

BEFORE THE CANTERBURY REGIONAL COUNCIL

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF Proposed Waipara River Regional Plan

STATEMENT OF EVIDENCE OF CATHY FAY BEGLEY, ON BEHALF OF TE RŪNANGA O NGĀI TAHU

INTRODUCTION

1. My full name is **CATHY FAY BEGLEY** and I am a Senior Environmental Advisor for Te Rūnanga o Ngāi Tahu (TRoNT) with whom I recently commenced employment. Prior to joining TRoNT I was employed by GHD Ltd as a Senior Environmental Planner and then as Team Leader Natural Resources Planning South Island for 2 ½ years. Prior to this I was employed by Davie, Lovell-Smith Ltd as a Senior Resource Planner for four years and by Environment Canterbury (the Canterbury Regional Council) as a Consents Investigating Officer and then as a Senior Investigating Officer for 5 ½ years. I hold a Bachelor of Resource Studies and a Masters in Applied Science (Environmental Management) from Lincoln University. I am an Associate Member of the New Zealand Planning Institute and a full member of New Zealand Water and Waste Association.
2. I have a rural background, which means that I am very familiar with pastoral farming activities and the unique resource management issues experienced by rural communities. I have worked throughout the South Island (Te Waipounamu) assisting both local authorities and private clients with statutory planning, environmental assessments and other resource management requirements.
3. One of my main areas of planning and resource management work has been in the preparation and auditing of assessments of environmental effects, and the processing of resource consents through various statutory steps and requirements. This required me to co-ordinate and prepare assessment of environmental effects for a wide range of projects involving inter-related technical assessments, including attending both Council Hearing and Environment Court. Some recent examples include providing an assessment of effects for seven of the 23 individual farming clients within a collective known as the Upper Waitaki Applicants Group (UWAG); assisting in auditing the assessment of effects of the Arnold River hydro electric power scheme on behalf of Grey District Council; auditing the assessments of effects of the Project Aqua hydro electric power scheme on

behalf of Environment Canterbury and providing an assessment of effects for the groundwater permit for Lynton Dairies Ltd.

SCOPE OF EVIDENCE

4. A key function of my role is to assist TRoNT to advocate for appropriate mechanisms which protect, recognise and provide for TRoNT values within the statutory planning process, such as Regional Plans and Resource Consents, where they pertain to freshwater.
5. I have read the further submissions received in response to the submissions lodged. I have also read the technical reports and evidence prepared for this hearing on behalf of Environment Canterbury's Reporting Officers.
6. I am familiar with the Proposed Waipara River Regional Plan (PWRRP), the Regional Policy Statement (RPS) and other relevant statutory planning documents. I have read the Code of Conduct for Expert Witnesses (Rule 330A, High Court Rules and Environment Court Practice Note) and agree to comply with it. I confirm that I have complied with it in the preparation of this statement of evidence.
7. My evidence will cover the following matters:
 - o Te Rūnanga o Ngāi Tahu
 - o Site and locality
 - o Environmental flow and allocation regime
 - o Review of existing consents

TE RŪNANGA O NGĀI TAHU

8. TRoNT is the tribal representative body of Ngāi Tahu Whānui. It is a body corporate established under s16 of the Te Rūnanga o Ngāi Tahu Act 1996 (TRoNT Act). S15(1) of the TRoNT Act states:
"Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui".
9. Notwithstanding its statutory status as the representative voice of Ngāi Tahu Whānui 'for all purposes', TRoNT accepts and respects the rights of individuals and Papatipu Rūnanga to make their own views known on all issues within their takiwā. The rights of individuals and Papatipu Rūnanga has also been given statutory recognition through both the TRoNT Act and the Ngāi Tahu Claims Settlement Act 1998 (Ngāi Tahu Claims Act). These acts recognise the status of Papatipu Rūnanga as kaitiaki and manawhenua of the natural resources within their takiwā

boundaries. The Waipara River is located within the takiwā of Te Ngāi Tūāhuriri and as such they are kaitiaki and manawhneua of this river.

SITE AND LOCALITY

10. As set out within TRoNT's submission, Part 3 of the PWRRP provides an accurate account of why the Waipara River and its catchment is of outstanding significance to TRoNT. This part appropriately recognises the Statutory Acknowledgement status of the Waipara River. This status recognises that there is a long standing cultural, spiritual, historical and traditional association with the Waipara River. This is evident by the number of Ngāti Wairaki, Ngāti Mamoe and Ngāi Tahu urupā (burial sites) and wāhi tapu along the river and coast line.
11. Part 3 of the PWRRP also correctly recognises that there is an active nohoanga site adjoining the Waipara River. The term nohoanga means a place to site, and were areas traditionally used in the pursuit of food and other natural resources. As set out within Part 3 of the PWRRP, there are a number of known nohoanga sites along the Waipara River. These *"...include the Deans where moa remains have been found, the coastal area where pāua, mussels and crayfish were caught, the lagoon where inanga were caught and the river mouth."* This traditional concept has been given a contemporary translation as temporary camping areas, adjacent to lakes and rivers which are solely and exclusively used by Ngāi Tahu Whānui to experience the landscape as their tupuna did and/or facilitating the ability to gather mahinga kai (food and other natural resources). The Waipara River nohoanga site is situated beside the river and is large, flat and well sheltered, an excellent camping area.
12. Further, Part 3 of the PWRRP highlights that the Waipara River was once a significant mahinga kai source for Te Ngāi Tūāhuriri and their social, economic and cultural well-being. The PWRRP states *"The river and associated coastline was also a significant mahinga kai, with kai moana, particularly pāua,... Tupuna had considerable knowledge of whakapapa, traditional trails and tauranga waka, places for gathering kai and other taonga, ways in which to use the resources of the river, the relationship of the people with the river and their dependence upon it, and tikanga for the proper and sustainable utilisation of resources."*
13. Thus, the Waipara River is of significant cultural, traditional and contemporary importance to TRoNT. Further the cultural, traditional, historical association and significance of the Waipara River has been given a somewhat elevated status by being recognised within statute (i.e. the Ngāi Tahu Clam Act) resulting in the river becoming an Statutory Acknowledgment and the formation of nohoanga which is actively used. This importance is formally and correctly recognised within the PWRRP. However, arguably the themes articulated within Part 3 of the PWRRP do not manifest themselves within the various Objectives, Policies and Rules of the Plan. This will be discussed in greater detail below.

ENVIRONMENTAL FLOW AND ALLOCATION REGIMES

14. In general TRoNT is supportive of the approach Environment Canterbury has taken to prepare a catchment specific regional plan for the Waipara River Catchment, as this aligns with the philosophy of Ki Uta Ki Tai (from the mountains to the sea). However, TRoNT remains concerned with two aspects of the Plan. While TRoNT supports the concept of imposing partial restrictions, where such restrictions promote flow variability throughout the river system, but in particular at the mouth to enable mouth openings and species recruitment, the proposed minimum flows, or the point at which consumptive takes must cease, appear to be based upon the status quo. This appears to render the significant cultural, traditional and contemporary importance of the river, as outlined above, along with the recognition that the mauri of the Waipara River (as set out within Part 4 of the PWRRP) as being degraded, to be inconsequential. Iwi have an inherent responsibility and duty of care for safeguarding the mauri of water. The responsibility as kaitiaki is placed in jeopardy by the outcomes of water management regimes which favour the existing regimes for waterways which have been recognised as being culturally unacceptable.
15. Part 4 of the PWRRP recognises:
 - The loss of mauri where flows are very low;
 - The importance of flow variability;
 - The impact of exotic vegetation is having on mauri;
 - The area of the Waipara River around and below SH 1 has the most degraded mauri.
16. It could be argued that the degraded state of the Waipara River and consequential loss of mauri, is a direct result of the management regime imposed to date, in particular the minimum flow regime, the lack of flow variability and a robust allocation regime. Allowing the river to be continually degraded has a significant adverse effect upon the significant cultural, traditional and contemporary values of the Waipara River. The significance of these cultural, traditional and contemporary values is such, that the Crown, as part of the Ngāi Tahu Clam Act, recognised them and afforded the river the Statutory Acknowledgement status, which enables TRoNT to cite this status as clear and undisputable evidence of its cultural, traditional and contemporary association with the Waipara River.
17. Part II of the Resource Management Act 1991 (RMA) sets out the purpose and principles of the RMA. Of note is s6 (e) which states:

"In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(e) *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga..."*

18. In this particular situation, the Waipara River has Statutory Acknowledgment status, which as outlined above enables TRoNT to cite this status as clear and undisputable evidence of a cultural, traditional and contemporary relationship with this river. Thus in terms of Part II s6 (e) any water management regime, and in particular, any environmental flow and allocation regime, must "recognise and provide" for this relationship. Thus, the issue is whether the flow regimes proposed as part of the Plan to date recognises and provides for that relationship.
19. The Officers on page 56 of their 2010 s42A report acknowledge that the flow regime recommended, which is that of Mr Ian Jowett, *"...is that at the lower end of the various reports and recommendations received by the Canterbury Regional Council."* The Officers, as is TRoNT, are cognisant that any change in minimum flows will have an impact upon the existing consent holder's reliability of supply. Obviously, the lower the minimum flow the greater the user's reliability of supply and vice versa. However, this does need to be put within a context. From a Tangata Whenua perspective the river is in a sorry state, which is unacceptable and as a result is impacting not only upon the relationship Tangata Whenua has with the river, but also their role as kaitiaki and manawhenua:
20. If one accepts that in terms of Part II s6 (e) TRoNT have a relationship with the Waipara River, which must be recognised and provided for, then recommending a environmental flow regime, which appears to be based upon the status quo and therefore protecting the interests of existing users, even with the proposed partial restriction regime fails to recognise and provide for this relationship. Rather the Officers appear to have placed a significant amount of weight on ensuring that there is a balance between ecological values and the existing user's reliability of supply. Further they appear to have failed to provide any form of protection to the cultural values and relationships held with the river has been provided for within the environmental flow regime.
21. This is based upon comments made on page 77 of the s42A report which states:
- "In conclusion, Mr Jowett considers that the flow regimes in the WRP are likely to have some effect on native fish populations and possibly bird feeding opportunities, and a relatively small increase would reduce these effects somewhat. As with most "ecological" flow regimes, a reduction in the amount of water taken, and any move closer to natural flows is generally beneficial. Overall Mr Jowett considers that a minimum flow at Whites Bridge of 60l/s, and 120l/s at Teviotdale Bridge, along with partial restrictions, to be an appropriate flow regime that balances the needs of abstractors with in-stream values."*

We are mindful of the significant implications to the consent holders and communities at large in the Waipara catchment, who are reliant on reliable supplies of water, and the effects of reliability of raising the minimum flow have been considered, both in terms of days of restriction and the economic implications in earlier reporting to the Canterbury Regional Council. Further, we note

that the minimum flows suggested by Mr Jowett are at the lower end of various reports and recommendations prepared for the Canterbury Regional Council."

22. The above statement would appear to reinforce TRoNT's submission that the values of the river to Tangata Whenua as set out within Part 3 along with the degraded status of the river, as set out within Part 4 of the PWRRP are inconsequential. TRoNT accepts that imposing a significantly different minimum flow that what has been experienced in the past will have significant impacts upon existing consent holders, and the wider community. However, TRoNT is firmly of a view that to recognise and provide for the values outlined in Part 3 of the PWRRP, and to start to address the issues raised in Part 4 of the PWRRP, a significantly different flow regime than that being proposed, needs to be adopted. This flow regime would see, potentially over time, minimum flows (the point at which consumptive takes must cease) within the Waipara River being raised to those proposed as part of TRoNT's submission. Further, as part of an overall environmental flow regime, there is a need for flow variability not only within the river system, but more importantly at the mouth to allow for species recruitment. Ensuring that species are recruited into the river system is fundamental to maintaining the traditional and contemporary use of the river as a source of mahinga kai. Thereby, ensuring that the cultural, traditional and contemporary relationships recognised by the rivers status as a Statutory Acknowledgment area are recognised and provided for as required by Part II s6 (e) of the RMA.
23. The second area of concern centres on whether the PWRRP, in particular the flow regime, is inconsistent with the visions and principles of the CWMS. As highlighted by the Officers, s63 of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 requires Environment Canterbury to *"...have particular regard to the visions and principles of the CWMS..."*
24. As the Officers correctly stated on Page 12 of their s42A report within the RMA context *"...have particular regard to..."* has a very strong meaning, and as such requires take positive action and weighting in any decision. Further, the Officers also state *"... the vision and principles, while requiring the inevitable balancing approach, given certain priority to "ecological" elements."* TRoNT supports this analysis. However, it considers that the principles of the CWMS also award a priority to cultural elements. To this end, of particular relevance to this hearing are the primary principles of the CWMS which include:

"2 Regional approach

The planning of natural water use is guided by the following:

- o *first order priority considerations: the environment, customary uses, community supplies and stock water*

- second order priority considerations: irrigation, renewable electricity generation, recreation, tourism and amenity...."

"3 Kaitiakitanga

- The exercise of kaitiakitanga by Ngāi Tahu applies to all water, lakes, hapua, waterways and wetlands, and shall be carried out in accordance with tikanga Maori."

25. As has been extensively outlined above, the Waipara River is of cultural, traditional and contemporary significance to TRoNT as amongst other things as a source of mahinga kai, which of course is a customary use. The value placed upon the Waipara River for its "customary use" is also reinforced by the nohoanga site located adjacent to the river. As a first order priority under the primary principles of the CWMS, and within this context it would appear that such uses (i.e. customary use) would have priority over the second order priority such as irrigation. As has been outlined above, the Officers appear to have taken a differing approach when recommending a flow regime. On the face of things it appears as if they have placed a significant level of weight upon providing a high level of reliability to existing users, at the expense of not only the environment, but also customary uses and the ability of TRoNT to exercise kaitiakitanga.
26. The significant weight placed upon ensuring that existing users' reliability of supply is maintained is reinforced by the Officers (page 77 of their s42A report). Given this it is TRoNT's view that the proposed flow regime is inconsistent with the principles of the CWMS as it appears to place more weight on second order priorities (such as irrigation) to the detriment of over first order priorities (such as the environment and cultural use).

REVIEW OF EXISTING CONSENTS

27. In TRoNT's submission, it was requested that in addition to the duration for any new consents being limited to 5 years that all existing consents within the catchment be reviewed within 5 years of the Plan becoming operative, which would be achieved via the inclusion of a new rule. The Officers have accepted this submission in part, by recommending that existing consents be reviewed within 3 years of the plan becoming operative which is supported.
28. However, the Officers do not recommend that such a requirement (i.e. to review all consents within 3 years of the Plan becoming operative) be a rule. Rather it is recommended that such a requirement be signalled in the new Policy 3.8. TRoNT understands that there are a number of inherent difficulties in having such a rule, for example does such a rule require the Consent Authority to review the various consents on a continual 3 yearly basis. TRoNT remains concerned that by not elevating such a requirement to a rule status this places a significant onus upon Environment Canterbury to do actually undertake the necessary review. Given the constraints around reviews, and the fact that this can allow for re-litigation of the matter subject to review,

TRoNT is not convinced that only providing for a review requirement within a policy is the most appropriate mechanism. To ensure that there is a high level of certainty for the Consent Authority, consent holders and TRoNT as kaitiaki as to when existing consents will comply with all the Plan provisions, but in particular provisions around annual volumes and environmental flow regimes. TRoNT still advocates that such a requirement should be incorporated into the Plan as a new rule.

CONCLUSIONS

29. In conclusion TRoNT acknowledges that within the PWRRP it is recognised the river is under pressure and in a sorry state which and that this impacts upon the relationship that Tangata Whenua has with the river along with their role as kaitiaki and manuwhenua. However, the current minimum flow regime, even with the partial restrictions, fails to recognise and provide for this relationship as is required by Part II s6 (e). Further the proposed minimum flow regime is considered to be inconsistent with the vision and principles of the CWMS, in particular, the primary principles which in TRoNT's submission gives priority to customary uses and kaitiakitanga over and above the secondary values such as irrigation. It is TRoNT's submission that these values could be provided for by adopting the minimum flows proposed as part of TRoNT's submission along with a flow regime which provides flow variability for species recruitment into the river system. The minimum flows are set out in the table contained in Appendix A for completeness.
30. Further TRoNT is seeking the requirements that within 3 years of the Plan becoming operative existing consent holders are consistent with the rules, in particular the minimum flow and allocation regime, contained within the Plan. This requirement in TRoNT's view should be signalled via a Regional Rule rather than through a Policy.

Cathy Begley

4 April 2011

Appendix A

| Sub-catchment | Min Flow Site | TRoNT Min Flow (L/s) | Allocation Limits |
|---------------|---------------------|----------------------|------------------------|
| Home Creek | | | |
| A Block | Kings Road Bridge | 20 | Adjust accordingly |
| B Block | | 67 | Adjust accordingly |
| Lower Waipara | | | |
| AA Block | Teviotdale | 200 | Adjust accordingly |
| A Block | | 200 | Adjust accordingly |
| Weka Creek | | | |
| A Block | Downstream of Dam | 28 | Adjust accordingly |
| Omihi Stream | | | |
| A Block | Confluence | 120 | Support proposed flows |
| B Block | Baxters Road Bridge | 57 | Support proposed flows |
| Upper Waipara | | | |
| A Block | White Gorge | 110 | Adjust accordingly |
| B Block | | Varies | Adjust accordingly |