manager shall be consulted for advice on which group is best placed to assist the local authorities and/or applicants to undertake impact assessments and values reports.



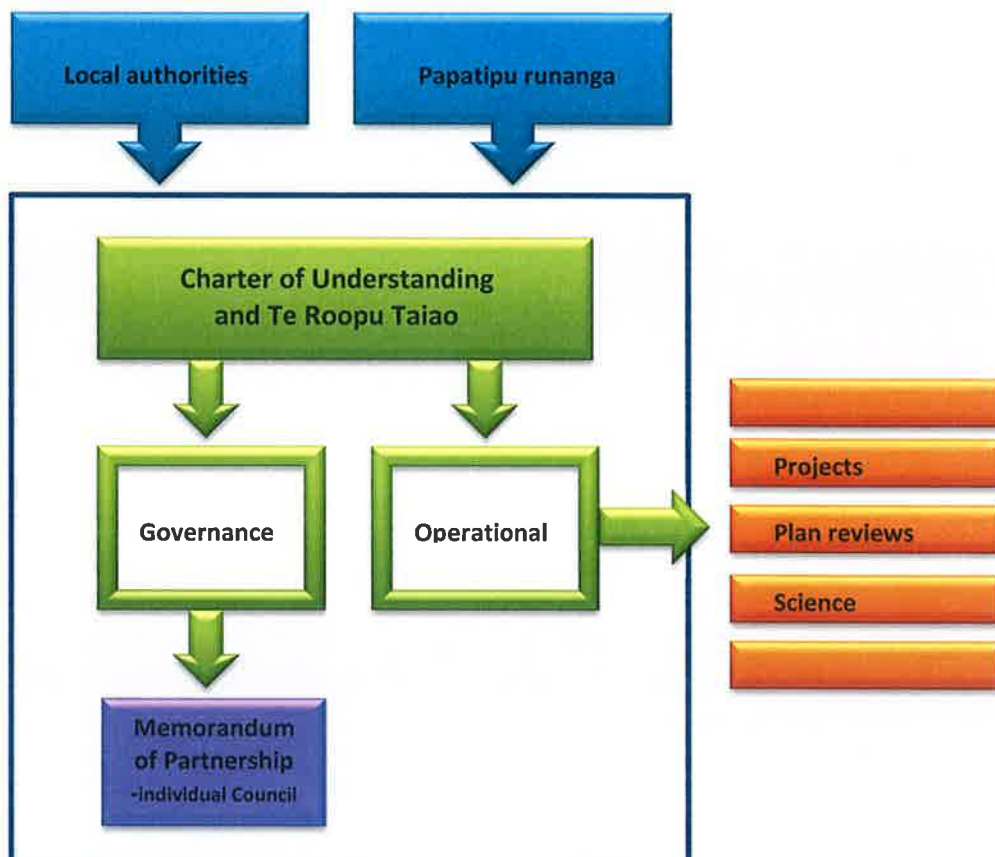
Section 4

Relationship Growth – Moving to Partnership

Relationships such as that envisaged by this Charter can flourish and grow but at the rate or pace that each local authority and tangata whenua are comfortable with. Local authorities that have been in the Charter for a longer period may wish to add to the Charter relationship by developing a partnership component. Recognition of that point in time will be identified by the local authority and tangata whenua, and it will be their choice to seek a further enhancement to their relationship with tangata whenua.

Such a partnership arrangement envisages retention of the Charter membership but offers an opportunity for the individual council to negotiate and prepare an additional but connected Memorandum of Partnership that is unique to that local authority.

The following diagram indicates in a general sense, how the connections work for the Charter and any partnership arrangement.



Section 5

Signatories

Te Rūnaka o Awarua



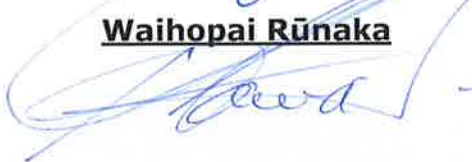
Hokonui Rūnanga



Oraka/Aparima Rūnanga



Waihopai Rūnanga



Clutha District Council

Mayor

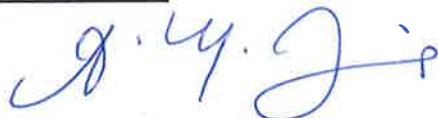


Chief Executive

Environment Southland

Te Taiao Tonga

Chair



Chief Executive



Gore District Council

Mayor

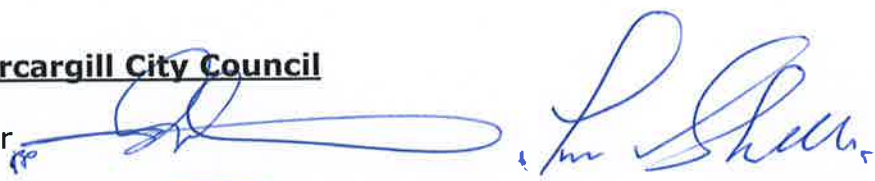


Chief Executive

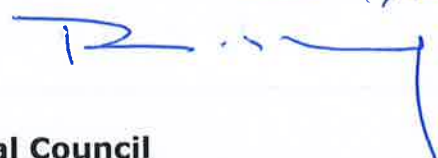


Invercargill City Council

Mayor

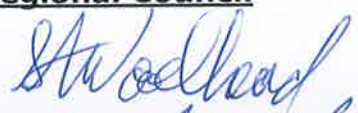


Chief Executive



Otago Regional Council

Chair



Chief Executive



Queenstown Lakes District Council

Mayor

Alexa Forbes on behalf.

Chief Executive



Southland District Council

Te Rohe Pōtae O Murihiku

Mayor



Chief Executive



Endorsed by Te Rūnanga o Ngāi Tahu

