

Called at Hearing Tuesday 19 April 2016

BEFORE INDEPENDENT COMMISSIONERS

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

Plan Change 6 to the Canterbury
Land and Water Regional Plan

Joint Statement of Expert Planning Witnesses

18 April 2016

Introduction

- 1 As directed by the Panel in its Minute 3, caucusing between the expert planning witnesses took place by meeting on 14 April 2016.
- 2 The expert caucusing was attended by:
 - (a) Alastair Picken (co-author of the Canterbury Regional Council's Section 42A Report); and
 - (b) Bryan McGillan (engaged by Wairewa Rūnanga and Te Rūnanga o Ngāi Tahu).
- 3 This Joint Statement captures the salient points from the caucusing meeting and subsequent email correspondence.

Code of Conduct for Expert Witnesses

- 4 The witnesses confirm that in producing this Joint Statement they have read and complied with the Environment Court Consolidated Practice Note 2014 – Expert Witness Code of Conduct.

Direction

- 5 The Panel directed us to caucus in an endeavour to narrow the issues and to set out the matters:
 - (a) on which we agree;
 - (b) on which we disagree; and
 - (c) the reasons why.

Discussion

- 6 We have set out the matters on which we agree and disagree with reasons in a table format.
- 7 Table 1 sets out the PC6 provisions as recommended in the section 42A Report on which we agree. We have not set out further reasons and instead rely on those in the s42A Report and/or evidence of Mr McGillan. Where we have agreed to specific amendments these are set out in track changes and submission scope is referenced in brackets.
- 8 Table 2 sets out the provisions on which we disagree (or agree in part) with our reasons. There remains disagreement in several areas, though the four main issues are:
 - (a) The naming of Lake Forsyth/Te Roto o Wairewa and whether the Māori name should precede the European name.

- (b) The permitted activity status of Rule 10.5.7 providing for lake investigations into legacy phosphorus and the granting of prior permission by Wairewa Rūnanga.
- (c) Whether a Farm Environment Plan should be required as part of a permitted activity to farm in the Valley Floor Area from 2020 and provide the tool for managing phosphorus, sediment and stock adjacent to waterways.
- (d) Whether PC6 should include a catchment-specific rule requiring resource consent for wastewater treatment systems in flood prone areas and the mapping of those flood prone areas or instead rely on the region-wide provisions.

Table 1 - Matters on which planning witnesses agree

Provision	Relief Sought	S42A Recommendation	Reasons
(1) Introduction, para 5, p10-2 (Introduction to Section 10)	Ngāi Tahu seeks that the reference used to determine that the lake is a nationally and regionally significant wetland is cited. <i>Point ID PC6 LWRP-103; Evidence at [33] to [35]</i>	S42A recommends amending nationally and regionally "significant" to nationally and regionally "important" and web link to Dept. of Conservation website. <i>Section 42A report at [13.21] and [13.26]</i>	Agree Mr McGillan provided a reference confirming Lake Forsyth/Te Roto o Wairewa as nationally significant wetland of ecological and regional importance. It was agreed to amend s42A report recommendation on the Introduction text at page 13-8, paragraph 1 to read: "Lake Forsyth / Te Roto o Wairewa is also recognised as a nationally and regionally <u>significant</u> important lake and wetland area." ¹ ¹ Adcock, H. M. 1994. WERI (<i>Wetlands of Ecological and Representative Importance</i>): the New Zealand wetlands inventory user guide. Department of Conservation, Information Services Unit, Wellington."
(2) Introduction, para 9, p10-3 (Introduction to Section 10)	Ngāi Tahu seeks the insertion of a new sentence that nitrogen concentrations in freshwater and Te Roto o Wairewa/Lake Forsyth are low and need to be maintained to avoid exacerbating algal blooms. <i>Point ID PC6 LWRP-106; Evidence at [36] to [37]</i>	S42A report recommends inserting text similar to that proposed by Ngāi Tahu but in respect of rivers only as concentrations in the lake are elevated. <i>Section 42A report at [13.23] and [13.26]</i>	Agree We agree that the wording in the s42A report at page 13-8, paragraph 6 is appropriate. (Scope - Ngāi Tahu PC6 LWRP-103)
(3) Section 10.1, p10-3 (Other regional plans that apply in the Banks Peninsula sub-region)	Ngāi Tahu requests the deletion of section 10.1 or the insertion of other regional plans including the Regional Coastal Environment Plan. <i>Point ID PC6 LWRP-107; Evidence at [39] to [40]</i>	S42A report recommends including reference to the Regional Coastal Environment Plan 2005 <i>Section 42A report at [13.30] to [13.34]</i>	Agree We agree that the insertion of the Regional Coastal Environment Plan as set out in the s42A report at page 13-9, Recommendation R10.1 is appropriate.

(4) 10.4 Policies, Note, p10-4	Ngāi Tahu suggests amending the Note and putting Te Roto o Wairewa first and emphasising the policies in Section 4 are region-wide. <i>Point ID PC6 LWRP-108; Evidence at [41] to [42]</i>	S42A report recommends amending the Note but doesn't put the Māori name first or use the term "region-wide". <i>Section 42A report at [13.66]</i>	<p>Agree</p> <p>We agree to amend the s42A Recommendation R10.4 to read:</p> <p>No additional policies apply in the Banks Peninsula Sub-region, in addition to those set out in Section 4 of this Plan.</p> <p><i>Note: The following policies apply within the Lake Forsyth/Wairewa catchment in addition to these <u>region-wide</u> policies set out in Section 4 of this Plan.</i></p> <p>(Scope - Ngāi Tahu PC6 LWRP-103)</p> <p>Note: the disagreement in respect of dual place naming is covered in Table 2.</p>
(5) 10.4 Policies – new policy (Policies)	Ngāi Tahu proposes a new policy to recognise cultural significance of the lake and states there is no discussion on this proposal. <i>Point ID PC6 LWRP-109; Evidence at [44] to [51]</i>	S42A report recommends a new policy 10.4.4A under a new heading "Cultural significance of Lake Forsyth/ Te Roto o Wairewa". <i>Section 42A report at [12.88]</i>	<p>Agree</p> <p>We agree to change the wording of Policy 10.4.4A in Recommendation R10.4.4A to be the wording in the original submission by Ngāi Tahu as follows:</p> <p>10.4.4A The restoration of Lake Forsyth/Te Roto o Wairewa and its margins recognises the cultural significance of the lake to Ngāi Tahu and its status as a customary lake and area of statutory acknowledgement under the Ngāi Tahu Claims Settlement Act 1998.</p> <p><i>"10.4.4A Recognise the cultural significance of Te Roto o Wairewa/Lake Forsyth to Ngāi Tahu and its status as a customary lake and area of statutory acknowledgement under the Ngāi Tahu Claims Settlement Act 1998; and promote the restoration of the lake and its margins for customary uses."</i></p> <p>(Scope - Ngāi Tahu PC6 LWRP-109)</p> <p>The reason for this change is that Mr McGillan highlights that although an extremely important aspect, restoration of the Lake alone does not provide for the cultural significance of the Lake.</p>

(6) Policy 10.4.3 (Flood Management)	<p>Ngāi Tahu proposes rewording Policy 10.4.3 to cover all activities that may reduce flood carrying capacity.</p> <p><i>Point ID PC6 LWRP-112; Evidence at [55] to [56]</i></p>	<p>S42A report recommends the amendment to Policy 10.4.3 proposed by Ngāi Tahu.</p> <p><i>Section 42A report at [11.51] to [11.55]</i></p>	<p>Note: the disagreement in respect of dual place naming is covered in Table 2 and the final decision on that matter will be reflected in the final wording of the Rule 10.4.4A.</p> <p>Agree</p> <p>We agree that the wording in the s42A report at page 11-8, Recommendation R10.4.3 is appropriate.</p>
(7) Rule 10.5.1 (Reducing Banks Erosion)	<p>Ngāi Tahu proposes deletion of Rule 10.5.1.</p> <p><i>Point ID PC6 LWRP-114; Evidence at [57] to [61]</i></p>	<p>S42A report recommends retaining Rule 10.5.1 as notified</p> <p><i>Section 42A report at [11.62] to [11.65]</i></p>	<p>Agree</p> <p>There was some agreement that as drafted, the intent of Rule 10.5.1 is not completely clear.</p> <p><u>Reasons</u></p> <p>Mr Picken explained that the intent behind Rule 10.5.1 is to clarify that persons carrying out any of the activities in Rule 10.5.2 (a) to (g) as a permitted activity under a region-wide Rule in Section 5 of the LWRP do not require consent under Rules 10.5.2 and 10.5.3 if the main purpose is not to reduce bank erosion. Examples include work carried out by network utilities and local authorities in and around rivers, for example Environment Canterbury River Engineers work to maintain defences against water, remove vegetation obstructions and general bank works on behalf of the River Rating District, or farmers putting up fencing.</p> <p>Both Mr McGillan and Mr Picken agree that the rule may be better re-written as an Advisory Note above Rule 10.5.2.</p> <p>We agree that Rule 10.5.1 as recommended in the section 42A report could be deleted and replaced with an advisory note as follows:</p> <p><i>"10.5.1 Despite For the purposes of Rules 10.5.2 and 10.5.3, any activity that is classified as a permitted activity by a rule in Section 5, and that meets the conditions of that rule is a permitted activity in the Valley Floor Area.</i></p> <p>Note: <i>Despite Rules 10.5.2 and 10.5.3, any activity classified as a</i></p>

<p>(8) Rule 10.5.2 and 10.5.3 (Reducing Banks Erosion)</p>	<p>Ngāi Tahu proposes Rules 10.5.2 and 10.5.3 are deleted and replaced with a new rule. <i>Point ID PC6 LWRP-115; PC6 LWRP-116; Evidence at [64] to [66]</i></p>	<p>S42A report recommends retaining Rules 10.5.2 and 10.5.3 but amending the text of the rule to clarify the purpose is to "reduce bank erosion and collapse" up front. <i>Section 42A report at [11.85] to [11.65]</i></p>	<p>(Scope Ngāi Tahu PC6 LWRP-114) Agree On the basis of the agreement to replace Rule 10.5.1 with an advisory Note (refer (7) above) we agree that the wording of Rules 10.5.2 and 10.5.3 in the s42A report on page 11-13 (Recommendation R10.5.2) and page 11-14 (Recommendation R10.5.3) respectively, are appropriate.</p>	<p><u>permitted activity by a Rule in Section 5 of this plan is permitted in the Valley Floor Area unless it is being carried out for the primary purpose of reducing bank erosion and collapse, in which case Rules 10.5.2 and 10.5.3 apply."</u></p>
<p>(9) Tables 10(a) to 10(f) (Freshwater outcomes, limits and targets for lake and rivers)</p>	<p>Ngāi Tahu proposes the retention of water quality outcomes for Tables 10(a) to 10(f) including the cultural attributes for nitrogen concentration and phosphorus loads. <i>Point IDs PC6 LWRP-120 to 125; Evidence at [80] to [81]</i></p>	<p>Section 42A report recommends: Retain Table 10(a) as notified – S42A at [10.14] Amend Table 10(b) to include a macrophyte indicator - S42A at [10.14] Retain Table 10(c) with minor changes – S42A at [10.39] Retain Table 10(d) with minor changes – S42A at [10.60] Retain Table 10(e) with minor changes – S42A at [10.68] Retain Table 10(f) as notified – S42A at [10.73]</p>	<p>Agree We agree that outcomes and limits tables in the s42A report at page 10-3 (Recommendation Table 10(a)), page 10-6 (Recommendation Table 10(b)), page 10-8 (Recommendation Table 10(c)), page 10-10 (Recommendation Table 10(d)), page 10-12 (Recommendation Table 10(e)) and page 10-12 (Recommendation Table 10(f)) are appropriate.</p>	

Table 2 - Matters on which planning witnesses disagree (or agree in part)

Provision	Relief Sought	S42A Recommendation	Reasons
(1) Introduction p10-1 (Introduction to Section 10)	Ngāi Tahu seeks consistency with naming of the catchment as "Te Roto o Wairewa/Lake Forsyth" throughout and that the Māori name precedes the English Name. <i>Point ID PC6 LWRP-101; Evidence at [27] to [32]</i>	S42A report recommends use of the term "Lake Forsyth/Te Roto o Wairewa" when referring to the lake and "Lake Forsyth/Wairewa catchment" when referring to the catchment as a whole. <i>Section 42A report at [13.18] and [13.26]</i>	Disagree Though it makes no material difference, we disagree on whether the name for Lake Forsyth/Te Roto o Wairewa should place the European or Māori name first. <u>Reasons</u> Mr Picken's view is based on CRC guidance which states that the correct format when using both Maori and European place names is to place the European word first separated only by a forward slash then the Māori word. The only exception to this rule is Aoraki/Mount Cook and Te Waihora/Lake Ellesmere. Placing the Māori name first would also be inconsistent with the drafting style of the LWRP.
(2) Policy 10.4.1 and 10.4.2 (Improving Water Quality)	Ngāi Tahu proposes Policies 10.4.1 and 10.4.2 are deleted and replaced with a new policy. <i>Point ID PC6 LWRP-110; PC6 LWRP-111; Evidence at [52] to [54]</i>	S42A report recommends retaining Policies 10.4.1 and 10.4.2 with amendments. With respect to Ngāi Tahu's submission, these include replacing the term "septic tanks" with "on-site wastewater treatment system" and inserting a new clause (g) on maintaining low levels of nitrogen in rivers. <i>Section 42A report at [11.27] to [11.31] and [11.34]</i>	Agree in part There is some disagreement on the style of wording of policies 10.4.1 and 10.4.2 <u>Reasons</u> Mr Picken maintains that Policy 10.4.1 as proposed in the s42A report focuses on enhancing the values in the catchment by specific actions and that the clauses link directly to the rules. Also retaining Policy 10.4.2 as a separate policy provides clear direction that the lake targets are to be met by 2030. In Mr Picken's view, the policy proposed by Ngāi Tahu focusses only on the lake (not the catchment), and simply represents a different style of drafting to that in the LWRP. Mr McGillan maintains that Policy 10.4.1 is a process driven statement rather than outcome focussed. The focus of Mr McGillan's submission is

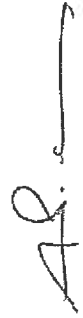
Provision	Relief Sought	S42A Recommendation	Reasons
(3) Policy 10.4.4 (Lake Management and Investigations)	Ngāi Tahu proposes Policy 10.4.4 is amended to include after sub-clauses (a) and (c) the words "in ways that do not adversely affect cultural values and customary uses". <i>Point ID PC6 LWRP-113; Evidence at [57] to [61]</i>	S42A recommends amending main text to "Recognise and provide for..." but does not recommend adding the submitter's words to sub-clauses (a) and (c) <i>Section 42A report at [12.6] to [12.12]</i>	on the outcome to be achieved rather than how to achieve it. The focus needs to be on water quality, water quantity and the effects on Ngāi Tahu Manawhenua cultural values. Agree in part
(4) Rule 10.5.4 and 10.5.5 (Stock Exclusion)	Ngāi Tahu proposes Rules 10.5.4 and 10.5.5 are deleted and replaced with a new rule and seeks clarification of the term "all stock". <i>Point ID PC6 LWRP-117; PC6 LWRP-118; Evidence at [67] to [73]</i>	S42A report recommends retaining Rule 10.5.5 as notified. <i>Section 42A report at [11.129] to [11.130] and [11.132]</i>	We agree on the insertion of the words "provide for" however, we disagree on whether the words "in ways that do not adversely affect cultural values and customary uses" should be added to clauses (a) and (b). <u>Reasons</u> In Mr Picken's opinion, insertion of "...and provide for..." strengthens the Policy 10.4.4 with respect to Ngāi Tahu cultural values. However, the Policy is not only about cultural values and inserting the words "in ways that do not adversely affect cultural values and customary uses" appears to prioritise cultural values, which are also recognised in other policies, over other activities including reducing sediment loss and flood control and land drainage functions. Mr McGillan supports the addition of the words "...and provide for..." but considers that the words "in ways that do not adversely affect cultural values and customary uses" are needed to maintain the emphasis on cultural values in relation to the status of other values being protected. Agree in part
			There was agreement on stock exclusion Rule 10.5.4 and part agreement on Rule 10.5.5. <u>Reasons</u> Mr McGillan supported the intent of Rule 10.5.5 but requested that the term "stock" is expanded to read "cattle, deer, pigs, sheep, horses, and stock". This is to capture large numbers of "pet stock" associated with small holdings rather than linking stock to farmed animals only. Though the replacement Rule proposed by Ngāi Tahu did not include exclusion of stock from "riparian margins" of rivers Mr McGillan was in favour of this providing there is flexibility on the width of the riparian margin to take account of "on the ground" practicalities for farmers.

Provision	Relief Sought	S42A Recommendation	Reasons
<p>(5) Rule 10.5.7 (Lake Forsyth / Te Roto o Wairewa Investigations)</p>	<p>Ngāi Tahu seeks a new condition to Rule 10.5.7 that Wairewa Rūnanga has granted permission for the activity.</p> <p>Or</p> <p>Re-write rule to make the activity (lake investigations) a restricted discretionary activity.</p> <p><i>Point ID PC6 LWRP-119; Evidence at [75] to [79]</i></p>	<p>Recommendation R10.5.7: that Rule 10.5.7 is retained as notified i.e. lake investigations are permitted if they meet the rules conditions</p> <p><i>Section 42A report at [12.40]</i></p>	<p>Mr Picken retains the ordinary meaning of the term "stock" in the Oxford English Dictionary to be consistent with the definition as used throughout the LWRP and considers that this will capture the types of stock Mr McGillan is concerned about.</p> <p>Disagree</p> <p>There remains significant disagreement on the rule providing for lake investigations into legacy phosphorus as a permitted activity.</p> <p><u>Reasons</u></p> <p>Mr McGillan considers the permitted status of Rule 10.5.7 covering lake is a significant issue with PC6 particularly if Wairewa Rūnanga are not able to grant permission for such investigations. The need to consider cultural values is a very important trigger. This is primarily to protect the cultural values specific to Wairewa Rūnanga (not general Ngāi Tahu cultural values) including artefacts buried in the bed of the lake and sites that only the Rūnanga know about. Mr McGillan recommends that restricted discretionary activity status is appropriate, and that this would be consistent with the approach taken for positive works aimed at reducing bank erosion and collapse.</p> <p>Mr Picken highlighted that the intent of the permitted activity Rule 10.5.7 is to encourage not hinder relevant investigations into "historical" phosphorus within the lake bed without imposing a consent burden for investigations.</p> <p>Mr Picken understands that reserving approval to a third party for a permitted activity rule is ultra vires which was why the condition 8 proposed by Ngāi Tahu was not recommended. Mr McGillan did not favour a suggestion that a condition could be added that Wairewa Rūnanga have been given prior notice of any investigations.</p> <p>Mr Picken also stated that it is highly unlikely any investigations would take place without consultation with Wairewa Rūnanga particularly given the Rūnanga membership of the Zone Committee and the Tuia partnership between Environment Canterbury and Ngā Rūnanga. Mr Picken was unable to comment on a suggestion by Mr McGillan that consent fees could be waived.</p>

Provision	Relief Sought	S42A Recommendation	Reasons
(6) New Rule – On-site Waste Water	<p>Ngāi Tahu seeks that the Regional Council maps or identifies flood-prone areas to which Policy 10.4.1(f) applies and introduces a rule to implement the policy.</p> <p>Either require RDA consent within mapped flood-prone areas only or for any system within the catchment.</p> <p><i>Point ID PC6 LWRP-126; Evidence at [82] to [83]</i></p>	<p>S42A Recommendation S42A report recommends not including a new rule for on-site wastewater treatment systems in flood-prone areas or inserting a map of flood-prone areas.</p> <p><i>Section 42A report at [11.159 11.160]</i></p>	<p>Disagree</p> <p>There is disagreement on the issue of a catchment specific rule requiring resource consent under PC6 for wastewater treatment systems in flood prone areas and mapping flood prone areas.</p> <p><u>Reasons</u></p> <p>Mr McGillan considers that though there may be conditions in the region-wide rules that will not be met and therefore trigger the requirement for resource consent, it is better to explicitly require resource consent under PC6. In Mr McGillan's experience building consent is not withheld even if persons should have, but have not, applied for resource consent for septic tanks.</p> <p>Mr Picken maintains that the additional policy guidance in 10.4.1(f) will drive improvements for new or modified wastewater treatment systems, and that region-wide rules on "On-site wastewater" contain sufficient hooks to manage the issue or trigger consent requirement.</p> <p>In addition, sufficient existing information exists to identify flood prone areas, for example, a <i>Te Wairewa/ Lake Forsyth Flood Management Area</i> (presently called the <i>Floor Level and Fill Management Area</i>) is proposed in CCC Replacement District Plan under the Natural Hazards Chapter 5.</p> <p>Mr Picken also showed Mr McGillan and map that identified there were 73 human effluent discharge consents in the catchment with 29 being in the Valley Floor Area and 7 in the proposed <i>Floor Level and Fill Management Area</i> (also referred to as the <i>Te Wairewa/Lake Forsyth Flood Management Area</i>).</p>
(7) New Rule – Farm Plans	<p>Ngāi Tahu seeks a new rule that farming is a permitted activity in the Valley Floor Area if a FEP is prepared and implemented by 1 Jan 2020 and it (1) Identifies sources of sediment and phosphorus and actions to minimise losses and (2)</p>	<p>S42A report recommends not including a new rule requiring FEPs for the Valley Floor Area.</p> <p><i>Section 42A report at [11.145]</i></p>	<p>Disagree</p> <p>There is disagreement on the issue of requiring a Farm Environment Plan as part of a permitted activity to farm in the Valley Floor Area from 2020.</p> <p><u>Reasons</u></p> <p>Mr McGillan considers that farm practices and the issues are very different in this catchment to those on the plains (which are primarily around</p>

Provision	Relief Sought	S42A Recommendation	Reasons
	<p>Addresses management of livestock near and where crossing waterways</p> <p><i>Point ID PC6 LWRP-137; Evidence at [84] to [91]</i></p>		<p>nitrogen loss) and that audited Farm Environment Plans are the appropriate tool for dealing phosphorus and sediment in this catchment. Mr McGillan is concerned that any proposals in PC5 cannot be retrospectively applied to PC6 which was notified prior to PC5.</p> <p>Mr Picken maintains that the purpose of PC6 is not to address use of land for farming as this is dealt with at region wide level through the rules in the LWRP and proposed Plan Change 5. In addition, requiring an audited FEP lacks the necessary certainty for a permitted activity rule because compliance is subject to a "future assessment" by a third party. Were farmers to be required to have a Farm Environment Plan in the Valley Floor Area, this would need to be under a consent framework.</p> <p>Instead, PC6 promotes a Valley Floor Area wide erosion plan – to target the area where the most of the sediment is coming from, and is explicit about excluding all stock from waterways and riparian margins in the Valley Floor Area.</p> <p>Mr Picken highlighted that Farm Environment Plans may be required in the catchment if the permitted activity conditions in the region-wide farming land use rules are not met (nutrient management rules) or they may be required in relation to other rules governing activities, such as discharge of animal effluent, silage pits and offal pits (amongst a few others).</p>

Dated 18 April 2016



Alastair Picken



Bryan McGillan