

BEFORE THE CANTERBURY REGIONAL COUNCIL

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER of Plan Change 3 to the Waitaki
Catchment Water Allocation
Regional Plan

**MEMORANDUM ON BEHALF OF TE RŪNANGA O AROWHENUA TRUST, TE RŪNANGA O
WAIHAO INC, TE RŪNANGA O MOERAKI AND TE RŪNANGA O NGĀI TAHU
IN RESPONSE TO MINUTE 9**

9 October 2015

 **Simpson Grierson**
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1. INTRODUCTION

1.1 This memorandum is filed on behalf of Te Rūnanga o Arowhenua Trust, Te Rūnanga o Waihao Inc, Te Rūnanga o Moeraki And Te Rūnanga o Ngāi Tahu (**Ngāi Tahu**) in response to Minute 9 of the Hearing Commissioners, dated 21 September 2015.

2. NGAĪ TAHU'S POSITION

2.1 Ngāi Tahu confirms that it has considered:

- (a) the recent High Court decision in *Rangitata Diversion Race Limited and Ors v Canterbury Regional Council*¹; and
- (b) the memoranda filed by Meridian Energy Limited, Genesis Energy and Waitaki Irrigators Collective Ltd in response to Minute 9 and in support of a controlled activity regime.

2.2 Ngāi Tahu confirms that there is no change to its position on activity status for the taking and using of water for hydro-electricity generation and regionally significant infrastructure. That position is set out in Mrs Murchison's evidence in chief dated 1 May 2015.²

2.3 In summary, Mrs Murchison's evidence is that:

- (a) it is not appropriate to make all activities associated with hydro-electricity generation a controlled activity, without first assessing whether the activity status is appropriate in each situation (ie the activity must still achieve the purpose of the Resource Management Act);³
- (b) that there are activities and areas where controlled activity status has not been assessed from a cultural perspective, and therefore it would not be appropriate to give those activities a controlled activity status through Plan Change 3;⁴ and

¹ CIV-2014-409-62; CIV-2014-409-76; CIV-2014-409-61; [2015] NZHC 2174

² Section 7.

³ Paragraph 7.6.

⁴ Paragraph 7.8.

- (c) that the assessment of activity status would be more appropriately carried out during the review of the Waitaki Catchment Allocation Regional Plan (which Mrs Murchison understands is due in 2016).⁵

2.4 If there is a change in activity status from Restricted Discretionary (as notified in Plan Change 3) to controlled, Ngāi Tahu wish to reiterate that its primary concern is whether the matters of discretion in Rule 15A could readily translate to matters of control. Mrs Murchison's evidence records that although the consent authority could maintain control over the matters listed in Rule 15A, there would not be the ability to impose conditions on the consent (if those conditions prevented the consent from being exercised).⁶ Mrs Murchison has noted that this matter is heightened by the breadth of the matters of discretion as drafted in the Rule, as it is not usual to have a broad range of matters of control to manage a broad range of potential environmental effects. This is particularly so when those environmental effects include interests of third parties, such as Ngāi Tahu cultural values.⁷

DATED this 9th day of October 2015



J G A Winchester / A O J Sinclair
Counsel for Te Rūnanga o Arowhenua Trust, Te
Rūnanga o Waihao Inc, Te Rūnanga o Moeraki and
Te Rūnanga o Ngāi Tahu

⁵ Paragraph 7.12
⁶ Paragraph 7.9.
⁷ Paragraphs 7.10 to 7.11.