

IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE

CIV-2021-412-089

UNDER the Declaratory Judgments Act 1908

IN THE MATTER of an application under the Declaratory Judgments
Act 1908

BETWEEN **OTAGO REGIONAL COUNCIL**
Plaintiff

AND **ROYAL FOREST AND BIRD PROTECTION**
SOCIETY INC
Defendant

AFFIDAVIT OF EDWARD WELLER ELLISON FOR NGĀ RŪNANGA

Dated 21 December 2021

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NGA91493 10177824.2



Handwritten signature in blue ink, likely of the solicitor or counsel, with the name 'Kunt' written below it.

MIHIMIHI

Matua Te Pō Matua Te Aō

Matua o Te Tai o Marokura

E Matua o Te Tai o Araiteuru

E tu e Hipo, e kai o mata

Ki Pukekura

Ki Ōtākou Wanaka

Ki Ōtākou Takata

E pania nei te kura o maukorua

E Poua ma e Taua ma

TIHEI MAURI ORA

Ko Te Atua o Taiehu taku mauka

Ko Ōtākou te awa

Ko Kāi Te Pahi, Moki II me Te Ruahikihiki ōku hapū

Ko Te Waipounamu te whare

Ko Taiaroa rāua ko Hineiwhariua ōku tūpuna

Ko Edward Ellison taku ikoa

Ko te mihi tuatahi ki to tātou Matua nui I te raki mo ōna manaaki ki ruka I a tātou.

Ka huri ki a rātou kā mate o te wā, te wiki, me te tau,

Haere, haere, tarahaua atu rā

Ki a tahu kumea

Ki a tahu whakairo

Ki te whare poutereraki

Hai taoka o kā mate

Hoki atu ai!

Ko tēnei mihi atu ki kā kanohi ora



Tēnā koutou, tēnā koutou mauri ora tātou katoa.

Ki a koe Kaiwhakawa, a, me kā mema o te roopu whakaroko

Ko koutou te kaiwharoko me kaiwhakarite o tēnei kaupapa nui nei

Tēnā rā koe, kia aata whakaroko ki ngā uaratanga,

Ngā mea whakaponu e tumanakohia nei e mātou, tēnā rawa atu koutou.

Ko tā mātou nei hiahia, kia tiakitia tātou nei whenua, kā roto, kā awa me te moana i hora nei, mai te tihi o kā mauka, heke iho ki te tai, me ērā taoka puta noa i te rohe.

Ki a koutou kā Kaunihere, otira me era roopu tāpaetanga katoa kā mihi tēnei ki a koutou katoa

I, Edward Weller Ellison, Upoko of Te Rūnanga o Ōtākou, of Dunedin, sincerely and solemnly affirm:

INTRODUCTION

1. I am authorised by Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga, and Te Rūnanga o Ngāi Tahu (collectively **Ngā Rūnanga**) to provide this affidavit in relation to these declaration proceedings before the High Court. The contents of this affidavit are true to the best of my knowledge and belief.
2. I was born in 1950 and raised at Ōtākou in our whānau home Te Waipounamu on our ancestral lands that abut and overlook Otago Harbour. Since 2018 I have held the role of Upoko of Te Rūnanga o Ōtākou.
3. I am a former Manager Iwi Liaison at Otago Regional Council and former Deputy Kaiwhakahaere for Te Rūnanga o Ngāi Tahu. I am the chair of Aukaha, chairperson of the New Zealand Conservation Authority, and a member of the NZ Biological National Science Challenge. I have also had significant experience as an accredited Resource Management Act 1991 (**RMA**) Hearings Commissioner.
4. I have extensive experience in representing the Kāi Tahu Otago Rūnaka in RMA matters, and I currently represent Otago Rūnaka on the Otago Regional Council Strategy and Planning Committee and the Land and Water Regional Plan Governance Group.

5. As my mihi indicates, I am a member of the local hapū. Our lineage connects us to this place; our identity is closely tied to the Otago region, ki uta ki tai, from the mountains to the sea. Our hapū have continuous connection to the land and resources of this area, we have been fishermen and hunter gatherers for countless generations.
6. I contributed to Aukaha input to the Proposed Otago Regional Policy Statement (**PORPS**) at various stages of its development and was involved in developing the expression of Te Mana o te Wai that has been included in the LF-WAI provisions in the PORPS. I also contributed to the preparation of the submission on the PORPS filed on behalf of Kāi Tahu ki Otago.

SCOPE OF AFFIDAVIT

7. In this affidavit I describe:
 - (a) The status of Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago;
 - (b) The Kāi Tahu understanding of the central importance of wai māori (freshwater) and its interconnectedness to the other parts of te taiao (the natural world);
 - (c) The importance of mana whenua involvement in decision making about wai māori and te taiao more broadly;
 - (d) Kāi Tahu concerns about the absence of an integrated approach to freshwater management in Otago; and
 - (e) Kāi Tahu support for an integrated approach to decision making.

EXECUTIVE SUMMARY

8. Water is a central element in Kāi Tahu creation traditions, and therefore our whakapapa, and our past, present and future relationship with te taiao. The rights of rakatirataka and the obligations of kaitiakitaka in relation to the natural environment arise from, and are fundamentally linked to, whakapapa. Due to this connection, the state of health and wellbeing of wai māori and te taiao is seen as a reflection on the mana, health and wellbeing of mana whenua.
9. Water is the lifeblood of the environment, and of the many life forms that depend on it. The resource management approach “ki uta ki tai” emphasises the holistic management of the interrelated elements within the natural environment. For Kāi Tahu, the water bodies and the environment they are part of cannot be considered in isolation from each other.

10. The interconnected nature of land, rivers, lakes and sea mean that where land-based activities are not managed well, they have a direct consequence on freshwater and coastal environments. Since the 1840s Kāi Tahu have experienced the profound loss of mahika kai resources and the degrading of the values of our wāhi tūpuna due to drainage and/or degrading of the quality of our wetlands, rivers, estuaries, harbours, and coastal domains.
11. Failure to recognise or appropriately provide for the connections between land, freshwater and the coastal environment has also contributed to decreases in the abundance of indigenous species and of their habitats. These are regarded by Kāi Tahu as taoka (treasures to be protected and cared for).
12. In developing the PORPS Kāi Tahu ki Otago have consistently advocated for a more holistic and integrated approach that recognises the connections between land, freshwater, coastal waters, and indigenous biodiversity, and for better recognition of the relationship of Kāi Tahu to te taiao.
13. In my opinion, it would run counter to a holistic “ki uta ki tai” approach to separate decision making on the freshwater provisions in the PORPS from the provisions for other parts of te taiao. An integrated approach is sorely needed if we are to be able to sustain te taiao for future generations.
14. Rakatirataka and kaitiakitaka sit at the heart of Te Mana o te Wai for Kāi Tahu. Our success as kaitiaki in implementing Te Mana o te Wai will be measured in outcomes for the current generations and the generations that follow. The Mana Whenua chapter includes direction for a partnership approach that recognises the rakatirataka of mana whenua and enables exercise of kaitiakitaka. From a Kāi Tahu perspective, the central place of wai māori within the wider taiao renders the requirements of the Mana Whenua chapter as inseparable from the sustainable management of freshwater.

TE RŪNANGA O NGĀI TAHU AND KĀI TAHU KI OTAGO

15. Te Rūnanga o Ngāi Tahu is the governing iwi authority established by the Te Rūnanga o Ngāi Tahu Act 1996. The Crown in 1998 recognised Ngāi Tahu as “the tāngata whenua of, as holding rangatiratanga within, the takiwā of Ngāi Tahu Whānui.”¹ It has therefore been clearly affirmed in statute that Te Rūnanga o Ngāi Tahu is the sole representative of Ngāi Tahu Whānui.
16. Te Rūnanga o Ngāi Tahu is made up of 18 papatipu rūnaka. These rūnaka are centred on marae which are located predominantly in traditional coastal

¹ Ngāi Tahu Claims Settlement Act 1998



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settlements, though their takiwā extend inland to the Southern Alps. Papatipu rūnaka are a contemporary focus for whānau and hapū (extended family groups). Through this tribal council structure Te Rūnanga o Ngāi Tahu is accountable to the tribal members. In practice, Te Rūnanga o Ngāi Tahu encourages consultation with the papatipu rūnaka and defers to the views of kā rūnaka when determining its own position.

17. Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga are the papatipu runaka collectively known as Kāi Tahu ki Otago and are mana whenua within the Otago region. Our interests in the inland lakes and mountains and along the Mata-au (Clutha River) are shared with Ngāi Tahu ki Murihiku.

WAI MĀORI

18. Water is a central element in Kāi Tahu creation traditions and is present very early in the whakapapa of the world, as described in this creation account from Tiramorehu, a Kāi Tahu elder and tohuka born at Tuahiwi and who relocated to Moeraki following the Te Rauparaha raids into Canterbury:

Te Waiaatanga mai o Te Atua

Nā Te Po (The Night), Ko Te Ao (The Day)

Nā Te Ao, Ko Te Aomarama (The Bright Day)

Nā Te Aomarama, Ko Te Aotūroa (The Long-standing Day)

Nā Te Aotūroa, Ko Te Koretēwhiwhia (The Unattainable Void)

Nā Te Koretēwhiwhia, Ko Te Koretērawea (The Intangible Void)

Nā Te Koretērawea, Ko Te Koretētāmaua (The Unstable Void)

Nā Te Koretētāmaua, Ko Te Koretēmātua (The Parentless)

Nā Te Koretēmātua, ko Te Mākū (The Damp).

E moe ana Mākū i Mahoranuiatea,

Ka Puta ko Raki (The Sky).

Tuatahi e moe ana Raki i Pokoharua-i-te-Po

Tuarua e moe ana Papatūānuku.

19. In this account darkness gives rise to light and then to stages of nothingness that produce moisture or water. This whakapapa continues down to Rakinui and his wives Pokoharua-i-te-Po and Papatūānuku.

20. The children of Papatūānuku and Rakinui conspired to force their parents apart. A proverb associated with their separation is “Te tomairaki, me te hukapapa, me te hukarere me te ua, he aitaka na Raki i a Papa, koia te taru ka tupu ai i te raumati.” (Morning mists, ice, snow, and the rain, descendants of Raki which grow the shoots at summertime.) From Raki’s many unions came the offspring, who together, were responsible for creating the elements that constitute our total world today, both animate and inanimate, including the mountains, rivers, forests and seas, and all fish, bird and animal life. Kāi Tahu claim the same descent from Raki and his wives and are therefore connected to all things by whakapapa.
21. Whakapapa describes bonds, relationships, and connections, and binds Kāi Tahu to the lands, waters and all life supported by them. Tribal whakapapa thus links the cosmological world of the atua to the present and future generations. This gives rise to a spiritual relationship with te taiao and a respect for the mauri of that environment, and to the rights inherent in rakatirataka and the associated and fundamental duties of kaitiakitaka.
22. Similarly, whakawhanaukataka (kinship, relationships, connectedness) is expressed in the resource management approach “ki uta ki tai”, which emphasises the holistic management of the interrelated elements within the natural environment. Water released by Raki as precipitation makes its way into rivers, which in turn connects the entire landscape from the mountains to the sea. From the sea and other waterbodies, water evaporates, condenses, and falls again on Papatūānuku, an eternal holistic cycle. These relationships demonstrate the interconnectedness of environmental systems and form a basic tenet in Kāi Tahu resource management practices and perspectives.
23. The whenua (land) and each mountain, river or lake, and the moana (sea) are linked to each other by whakapapa. This interconnectedness between all parts of the natural world, be it land, water, sea or air, acts to sustain life and life forms in a myriad of ways and requires reciprocal respect and care. Water is the lifeblood of the environment, and of the many life forms that depend on it. For Kāi Tahu, the water bodies and the environment they are part of cannot be considered in isolation from each other.
24. Water bodies are the central unifying feature that connects our wāhi tūpuna (cultural landscapes) together. Wāhi tūpuna are made up of interconnected sites and areas reflecting the history and traditions associated with the long settlement of Kāi Tahu in Otago, and our relationship with the land, rivers, lakes, wetlands and coast across the region. The interconnections between these places should be recognised in resource management decision-making and the component parts should be managed as part of a wider cultural setting. For example, an

archaeological site adjacent to a wetland is likely to be associated with mahika kai² resources in the wetland. Mahika kai, including the ability to learn and practice customary food gathering, and to put kai on the table at the marae and at home, is fundamental to the cultural identity of Kāi Tahu whānau and hapū. If the archaeological site is protected but the wetland is degraded so that mahika kai activities can no longer take place, then the relationship of mana whenua to the wāhi tūpuna is diminished.

MANA WHENUA ROLE IN DECISION-MAKING

25. The Crown in settling the Ngāi Tahu Claim acknowledged that the settlement did not “diminish or in any way affect the Treaty of Waitangi or any of its Articles or the ongoing relationship between the Crown and Ngāi Tahu ... or undermine any rights under the Treaty...”. This includes the rakatirataka rights over all our taoka that are guaranteed under Article Two of Te Tiriti.
26. As I have discussed above, the rights of rakatirataka and the obligations of kaitiakitaka in regard to the natural environment arise from, and are fundamentally linked to, whakapapa. Due to this connection, the state of health and wellbeing of wai māori and te taiao is seen as a reflection on the mana, health and wellbeing of mana whenua.
27. Rakatirataka is about having the mana or authority to give effect to Kāi Tahu culture and traditions in the management of the natural world. Kaitiakitaka is a practical expression of rakatirataka.
28. Kaitiakitaka is a widely used term that is based on the traditional concept of ‘kaitiaki’. Kaitiaki were the range of demi-gods responsible for the different components of nature. These kaitiaki provided signs that could be read in the environment, and manifested in a range of forms, such as the appearance of an animal or fish or the seasonal appearance of a certain species that signalled a time to take or to stop gathering a particular resource. The kaitiaki were acknowledged by words or prayer by those gathering resources such as the taking of a tree, going fishing or travelling. There were also powers of protection that were placed on an environmental feature or object through a ceremonial process, and that would act as a mauri for a specific purpose.

² Mahika kai refers to gathering of food and natural materials by Kāi Tahu whānui in accordance with tikaka, the places where those resources are gathered, and the work, methods and cultural activities involved in obtaining them.

29. In the modern era, the traditional kaitiaki functions have been taken up by mana whenua, who have adapted old customs to address new challenges in the world of commerce, law, and environmental change.
30. I have inherited my 'kaitiaki' responsibility from my father, and through him from the ancestors. Kaitiakitaka is intergenerational and in this context, it can briefly be summed up as having the right and responsibility to care and look after our environment handed to us by our ancestors mō tātou, ā, mō kā uri ā muri ake nei (for us and for future generations – our children and grandchildren).
31. The principles of the Treaty of Waitangi imply a partnership, to be exercised with the utmost good faith. For Kāi Tahu, effective participation in the management of our region's environment is best achieved by establishing partnerships with local authorities (and government departments charged with environmental management and protection functions), as representatives of the Crown or with delegated functions.
32. Effective partnerships require that mana whenua are involved in natural resource and environmental management at both the governance and management levels of decision-making. That is, Kāi Tahu values and policies should be represented and reflected on planning committees and decision-making boards, in regional and district plans and policy statements, and in everyday resource consent application processes.
33. These relationships must be robust enough to be sustained over the long term; even when people come and go, or when challenges arise. Thinking long term and maintaining consistency is the key. All parties must respect the knowledge, experience and skills of each other if effective partnerships are to develop.

CONCERNS ABOUT EXISTING FRESHWATER MANAGEMENT APPROACH

34. Kāi Tahu have long held concerns about the narrow approach that has been taken to freshwater management in Otago.
35. Since the 1840s Kāi Tahu have experienced the profound loss of mahika kai resources and the degrading of the values of our wāhi tūpuna, which continues today. The inability to source seasonal mahika kai due to drainage of wetlands, reduction in flows or levels of water bodies and/or degrading of the quality of our wetlands, rivers, estuaries, harbours, and coastal domains has created an impediment to accessing, using and/or consuming customary kai, from places that our tūpuna regularly accessed. This breakdown in the quality of our natural resources is damaging to the retention of and transfer of mātauranga (traditional knowledge) associated with places and resources, between the generations.

36. The interconnected nature of land, freshwater, and sea means that where land-based activities are not managed well, they have a direct consequence on wai māori and subsequently, the coastal environment. The bays, inlets, estuaries, river mouths and coastal marine systems are of integral importance to our whānau and hapū. A strong historical reliance on the kaimoana and fishery resources complemented the land-based mahika kai food and resources network. Most areas of Māori land (that is land reserved from sale) have a coastal / marine linkage, and in fact the original subdivision of some blocks was arranged in such a way that direct access to the sea was enabled to expedite access to kaimoana and the fishery.
37. A principal concern for kā rūnaka is the discharge of sediment from land-based activities that ends up in the coastal environment, causing a devastating effect on valuable seabed and benthic ecosystems, spawning grounds and reducing the viable marine habitats. The northward drift of fine sediments causes the impacts of discharges containing sediments to be widespread and invasive.
38. In my opinion, a key reason that the regional planning framework in place until now has been ineffective in managing water quality is that it does not recognise the interconnection between land and water by regulating the land uses that generate contamination of our rivers and lakes. Mana whenua consider that all land users have a responsibility to manage their land in a way that avoids impacts on the quality of surface water and groundwater, and that the planning framework needs to ensure that land users are aware of and fulfil this responsibility.
39. The interconnections between terrestrial ecosystems and wai māori have also been poorly recognised in land management. Loss or modification of terrestrial habitats, including indigenous forests and tussock lands, has had adverse impacts on the flow in rivers and the transport of sediment and contaminants into water bodies.
40. Failure to recognise or appropriately provide for the connections between land, freshwater and the coastal environment has also contributed to decreases in the abundance of indigenous species and of their habitats, which are regarded by Kāi Tahu as taoka (treasures to be protected and cared for). For example, tuna (eels) and īnaka (whitebait) populations have been adversely affected through loss of wetland and riparian habitat and loss of connectivity between freshwater and coastal waters. Loss of habitat has impacted population size and distribution of wetland bird species. The decline in inshore marine ecosystems, as discussed above, is likely to contribute to stress being suffered by coastal sea birds such as the hoiho, by requiring them to travel further off the coast to access their kai.

41. In my experience, the regional planning framework has not proved effective in enabling Kāi Tahu to exercise rakatirataka and kaitiakitaka, nor has it proved effective in providing for Kāi Tahu values and the values of our wāhi tūpuna. Our experience is that mana whenua values are considered narrowly in consent decision-making, rather than in a way that recognises and provides for the interconnected components and values associated with wāhi tūpuna.

SUPPORT FOR INTEGRATED DECISION MAKING

42. Kāi Tahu ki Otago have raised concerns about the inadequacy of the regional planning framework in a number of plan change processes over time, as well as in the context of the Skelton review of freshwater planning in Otago. Kā rūnaka support the commitment of Otago Regional Council, arising from that review, to develop a more effective framework.
43. I have been involved with other rūnaka representatives and with Aukaha in providing input to the PORPS, particularly in respect to the provisions to give effect to Te Mana o te Wai. In that process, kā rūnaka have consistently advocated for a more holistic and integrated approach that recognises the connections between land, freshwater, coastal waters, and indigenous biodiversity, and for better recognition of the relationship of Kāi Tahu to te taiao and provision for the rakatirataka and kaitiakitaka associated with that relationship.
44. We support the PORPS to the extent that it reflects these matters, but have also sought further measures in our submission on the notified document, including improvements in integration between land management and freshwater outcomes and between freshwater and the coastal environment. In my opinion, it would run counter to a holistic “ki uta ki tai” approach to separate decision making on the freshwater provisions in the PORPS from the provisions for other parts of te taiao. As I have discussed above, a ki uta ki tai approach requires recognition of the interconnections between all parts of the environment.
45. The Mana Whenua chapter in the PORPS describes key Kāi Tahu concepts and values that underly the approach of mana whenua to management of wai māori and the other parts of te taiao. It also includes direction for a partnership approach between councils and papatipu rūnaka that recognises the rakatirataka of mana whenua with respect to te taiao and enables the exercise of kaitiakitaka.
46. Rakatirataka and kaitiakitaka sit at the heart of Te Mana o te Wai for Kāi Tahu. Our success as kaitiaki in implementing Te Mana o te Wai will be measured in

outcomes for the current generations and the generations that follow. Te Mana o te Wai is inseparable from the mana of the people.

47. I understand that some parties to these proceedings have requested that decision making on the Mana Whenua chapter is also separated from decision-making on freshwater. From a Kāi Tahu perspective, the central place of wai māori within the wider taiao renders the requirements of the Mana Whenua chapter as inseparable from the sustainable management of freshwater as set out under the Land and Fresh Water provisions. Separating consideration of the Mana Whenua chapter from consideration of the Land and Fresh Water chapter would run counter to a holistic and integrated management of the taiao and would not be consistent with the principles of Te Tiriti o Waitangi.

CONCLUSION

48. The approach taken by Kāi Tahu to freshwater management is a holistic approach that reflects the whakapapa of water and the interconnectedness between water and land. Mana whenua have a kaitiakitaka obligation, arising from rakatirataka, to care for our water bodies and protect their mauri from degradation. This is crucial to us to ensure that we can keep our relationships with wāhi tūpuna vital, and that we can pass on mātauraka about cultural traditions and practices from generation to generation.
49. Past management of freshwater in Otago has been ineffective in preventing deterioration of our freshwater bodies and the coastal waters they feed into, and the ecosystems and habitats that depend on these waters. I believe this is at least in part because the management framework did not adequately acknowledge the interconnection between land, freshwater and the coastal environment.
50. The PORPS provides direction for a more integrated approach to management of the whenua and wai, and the species they support, I consider an integrated approach is sorely needed if we are to be able to sustain te taiao for future generations. A fragmented decision making process that separates freshwater from the other elements of te taiao will not achieve this.
51. Separating the consideration of freshwater from the Mana Whenua provisions on the role of Kāi Tahu in resource management processes would fail to properly acknowledge the relationship of Kāi Tahu to wai māori and the obligations under Te Tiriti to recognise rakatirataka.



12 RMH

AFFIRMED at Dunedin)
This 21st day of December 2021,
before me:

Rachel Hurd JP
(Rachel Hurd JP)

A Justice of the Peace

R.M. Hurd, JP
#14236
DUNEDIN
Justice of the Peace for New Zealand

) *E. W. Elle*
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