



## **MAY IT PLEASE THE COMMISSIONERS**

At the conclusion of the case for Te Rūnanga o Arowhenua Trust and Te Rūnanga o Ngāi Tahu (collectively Ngāi Tahu) some questions remained and leave was given to respond to them by memorandum. This memorandum provides the response by Ngāi Tahu.

### **1. OBJECTIVES**

1.1 The question was: Are the objectives requested in the Ngāi Tahu submission objectives or policies?

- (a) The advice Ngāi Tahu has from Mrs Murchison is that the Ngāi Tahu requests are objectives. They described the outcomes or the state of the resources envisaged from implementing the policies and methods in Variation 2. That is; there will be water for abstraction to support a range of land uses and the flows and quality of water in the Upper Hekeao/Hinds catchment will be maintained, and there will be improvements in the lower catchment.
- (b) The reference to water quality and flows being maintained in the Upper Hekeao/Hinds catchment and improved in the Lower Hekeao/Hinds Plains area reflects Objectives A2 and B2 of the NPS for Freshwater.
- (c) The second objective sought Ngāi Tahu is that they are able to exercise Kaitiakitanga. Kaitiakitanga can be misunderstood as a management process and, as a result, considered by councils to be a policy. Ngāi Tahu's submission is that Kaitiakitanga is a concept incorporating both the state of the resource and the management process to achieve that state and the two concepts are not separated.

### **2. NEW POLICY REQUESTED BY NGĀI TAHU**

2.1 The question asked was: does the policy need the words "continual" in (i) and (ii) and "potential" in (iii)? Having reflected on the discussion with Commissioners, Ngāi Tahu accepts using both the phrases "continual improvement" and "over time" in subclauses (i) and (ii) of the new policy proposed by them is not necessary. However, the preferable outcome is to delete from the Ngāi Tahu proposal the words "over time" rather than the word "continual".

- 2.2 The reason for that suggestion is because continuity in improvement is the concept Ngāi Tahu is seeking to implement. A policy that requires improvement in flow or reduction in nitrogen concentrations over time could be interpreted as not requiring any changes to occur in the immediate future or for any changes to be enduring.
- 2.3 Ngāi Tahu agree there is no need for the word 'potential' in subclause (iii).
- 2.4 In that light the new policy would read:

*"Recognise the cultural significant of the Hekeao/Hinds River to Ngāi Tahu and enable Ngāi Tahu to exercise Kaitiakitanga and Mahinga Kai in the catchment through:*

- (i) continual improvement in the flows of lowlands streams and springs ~~over time~~;*
- (ii) continual reductions in the concentrations of nitrogen and ground water ~~over time~~;*
- (iii) minimising the ~~potential~~ discharge of contaminants into water through land use practises, riparian management, and waterway and drain maintenance; and*
- (iv) encouraging the protection or restoration of natural wetland areas and other mahinga kai."*

### **3. RED ZONE NITROGEN LOSS RULES**

- 3.1 During the presentation of Mrs Murchison's evidence an issue arose about whether a reference in her evidence in chief (at paragraph 76) should be to 20kg/ha/yr. Mrs Murchison's evidence in chief had stated that under Rule 5.43 in the proposed Canterbury Land and Water Plan nitrogen loss is a permitted activity in a Red Zone up to 10kg/ha/yr.
- 3.2 Mrs Murchison confirms her first interpretation was correct<sup>1</sup>. Farming activities in the Red Zone are permitted activities under Rule 5.43 where those activities have nitrogen losses greater than 10kg/ha/yr but not greater than 20kg/ha/yr provided there is no increase in their nitrogen base line. That is, those activities are restricted to current nitrogen losses.

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<sup>1</sup> This memorandum has been reviewed by Mrs Murchison and approved by her before it was filed.

3.3 Mrs Murchison should also have referred to Rule 5.41 which is the rule which allows an increase in nitrogen up to 10kg/ha/yr in any zone except the Lake Zones

#### **4. NGĀI TAHU NITROGEN REDUCTION REGIME**

4.1 The question posed by Commissioners was whether the banding system suggested by Ngāi Tahu is still grandparenting.

4.2 The approach requested by Ngāi Tahu is not grandparenting nitrogen losses. Grandparenting in this context is a reference to existing farming activities being treated in a way which would allow them to discharge nitrogen into the future in the same way, and in the same amount, they have been able to discharge in the past measured at a set point of time in the past.

4.3 Ngāi Tahu considers its position is not grandparenting in that sense.

4.4 The Ngāi Tahu approach starts with farming activities being allocated into one of the bands for nitrogen loss based on the nitrogen loss estimates for the farming activity being undertaken. The management regime from that point is not to allocate to that farmer his or her current nitrogen footprint as their nitrogen loss allowance in the plan. Rather:

- (a) A farmer can increase nitrogen losses up to a maximum loss rate of 15kg/ha/yr (Band A);
- (b) A farmer can increase nitrogen losses above 15kg/ha/yr and move from Band A to Band B provided they are accessing irrigation water and the associated increase in nitrogen loss can be allocated from the 214 tonnes of nitrogen allocated for new irrigation in Variation 2;
- (c) Those farmers with nitrogen losses between 15kg/ha/yr and 27kg/ha/yr (Band B) must keep their nitrogen losses to their good management practice number (assuming the Matrix of Good Management Project is completed) or 27kg/ha/yr whichever is the lesser;
- (d) Those farmers with nitrogen losses that exceed 27kg/ha/yr are placed in Band C and must make reductions in their nitrogen losses down to the Band B limit of 27kg/ha/yr over time. No one can move from Band A or B into Band B and C.

4.5 Ngāi Tahu acknowledges that their proposed regime is not truly an equal allocation regime, because it does not allow increases in nitrogen loss above

15kg/ha/yr unless the proposed activity is for new irrigation and can be accommodated within the 214 tonne cap for nitrogen loss from new irrigation. In an equal allocation regime all farmers would eventually have the same maximum nitrogen loss rate.

- 4.6 Ngāi Tahu considers this approach reflects the reality of the levels of nitrogen concentrations in the Hekeao/Hinds catchment and the reductions in those concentrations that are likely to be achieved even with everyone in Band C reducing their nitrogen losses to meet the Band B maximum limit.

## **5. USING OVERSEER™ NUMBERS FOR COMPLIANCE**

- 5.1 The question asked was if the Ngāi Tahu recommended regime used an Overseer™ number for compliance?
- 5.2 The answer is a qualified yes but with important differences from that in Variation 2. In Variation 2, nitrogen losses from a farming activity (except where the activity is part of an irrigation scheme or farm enterprise) is either permitted if there is no increase in nitrogen loss from the land use base line, calculated using Overseer™, or prohibited under Rule 13.5.12.
- 5.3 The Ngāi Tahu approach uses numbers calculated in Overseer™ as a management tool; but the number determines whether the activity is permitted or a resource consent is required rather than for identifying the threshold between permitted activity status and prohibited activity status.
- 5.4 Once in the consenting process, a more detailed assessment of Overseer™ loss estimates and relative changes in nitrogen losses can be undertaken. The resource consent applicant and the consent authority have the opportunity to assess the situation and the data provided, reconcile any differing interpretations of input data, decide how to deal with data that may be missing or farm systems that Overseer™ cannot measure accurately, and to make a judgment call as to whether any differences in calculations are significant.
- 5.5 The Ngāi Tahu approach does not allow for an increase in nitrogen losses from farmers who are above the on-farm limits set in the regional plan, so it is not a regime that will allow for over-allocation through granting of resource consents contrary to the limits in the plan. However, the Ngāi Tahu approach allows more flexibility in the assessment process given the characteristics of the Overseer™ model and data being used.

## 6. IDENTIFYING SEDIMENT AND PHOSPHOROUS RISK AREAS

- 6.1 The question is whether there is scope.
- 6.2 Ngāi Tahu's submission requested areas of potential sediment and phosphorous loss risk in the catchment be mapped and require a Farm Environment Plan within those areas rather than for all farms. The Ngāi Tahu submission did not include its own map. Unlike Variation 1, Variation 2 does not contain those maps.
- 6.3 At paragraph 116 of her evidence Mrs Murchison raised a similar concern to the concern raised by Commissioners. Mrs Murchison suggested an alternative, where the rules in the plan could identify the requirement to manage potential sediment and phosphorous run-off from farms with waterways on or adjoining the property or with land above a certain slope limit.
- 6.4 Under Variation 2 as notified, every property over 5 hectares in size in the Lower Hekeao/Hinds Plains Area is required to have a Farm Environment Plan. The amendments sought by Ngāi Tahu, to apply the Farm Environment Plans to properties, either as described in the submission or in the alternative as offered by Mrs Murchison,<sup>2</sup> will not increase and possibly potentially reduce the number of properties that have to have a Farm Environment Plan in the Lower Hekeao/Hinds area.
- 6.5 In the Upper Hinds/Hekeao Plains Area every property greater than 5 hectares in size has to have a Farm Environment Plan or comply with the Good Management Practices in Schedule 24(b).
- 6.6 The Commissioners asked whether the matters raised at paragraph 119 of Mrs Murchison's evidence are within the scope of the Ngāi Tahu submission. Mrs Murchison's evidence contains a new condition for Rule 13.5.8 as well as an amendment to condition 2 of Rule 13.5.9.
- 6.7 Ngāi Tahu accepts there is no mapping for sediment and phosphorous risk areas in Variation 2 and that its submission does not include alternative mapping.

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<sup>2</sup> At paragraph 117-119 of her evidence.

## **7. REFERENCES TO TABLE XX AND SCHEDULE XX IN NGĀI TAHU'S SUBMISSION**

- 7.1 The Commissioners asked about the references in Table XX and Schedule XX in the amended Policy 13.4.12 and Rules 13.5.8 to 13.5.11 in Ngāi Tahu's submission.
- 7.2 The reference in policies 13.4.9 to 13.4.12 and Rules 13.5.8 and 13.5.10 to Table XX is to the table labelled Table XX included in Ngāi Tahu's submission.
- 7.3 The reference in Rule 13.5.12 to Schedule XX is the name given in the Ngāi Tahu submission to the schedule which would replace Table 13(h) with the nitrogen reductions to be achieved once the Matrix of Good Management Project is completed. The rules go on to set out how nitrogen reductions are to be managed if Schedule XX is not included in Variation 2.

## **8. NEW POLICY – ABSTRACTION OF DEEP GROUND WATER**

- 8.1 Ngāi Tahu requested a new policy be added to Variation 2 relating to the abstraction of deep ground water. Variation 2 has a rule to this effect but no policy. The policy is assessed in paragraph 138 of Mrs Murchison's evidence.
- 8.2 The Commissioners asked whether the words "to consider" at the start of the policy are appropriate.
- 8.3 The policy could be amended by striking through the words "to consider" and replacing them with the word "enable".

## **9. SUNDRY MATTERS**

- 9.1 The Commissioners also asked about the scope of the suggested amendment in paragraph 107 of Mrs Murchison's evidence. In that paragraph Mrs Murchison suggested a new policy for monitoring trends in nitrogen concentrations and an amendment to policy 13.14.4.
- 9.2 Mrs Murchison's evidence was addressing paragraph 6.4 in the Ngāi Tahu submission. The new policy introduced at Mrs Murchison's paragraph 107 was designed to give effect to the NPS for Freshwater and draws on paragraph 8.3 of its submission. In paragraph 8.3 Ngāi Tahu supported the provision to consider instream augmentation to improve flows in lowland

streams, asked for amendments to the policies and rules to better achieve the purpose of the RMA and to give effect to the NPS for Freshwater and regional policy statements. At the conclusion of para 8.4 in this part of the submission Ngāi Tahu sought consequential amendments necessary to give effect to that decision.

- 9.3 Finally, an issue was raised about paragraph 131 in which Mrs Murchison proposed a new policy reading:

*Managed groundwater and surface water as a single resource to ensure flows in the Lower Hinds/Hekeao Plains area are improved ~~and the allocation limits set in Table 13(f) are met.~~*"

- 9.4 The submission point that evidence supports is at paragraph 6.4 of the Ngāi Tahu submission.

Dated at Christchurch this 2<sup>nd</sup> day of July 2015



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**K G Smith**

Counsel for Ngāi Tahu