BEFORE THE COMMISSIONERS APPOINTED ON BEHALF OF THE OTAGO REGIONAL COUNCIL AND CENTRAL OTAGO DISTRICT COUNCIL

UNDER	The Resource Management Act 1991
IN THE MATTER	of an application for resource consents for alluvial gold mining
BETWEEN	**HAWKESWOOD MINING COMPANY LIMITED** **Applicant**
AND	**OTAGO REGIONAL COUNCIL (RM23.819)** **CENTRAL OTAGO DISTRICT COUNCIL (RC230325)** **Consent Authorities**
AND	**TE RŪNANGA O NGĀI TAHU** **KĀTI HUIRAPA RŪNAKA KI PUKETERAKI** **TE RŪNANGA O ŌTĀKOU** **HOKONUI RŪNANGA INC** **Submitters (Collectively Kāi Tahu Ki Otago)**

EVIDENCE OF DR LYNDA MURCHISON

ON BEHALF OF TE RŪNANGA O NGĀI TAHU AND KĀI TAHU KI OTAGO

8 May 2024

INTRODUCTION

1. My name is Lynda Marion Weastell Murchison.

2. I hold the following relevant qualifications:

- PhD in Environmental Policy and Planning from the University of Canterbury
- MA (hons) in Geography from the University of Canterbury
- Certificate of Proficiency in Resource Management Law (LAWS 304) from the University of Canterbury
- Certificate of Proficiency in Advanced Urban, Regional and Resource Planning (ERST 604) from Lincoln University
- Full membership of the New Zealand Planning Institute (since 1999)
- Hearing Commissioner Accreditation

3. I work as a consultant planner. I am also an adjunct lecturer at Lincoln University.

4. I have worked for over 25 years in environmental policy and planning in New Zealnd, holding senior planning and managerial positions with district councils, Canterbury Regional Council (Environment Canterbury), iwi authorities and in private consultancy. I have worked for the last 12 years as an environmental planning advisor and witness for Te Rūnanga o Ngāi Tahu and papatipu rūnanga.

5. My planning experience includes drafting regional policy statements and regional and district plans, processing resource consent applications for both district and regional councils, and preparing resource consent applications and plan change requests for the private sector.

6. Throughout my career, I have worked across a broad range of environmental issues including freshwater, soils and contaminated land, climate change and natural hazards, air quality, coastal marine environments, indigenous biodiversity, biosecurity and pest management, rural land use including farming, mining and forestry, and urban planning. I have a particular interest and experience working at the interface of environmental management grounded in mātauranga and tikanga frameworks and statutory environmental planning.

7. Currently, my contract work is largely, though not exclusively, for Ngāi Tahu entities, including Hokonui Rūnanga Inc and their environmental company Hokonui Rūnanga Floriculture Ltd, trading as Hokonui Rūnanga Kaupapa Taiao.

8. Hokonui Rūnanga Inc is a submitter on these resource consent applications. That submission was prepared and lodged by Aukaha (1997) Ltd on behalf of Hokonui and other Otago Rūnaka.

9. I have not been involved in these resource consent applications or submissions.

However, I have been engaged by Te Rūnanga o Ngāi Tahu to provide evidence in relation to the role of the iwi authority, given the status of the Matau-au (Clutha River) as a Statutory Acknowledgement Area under the Ngāi Tahu Claims Settlement Act 1998.

Code of Conduct for Expert Witnesses

10. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court of New Zealand Practice Note (2023) and I agree to comply with it. I confirm that the issues addressed in this statement of evidence are within my area of expertise except where I state that I am relying on information provided by another party. I have not knowingly omitted to consider any material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

11. I have been asked to give evidence on the following matters:

(i) The status of Te Rūnanga o Ngāi Tahu and its relationship with papātipu rūnanga

(ii) Te Kereme – the Ngāi Tahu Claim and the Ngāi Tahu Claims Settlement Act 1998

(iii) The Mata-au (Clutha) River as a Statutory Acknowledgement Area; and

(iv) The provision for Ngāi Tahu rights and interests in natural resource management in the Resource Management Act 1991 (RMA) and how those provisions apply to the relationship of mana whenua with the Mata-au (Clutha) catchment.

12. I am familiar with the proposed activity, the proposed site, the resource consent applications, and the Mata-au (Clutha) catchment.

13. I am familiar with the evidence of Mr Tūmai Cassidy and Mr Tim Vial on behalf of Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago.

14. Kāi Tahu ki Otago uses the dialectal ‘k’ rather than ‘ng.’ However Te Rūnanga o Ngāi Tahu tends to use ‘ng’ so I am using ‘ng’ in my evidence except where I refer to Kāi Tahu ki Otago.

EXECUTIVE SUMMARY

15. In summary:

(i) Ngāi Tahu whānui are mana whenua over most of Te Wai Pounamu/South Island including the Mata-au/Clutha Catchment as recognised in the Te Rūnanga o Ngāi Tahu Act 1996.

(ii) Ngāi Tahu whānui are represented today through papātipu rūnanga who

collectively form Te Rūnanga o Ngāi Tahu. Te Rūnanga o Ngāi Tahu is recognised as the iwi authority under Te Rūnanga o Ngāi Tahu Act 1996.

(iii) The rangatiratanga of Ngāi Tahu whānui within the Ngāi Tahu takiwā is acknowledged by the Crown in the Ngāi Tahu Claims Settlement Act 1998. That Act also provides for the settlement of Te Kereme – the Ngāi Tahu claim to the Waitangi Tribunal, through a record of the Crown's apology, financial redress, the return of some tribal lands, and cultural redress.

(iv) Cultural redress provisions are intended to recognise and enable the exercise of kaitiakitanga over the whenua/land, wai/water and resource of the takiwā and to enable mahinga kai. The loss of mahinga kai was a fundamental part of Te Kereme.

(v) Cultural redress provisions in the Ngāi Tahu Claims Settlement Act 1998 include Statutory Acknowledgement Areas where Ngāi Tahu connections to place are accepted by the Crown and do not have to be relitigated; and Nohoanga Entitlements to facilitate mahinga kai.

(vi) The Mata-au/Clutha River is a Statutory Acknowledgement Area under Schedule 40 to the Ngāi Tahu Claims Settlement Act 1998. It is recognised for both its whakapapa and mahinga kai values. It also has two Nohoanga Entitlements under Schedule 95.

(vii) To exercise kaitiakitanga. mana whenua need to understand the proposed activity and associated environmental effects, to see whether and how the activity and associated effects align with the ethic of kaitiakitanga and the cultural values associated with place. The expert cultural evidence presented in this hearing concludes that insufficient evidence is available in the application to make that assessment.

(viii) Ngai Tahu cultural values is an area of expertise. Like any area of specialist knowledge, a cultural assessment cannot be appropriately undertaken by a professional who has no grounding in Te Ao Tahu, relying on western planning or scientific paradigms.

(ix) The relationship of Ngāi Tahu whānui with its takiwā, and the effects of activities on mana whenua and their values, are matters which must be considered by the consent authority when making decisions on resource consent applications under s104 of the RMA.

TE RUNANGA O NAGI TAHU AND PAPATIPU RUNANGA

16. Ngāi Tahu means 'the people of Tahu' - those who can trace their ancestry to the eponymous ancestor Tahu Potiki. Ngāi Tahu migrated south from the East Coast of Te Ika a Maui/ North Island and were mana whenua in Te Wai Pounamu/South Island by the time of the signing of Te Tiriti o Waitangi/Treaty of Waitangi in 1840.

17. The original inhabitants of Te Wai Pounamu are referred to as Waitaha. Their origins and date of arrival are unknown but carbon dating of ka tuhituhi nehera (rock art) and other artefacts places them in the area from at least 1200 AD. In the seventeenth century Ngāti Mamoe migrated south from Te Ike a Maui/ North Island followed by Ngāi Tahu in the eighteenth century. Whānau and hapū from all three tribes have mixed through marriage, feuds, and alliances over time. Today, the term Ngāi Tahu whānui refers to those who descend from Waitaha, Ngāti Mamoe and Ngāi Tahu.

18. Te Rūnanga o Ngāi Tahu (Te Rūnanga) is an entity established under the Te Rūnanga o Ngāi Tahu Act 1996. It is the collective of 18 papātipu rūnanga who are, in turn, the modern assemblages that represent the whānau and hapū who hold mana whenua over the Ngāi Tahu takiwā.

19. The term mana whenua is defined in s2 of the Resource Management Act 1991 as *" … customary authority exercised by an iwi or hapu in an identified area."*

20. Mana whenua also refers to the people who hold customary authority over an area. Mana whenua status is defined by tradition and whakapapa and is traceable.

21. The status of mana whenua may have been bestowed in one of several ways:

- conquest/umu tangata
- inheritance/take whenua
- an ancestral right proven by discovery and naming of the land or resource/ mahi tangata
- an ancestor asserting a right over the land or resource/take tūpuna
- rights of settlement and continual occupation/tuturu te noho; or
- the exchange of land or resources for a gift/kai taonga or the gifting of land or resources/tuku whenua.

22. The takiwā of Ngāi Tahu whānui is described in s4 of the Te Rūnanga o Ngāi Tahu Act 1996. It encompasses all of Te Wai Pounamu from Te Parinui o Whiti (White Bluffs) and Te Rae o Kahurangi (Kahurangi Point) south, and includes Rakiura (Stewart Island) and the sub-Antarctic Islands.

23. The takiwā of each papātipu rūnanga is described in the Ngāi Tahu Declaration of Membership Order 2001.

24. Kati Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga Inc are three of the 18 papātipu rūnanga that comprise Te Rūnanga. The respective takiwā of each papātipu rūnanga is described below:

(i) The takiwā of Kāti Huirapa ki Puketeraki centres on Karitane and extends from Waihemo to Purehurehu and includes an interest in Ōtepōti and the greater harbour

of Ōtākou. The takiwā extends inland to the Main Divide sharing an interest in the lakes and mountains to Whakatipu-Waitai with Rūnanga to the south.

(ii) The takiwā of Te Rūnanga o Ōtākou centres on Ōtākou and extends from Purehurehu to Te Matau and inland, sharing an interest in the lakes and mountains to the western coast with Rūnanga to the North and to the South.

(iii) The takiwā of Hokonui Rūnanga centres on the Hokonui region and includes a shared interest in the lakes and mountains between Whakatipu-Waitai and Tawhitarere with other Murihiku Rūnanga and those located from Waihemo southwards.

25. Te Rūnanga is recognised for all purposes as the representative of Ngāi Tahu whānui under s15 of Te Rūnanga o Ngāi Tahu Act 1996. However, in developing a position on any matter, Te Rūnanga:

- is required to consult with papātipu rūnanga and any hapū; and
- cannot act in a manner that prejudices or discriminates against any papātipu rūnanga or hapū unless it believes it is in the best interests of Ngāi Tahu whānui to do so.

26. In practice, Te Rūnanga defers to and supports the position of papātipu rūnanga in matters of local governance and interest.

TE KEREME AND THE NGĀI TAHU CLAIMS SETTLEMENT ACT 1998

Te Kereme

27. Ngāi Tahu is a Treaty Partner of the Crown. Ngāi Tahu chiefs signed Te Tiriti o Waitangi/Treaty of Waitangi (Te Tiriti) including at Ruapuke on 10 June 1840 and at Otago Harbour on 13th June 1840.

28. Following the signing of Te Tiriti, some Ngāi Tahu chiefs negotiated land purchases with Crown agents including Otago in 1844, Canterbury in 1848 and Murihiku in 1853. In many instances, the conditions of these purchases were not upheld by the Crown. Some purchases included land areas which Ngāi Tahu did not agree to sell, and some land outside the agreed areas of purchase became forced land sales.

29. Ngāi Tahu made their first claim against the Crown for breach of contract in 1849. Matiaha Tiramōrehu petitioned the Crown to have put aside adequate reserves of land for the iwi, as the Crown had agreed to do under the terms of its land purchases from Ngāi Tahu.

30. A claim was also made through the Native Land Court in 1868 along with further petitions to Parliament and Queen Victoria in the 1870s. These actions resulted in a Royal Commission of Enquiry headed by Nairn and Smith in 1879. The enquiry found that bigger reserve areas should have been set aside for Ngāi Tahu under the various land purchases. This recommendation was not acted upon by

Parliament.

31. A further enquiry in 1920-21 recommended a compensatory payment of £345 000 be paid to Ngāi Tahu; but it was not paid by the government of the time.

32. The first labour government passed the Ngāi Tahu Claims Settlement Act in 1944 which provided compensation of £300 000 to be paid to Ngāi Tahu in £10 000 instalments over the next 30 years. In 1946 the Ngāi Tahu Māori Trust Board was established to administer the fund.

33. The Waitangi Tribunal was established to hear claims of breaches of Te Tiriti under the Treaty of Waitangi Act 1975 (s4). In 1985, the Act was amended to enable the Waitangi Tribunal to consider historic grievances.

34. In 1986 the Ngāi Tahu Māori Trust Board lodged Te Kereme – the Ngāi Tahu claim. The claim included historic grievances in relation to land, fisheries, loss of Te Reo Māori and cultural redress. It encompassed 73 grievances in nine categories or 'nine tall trees'. Eight of those tall trees related to regional land sales; the ninth to the loss of mahinga kai.

Mahinga Kai

35. Mahinga kai is defined in s167 of the Ngāi Tahu Claims Settlement Act 1998 as,

"*… for the purposes of a joint management plan, the customary gathering of food and natural materials and the places where those resources are gathered."*

36. As Mr Cassidy describes in his evidence, mahinga kai is an all-encompassing term that refers to the resources required to sustain people, the places where those resources are found, the practices of procurement, and the associated mātauranga or knowledge, social systems and practices.

37. Mahinga kai is the mana whenua resource system and underpins Ngāi Tahu whānui relationships with rivers, lakes, wetlands, and the broader environment. Mahinga kai has been lost through modification of catchments, drainage of wetlands and side braids, modification of awa (rivers) and riparian areas, land clearance, and loss of access when land was subdivided and sold to settlers. This loss had a devastating effect on Ngāi Tahu whānui.

Ngai Tahu Claims Settlement Act 1998 and Cultural Redress

38. The Ngāi Tahu Claims Settlement Act 1998 records the Crown's apology to Ngāi Tahu and provides the framework to give effect to the Deed of Settlement signed by the Crown and Te Rūnanga o Ngāi Tahu on 21 November 1997.

39. The Act acknowledges the Crown's apology to Ngāi Tahu for the Crown's *"…past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations".*

40. The Act includes:

(i) Financial redress

(ii) The return of some tribal property; and

(iii) Provisions to support cultural redress, including statutory acknowledgement areas and nohoanga entitlements.

41. The provisions for cultural redress are particularly relevant to environmental management under the Resource Management Act 1991 and other relevant statutes. The provisions recognise and seek to enable Ngāi Tahu to express a traditional relationship with te taiao/ the natural environment and opportunities to give practical effect to the role of mana whenua as kaitiaki within the confines of a modern context.

Kaitiakitanga

42. Kaitiakitanga is defined in s2 of the RMA as, "*… the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship*."

43. As explained in Mr Cassidy's evidence, kaitiakitanga is the duty to ensure that te taiao/the natural environment is managed to secure the intergenerational abundance, health, and availability of resources on which mana whenua depend. Kaitiakitanga is the reciprocal of rangatiratanga – the right to use resources and the duty to care for them.

Statutory Acknowledgment Areas

44. Two important aspects of cultural redress in the Ngāi Tahu Claims Settlement Act 1998 are Statutory Acknowledgement Areas and Nohoanga Entitlements. Both instruments are tools that recognise and provide for the relationship of Ngāi Tahu with their ancestral lands, water, sites, wāhi tapu, and other taonga", which is a Matter of National Importance to be recognised and provided for as part of achieving the purpose of the RMA (Section 6(e)).

45. Statutory Acknowledgement Areas include mountains, lakes, rivers, and other areas of cultural significance to Ngāi Tahu.

46. Under s211 of the Ngāi Tahu Claims Settlement Act 1998, Te Rūnanga o Ngāi Tahu and any member of Ngāi Tahu whānui may cite a Statutory Acknowledgement as evidence of the association of Ngāi Tahu with that area. The relationship is acknowledged by the Crown and does not have to be re-established in proceedings or further proved.

47. The other provisions for cultural redress in Statutory Acknowledgement Areas under ss207- 212 of the Ngāi Tahu Claims Settlement Act 1998, include:

(i) A requirement on consent authorities to forward summaries of relevant resource consent applications to Te Rūnanga;

(ii) A requirement on local authorities and the Environment Court to have regard to Statutory Acknowledgement Areas when forming an opinion as to who may be an affected party under the RMA;

(iii) A requirement on Heritage New Zealand Pouhere Taonga and the Environment Court to have regard to a Statutory Acknowledgement Area when making a determination if Ngāi Tahu is affected by an application for an authority to modify or destroy an archaeological site; and

(iv) Enabling the Minister of Crown Lands to enter into a Deed of Recognition with Te Rūnanga o Ngai Tahu in relation to the area.

48. From my planning experience, I consider it is usual practice for consent authorities to seek the input of the iwi authority or its mandated representative on resource consent applications for activities that are occurring in or adjoining Statutory Acknowledgment Areas. This input may occur by requiring the written approval of the iwi authority as an affected party or notifying it of the resource consent application.

49. In my experience, it is also common for resource consent applicants to consult with mana whenua as part of developing a proposal in or adjoining a Statutory Acknowledgment Area, particularly for larger-scale activities. However, consultation with any party prior to lodging a resource consent application is not a statutory requirement under the RMA. Rather, Cl 6(3) of Schedule 4 to the RMA requires the applicant to record if any consultation has occurred and if so, the feedback.

50. If an area is not a Statutory Acknowledgement Area, it does not mean it has no cultural significance to Ngāi Tahu. As Mr Cassidy notes in his evidence, Ngāi Tahu whānui have a relationship with all areas in the takiwā. Section 211(3) of the Ngāi Tahu Claims Settlement Act 1998 says,

"Neither Te Rūnanga o Ngāi Tahu nor any member of Ngāi Tahu Whānui is precluded from stating that Ngāi Tahu has any association with the statutory area not described in the relevant statutory acknowledgement, nor does the content or existence of the statutory acknowledgement derogate from any such statement."

Nohoanga Entitlements

51. Nohoanga Entitlements are areas adjoining lakes and rivers, where Ngāi Tahu whānui have rights to temporary occupation for the purpose of mahinga kai. They are an important tool to enable Ngāi Tahu whānui to practice mahinga kai and provide further evidence of cultural connection to lakes and rivers in the takiwā.

52. Section 256 (2) of the Ngāi Tahu Claims Settlement Act 1998 (NTCSA) states:

"*Nohoanga entitlements are created and granted for the purpose of permitting members of Ngāi Tahu whānui to occupy temporarily land close to waterways on a non-commercial basis, so as to have access to waterways for lawful fishing and gathering of other natural resources."*

53. The Act provides that the Crown must set aside 72 Nohoanga Entitlements in the locations listed in Schedule 95. Each Nohoanga Entitlement must be within 20 metres of waterways to enable Ngāi Tahu whānui access to the waterway for mahinga kai.

NGĀI TAHU ASSOCIATION WITH THE MATA-AU

54. The Mata-au (Clutha) River is a Statutory Acknowledgement Area under Schedule 40 of the Ngāi Tahu Claims Settlement Act 1998. A copy of that schedule is attached to my evidence (Attachment 1).

55. The Statutory Acknowledgement Area describes the Ngāi Tahu association with the Mata-Au. It records that the headwaters of the Mata-au are located amongst mountains often named for significant tūpuna, and the waters flowing from them are considered the purest.

56. The awa as it flows from Lake Wānaka to the outlets of the Matau and Kōau branches at Tauhinu is joined by significant tributaries, which increase its size and volume.

57. The Statutory Acknowledgment Area states and Mr Cassidy's evidence attests, that the Mata-au was part of an ara tawhito (networks and trails) that provided access for mana whenua from the coast to the upper lakes of Wānaka, Hāwea, and Whakatipu-wai-māori including for mahinga kai and the route was used to transport and trade pounamu.

58. The entire system acted as a significant mahinga kai. Weka, kōura, kanakana, and tuna are identified as key food sources collected along its length, and there were stands of tī kōuka from which kāuru was sourced.

59. The Statutory Acknowledgment records the Mata-au as the place where Ngāi Tahu's leader, Te Hautapunui o Tū, established a boundary between the takiwā of Ngāi Tahu and Ngāti Mamoe. Ngāti Mamoe held mana (authority) over the lands south of the river and Ngāi Tahu those northwards. Eventually, unions between the families of Te Hautapunui o Tū and Ngāti Mamoe made this boundary redundant, but the awa symbolises the link and continuity between past and present generations, and reinforces tribal identity.

60. There are four Nohoanga Entitlements adjoining the Mata-Au/Clutha River as set

out in Schedule 95 of the Ngāi Tahu Claims Settlement Act 1998: at Clutha River Island, McNulty Point, Kaitangata and Te Kōwhai/Beaumont Bridge. These areas are not in proximity to the area subject to these resource consent applications. However, their provision reinforces the connection of mana whenua with the Mata-au and its significance as a mahinga kai.

61. As outlined in Mr Cassidy's evidence, the Mata-au and mana whenua connection to the Mata-au has been impacted by human activities post-colonisation and continues today.

62. However, the impacts of these activities on the awa does not diminish the cultural significance of the Mata-au for mana whenua. The fact that an area has been modified or degraded by human activities does not make it any less culturally significant for mana whenua. Rather, as Mr Cassidy explains, it imposes a duty on mana whenua as kaitiakitanga to address that degradation and restore mauri and mahinga kai.

PROVISION FOR NGĀI TAHU RIGHTS AND INTERESTS IN RMA

Duties under the RMA

63. The RMA is the primary statute that manages the use, development, or protection of natural and physical resources in New Zealand outside of the Conservation Estate; and is the statute under which these resource consent applications are made.

64. The RMA provides for consideration of the rights and interests of Ngāi Tahu (and other iwi) in decision-making on the use, development or protection of natural and physical resources in two ways:

(i) Through participatory rights of mana whenua through the iwi authority or papātipu rūnanga when identifed as an affected party or when a resource consent application is notified; and

(ii) Through the matters in Part 2 of the RMA which must be considered in decision-making on resource consent applications.

65. Section 104 of the RMA sets out the matters a consent authority must have regard to when considering a resource consent application. S104 is subject to achieving the purpose of the RMA.

66. The purpose of the RMA is set out in s5. It is to promote the sustainable management of natural and physical resources. Sustainable management is defined in s5(2) as:

"…managing 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."

67. Prompting sustainable management includes:

- enabling people and communities to provide for their cultural well-being; and
- avoiding, remedying remigrating adverse effects of activities on the environment.

68. Environment is defined in s2 of the RMA and includes:

"(a) ecosystems and their constituent parts, including people and communities; and…

(d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters."

69. In addition, there are matters set out in sections 6-8 of the RMA which must be considered as part of achieving the purpose of the Act. These duties include:

(i) Recognising and providing for, as a Matter of National Importance, the relationship of Māori and their customs and traditions with their ancestral lands, waters, sites wāhi tapu and other taonga (s6(e));

(ii) Having particular regard to kaitiakitanga (s7(a)); and

(iii) Taking into account the principles of the Treaty of Waitangi (s8).

70. Irrespective of whether consultation occurs with mana whenua, in my opinion there is a duty when considering resource consent applications to understand and assess the effects of the proposed activity on mana whenua, their cultural well-being, and the matters set out in sections 6(e), 7(a) and 8 of the RMA.

<u>Assessing Effects on Mana Whenua and Cultural Values</u>

71. In my experience, planners often assume that Ngāi Tahu values can be represented by ecology, heritage conservation, hydrology or other 'western' disciplines; and therefore if the environmental effects are found to be acceptable when assessed in those disciplines, there are no significant cultural effects.

72. In my view, it isn't accurate or appropriate for a planner or other professional to attempt to assess the effects of an activity on mana whenua cultural values from a western scientific or planning ontology. In my opinion, such an assessment ought to be undertaken by those who have expertise in mana whenua culture and values.

73. My reasoning is that Te Ao Tahu or the Ngāi Tahu world view is grounded in a

different ontological context from that which underpins western science, planning and legal paradigms. That is not to say that western scientific assessments such as effects on ecology and hydrology are not valuable to mana whenua in understanding the effects of a proposal. However, they cannot be used as a substitute for an assessment of effects on cultural values by those expert in mana whenua cultural values.

74. How Ngāi Tahu understand their relationship with te taiao/the natural world, what is regarded as an environmental issue, and how such issues are managed, is fundamentally different from statutory environmental management under the RMA.

75. As Mr Cassidy explains, Ngāi Tahu whānui see themselves as part of rather than separate from the natural world. Therefore the health and well-being of mana whenua is inextricably tied to the health of te taiao/the natural world.

76. Even when similar words are used, the understanding of the condition or health of te taiao/the natural environment, environmental effects, and appropriate methods of management, can differ in fundamental ways.

77. For example, wai māori/freshwater is not just the molecule H_2O manifesting as different forms in the landscape. As Mr Cassidy explains, water is fundamental to whakapapa as it forms the link between the physical and metaphysical worlds, and each waterbody has its own whakapapa, its own identity. If you want to know who someone is in Te Reo you ask, kō wai koe? This enquiry literally translates as, 'what water are you?'

78. Mana whenua do not compartmentalise the environment into component parts such as an awa/river comprising of the bed, flowing water, ecosystems and riparian margins, and the land/whenua that drains into it. Rather the catchment is understood as one place and all things in that place are connected – ki uta ki tai.

79. Mana whenua are integrally connected to and identify with the awa to which they whakapapa. Therefore effects of an activity on land alongside the Matau-au impacts on the awa and on those who whakapapa to that awa.

80. In another example, Mr Cassidy has explained how mauri is a critical element of the spiritual relationship of Ngāi Tahu with wai māori. A core component of exercising kaitaikitanga is to protect the mauri of a resource from desecration or, where it is degraded, restore it.

81. Therefore mana whenua seek to avoid activities which further degrade the mauri of the awa/river and support activities which improve or restore it. This is a fundamental difference from environmental management in a western sense, where greater protection is afforded to 'pristine' or natural areas over those that have been modified or degraded.

82. The Statutory Acknowledgment and Mr Cassidy's evidence both identify the Matau-au as an important mahinga kai. In my view, mahinga kai is often

misunderstood in planning under the RMA as being limited to traditional fishing or harvesting sites. As explained by Mr Cassidy and noted in paragraphs 35 to 37 of my evidence, mahinga kai has a much broader meaning.

83. Like many indigenous societies, Ngāi Tahu whānui do not distinguish between resource conservation and resource, and do not see them as conflicting goals. Mahinga kai involves both use of the resource and sustaining it for future generations: it is resource use in accordance with a cultural ethic.

84. Therefore, it does not come to pass that any activity in or adjoining an awa will be opposed by Ngāi Tahu whānui. However, mana whenua need sufficient information to be able to understand what is proposed, how it effects te taiao/the natural environment and therefore whether the activity does or can be modified to align comfortably with that cultural ethic.

85. My understanding from the submissions of Kāi Tahu ki Otago and the evidence of Mr Vial, is that a fundamental issue with the subject resource consent applications is insufficient information to understand the proposed activity and associated effects to enable mana whenua to make this assessment.

CONCLUSIONS

86. The Matau-au/Clutha Catchment is significant to Ngāi Tahu whānui through both whakapapa and as a mahinga kai. This connection is recognised by the Crown though its status as a Statutory Acknowledgement Area under the Ngāi Tahu Claims Settlement Act 1998.

87. For mana whenua, the environment is not separated and managed in component parts, but as an integrated whole - ki uta ki tai; encompassing ngā whenua (land), wai māori (freshwater) and ecosystems including tangata/people. Therefore, the whakapapa and mahinga kai values associated with the Mata-au/Clutha Catchment apply to activities occurring on land and in tributaries and wetlands of the catchment.

88. The cultural significance of the catchment does not mean that mana whenua oppose any use or development of its resources. As outlined in both Mr Cassidy's and my evidence, mahinga kai is the procurement and use of resources to sustain people. However, mahinga kai occurs in accordance with mātauranga (knowledge) and tikanga (practices) that sustain environmental systems and maintain the mauri of the resources – a cultural ethic.

89. To effectively exercise kaitiakitanga, mana whenua need to understand the nature of a proposed use of resources and associated environmental effects in sufficient detail to be able to assess whether the activity will align with that cultural ethic.

90. Under the RMA, the consent authority has a duty to understand and assess the

effects of a proposed activity on mana whenua values, in considering whether the activity achieves the purpose of the RMA; in particular the discharge of duties under s5(2), 6(e), 7(a) and 8.

Lynda Murchison

8th May 2024