



12 NOVEMBER 2024

Central Otago District Council

PO Box 122

ALEXANDRA 9320

Attention: RMA Hearing Commissioner GM Rae

*Tēnā koutou, ko tēnei mihi atu ki a koutou, ngā mema o te komiti, ngā kaiwhakawa o ngā mea e pa ana tēnei kaupapa taumaha, me ki, o tātou nei rohe moana, he taoka o tātou nei whānau, hapū me te iwi. Ki a rātou kua whetu rangitia, te hunga wairua, haere, moe mai, oki oki mai, kati.*

#### FURTHER SUBMISSION – RC230179 TKO Properties Limited: Rocky Point subdivision

##### Resource Consent Application RC230179

To undertake a subdivision creating 30 lots with building platforms and one balance allotment at Rocky Point, Bendigo. The application is bundled as a Non-Complying Activity.

#### 1. TOITŪ TE MANA, TOITŪ TE WHENUA: KĀ RŪNAKA

- 1.1 This letter is written on behalf of Te Rūnanga o Ōtākou, Kāti Huirapa Rūnaka ki Puketeraki, and Te Rūnanga o Moeraki ('Kā Rūnaka'), three papatipu rūnaka with shared authority in the area of the proposed activity. Kā Rūnaka represent hapū who uphold the mana of the whenua in this region, and interests in the inland lakes and mountains and along the Mata-au are shared with Ngāi Tahu ki Murihiku.
- 1.2 The takiwā of Te Rūnanga o Ōtākou centres on Muaūpoko/Otago Peninsula and extends from Purehurehu Point/north of Heyward Point to the Clutha River/Mata-au and inland to the Southern Alps.
- 1.3 The takiwā of Kāti Huirapa Rūnaka ki Puketeraki centres on Karitāne and extends from the Waihemo River/Shag River to Purehurehu/north of Heyward Point.
- 1.4 The takiwā of Te Rūnanga o Moeraki centres on Moeraki and extends from Waitaki to Waihemo and inland to the Main Divide. The interests of Te Rūnanga o Moeraki are concentrated in the Moeraki Peninsula area and surrounds, including Te Rakahineatea Pā, Koekohe (Hampden Beach), and Te Kai Hīnaki (the Boulders Beach) with its boulders. In addition, the interests of the Rūnanga extend both north and south of the Moeraki Peninsula, within their takiwā.
- 1.5 Representatives for Kā Rūnaka have received and provided direction on the present application.

## 2. BACKGROUND

2.1 On 12 October 2023, Kā Rūnaka submitted to Central Otago District Council ('CODC') on the publicly notified consent application lodged by TKO Properties Limited ('the Applicant'). This submission ('Rūnaka Submission') opposed the application and stated that Kā Rūnaka may wish to be heard.

2.2 The Rūnaka Submission addressed the following matters:

- a. The significance of the cultural landscape: Kāi Tahu has a deeply rooted relationship of Kāi Tahu with the Clutha/Mata-au Catchment. Kā Rūnaka seek to protect the mauri of the awa and this ancestral landscape from inappropriate land-use activities.
- b. Concerns about the increased number of subdivisions within the takiwā of Kā Rūnaka and the potential adverse effects on the cultural landscape and wai māori.
- c. Specific concerns about on-site wastewater and stormwater management, and uncertainty regarding how these discharges will be managed.
- d. The source and adequacy of water supply was not clear in the application as notified. Kā Rūnaka hold concerns about the mismanagement and over-allocation of water sources in Otago.

2.3 The following information has been reviewed:

- a. The resource consent application (15 June 2023) and amended application (26 July 2024);
- b. The reporting officer's s42A Report ('Officer's Report') dated 28 March 2024, and Officer's Supplementary Report dated 27 September 2024;
- c. The report of Mike Harding for CODC, in review of the proposed ecology compensation and biodiversity offsetting (25 March 2024), and further review of the amended application (September 2024);
- d. On behalf of the Applicant:
  - i. Statement of Evidence of Simon Beale (ecology);
  - ii. Statement of Evidence of Patrick Baxter (landscape);
  - i. Statement of Evidence of Andrew Wells (biodiversity offsetting);
  - ii. Statement of Evidence of Bronwyn Rhynd (engineering: stormwater management and flood risk matters);
- e. On behalf of Submitters:
  - i. The evidence of Elizabeth Williams on behalf of the Director-General of Conservation (11 November 2024), and the submission for the Director-General of Conservation (12 October 2023).

2.4 The following reports have been noted:

- a. On behalf of the Applicant:
  - i. Statements of Evidence of Jeffrey Brown (planning), Chris Jennings (archaeology), James Patrick Cowan (wildfire management), Samantha King (lizard management), and Shanon Garden (land management);
  - ii. The memorandum from Patrick Baxter (Registered Landscape Architect, Baxter Design) in response to Minute 1 of the Commissioners.

### 3. RŪNAKA POSITION

- 3.1 Kā Rūnaka remain **opposed** to the application.
- 3.2 The Rūnaka Submission discussed concerns about inappropriate subdivision and land use activities in their takiwā and the cultural landscapes therein, with specific emphasis on wastewater and stormwater management practices that may compromise the integrity of the mauri of wai māori in the Mata-au catchments.
- 3.3 As noted in the Rūnaka Submission, the proposal affects the Statutory Acknowledgement for the Mata-au (Clutha River), conferred under the Ngāi Tahu Claims Settlement Act 1998 and included at **Appendix 2**. Cultural mapping has been undertaken to identify particularly significant wāhi tūpuna areas in the Central Otago District. While in draft form and not yet incorporated into the Central Otago District Plan, Kā Rūnaka record that the proposal affects a wāhi tūpuna area known as Upper Mata-au Trail, with values that include but are not limited to: mahika kai, nohoaka, and ara tawhito.
- 3.4 A priority for Kāi Tahu is the protection of significant cultural landscapes from inappropriate use and development.<sup>1</sup> Kāi Tahu aspirations for the management of wāhi tūpuna are set out in the *Kāi Tahu ki Otago Natural Resource Management Plan 2005* with relevant provisions set out at **Appendix 3**.
- 3.5 Upon review of the documents outlined at [2.3], the position of Kā Rūnaka has not changed. Kā Rūnaka are not confident that stormwater and wastewater have been sufficiently addressed in the Applicant's expert reports so as to allay rūnaka concerns including, but not limited to, sedimentation via stormwater runoffs and increased flows, and discharge of contaminants from on-site wastewater disposal.<sup>2</sup>
- 3.6 It is not in contention that the subject site is considered ecologically sensitive, and the proposal – if granted – is likely to residual adverse effects upon terrestrial ecology and biodiversity. It is noted that the adequacy of biodiversity offsetting – to address the residual adverse effects of “unavoidable” loss and fragmentation of indigenous vegetation, including Threatened and At Risk species – remains an issue in contention.<sup>3</sup> Attention is drawn to the analysis in the evidence of Ms Williams, namely:
- i. That the National Policy Statement for Indigenous Biodiversity (**'NPS-IB'**) requires that a precautionary approach be adopted where effects on indigenous biodiversity are uncertain but may cause significant or irreversible damage;<sup>4</sup> and
  - ii. Where biodiversity compensation is not appropriate, the NPS-IB states that “the activity itself should be avoided.”<sup>5</sup>
- 3.7 The potential adverse effects to terrestrial ecology and biodiversity, together with the concerns expressed in the Rūnaka Submission regarding management of wastewater and stormwater, lead

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<sup>1</sup> *Kāi Tahu ki Otago Natural Resource Management Plan 2005*. See Cultural Landscapes Objectives, section [5.6.3].

<sup>2</sup> For example, in response to the points raised in the Aukaha submission, the evidence of Ms. Rhynd does not discuss the potential impacts of stormwater runoffs upon the mauri of receiving waters: rather, Ms. Rhynd's evidence states “[t]he SMP is designed to ensure that effects on water quality and quantity are minimized, helping to preserve the mauri of the surface water” (at [16]).

<sup>3</sup> See, for example: Evidence of Andrew Wells; Harding Peer Review; Evidence of Elizabeth Williams.

<sup>4</sup> Statement of Evidence of Elizabeth Williams, at [77].

<sup>5</sup> NPS-IB, section 1.6: interpretation of ‘effects management hierarchy.’

Kā Rūnaka to remain **unsatisfied** that the proposal represents appropriate subdivision or development of land in this culturally significant landscape.

#### 4. RELIEF SOUGHT

- 4.1 Kā Rūnaka seek that the resource consent application be **declined**.
- 4.2 This submission confirms that Kā Rūnaka **oppose** the application as applied for. Kā Rūnaka wish to **restate** mana whenua interests in the landscape and **record** concerns about potentially significant adverse effects and cumulative effects upon the cultural landscape in which the proposal is situated.

#### 5. DECISION ON WHETHER TO BE HEARD

- 5.1 Kā Rūnaka confirm that they no longer wish to be heard.

E noho ora mai

***Address for Service***

*Aukaha*

*PO Box 446*

***Dunedin 9054***

*Phone: (03) 477 0071*

*E-mail: [consents@aukaha.co.nz](mailto:consents@aukaha.co.nz)*

## Appendix 1: Glossary of te reo Māori terms

Ara tawhito	Ancient trails
Hapū	Sub-tribe
Iwi	Tribe
Kaitiaki/Kaitiakitaka	Guardian / to exercise guardianship
Kāi Tahu	Descendants of Tahu, the tribe
Kaupapa	Topic, plan
Ki uta ki tai	Mountains to the Sea
Mahika kai	Places where food is produced or procured.
Mana Whenua	Customary authority or rakātirataka exercised by an iwi or hapū in an identified area
Manawhenua	Those who exercise customary authority or rakātirataka
Mātauraka	Knowledge, wisdom, understanding, skill
Mauka	Mountain
Mauri	Essential life force or principle, a metaphysical quality inherent in all things both animate and inanimate
Ngā Rūnanga/Kā Rūnaka	Local representative group of Otago
Papatipu Rūnaka/Rūnanga	Traditional Kāi Tahu Rūnaka
Papatūānuku	Earth Mother
Rakātirataka	Chieftainship, decision-making rights
Rakinui	Sky Father
Rohe	Boundary
Roto	Lake
Takiwā	Area, region, district
Tākata whenua	Iwi or hapu that holds mana whenua (customary authority) in a particular area
Taoka	Treasure
Tikaka	The customary system of values and practices that have developed over time and are deeply embedded in the Māori social context.
Tino rakātirataka	Self-determination, autonomy, self-government
Urupā	Burial place
Wai māori	Fresh water
Whakapapa	Genealogy
Whānau	Family

## Appendix 2: Statutory Acknowledgement for the Mata-au (Clutha River)

### Ngāi Tahu Claims Settlement Act 1998, sch 40

#### Statutory area

The statutory area to which this statutory acknowledgement applies is the river known as Mata-au (Clutha River), the location of which is shown on Allocation Plan MD 122 (SO 24727).

#### Preamble

Under section 206, the Crown acknowledges Te Rūnanga o Ngāi Tahu's statement of Ngāi Tahu's cultural, spiritual, historic, and traditional association to the Mata-au, as set out below.

#### Ngāi Tahu association with the Mata-au

The Mata-au river takes its name from a Ngāi Tahu whakapapa that traces the genealogy of water. On that basis, the Mata-au is seen as a descendant of the creation traditions. For Ngāi Tahu, traditions such as this represent the links between the cosmological world of the gods and present generations, these histories reinforce tribal identity and solidarity, and continuity between generations, and document the events which shaped the environment of Te Wai Pounamu and Ngāi Tahu as an iwi.

On another level, the Mata-au was part of a mahinga kai trail that led inland and was used by Ōtākou hapū including Ngāti Kurī, Ngāti Ruahikihiki, Ngāti Huirapa and Ngāti Tuahuriri. The tūpuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of the river, the relationship of people with the river and their dependence on it, and tikanga for the proper and sustainable utilisation of resources. All of these values remain important to Ngāi Tahu today.

The river was also very important in the transportation of pounamu from inland areas down to settlements on the coast, from where it was traded north and south. Thus there were numerous tauranga waka (landing places) along it. The tūpuna had an intimate knowledge of navigation, river routes, safe harbours and landing places, and the locations of food and other resources on the river. The river was an integral part of a network of trails which were used in order to ensure the safest journey and incorporated locations along the way that were identified for activities including camping overnight and gathering kai. Knowledge of these trails continues to be held by whānau and hapū and is regarded as a taonga. The traditional mobile lifestyle of the people led to their dependence on the resources of the river.

The Mata-au is where Ngāi Tahu's leader, Te Hautapunui o Tū, established the boundary line between Ngāi Tahu and Ngāti Mamoe. Ngāti Mamoe were to hold mana (authority) over the lands south of the river and Ngāi Tahu were to hold mana northwards. Eventually, the unions between the families of Te Hautapunui o Tū and Ngāti Mamoe were to overcome these boundaries. For Ngāi Tahu, histories such as this represent the links and continuity between past and present generations, reinforce tribal identity, and document the events which shaped Ngāi Tahu as an iwi.

Strategic marriages between hapū further strengthened the kupenga (net) of whakapapa, and thus rights to travel on and use the resources of the river. It is because of these patterns of activity that the river continues to be important to rūnanga located in Otago and beyond. These rūnanga carry the responsibilities of kaitiaki in relation to the area, and are represented by the tribal structure, Te Rūnanga o Ngāi Tahu.

Urupā and battlegrounds are located all along this river. One battleground, known as Te Kauae Whakatoro (downstream of Tuapeka), recalls a confrontation between Ngāi Tahu and Ngāti Mamoe that led to the armistice established by Te Hautapunui o Tū. Urupā are the resting places of Ngāi Tahu tūpuna and, as such, are the focus for whānau traditions. These are places holding the memories, traditions, victories and defeats of Ngāi Tahu tūpuna, and are frequently protected by secret locations.

The mauri of Mata-au represents the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All elements of the natural environment possess a life force, and all forms of life are related. Mauri is a critical element of the spiritual relationship of Ngāi Tahu Whānui with the river.

#### Purposes of statutory acknowledgement

Pursuant to section 215, and without limiting the rest of this schedule, the only purposes of this statutory acknowledgement are—

- (a) to require that consent authorities forward summaries of resource consent applications to Te Rūnanga o Ngāi Tahu as required by regulations made pursuant to section 207 (clause 12.2.3 of the deed of settlement); and
- (b) to require that consent authorities, Heritage New Zealand Pouhere Taonga, or the Environment Court, as the case may be, have regard to this statutory acknowledgement in relation to the Mata-au, as provided in sections 208 to 210 (clause 12.2.4 of the deed of settlement); and
- (c) to empower the Minister responsible for management of the Mata-au or the Commissioner of Crown Lands, as the case may be, to enter into a Deed of Recognition as provided in section 212 (clause 12.2.6 of the deed of settlement); and
- (d) to enable Te Rūnanga o Ngāi Tahu and any member of Ngāi Tahu Whānui to cite this statutory acknowledgement as evidence of the association of Ngāi Tahu to the Mata-au as provided in section 211 (clause 12.2.5 of the deed of settlement).

#### **Limitations on effect of statutory acknowledgement**

Except as expressly provided in sections 208 to 211, 213, and 215,—

- (a) this statutory acknowledgement does not affect, and is not to be taken into account in, the exercise of any power, duty, or function by any person or entity under any statute, regulation, or bylaw; and
- (b) without limiting paragraph (a), no person or entity, in considering any matter or making any decision or recommendation under any statute, regulation, or bylaw, may give any greater or lesser weight to Ngāi Tahu's association to the Mata-au (as described in this statutory acknowledgement) than that person or entity would give under the relevant statute, regulation, or bylaw, if this statutory acknowledgement did not exist in respect of the Mata-au.

Except as expressly provided in this Act, this statutory acknowledgement does not affect the lawful rights or interests of any person who is not a party to the deed of settlement.

Except as expressly provided in this Act, this statutory acknowledgement does not, of itself, have the effect of granting, creating, or providing evidence of any estate or interest in, or any rights of any kind whatsoever relating to, the Mata-au.

### Appendix 3: Provisions of the *Kāi Tahu ki Otago Natural Resources Management Plan 2005* relevant to the present submission

The following Issues/Objectives/Policies of the *Kāi Tahu ki Otago Natural Resource Management Plan 2005* are seen as relevant to the proposal. This relates to the holistic management of natural resources from the perspective of mana whenua.

#### **Chp. 5: Otago Region | Te Rohe o Otago**

**[5.2] – Overall Objectives** include:

- i. The rakātirataka and kaitiakitaka of Kāi Tahu ki Otago is recognised and supported.
- ii. Ki Uta Ki Tai management of natural resources is adopted within the Otago region.
- iii. The mana of Kāi Tahu ki Otago is upheld through the management of natural, physical, and historic resources in the Otago Region.
- iv. Kāi Tahu ki Otago have effective participation in all resource management activities within the Otago Region.

**[5.3.2] Wai Māori General Issues** include:

##### ***Land Management and Use including:***

- Vegetation clearance and afforestation that affects the water retention capacity of land.
- Draining of wetlands.
- Lack of proper riparian management throughout an entire catchment.
- Sedimentation from land use and development.
- Accidental discovery of cultural materials or sites from changed land use

**[5.3.3] Wai Māori General Objectives** include:

- i. The spiritual and cultural significance of water to Kāi Tahu ki Otago is recognised in all water management.
- ii. The waters of the Otago Catchment are healthy and support Kāi Tahu ki Otago customs.

**[5.3.4] Wai Māori General Policies** include:

##### ***Land Use and Management:***

54. To promote land use that suits the type of land and climatic conditions.
56. To oppose the draining of wetlands. All wetlands are to be protected.
58. To promote integrated riparian management throughout entire catchments.

**[5.4.3] Wāhi Tapu Objectives:**

- i. All wāhi tapu are protected from inappropriate activities.
- ii. Kāi Tahu ki Otago have access to wāhi tapu.
- iii. Wāhi tapu throughout the Otago region are protected in a culturally appropriate manner

**[5.4.4] Wāhi Tapu General Policies** include:

1. To require consultation with Kāi Tahu ki Otago for activities that have the potential to affect wāhi tapu.



### ***Earth Disturbance***

4. To require that a Kāi Tahu ki Otago mandated archaeologist survey an area before any earth disturbance work commences.
5. To promote the use of Accidental Discovery Protocols for any earth disturbance work.
6. To require all Māori archaeological finds to remain the cultural property of Kāi Tahu ki Otago.

#### **[5.5.3] Mahika Kai and Biodiversity Objectives** include:

- i. Habitats and the wider needs of mahika kai, taoka species and other species of importance to Kāi Tahu ki Otago are protected.
- ii. Mahika kai resources are healthy and abundant within the Otago Region.
- v. Indigenous plant and animal communities and the ecological processes that ensure their survival are recognised and protected to restore and improve indigenous biodiversity within the Otago Region.
- vi. To restore and enhance biodiversity with particular attention to fruiting trees so as to facilitate and encourage sustainable native bird populations.
- ix. To create a network of linked ecosystems for the retention of and sustainable utilisation by native flora and fauna.

#### **[5.5.4] Mahika Kai and Biodiversity General Policies** include:

1. To promote catchment-based management programmes and models, such as Ki Uta Ki Tai.
7. To require that all assessments of effects on the environment include an assessment of the impacts of the proposed activity on mahika kai.
12. To protect and enhance existing wetlands, support the reinstatement of wetlands and promote assistance for landowners for fencing-off wetlands.

#### **[5.6.3] Cultural Landscapes Objectives**

- i. The relationship that Kāi Tahu ki Otago have with land is recognised in all resource management activities and decisions.
- ii. The protection of significant cultural landscapes from inappropriate use and development.
- iii. The cultural landscape that reflects the long association of Kāi Tahu ki Otago resource use within the Otago region is maintained and enhanced.

#### **[5.6.4] Cultural Landscapes General Policies**

1. To identify and protect the full range of landscape features of significance to Kāi Tahu ki Otago.

### ***Earth Disturbance***

19. To require all earthworks, excavation, filling or the disposal of excavated material to:
  - i. Avoid adverse impacts on significant natural landforms and areas of indigenous vegetation;
  - ii. Avoid, remedy, or mitigate soil instability; and accelerated erosion;
  - iii. Mitigate all adverse effects.