



27 October 2020

Otago Regional Council

P O Box 1954

DUNEDIN 9054

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 mai, kati.

Resource Consent Applications – RM20.039.01 – RM20.039.08 – Pigburn Limited & Others

RM20.039.01 - Natasha Lee Burrell, Ian Joseph Burrell and Canterbury Trustees (2016) Limited being trustees of the Duncan Cleugh Farming Trust (1/3 share), Pig Burn Gorge Limited (1/3 share) and Janine Ruth Smith (1/3 share)

To discharge water taken from the Pigburn to an unnamed tributary of the Taieri River known locally as Harpers Creek, for the purpose of subsequent re-taking for the purpose of irrigation, domestic use and stock drinking water.

RM20.039.02 - Natasha Lee Burrell, Ian Joseph Burrell and Canterbury Trustees (2016) Limited being trustees of the Duncan Cleugh Farming Trust (1/3 share), Pig Burn Gorge Limited (1/3 share) and Janine Ruth Smith (1/3 share)

To take and use surface water as primary allocation from an unnamed tributary of the Pig Burn, and to retake from a tributary of the Taieri River known locally as Harpers Creek for the purpose of irrigation, domestic use and stock drinking water.

RM20.039.03 - En Hakkore Limited

To take and use surface water as primary allocation from the Pig Burn for the purpose of irrigation, stock drinking water and domestic supply.

RM20.039.04 - Greenbank Pastoral Limited

To take and use surface water as primary allocation from the Pig Burn for the purpose of irrigation, stock drinking water and dairy shed use.

RM20.039.05 - Hamilton Dairy Limited

To take and use surface water as primary allocation from the Pig Burn for the purpose of irrigation, dairy shed use and stock drinking water.

RM20.039.06 - Hamilton Runs Limited

To take and use surface water as primary allocation from the Pig Burn for the purpose of irrigation and stock drinking water.

RM20.039.07 - Concept Farms Ltd and Christopher Patrick Mulholland and Dale Evelyn Mulholland, Hamiltons Dairy Limited and Trustees of the Sophic Trust

To take and use surface water as primary allocation from the Pig Burn for the purpose of irrigation, stock drinking water and dairy shed use.

RM20.039.08 - Concept Farms Ltd

To take and use surface water as primary allocation from the Pig Burn for the purpose of irrigation, dairy shed use and stock drinking water.

This is a submission on a publicly notified resource consent application pursuant to Section 95A of the Resource Management Act 1991.

Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (Kā Rūnaka) **oppose** this application.

We **do wish** to be heard in support of this submission at a hearing.

1. INTRODUCTION

- 1.1 The takiwā of Kāti Huirapa Rūnaka ki Puketeraki centres on Karitane and extends from the Waihemo River/Shag River to Purehurehu/north of Heywards Point. Kāti Huirapa Rūnaka ki Puketeraki share an area of interest in the inland roto and mauka with Kāi Tahu Papatipu Rūnanga within Otago, and with those Papatipu Rūnanga located beyond the boundaries of the Otago region.
- 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 River. Te Rūnanga o Ōtākou share an area of interest in the inland roto and mauka with Kāi Tahu Papatipu Rūnanga within Otago, and with those Papatipu Rūnanga located beyond the boundaries of the Otago region.
- 1.3 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 and other Murihiku Rūnanga and those located from Waihemo southwards.

Tino Rakatirataka recognised under the Kāi Tahu Settlement

- 1.4 The Ngāi Tahu Claims Settlement Act 1998 (Settlement Act) gives effect to the Deed of Settlement signed by the Crown and Te Rūnanga o Ngāi Tahu on 21 November 1997. The purpose of these documents was to:
- confirm the Treaty relationship, obligations and responsibilities between Kāi Tahu and the Crown;
 - achieve a final settlement of Kāi Tahu historical claims against the Crown; and
 - confirm Kāi Tahu tino rakatirataka. This includes an express acknowledgement (in both the Settlement Act and the earlier Deed) that:

“The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.”
- 1.5 The Deed of Settlement and Settlement Act also acknowledge the requirement for Kāi Tahu to express its traditional relationship with the natural environment and to exercise its kaitiaki responsibilities.

- 1.6 To acknowledge the association with the district and its resources, Māori words (underlined) are used within this document. See Appendix 1 for translation.

2. KAITIAKITAKA

- 2.1 All wai māori is of great significance to Kāi Tahu. Kā Rūnaka have responsibilities through whakapapa to act as kaitiaki and care for catchments as a whole. The right of Kāi Tahu to oversee land, resources, aspirations and wellbeing was protected under the Treaty of Waitangi, and this right still exists today, as recognised by the Ngāi Tahu Settlement.
- 2.2 The Kāi Tahu ki Otago Natural Resource Management Plans 1995 and 2005 are the principal resource management planning documents for Kāi Tahu ki Otago. The kaupapa of the plans is 'Ki Uta ki Tai' (Mountains to the Sea), which reflects the holistic Kāi Tahu ki Otago philosophy of resource management.
- 2.3 The plans express Kāi Tahu ki Otago values, knowledge and perspectives on natural resource and environmental management issues. While the plans are first and foremost planning documents to assist Kāi Tahu ki Otago in carrying out their kaitiaki roles and responsibilities, they are also intended to assist others in understanding tākata whenua values and policy.
- 2.4 The 2005 Natural Resource Management Plan is divided into catchments, with specific provisions for the whole Otago area and each catchment. The current proposal is located within the Taieri Catchments. The relevant objectives and policies of the 2005 Natural Resource Management Plan are attached to this submission as Appendix 2.
- 2.5 Kā Rūnaka are concerned about the extent of over-allocation in the Otago Region, which degrades the mauri of waterways. Abstractions of water that alter the natural elements of a catchment have a very real potential to undermine the role of Kā Rūnaka as rakatira and kaitiaki of all natural resources.

3. SCOPE OF THE SUBMISSION

- 3.1 This submission relates to the application in its entirety.

4. KĀI TAHU RELATIONSHIP WITH THE CATCHMENT

- 4.1 Kāi Tahu has a cultural, spiritual, historic and traditional relationship with the Taieri Catchments / Te Riu o Taieri.
- 4.2 The Taieri Catchments remain of great significance to Kāi Tahu ki Otago and our long association and interaction with the catchment is widely recorded.
- 4.3 Existing in the consciousness of Kāi Tahu ki Otago is awareness of a significant cultural landscape dominated physically by a series of block mountain ranges and valleys running parallel to the coast.
- 4.4 When our Tīpuna were walking over these mountains they recognised in their shape and appearance a likeness to the combers and rolling waves of the ocean, waves responsible for causing well-known maritime disasters.
- 4.5 In traditional accounts the ocean voyaging waka Araiteuru encountered three big waves followed by a cross wave off the Otago coast. The first wave that assaulted the Araiteuru waka ran inland and became the Old Man Range, the second wave followed and became Raggedy Ridge and the third became represented in Rought Ridge.
- 4.6 These three waves were followed by a giant cross wave, which is represented by the Horse Range. These events are immortalised by these block mountains standing inland, turned to stone and forever stirring the imagination of succeeding generations of the great deeds of the past.
- 4.7 The large streams and rivers of the Taieri Catchments begin in high altitude sphagnum and cushion bog hollows, flow off bedrock and then lower down flow through deep gorgers before emerging onto the plains.
- 4.8 The Taieri is a classic example of this, emerging onto the plains in the Styx Basin, and meandering down through to the Paerau Gorge (now dammed as part of the Maniototo hydro electric irrigation scheme) from whence it emerges again to flow in a similar but even more extensive fashion across the maniototo Basin. It then enters another confined stretch immediately below Waipiata before emerging once more to flow through wetlands of old Taieri Lake.

- 4.9 Collectively these three areas are known as the Upper Taieri Wetlands. At over 300 hectares, it is one of the largest and most important wetland complexes in the country. The area that is protected is less than 2% of the total area of wetland in the complex.
- 4.10 All water plays a significant role in our spiritual beliefs and cultural traditions - the condition of water is seen as a reflection of the health of Papatūānuku. The loss and degradation of this resource through drainage, pollution and damming is a significant issue for Kāi Tahu ki Otago and is considered to have resulted in material and cultural deprivation.
- 4.11 Kāi Tahu had a very distinctive and unique culture and lifestyle in the southern half of the South Island, including permanent coastal settlements and seasonal migrations inland over often vast distances to harvest and collect food and resources. The seasonal inland migrations were determined by whakapapa as to who could exercise those rights. This practice is referred to as 'mahika kai' and became a corner stone of our culture. Mahika kai is the basis of culture and the unrelenting cultural imperative is to keep the mahika kai intact, to preserve its productivity and the diversity of species.
- 4.12 Mahika kai literally means "food works". It encompasses the ability to access the resource, the site where gathering occurs, the act of gathering and using resources and ensuring the good health of the resource for future generations. This is enshrined in the Kāi Tahu proverbial saying and tribal motto "Mō tātou, a mō kā uri I muri ake nei – for us and for the generations that come after us."
- 4.13 The area subject to the application and the broader cultural landscape in which it is located were traditionally part of an important mahika kai network associated with the Taieri River and its tributaries and wetlands. Kā Rūnaka have knowledge of numerous mahika kai sites that were used in and near the area.
- 4.14 The primary management principle for Kā Rūnaka is the maintenance and enhancement of the mauri or life-giving essence of a resource. Mauri is a critical element of the spiritual relationship of Kāi Tahu with wai māori, recognising that all elements of the natural environment possess a life force, and all forms of life are related. Mauri can be tangibly represented in terms of elements of the physical health of the land, a river, or surrounding biodiversity. The forest, waters, the life supported by them, together with natural phenomena such as the mist, wind and rocks, possess a mauri or life-force. While there are also many intangible qualities associated with the spiritual presence of a resource, elements of physical health which Kā Rūnaka use to reflect the status of mauri and to identify the enhancements needed include:

- Aesthetic qualities e.g. natural character and indigenous flora and fauna;
- Life supporting capacity and ecosystem robustness;
- Fitness for cultural usage

4.15 A resource's mauri is desecrated if it no longer supports the traditional uses and values. A water body or other natural resource can be desecrated by improper resource management activities. These may extinguish the mauri and in turn diminish the association upon which a range of values are based, including mahika kai, for Kā Rūnaka who hold traditional rights and responsibilities in respect to the resource.

4.16 Across the rohe, one of the principal indicators by which Kā Rūnaka assesses the mauri of a resource is its productivity and the food and other materials sourced from it. Hence Kā Rūnaka use the nature and extent of mahika kai as an environmental indicator. If the mauri of an entity is desecrated or defiled, the health and well-being of the resource itself, resource users and others depending on the resource are at risk. When considering abstractions, Kā Rūnaka understand that every take affects the mauri of the river system. It is our right as rakatira, and our obligation as kaitiaki, to ensure that the mauri of the water comes first.

5. REASON FOR DECISION SOUGHT

5.1 The natural landscape holds many values for our people, from the celestial home of Rakinui to the earthly home of Papatūanuku and all things in between. This connectedness from the beginning of time is imbued with a life force often referred to as the "mauri" evident in all objects animate or inanimate. Therefore Kāi Tahu believe that people, flora, fauna as well as natural phenomena such as forest, waters, mist, wind and rocks, possess a mauri or life force. The primary management principle for Kāi Tahu is the protection of the mauri of a resource from desecration.

5.2 If mauri is viewed in the context of life, energy and vitality it is easier to understand how activities can change and degrade the mauri of rivers. This can be done by altering the food or energy sources, the water quality, the habitat, the flow, and the biotic interactions of the river ecosystem. Mauri is about life in and around a river and is epitomized by a river being in motion.

5.3 However, the mauri of a waterway is unable to protect itself against unnatural actions and interventions such as damming, diversions, altered flow regimes, discharges, and activities that impact on the riverbed.

- 5.4 Traditionally the mauri of waterways were protected by the values and beliefs applied to water, there being a spiritual essence as well as it being a source of food, and medium for travel, framed within a use and protection ethic, of tapu and noa (restrictions and open use). Mismanagement and appropriation of water resources in Otago has resulted in most catchments being ‘over-allocated’, meaning that the volume of water abstracted through resource consents exceeds the volume of water available in the catchment. The rules of the operative Regional Plan: Water for Otago are not consistent with national requirements and set default minimum flow levels well below the national average.¹
- 5.5 Proposed Water Permits Plan Change (Plan Change 7) has been developed by the Council in response to the direction of the Minister for the Environment to “... *develop a fit for purpose freshwater management planning regime that gives effect to the relevant national instruments and sets a coherent framework for assessing all water consent applications...*”,² and was notified by the Environmental Protection Authority on 6 July 2020 . Plan Change 7 is intended to provide an interim regulatory framework for the assessment of applications to renew deemed permits expiring in 2021 and any other water permits expiring prior to 31 December 2025, the date by which a new Regional Land and Water Plan is expected to be operative.
- 5.6 Plan Change 7 also establishes a requirement for short duration consents for all new water permits granted under the operative Water Plan rules. The objective and policies of Plan Change 7 require the granting of resource consents to replace deemed permits, or water permits to take and use surface water, to be avoided unless certain conditions are met, and that consents are only granted for the take and use of water for no more than six years.
- 5.7 Under section 86B of the RMA, the objective and policies of Plan Change 7 have immediate legal effect, therefore, it is preferred the application is assessed against the requirements of Plan Change 7, including that there is a reduction in the volume of water allocated for abstraction, and that new resource consents for the take and use of water are for a duration of no more than six years.
- 5.8 Kā Rūnaka therefore consider that it is only appropriate for a short term consent to be granted in this instance. Kā Rūnaka agree with the Minister that granting long term resource consents for water abstractions would “... *lock in unsustainable water use, inhibiting the council from effectively implementing the outcomes of its intended new RPS (Regional Policy Statement) and*

*LWRP (Land and Water Regional Plan)*⁷³. The new regional planning framework to be established must be compliant with:

- the purpose and principles of the Resource Management Act 1991, including Section 6(e), Section 8 and Section 7(a);
- the *National Policy Statement for Freshwater Management 2020* (the Freshwater NPS);
- the partially operative *Otago Regional Policy Statement 2019 (Otago RPS)* (including both the already operative parts, and those that still await sign-off from the Environment Court); and
- *Te Rūnanga o Ngāi Tahu Freshwater Policy Statement 1999* and the *Kāi Tahu ki Otago Natural Resource Management Plan 2005* (which have not yet been incorporated into the *Regional Plan: Water*); and
- the acknowledgement and obligations identified in the Settlement Act, including the confirmation of Kāi Tahu tino rakatirataka.

5.9 Kāi Tahu aspirations for freshwater management are recorded in the *Te Rūnanga o Ngāi Tahu Freshwater Policy Statement 1999*, and the *Kāi Tahu ki Otago National Resource Management Plan 2005*. These documents both reference water ownership as an outstanding matter for resolution, which is relevant to the manner in which water continues to be allocated. Kāi Tahu has unresolved customary interests in water, which must be taken into account in the consenting process. Water permits must not be treated as a property right, therefore the adverse effects of the take should be avoided and mitigated by limiting the water extraction in both term and the nature of the take. Limiting the take and use of water is consistent with the RMA, and Kāi Tahu customary rights and interests.

5.10 Kāi Tahu iwi management plan objectives and policies provide guidance to decision-makers working within the context of the *Resource Management Act 1991 (RMA)*. Notable priorities include protection and restoration of mahika kai habitats, and ensuring that environmental flows are sufficient to sustain the range of Kāi Tahu rights, interests and values associated with waterbodies. As discussed above, there are significant mahika kai values associated with the area within which this application is situated and the broader Taieri River system.

- 5.11 The Freshwater NPS requires that freshwater is managed in a way that gives effect to Te Mana o te Wai⁴. Te Mana o te Wai refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai.⁵
- 5.12 Te Mana o te Wai encompasses obligations on the part of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations, and on the part of decision-makers to prioritise the health and well-being of freshwater.⁶ The Freshwater NPS requires that the health and well-being of water bodies and freshwater ecosystems are prioritised above other water uses.⁷ Freshwater must be allocated and used efficiently and existing over-allocation must be phased out.⁸
- 5.13 The Freshwater NPS specifically requires that Māori freshwater values are identified and provided for and provides for the active involvement of tākata whenua in freshwater management.⁹ Freshwater must be managed in an integrated way, ki uta ki tai, that recognises the interconnectedness of the whole environment.¹⁰
- 5.14 The Regional Plan: Water for Otago and the Regional Policy Statement were both written prior to the introduction of obligations relating to Te Mana o te Wai and Ki Uta Ki Tai in the Freshwater NPS and its preceding 2017 version, and do not reflect these significant kaupapa. The Freshwater NPS must be considered as an overriding consideration above the issues, objectives and policies of the Regional Plan: Water for Otago and the Regional Policy Statement.
- 5.15 Section 7 of the RMA requires consent authorities to have ‘particular regard’ to kaitiakitaka in a manner that respects and accounts for tikaka unique to each iwi exercising kaitiakitaka within their rohe. In full view of the rakatirataka and tikaka embedded in kaitiakitaka, the application significantly affects, and is inconsistent with, the kaitiakitaka role and duties held by Kā Rūnaka.
- 5.16 Granting of a long-term consent in this instance would be not support Te Mana o te Wai. Such an approach would also be inconsistent with Kāi Tahu tikaka, rakatirataka and the exercise of kaitiakitaka. Tikaka values and practices associated with kaitiakitaka are dependent on the

⁴ Freshwater NPS, Policy 1

⁵ Freshwater NPS 1.3(1)

⁶ Freshwater NPS 1.3(4)

⁷ Freshwater NPS Objective

⁸ Freshwater NPS Policy 11

⁹ Freshwater NPS Policy 2

¹⁰ Freshwater NPS Policy 2 and section 3.5(1)

exercise of rakatirataka. Kāi Tahu tikaka is an intergenerational source of mātauraka that gives insight into customary views and practices and how they have evolved over time.

5.17 As no environmental flows have been set on the Pig Burn, Kā Rūnaka preference is to determine the appropriate minimum flow in accordance with the proposed NES on Ecological Flows and Water Levels (2008) for rivers and streams with mean flows less than or equal to 5m³/s:

- A minimum flow of 90% of the mean annual low flow (MALF) as calculated by the regional council.

5.18 The abstractions sought in this application represent 300-500% MALF and have potential to result in very low flows persisting in the water body for long periods. This does not provide for cultural values such as mauri, and reflects the existing use rather than the needs of the water body. Allocation of this level of abstraction at all flows above a minimum would not appropriately support Te Mana o Te Wai and Kā Rūnaka request that, above the minimum flow, abstraction should not be permitted to exceed 50% of the flow in the river at any time.

5. DECISION SOUGHT

5.1 Kāi Tahu submits that the application, as applied for, should **be declined**.

5.2 Kāi Tahu would not oppose an amended application or any consent that would be subject to the following conditions:-

- That the term of consent be no longer than 6 years;
- A minimum flow of 90% of the mean annual low flow (MALF) as calculated by the regional council;
- That above the minimum flow, at least 50% of the flow in the waterway is left in the waterway;
- That a fish screen is installed over the intake structure at the point of take for each water take;
- That the water take is metered, and results recorded and reported via telemetry.

E noho ora mai

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Appendix: 1

Glossary

Ara tawhito	Ancient trails
Hapū	Sub-tribe
Hukuwai	Type of water
Ika	Fish
Inaka/Inganga	Whitebait
Kaitiaki/Kaitiakitaka	Guardian / to exercise guardianship
Kāi Tahu	Descendants of Tahu, the tribe
Kanakana	Lamprey
Kaupapa	Topic, plan
Kōkōpu	Cockabully
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
Manu	Bird
Mauka	Mountain
Mauri	Essential life force or principle, a metaphysical quality inherent in all things both animate and inanimate
Moa	large extinct flightless bird of nine subspecies
Ngahere	Forest/Bush
Ngā Rūnanga/Rūnaka	Local representative group of Otago
Papatipu Rūnanga	Traditional Kāi Tahu Rūnanga
Papatūānuku	Earth Mother
Puna	spring (of water)
Rakātirataka	Chieftianship, decision-making rights
Rohe	Boundary
Roto	Lake
Takiwā	Area, region, district
Tākata whenua	Iwi or hapu that holds mana whenua (customary authority) in a particular area
Te Mana o te Wai	Concept for fresh water that encompasses the mauri of a water body
Tuna	Eel
Urupā	Burial place
Wāhi Tapu	Places sacred to takata Whenua
Weka	Bird-woodhen
Whakapapa	Genealogy
Whānau	Family

Appendix: 2

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

Kāi Tahu ki Otago Natural Resource Management Plan 2005

Otago Region / Te Rohe o Otago

Wai Māori

Wai Māori General Issues

Water Extractions

- Inefficient irrigation methods and reluctance to consider alternatives.
- Volume of some extractions being more than is required.
- Cumulative effects of water extractions.
- Lack of water harvesting.
- Long duration of water take consents.

Wai Māori General Policies

- To protect and restore the mauri of all water.

Water Extractions

- To require that resource consent applicants seek only the amount of water actually required for the purpose specified in the application.
- To require that all water takes are metered and reported on, and information be made available upon request to Kāi Tahu ki Otago.
- To oppose the granting of water take consents for 35yrs. Consistent with a precautionary approach, either a review clause or a reduced term may be sought.

Irrigation

- To encourage those that extract water for irrigation to use the most efficient method of application. Flood irrigation, border dyke and contour techniques are less likely to be supported than spray irrigation techniques.
- To require that a consent term for water extractions for irrigation be of 5-10 years where Kā Papatipu Rūnanga considers the method of irrigation to be inefficient to allow for an upgrade to a more efficient method.
- To discourage over-watering
- To encourage irrigation to occur at times when winds are light and evaporation low.
- To encourage dry land farming practices where appropriate.

Taieri Catchments / Te Riu o Taieri

Wāi Māori

Wāi Māori Issues

Water Takes

- Water extractions from the tributaries of the Taieri River can result in dewatering and affect the flows in the main stem.
- Cross mixing of waters.

Land Use

- Intensive land use in both the upper and lower Taieri Catchment is affecting water quality.

Wāi Māori Policies

Water Allocation

- To oppose the allocation of any further water from the Upper Taieri and Strath Taieri
- To require that the cumulative effects and Kī Uta Ki Tai values are addressed in water allocation in the Taieri Catchment.

Mahika Kai and Biodiversity

Mahika Kai and Biodiversity Issues

- Low flows and/or dewatering of significant reaches of waterways is affecting mahika kai habitat

Mahika Kai and Biodiversity Policies

- To encourage the development of the Taieri River as a ‘mountains to the sea’ corridor.
- To encourage native fish migration