



13 July 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 taaka o tātou nei whānau, hapū me te iwi. Ki a rātou kua whetu rangitia, te hunga wairua, haere, moe mai, oki oki mai, kati.

RE: Resource Consent Application – Smallburn Limited

Resource Consent Applications – RM20.007.01 & RM20.007.02

Take and use surface water from Amisfield Burn, Breakneck Creek and the Park Burn for the purpose of Irrigation and stock water supply.

Retake and use surface water from Five Mile Creek and a tributary of the Park Burn for the purpose of Irrigation and stock water supply.

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

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

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

1. INTRODUCTION

- 1.1 The takiwā of Te Rūnanga o Moeraki centres on Moeraki and extends from Waitaki to Waihemo and inland to the Main Divide.
- 1.2 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.
- 1.3 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.
- 1.4 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

- 1.5 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.”

- 1.6 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.
- 1.7 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 Clutha/Mata-au 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 Clutha Catchments/Mara-au.

4.2 Kāi Tahu ki Otago used all areas of the Clutha/Mata-au Catchments as evidenced by the hundreds of mahika kai sites associated with the many waterways, lakes and wetlands in the Clutha/Mata-au catchments. Many of these waterways have been modified or lost as a result of mismanagement and misappropriation of this taoka.

4.3 Because of the long history of use of the Clutha/Mata-au Catchments as a mahika kai, supporting permanent and temporary settlements, there are numerous urupā and wahi tapu associated with the streams, rivers and wetlands.

4.4 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.

4.5 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.

4.6 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."

4.7 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

4.8 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.

4.9 Across the rohe, one of the principle 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 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

- 5.2 The Council, acting under 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 has notified the Proposed Water Permits Plan Change (Plan Change 7). 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.
- 5.3 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.
- 5.4 Under section 86B of the RMA, the objective and policies of Plan Change 7 have immediate legal effect, therefore the application must be 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.
- 5.5 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)*”³. 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 2014*, as amended in 2017 (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
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- *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 tinō rakatirataka.

5.6 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.

5.7 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. Kā Rūnaka consider that the application would prevent the protection and restoration of mahika kai habitats in the Clutha/Mata-au Catchment.

5.8 The Freshwater NPS requires consideration and recognition of Te Mana o te Wai, through identification of values and management of those values. The Freshwater NPS specifically provides for the involvement of iwi and hapū to ensure that tākata whenua values and interests are identified and reflected in the management of freshwater. Included within freshwater objectives is intent to phase out over-allocation.

5.9 Under the Freshwater NPS, it is a matter of national significance that fresh water is managed through a framework that considers and recognises Te Mana o Te Wai as an integral part freshwater management. When speaking about Te Mana o te Wai we are referring to the integrated and holistic wellbeing of a freshwater body. Upholding Te Mana o te Wai acknowledges and protects the mauri of water.

- 5.10 The Regional Plan: Water for Otago and the Regional Policy Statement were both written prior to the 2017 amendment of the Freshwater NPS and therefore kaupapa as significant as Te Mana o te Wai and Ki Uta Ki Tai 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. The are requirements for water to be managed consistent with Te Mana o te Wai and the tikaka of Ki Uta Ki Tai
- 5.11 Granting of a long-term consent in this instance would be inconsistent with the RMA and the planning framework. 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 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.
- 5.12 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.
- 5.13 In respect to flow conditions, the proposed National Environmental Standard for Ecological Flows and Water Levels 2008 (proposed NES) proposes interim flows and allocation limits for rivers and streams. These interim limits were intended to apply to water bodies for which there are no environmental flows or water levels specified in a proposed or operative water plan, and would only apply until an alternative is established through the regional plan process. While the proposed NES has not been confirmed, Kā Rūnaka recognise the expertise of the authors and support the setting of interim flows and allocations in Otago in accordance with the proposed NES, until the review of the Land and Water Regional Plan has been completed.
- 5.14 As no environmental flows have been set on Omeo Creek, Kā Rūnaka preference is to determine the appropriate allocation in accordance with the proposed NES:
- 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 and an allocation limit of, whichever is greater of:
 - 30% of MALF as calculated by the Regional Council
 - the total allocation from the catchment on the date that the national environmental standard comes into force less any resource consents surrendered, lapsed, cancelled or not replaced.

6. DECISION SOUGHT

- 6.1 Kāi Tahu submits that the application, as applied for, should **be declined**.
- 6.2 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 and an allocation limit of, whichever is greater of:
 - 30% of MALF as calculated by the regional council
 - Retain existing requirements for water meter(s) and ensure results continue to be 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/Inanga	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/Kā 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
Taoka	Treasure
Te Mana o te Wai	Concept for fresh water that encompasses the mauri of a water body
Tikaka	
Tuna	Eel
Urupā	Burial place
Wāhi Tapu	Places sacred to takata Whenua
Wai māori	Fresh water
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.