

BEFORE THE INDEPENDENT COMMISSIONERS

UNDER the Resource Management Act
1991

AND

IN THE MATTER of the proposed Canterbury
Land and Water Regional Plan

**STATEMENT OF EVIDENCE OF LYNDA WEASTELL MURCHISON
ON BEHALF OF NGĀ RŪNANGA OF CANTERBURY, TE RŪNANGA O NGĀI
TAHU AND NGĀI TAHU PROPERTY LIMITED**

4 February 2013

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1. INTRODUCTION

- 1.1 My name is Lynda Marion Weastell Murchison.
- 1.2 I am employed by Te Rūnanga o Ngāi Tahu as the Programme Leader for Environmental Policy and Planning. In this role I manage a team of staff responsible for advising and assisting Te Runanga o Ngāi Tahu and papatipu rūnanga and their entities, in developing positions in relation to a variety of environmental issues and aspirations, including responding to applications and proposals under various statutes: the Resource Management Act 1991 (RMA), Crown Minerals Act 1991, Conservation Act 1987; and the Hazardous Substances and New Organisms Act 1996. I am also employed part-time by the University of Canterbury to teach a post-graduate course in environmental and resource management in the School of Geography.

Qualifications and Experience

- 1.3 My qualifications are: MA (Hons) in geography from the University of Canterbury; and certificates of proficiency in Natural Resource Law from the University of Canterbury and Advanced Regional and Resource Planning from Lincoln University. I am a full member of the New Zealand Planning Institute and an accredited Hearings Commissioner. I also hold a National Certificate in Agriculture (Level 3) from the Open Polytechnic of New Zealand and have farmed in partnership with my husband for twelve years. I am the 2012 recipient of the Roper Scholarship awarded by the University of Canterbury, and will commence doctoral research on environmental ethics in farming in New Zealand in June.
- 1.4 I have worked in the field of resource management in New Zealand for 18 years, holding senior and managerial positions in both district and regional councils and in private practice, including: District Planner for Selwyn District Council (1997-2000, and 2001-2003); planning advisor to the Hurunui District Council (2005-2008); and Planning Manager Air and Rivers and then Principal Planning and Consents Adviser for the Canterbury Regional Council (2008-2011). At the Canterbury Regional

Council, I managed the environmental flows and air planning teams, both of which received a commendation in the Creech Report 2009.

- 1.5 I have experience in the preparing and processing resource consent applications, water conservation order applications, over 70 plan changes, and developing implementing community-led planning approaches. I wrote the Selwyn District Plan and several regional catchment plans, and the Freshwater Chapter of the (then) proposed CRPS (2010). My format for Section 32 reports has been used by the Ministry for the Environment as an example of best practice.
- 1.6 I have given evidence as an expert witness in many resource management hearings, and before the Environment Court. I am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note (2011) and I agree to comply with the Code in preparing and presenting this evidence. The evidence I am giving is within my area of expertise and I have not omitted any material facts which are known to me that may detract from or alter the opinions given in my evidence.

Declaration of Conflicts of Interest

- 1.8 While working for Canterbury Regional Council I was involved in some preliminary drafting of the pLWRP. Therefore, my evidence is confined to providing background information on the issues and reasons behind Te Rūnanga's submission. Sandra McIntyre and Philippa Lynch will provide the planning evidence on behalf of Ngāi Tahu.
- 1.9 My husband and I own dry land sheep and beef farms at Lake Coleridge and in the Weka Pass. We have made a submission on some of the farming policies and rules for nutrient discharges and water quality in the pLWRP. Consequently I am not giving any evidence on behalf of Te Rūnanga o Ngāi Tahu in that area. Cathy Begley and Brent Cowie will provide background evidence on the Ngāi Tahu submissions in relation to rural land uses and water quality.

Scope of Evidence

1.10 I have been asked by Te Rūnanga O Ngāi Tahu to prepare evidence in relation to:

(i) Te Rūnanga and ngā rūnanga involvement in the preparation of the pLWRP; and

(ii) Ngāi Tahu issues with the management of land and water in Canterbury and the reasons for the submissions made by Te Rūnanga and ngā rūnanga on the pLWRP.

2. CONSULTATION ON THE PLWRP

2.1 Cathy Begley's evidence outlines the involvement of Te Rūnanga in the issues of managing effects of rural land uses on water quality. This issue was addressed by Environment Canterbury in a separate process from the rest of the pLWRP. In relation to the rest of the plan, engagement with Environment Canterbury staff and plan drafting team occurred at three levels:

(i) Kāi Tahu Ki Otago Ltd (KTKO) was engaged by Environment Canterbury to provide an initial assessment of Ngāi Tahu values and issues in relation to the management of land and water using iwi management plans and other Ngāi Tahu policy documents.

(ii) Te Rūnanga's planning officer met regularly with the pLWRP project team.

(iii) Ngā rūnanga of Canterbury nominated five representatives who formed the Ngā Rūnanga Working Group. This group, supported by a consultant employed by Environment Canterbury and Te Rūnanga staff who worked with Peter Constantine of Environment Canterbury to discuss draft objectives and policies.

2.3 In July 2012, Te Rūnanga received a copy of the draft LWRP for formal consultation under Clause 3(1) of Schedule 1 to the RMA. Te Rūnanga was given 10 working days to respond to the draft. This draft LWRP had some notable changes to the policies from those discussed with Peter Constantine, and the working group were not consulted in relation to the rules.

- 2.4 Both the Ngā Rūnanga Working Group and Te Rūnanga staff were surprised to find content in the draft LWRP which they had not been advised by Environment Canterbury staff would be included in the pLWRP, despite the very regular contact described above. This information included flow regimes for various catchments in the sub-regional sections of the plan (sections 6-15) and the approach to managing land uses and water quality. The latter matter is discussed in Ms Begley's evidence.
- 2.5 Te Rūnanga responded on behalf of ngā rūnanga notifying Environment Canterbury of two matters:
- (i) The key issues Ngāi Tahu were likely to submit on;
 - (ii) The surprise and concern at the inclusion of the flow regimes in the sub-regional sections without any prior notice and Ngāi Tahu's view that 10 working days was insufficient time to respond in any meaningful way on these matters.
- 2.6 A copy of that letter is attached to my evidence as **Attachment 1**.
- 2.7 Te Rūnanga's submission requests the withdrawal of the flow and allocation regimes for: Kaikoura streams; Hakatere (Ashburton), Orari, Waihao and Rakahuri (Ashley) catchments from the pLWRP. Ngā rūnanga have concerns with the adequacy and appropriateness of these particular flow regimes, and the lack of adequate time to assess the draft flow regimes and respond in any meaningful way has disadvantaged ngā rūnanga.

3. NGĀI TAHU ISSUES WITH MANAGEMENT OF LAND AND WATER

Introduction

- 3.1 The role and value of water as part of Ngāi Tahu culture, customs and traditions is outlined in the evidence of Te Marino Lenihan, and the role of Ngāi Tahu as resource users owning companies undertaking commercial ventures which rely on the sustainable use of natural resources is outlined in evidence by Mark Solomon and Tony Sewell.
- 3.2 In summary, my understanding of the Ngāi Tahu position is that wai or water is an integral and essential element of Ngāi Tahu culture and

values. It is the source of life, identity, ancestry and the link between the physical and metaphysical worlds. Fresh and coastal water and associated wetlands are also the major source of mahinga kai – the food, fibre and other materials that sustain Ngāi Tahu and the fabric of society that has woven around learning and using the skills to procure mahinga kai. Therefore there is a strong culture around the management of wai; not just the end state of the fresh water body but the process by which it is managed.

- 3.3 Ngāi Tahu are also resource users both traditionally and today. As natural resource users, Ngāi Tahu are keenly aware of the importance of a robust economy to Canterbury and New Zealand's economic and social well-being, but Ngāi Tahu does not believe it has to be a choice between a highly valued natural environment or a high performing economy.
- 3.4 Ngāi Tahu are inter-generational in their focus; accepting that complex issues with fresh water will take time to resolve but, at the same time, needing 50 or 100 years to fix a problem is not, for Ngāi Tahu, an excuse not to address it.

Fundamental Challenges to incorporating Ngāi Tahu Values in Resource Management

- 3.5 Later in my evidence I will discuss specific Ngāi Tahu issues with land and fresh water management in Canterbury. Before doing this, I think it is helpful to outline three fundamental challenges or issues I see in incorporating Ngāi Tahu values into regional plans dealing with land and fresh water.
- (i) The usual approach is that Ngāi Tahu values, customs and traditions are but one of many objectives to be achieved or factors to be considered in fresh water management. This leads to Ngāi Tahu values not being properly recognised as a whole resource management system with outcomes and processes – a system which is akin, in my view, to promoting sustainable management. As such, Ngāi Tahu values and interests in land and water management go well beyond the identification and protection of

sites or water bodies of cultural significance, or having a flow sufficient to sustain indigenous fish species. It is a whole way of managing the resource.

- (ii) Many regional plans tend to focus on the effects of an activity on the physical or chemical state of fresh water. Other effects, such as effects on people's cultural and social values are not considered or are dismissed on the basis that the physical or chemical effects on the water are minor, so people shouldn't have a problem. A classic example is the discharge of treated sewage or effluent directly into water which is culturally offensive to Ngāi Tahu. To my mind, if an activity has effects which are culturally offensive to people then the effects of that activity cannot be minor no matter what the physical or chemical effects are on the water. In reaching this conclusion I note that section 2 of the RMA defines environment as follows:

“environment includes –

- (a) ecosystems and their constituent parts, including people and communities;*
- (b) all natural and physical resource; and*
- (c) amenity values; and*
- (d) The social, economic, aesthetic, and cultural conditions which affect matters stated in paragraphs(a) to (c) of this definition or which are affected by those matters.”*

- (iii) The approach that is often taken in assessments under the RMA is that 'effects will be minor therefore no management is justified.' I have observed this argument used in applications for and assessments of resource consents, water conservation orders and for making activities permitted in a plan. This approach of allowing adverse effects on an environment provided they are minor has the potential to allow incremental decline of environment quality over time, including further degradation in already degraded environments. As such it is at odds with my understanding of kaitiakitanga – leaving the resource in better shape at the end of one's tenure than when one inherited the duty.

- 3.6 At first, I considered this final challenge might simply reflect a philosophical departure between the RMA and Ngāi Tahu values in fresh water management. Upon further consideration I noted that the purpose of the RMA does not include an exemption for activities whose effects will be minor from any further management. S5(2)(c) of the Act requires any adverse effects be avoided, remedied or mitigated'.
- 3.7 My evidence will now discuss the reasons for the specific issues raised in Te Rūnanga's submission. I will focus on the key topic areas in a similar order to the submission.

Specific Issues with Land and Water Management in the pLWRP

- 3.8 As part of achieving the purpose of the RMA, Ngāi Tahu acknowledges that the economic and social well-being which comes from using fresh water resources must be balanced with the cultural, environmental and long-term social and economic well-being of resource protection. To that end, Ngāi Tahu seeks management of fresh water quality and quantity that balances those needs. Within that context, however, there are four key aspects of the fresh water environment which must be protected as fundamental bottom lines. They are:
- (i) The protection of all natural wetlands as having significant values;
 - (ii) The protection of the natural character of the main stem of Canterbury's braided rivers;
 - (iii) Removing the discharge of contaminants directly to water; and
 - (iv) Addressing the cumulative effects of groundwater abstraction on the base flows of lowland and springfed rivers and streams.

These issues and the end to address them are well-documented within the CRPS. Te Rūnanga believes that the pLWRP provisions need strengthening in these areas to give effect to the CRPS. Each matter is discussed in more detail below.

Plan Structure and Role of Sub-Regional Sections

- 3.9 Te Rūnanga supports the general structure of the pLWRP, in particular, the opportunity to incorporate Ngāi Tahu issues and values throughout the plan rather than a separate Ngāi Tahu section. Te Rūnanga also supports the concept of region-wide provisions and catchment-specific provisions as there are some matters which are clearly best addressed at the catchment level.
- 3.10 Te Rūnanga does not support the concept that the sub-regional sections only have to achieve the objectives of the pLWRP and can have their own policies and rules on any matter. The reasons are:
- (i) There are many fundamental resource management principles around land and fresh water management which should apply in all catchments and should not have to be litigated every time. The evidence from Mr Maurice Duncan for example talks about some of the key basic principles needed for managing surface water abstraction. The numbers in a flow and allocation regime will vary catchment by catchment, but the basic approach should be consistent.
 - (ii) Having to relitigate these fundamentals of good fresh water management repeatedly in every catchment is very inefficient. It also begs the question as to the point or value of the pLWRP if all policies and rules can be superseded in the sub-regional sections.
 - (iii) The ability of sub-regional sections to include different policies and rules on any matter has the potential to create a very complex resource management regime across the region, especially when the extent to which sub-regional sections will deviate from the pLWRP will also vary between catchments. Already the draft Selwyn-Te Waihora sub-regional section is showing signs of complexity and confusion from trying to integrate the rules in the pLWRP with separate catchment-specific rules. Te Rūnanga is concerned that activities as basic as on-site effluent treatment and disposal systems are having their own rules in this sub-regional section.

- 3.11 Te Rūnanga is also very concerned at the process whereby some sub-regional sections of the pLWRP are being drafted now and will be notified as variations to the pLWRP before decisions are made on submissions on the pLWRP. How can the Council can sub-regional sections that have to achieve the objectives of the pLWRP when those objectives are not settled?
- 3.12 For these reasons, Te Rūnanga asked for the pLWRP to specify the matters which can be subject to catchment-specific rules and that all other policies and rules in the pLWRP apply to all catchments.

Sub-regional Catchment Boundaries

- 3.13 Te Rūnanga's submission requests the boundaries of the sub-regional sections of the pLWRP follow catchment boundaries rather than the administrative lines of the CWMS Zone Committees. While it is my understanding these Zone Committee boundaries were originally drawn along surface water catchments, they were then altered to reflect territorial local authority boundaries.
- 3.14 Te Rūnanga understands that groundwater catchment boundaries are not easy to define in parts of the region. However having surface water catchments split between up to four sub-regional sections (as is the case for the Waimakariri Catchment) creates, in our view, an unnecessarily complex administrative regime. In addition, there is no over-arching management regime to co-ordinate the content of these sub-regional sections other than a broad directive to achieve the objectives of the pLWRP, so there is a danger of having different provisions for fresh water management within one catchment. Such an outcome would fail to give effect to the principle of integrated catchment management or ki uta ki tai which is at the heart of Ngāi Tahu values in relation to fresh water management, and is also incorporated into within Objective C of the NPS for Freshwater, Objective 7.2.4 of the CRPS and Objective 1 of the pLWRP.

Definition of Māori Terms

- 3.14 The pLWRP includes definitions of 'Ngāi Tahu, mauri, ki uta ki tai, and kaitiakitanga'. These concepts are also explained in Section 1 of the pLWRP and some of the definitions are inconsistent with that description. Te Rūnanga's submission repeats earlier requests made by the Ngā Rūnanga Working Group and in first schedule consultation to remove these definitions.

Plan Objectives & Strategic Policies

- 3.15 Te Rūnanga's submission requested a comprehensive rewrite of the objectives and strategic policies of the pLWRP. Considerable effort has gone into formulating these provisions in order to add value to the submission process. There were four main reasons for seeking this relief. Firstly, to incorporate Ngāi Tahu values into the pLWRP objectives in a way which could be understood and applied as part of mainstream management of land and fresh water. In particular we were concerned that Objective 3.3 -- *The relationship of Ngāi Tahu and their culture and traditions with the water and land of Canterbury is protected* -- was very uncertain for the Council, for Ngāi Tahu, and for plan users as to what this meant. So we set about crafting objectives for managing freshwater in ways which protect the relationship of Ngāi Tahu with its culture and traditions but which are described in mainstream resource management outcomes.
- 3.16 The second reason was to establish some relationship between the objectives, in particular, potentially conflicting objectives between the use of water resources and protection of the fresh water environment. I am very aware that it is common practice for regional and district plans to list a suite of stand-alone objectives reflecting the various duties under Part 2 of the RMA, with an interpretive statement that all objectives apply equally with no hierarchy. I am also aware that this approach then invites an argument that no activity can possibly achieve all these objectives and therefore as long as it achieves some of them then, taking a broad overall judgment, the activity is not inconsistent with the objectives of the plan. Te Rūnanga felt some value would be added to the plan by

expressing objectives around resource use and protection relative to one another.

- 3.17 The third reason for the comprehensive rewrite of objectives and strategic policies was to reflect the position in the plan that sub-regional sections only have to achieve the objectives of the pLWRP. Therefore Te Rūnanga felt some fundamental principles of land and water management which sat within policies in the pLWRP should sit within the objectives. This is reflected particularly in Te Rūnanga's proposed objectives 7 to 10.
- 3.18 The fourth and final reason was simply a matter of good drafting. Te Rūnanga observed that some of the objectives in the pLWRP overlap or say the same things using slightly different words. Other objectives are not really objectives or use terms that are unclear, such as Objective 3.15 which refers to 'sustainable, wise, efficient and multiple use of water' and Objective 3.22 which in my view reads as a methods-based policy not an objective or outcome.
- 3.19 Even with redrafting 23 objectives into 10, I note there are still some overlaps between the outcomes sought in Te Rūnanga's Objective 2(b) and some of the other objectives. Ms McIntyre will assess whether this can be further refined as part of her evidence.
- 3.20 One of the matters which Te Rūnanga did not address in its rewrite of the objectives was any provision for existing infrastructure and activities and what would be expected of those activities in terms of on-going improvements in water efficiency and reductions in environmental effects. This matter has been raised in the submission by NTPL (and other parties). Ms McIntyre assesses whether and how this concept can be incorporated into Te Rūnanga's new suite of objectives.

Objective 3.2 – Replacing Mauri with Kaitiakitanga

- 3.21 As we were drafting Te Rūnanga's proposed objectives 2(a) and 2(b) it became clear among our rūnanga representatives that the outcomes we were seeking were best described as kaitiakitanga not mauri. Hence the submission requested the deletion of Objective 3.7 and the rewriting of Objective 3.17 so the concept of mauri was replaced with more

appropriate terminology. As well as being a more appropriate cultural term, the use of kaitiakitanga also appealed to Te Rūnanga as it reflects the duty in section 7(a) of the RMA.

- 3.22 In the submission we wrote the objective as two parallel objectives to try and show they mean the same thing. Ms McIntyre in her evidence will assess the potential to rewrite objectives 2(a) and 2(b) as one objective. Te Rūnanga's submission also included an explanation to the objective. I note that the pLWRP does not include explanations to objectives and policies. I agree that well written provisions should not require lengthy explanations to interpret their meaning, as a rule. However when introducing a new concept as sought in Te Rūnanga's submission, we felt there was value in including an explanation.

Objectives 9 and 10

- 3.23 Similarly Te Runanga's draft objectives 9 and 10 attempt to show how resource use and protection can be balanced to achieve the purpose of the RMA, from a Ngāi Tahu perspective. Essential components to these objectives are:

- (i) When using a resource to give something back to the environment. For example, if you are going to modify flows in a river to store water, design your scheme so you can also spill water back into the river when it is stressed by low flows.
- (ii) Water is a shared, public resource with multiple, high value uses – take only what you need, share whenever you can, tread lightly with the environment, and there will be enough for everyone.

Discharge of Contaminants

- 3.24 The reasons behind Te Rūnanga's submission on non-point discharges from rural land uses is addressed by Ms Begley. In relation to the discharge of other contaminants, Te Rūnanga requested the insertion of a new policy and the amendment of other policies and rules to better manage the effects of the discharge of contaminants into water or onto land where it may enter water. Most of these concepts were included in

early drafts of the plan but were changed before notification of the pLWRP.

- 3.25 Te Rūnanga wants a strong policy signal in the pLWRP that the on-going discharge of waste or other contaminants into water without land or wetland treatment, is inappropriate in the long term. Te Rūnanga is particularly frustrated by on-going discharges of sewage to water. Not only is this practice highly culturally offensive to Ngāi Tahu, but Te Rūnanga is of the view that the policy position in the pLWRP is inconsistent if it allows human sewage to be discharged directly into water but requires livestock to be excluded from waterways.
- 3.26 Te Rūnanga appreciates that these issues cannot be fixed overnight – the tap cannot simply be turned off council infrastructure. But there is an on-going frustration at what is perceived as the stalling of some councils on remedying existing situations even when they are on short-term discharge permits issued to give them time to upgrade systems. Te Rūnanga also wants to secure the opportunity to end the regular discharge of untreated sewage into the Avon and Heathcote rivers from overflow of Christchurch City's sewage system, as part of the rebuild of Christchurch.

Surface Water/Groundwater Management

- 3.27 One of the fundamental issues for Ngāi Tahu is the relationship between surface water and groundwater and addressing the cumulative, long term effects of groundwater abstraction on base flows in surface water bodies, especially lowland and springfed streams. Mr Duncan's and Mr Henderson's evidence talks about these relationships.
- 3.28 The Natural Resources Regional Plan (NRRP) for Canterbury manages direct stream-depleting groundwater takes (known as having medium or high connectivity) but it has yet to find a recipe to manage the cumulative effects of indirectly stream depleting groundwater takes which take much longer for effects to register. The issue was exacerbated in the NRRP by having separate allocation blocks for surface water and groundwater in these catchments, even though it was the same resource being allocated.

- 3.29 The state of Canterbury's water ways especially lowland and springfed streams is a significant issue for Ngāi Tahu. As outlined in Mr Lenihan's evidence these water bodies are (or were) the most accessible and regular sources of mahinga kai; and the inability of successive regional plans to address this issue is a major failing from Ngāi Tahu's perspective. Te Rūnanga is concerned that the pLWRP is continuing the approach in the NRRP. Even the new flow and allocation regimes included in the sub-regional sections of the pLWRP for the first time (ie not being rolled over from NRRP) are not recognising and addressing this issue.
- 3.30 Te Rūnanga's submission has requested additional policies be added to the pLWRP to:
- (i) Require allocation regimes for surface and groundwater be treated as one resource when setting allocation blocks; and
 - (ii) That where groundwater and surface water resources do have separate allocation blocks in the plan, if one allocation block is fully or over-allocated resource consents are not granted for additional abstraction from the other source unless the surface water and groundwater resources are not hydraulically connected or the application is for a straight swap of water resources (surface to ground or vice versa).
- 3.31 This relief sought is similar to policies which were in earlier drafts of the pLWRP and supported by Ngā Rūnanga Working Group, but which were removed prior to notification of the pLWRP. The specific and directional nature of this relief and other amendments requested to the policies for partial restrictions, are part of ensuring those fundamental principles of good water management are applied to every catchment in the region and do not have to be relitigated time and again.

Transfer of Water Permits

- 3.32 Te Rūnanga's position on the transfer of water permits is often misunderstood. My understanding is that Te Rūnanga is not opposed to the transfer of water permits per se. Indeed, the ability to transfer water permits to other resource users when the water is not required by the

original permit holder appears a sensible and appropriate way to manage a shared public resource, provided that the allocation regime is sustainable in the first instance.

3.33 Some Ngāi Tahu are very opposed to two specific aspects of the practice of water permit transfers:

- (I) The 'trading' of water permits when as part of the transfer large amounts of money exchange hands. This exchange of money is viewed by some Ngāi Tahu as cutting to the heart of issues of resource ownership. Of particular concern is the situation where people apply for water permits they have no intention of using simply to 'trade' them.
- (II) The transferring of water permits where water allocated is not currently being abstracted and the catchment is under environmental stress. When a catchment is over-allocated for abstraction and someone is not using or no longer requires their water permit, the priority should be keeping the water 'in stream' or in the ground until the catchment is no longer over-allocated.

3.33 Te Rūnanga's submission requested amendments to the provision for water permit transfers to do two things:

- (i) To limit the ability to transfer to people who have actually used their water permit (to try and limit the market of people applying for water permits solely to 'trade' them); and
- (ii) In over-allocated catchments, to limit the transfer to situations where there is a net environmental benefit from the water permit transfer.

3.34 Te Rūnanga preferred this approach to the partial surrender provision in the pLWRP for three reasons:

- (i) Uncertainty over the legality of requiring partial surrender of a water permit as part of transferring the permit, or if a rule can make the transferring of water permits a prohibited activity (given that the Act expressly allows a person to apply for a transfer under section 136).
- (ii) The approach in the pLWRP can still result in more water being abstracted from over-allocated catchments as the consent holder only has to surrender a percentage of their total allocation of water,

not a percentage of what they have used.

(iii) The approach is rather inflexible as to other ways in which a water permit transfer could benefit the environment.

3.35 I also note there has been much discussion about the need to facilitate water permit transfers to enable people abstracting from lowland streams and shallow groundwater sources to transfer to irrigation schemes when they are made available. In my view a water permit transfer is a transfer of an existing permit to take water from one person to another or one site to another, within the same catchment. The scenario of people changing irrigation water sources can be facilitated through surrendering one permit and obtaining another (which if moving to an irrigation scheme might only be a use permit).

Wetlands

3.36 Te Runanga's submission seeks greater recognition of the value of wetlands in Canterbury. Te Rūnanga position is that natural wetlands are now so scarce in Canterbury that they all have significant values which require protection to give effect to relevant objectives contained in the NPS for Freshwater. The cultural significance of wetlands to Ngāi Tahu is outlined in Mr Lenihan's evidence. Dr Philippe Gerbeaux outlines the ecological significance of wetlands in his evidence presented on behalf of the Minister of Conservation.

3.37 Te Rūnanga requests the pLWRP have a clear and specific objective around protecting all the significant values of natural wetlands in Canterbury, not just ecological values. Many ecologically degraded wetlands still hold significant cultural value for Ngāi Tahu because of their historical links with mahinga kai. Te Rūnanga's submission also sought to clarify through amended policies and rules the extent to which natural wetlands could be modified.

3.38 Te Rūnanga felt the provisions in the pLWRP allowed for activities which would result in significant modification or destruction of wetlands, especially for the provision of infrastructure, and seek amendments to the pLWRP to clarify clearly in policies the purposes for which natural wetlands can be modified.

- 3.39 Te Rūnanga supported the intent in the pLWRP rules to distinguish between wetlands surrounded by dry land and those in the beds of lakes and rivers. Te Rūnanga is aware that by not making this distinction the NRRP inadvertently made the opening of Te Waihora to the sea a prohibited activity under Rule WTL2. However, somewhere in the execution, things appear to have gone little astray. The pLWRP states that the wetlands rules do not apply within the beds of lakes and rivers, but when one goes to the rules for managing takes, uses, damming or diversion of water in lakes or rivers those rules state they exclude wetlands.
- 3.40 Therefore in the amendment to Rule 5.1.41 Te Rūnanga identified two conditions, one relating to opening hāpua and coastal lakes (which arguably should be in the rules for lakes) and one for all wetlands, but we were unsure exactly where those rules should go. The submission asks for consequential amendments to give effect to that relief.
- 3.41 Ngāi Tahu acknowledge that the very broad definition of wetland in the RMA can arguably capture 'puddles in paddocks'. Ngāi Tahu also acknowledge and support the promotion of artificial wetlands as fantastic and much underrated tools for treating water, and do not wish to see people who create wetlands for water treatment suddenly captured by rules for the protection of *natural* wetlands. Therefore the amendments requested relate to natural wetlands only and Ms McIntyre will assess the appropriateness of a rule to determine when an area is a natural wetland and when it is a 'puddle in paddock.'

Braided Rivers

- 3.42 Canterbury's braided rivers are geomorphologically and ecologically unique. Mr Duncan provides evidence on this issue. As such Te Rūnanga believe their natural character must be protected to achieve the purpose of the RMA.
- 3.43 The pLWRP, as notified, protects the main stems of alpine rivers but not hill-fed braided rivers. The CRPS (Policy 7.3.2) and the CWMS second principle both require protection of the natural character of braided rivers and as Mr Duncan explains in his evidence, a braided river is defined by its braided character not its water source.

Gravel Extraction

- 3.44 Te Rūnanga's submission seeks amendments to the policies and rules for managing gravel extraction in the pLWRP. There are two main concerns:
- (i) The need to recognise potential effects of gravel extraction on areas of mahinga kai. For example, recently a gravel extractor in the Opihi river bed dumped gravel over the cress beds.
 - (ii) Rule 5.126 making any gravel extraction undertaken by Canterbury Regional Council or any person acting under written authority of the Regional Council a permitted activity with no conditions.
- 3.45 This rule appears to have followed from the draft Gravel Management Strategy prepared by the council under the Local Government Act 2002 and released for consultation in 2012. In that strategy the council discussed options for managing gravel extraction, including that gravel extraction by the Canterbury Regional Council or people it authorises on its behalf could be a permitted activity. This option was strongly opposed by Te Rūnanga, yet we noticed with some concern the notification of the pLWRP with the corresponding Rule 5.126 was notified before hearings on the gravel management stagey occurred. At that point we turned our attention to the pLWRP provision.
- 3.46 Te Rūnanga is opposed to any plan provisions which seek to exempt councils from compliance with the rules in its own plans, and to be frank I thought most councils had long since abandoned the notion. Te Rūnanga struggles with how the Council can justify, under s32 of the RMA, that it is appropriate to have one rule for itself and another rule for any other user of the resource. I note that under the Memorandum of Understanding between the Regional Council and gravel extractors in South Canterbury rivers, resource consents still included some 25 conditions.
- 3.47 Te Rūnanga is not satisfied that the values and interests of ngā rūnanga will be protected through the council managing gravel extraction. Many of the issues ngā rūnanga face in the beds of rivers across the region (and the takiwā) result from flood protection and maintenance works undertaken by regional councils.

Natural Hazards

3.48 Te Rūnanga's submission requests the replacement of policies 4.92 to 4.94 of the pLWRP for the management of natural hazards. Undoubtedly these policies have been spurred by the need to rebuild Christchurch and the associated work required. However Te Runanga is concerned that the policies allow for that remediation work unfettered except for Policy 4.93 which has a duty to minimize effects. There have already been issues with geotechnical drilling in silent file areas and urupā sites around Kaiapoi. While Te Rūnanga is not suggesting such work cannot occur, the introduction of protocols or other conditions to mitigate effects of the potential disturbance of those sites would be welcomed.

Mixing of Waters

3.49 Ngāi Tahu values around the mixing of waters between catchments is another issue which has been the subject of misunderstanding. As part of the quest to incorporate Ngāi Tahu values into mainstream land and water management and make them understandable to other parties, Te Rūnanga believes a policy on mixing of waters would add value to the plan.

3.50 The policy requested explains that there is no hard and fast rule on mixing of waters – other than the need to consult with the relevant rūnanga (as there is no hard and fast rule). Mr Lenihan discusses Ngāi Tahu values around mixing of waters in his evidence. My understanding is that whether mixing of waters is culturally acceptable in any one proposal depends on specific factors including: the whakapāpā or origins of the waters to be mixed; traditional uses of the water bodies; and the appropriateness of any 'cleansing' process such as passing through gravels or wetlands. And these values will also vary between rūnanga. Te Rūnanga's requested policy addresses other issues around mixing of waters and spread of unwanted organisms, which reflects Te Rūnanga drive to have Ngāi Tahu policy integrated into mainstream resource management.

4. CONCLUSIONS

- 4.1 Te Rūnanga has lodged a comprehensive submission on the pLWRP on behalf of ngā rūnanga of Canterbury.
- 4.2 The main drivers for the submission were:
- (i) The desire to incorporate Ngāi Tahu values into mainstream management of land and water in Canterbury and therefore the need to articulate those values in everyday resource management terms so people can understand and apply them.
 - (ii) The need to get fundamental principles of land and water management in the region settled once in the pLWRP and followed through in all sub-regional plans, rather than having to relitigate matters over and again in each catchment.
 - (iii) The desire to create a plan which actively manages potential conflicts between resource use and resource protection, rather than having a series of discrete and unrelated objectives which no activity is ever going to achieve.
 - (iv) The need for better recognition and protection of wetlands and braided rivers, management of surface water and groundwater connectivity, and recognition of Ngāi Tahu values in the management of natural hazards, and gravel extraction.



Lynda Weastell Murchison

4 February 2013

ATTACHMENT 1



Te Rūnanga o NGĀI TAHU

12th July 2012

The Canterbury Regional Council
PO Box 345
Christchurch
Attn. V Smith

Tēnā koe Vin

RE: Draft Land and Water Regional Plan – First Schedule Consultation

Thank you for providing a copy of the draft Land and Water Regional Plan (LWRP) to Te Rūnanga o Ngāi Tahu (Te Rūnanga) and the papatipu rūnanga who represent those who hold mana whenua over land and water within Canterbury (ngā rūnanga), for comment. As you will be aware, representatives of ngā rūnanga have worked with Te Rūnanga staff and Dyanna Jolly on behalf of Environment Canterbury, on various iterations of the plan and this response is made on behalf of and with the endorsement of that group.

Te Rūnanga staff have relayed to Environment Canterbury staff their concerns with the timeframe given to parties for First Schedule Consultation on this document and there is little value in further comment, except to point out that given the timeframe we are not in a position to provide comments on a provision-by-provision basis, nor on that material which has been included in this version of the LWRP for the first time. In addition, decisions on the proposed Regional Policy Statement (RPS) are not yet released, so we are not in a position to comment on whether we agree the draft LWRP will give effect to the new RPS.

Therefore, this letter sets out some general positions and issues which Te Rūnanga and ngā rūnanga will address more fully in formal submissions on the plan when it is notified.

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Plan Structure

Ngā rūnanga working group is comfortable with the structure of the LWRP, in particular the incorporation of Ngāi Tahu values in the main suite of plan objectives and policies. The rationale for this approach is to try and incorporate Ngāi Tahu values into all resource management decision-making, rather than having Ngāi Tahu objectives and policies in a separate section of the plan where they are either forgotten or presented as objectives and policies which compete with other objectives and policies in the plan. If this approach in the plan does not result in a more robust incorporation of Ngāi Tau values into decision-making, then Te Rūnanga can request a new Ngāi Tahu chapter added to the LWRP in the future.

We do note the need for Ngāi Tahu values to be incorporated in the issues narrative at the start of the plan and attached to this letter is the material from the ngā rūnanga working group, for this purpose. We ask that this information be included in the proposed LWRP for notification.

Plan Definitions

Having all the plan definitions in one place makes plans much easier to work with, and we assume that the sub-regional sections will not introduce new or varying definitions.

We do note that the definitions section includes many terms which are defined in the RMA. While it is useful for people to know that those terms are defined by statute, an alternative approach to repeating the definition in the plan is to note that the term is defined in the RMA. Then if the definition changes, the LWRP will not be outdated and require amendment.

Plan Objectives

Ngā rūnanga working group is generally comfortable with the suite of objectives in the draft LWRP. We do note that there are some potentially overlapping objectives which could be combined, and some objectives which appear to have the same goal but using different words, which begs the question whether they are intended to mean different things. Examples include: objectives 3.2 and 3.4, 3.8 and 3.10, and 3.19 and 3.20.

Of more substantial matters, ngā rūnanga working group does not agree Objectives 3.6 is sufficient to protect the significant values of wetlands as required to give effect to the NPS for

Freshwater. We also note that objectives 3.15 and 3.22 could be clearer. For example, what is 'sustainable, wise, efficient and multiple use of water' in Objective 3.15?

Summarily we do not agree Objective 3.22 is sufficient to give effect to the NPS for Freshwater. In our view good practice to protect the regions' freshwater bodies from degradation is insufficient to give effect to the NPS for Freshwater, as it could be interpreted as implying that further degradation is acceptable if 'good practice' is being applied.

Plan Policies

Nga rūnanga working group generally supports the policies in the draft LWRP, with the exception of the topics discussed under specific headings below. Within the context of that general support, we have the following comments.

Policy Drafting

We support the approach to policy drafting with the general focus on:

- (i) Resource management outcomes rather than methods, which provides guidance for applicants, affected parties and decision-makers on appropriate resource management outcomes; and
- (ii) Activities rather than effects, which makes it easy to identify which policies apply to a particular activity.

We also welcome the generally concise and robust nature of the policies.

We believe the plan could be further improved with the following changes:

- (i) Regrouping the policies by topic. It is most likely as a result of feedback and on-going review that some policies have got out of order, and a quick re-ordering of policies back into topic groups would make the plan even more user-friendly.
- (ii) The policies for nutrient discharges do not appear to have quite the same focus on outcomes and clear directions as the other policies in the plan.

Strategic Policies:

In Policy 4.1, it is unclear what is meant by each lake, river or aquifer '*will overall meet the outcomes set in Table 1*'; what does 'overall' mean and how is it measured?

Plan users may find Policy 4.2 a bit vague and we will come up with a more defined policy of what constitutes 'Ngāi Tahu values', recognising that vague policies are unlikely to result in robust decisions around Ngāi Tahu values.

There does not seem to be any policy either in the strategic policies or in the other policies that clearly states that resource consents shall not be granted for the taking or use of water which exceeds environmental flow and allocation regimes, groundwater allocation limits, or water quality limits. Policy 4.1 states limits will be set, but not that they must not be breached.

Plan Rules

Nga rūanga working group supports the valiant attempt that has been made to reduce the number and complexity of the rules in the draft LWRP from the NRRP. We do believe a real difference is already discernible to the plan user.

We think the rules section of the plan could be further enhanced through:

- (i) A review of the grouping of rules by activity or topic, this appears to have been done originally and may have got a little mixed up with revisions and changes.
- (ii) Bundling together rules around common activities to reduce the number of separate resource consents needed. We note some attempt has been made at this but we believe it could be taken further.
- (iii) Identifying a clear set of everyday, minor activities which are permitted activities without any or very few conditions.
- (iv) A review of the conditions on rules for legal certainty, especially for conditions on permitted activities.
- (v) A review of the status of some activities which are currently non-complying and perhaps should be discretionary, bearing in mind how the plan describes non-complying activities in the first section.
- (vi) A review of the length and complexity of the descriptors in some rules, eg rules 5.101, 5.109, 5.139, 5.149, 5.150.

We will comment on specific rules in submissions.

Discharge of Contaminants to Land

Ngā rūnanga working group supports the explicit policy position of no direct discharges to water set out in Policy 4.7. However there appears to be some inconsistency with Policy 4.8, which then goes on to discuss how to manage discharges where it is impractical to avoid the discharge to water; and policies 4.10 and 4.11 which appear to provide an exemption for existing stormwater and waste water systems.

There does not seem to be any policy requiring existing discharges of wastewater or stormwater to be upgraded to land or wetland treatments over time, only new infrastructure installed after August 2012. It is unacceptable to Ngāi Tahu for the Council to allow the continual renewal of consents for urban waste water systems which discharge effluent to water without ever being obliged to consider land-based treatment alternatives. Ngāi Tahu also questions the equity in this policy approach, whereby it is no longer acceptable for farmers to allow stock access to and animal effluent to be discharged into water. Ngāi Tahu will address this issue in submissions.

Nutrient Discharges

Ngā rūnanga working group supports the attempt of the draft LWRP to address water quality as a result of non-point source discharges, and acknowledges the difficulty in managing this issue. However we do not support the approach being taken in the draft LWRP for the following reasons:

- (i) The approach focuses very narrowly on nitrogen from farming activities. For ngā rūnanga and Te Rūnanga, issues with water quality are much broader than nitrogen and the sources of poor water quality are both urban and rural, point-source and non-point source.
- (ii) We are concerned that the focus on using a particular model and complying with particular concentrations of N, will generate an industry dedicated to both arguing the appropriateness of the numbers and developing models to meet the numbers, rather than focusing on improving land management and reducing the discharge of all contaminants into water.
- (iii) We believe it is inappropriate to tie water quality to the use of one particular model Overseer. That model was not developed for the purpose it is being used and we foresee similar difficulties as with the use of WQN 9/Irricalc in the NRRP.
- (iv) We believe the current approach triggering compliance with 'any change in farming activity' is too hard to define, and is a disincentive to improving water quality by encouraging people to adopt new activities and better practice. We also note that if one is dairying, the capital involved in this venture means it is most unlikely that 'any change in farming activity' will occur.

We are working with other parties to develop a preferred approach to managing effects of land uses and non-point source discharges on water quality, which we will address in submissions in due course.

Interconnectivity of Surface Water and Groundwater

The proposed RPS has quite clear objectives and policies to better manage water in an interconnected way recognising the connections between surface water and groundwater, but the draft LWRP continues to manage surface water and groundwater as two separate resources.

Environment Canterbury has adopted some long, expensive planning and consent review processes in recent years to try and reduce the impact of water abstraction on low flows in hill fed and lowland spring fed streams. Success has been limited because these reviews have not addressed the cumulative effects of groundwater takes with low direct connectivity, on base flows in surface water bodies. The approach in the NRRP has long been recognised by Environment Canterbury's own staff as not being appropriate to deal with these sorts of effects, yet the draft LWRP appears to continue this approach.

We recall some policies around this issue in earlier drafts of the LWRP but these appear to have been removed.

Existing Activities

Ngā rūnanga working group is opposed to Policy 4.47 which appears to give a perpetual right of renewal to water allocations to existing hydro-generation and irrigation schemes. While we accept that when it comes to renewing consents for their infrastructure there may be limited options, it is inappropriate to have a policy position of perpetual renewal of the water and discharge permits, and seems to work against some of the aspirations of the Canterbury Water Management Strategy.

Ngā rūnanga working group supports the approach to tightening up the time to give effect to resource consents under Policy 4.72. However, we suggest the five year consent durations in red zones under Policy 4.73 are too short.

Water Transfers

Ngā rūnanga working group does not support the ability to transfer water which is not currently being used in catchments which are already over-allocated.

Te Rūnanga and papatipu rūnanga have a strong position in relation to any transferring of water, particularly in catchments which are already over-allocated. This matter will be addressed in submissions in due course.

Given the timeframes for notification of the LWRP, Te Rūnanga and nga rūnanga are not anticipating that Environment Canterbury will be in a position to give further attention to these matters prior to notification of the plan. However, nga rūnanga working group looks forward continuing to work with Environment Canterbury on these matters as the plan moves into the next stage of the planning process.