

Tabled at Hearing 16/10/14

BEFORE CANTERBURY REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of proposed Land and Water Plan (Variation 1)

**EVIDENCE OF DONALD BROWN
ON BEHALF OF TE RŪNANGA O NGĀI TAHU
DATED 16 OCTOBER 2014**

BUDDLE FINDLAY
NEW ZEALAND LAWYERS

Barristers and Solicitors
Christchurch

Solicitor Acting: **Kerry Smith / Jenna Silcock**
Email: kerry.smith@buddlefindlay.com / jenna.silcock@buddlefindlay.com
Tel 64 3 379 1747 Fax 64 3 379 5659 PO Box 322 DX WX11135 Christchurch 8140

1. INTRODUCTION

- 1.1 My name is Donald Brown. I identify with this place known as Te Waihora as I am mana whenua and I am part of the Brown whānau. As a registered member of Ngāi Tahu I own half a hectare of the lake bed. I am also a tangata tiaki under fisheries law and have fished on the lake for over 60 years.
- 1.2 I am the last of the local tangata whenua alive who gave evidence to the Waitangi Tribunal supporting the Ngāi Tahu claim for Te Waihora. More recently, I gave evidence in the Central Plains Water Scheme consents hearings and the amendment to the Te Waihora Water Conservation Order.
- 1.3 In presenting this evidence, I have the support of the Chair of the Te Waihora Management Board Terrianna Smith.
- 1.4 I was on the Te Waihora Management Board in the early 1990s and the Chair of the Board from 2001 to 2002. I was on the Eel Management Committee and assisted with the writing of the plan for Te Waihora. I have been involved with kai hau kai and in an advisory role to Toitu te Whenua within Te Rūnanga o Ngāi Tahu.
- 1.5 To undertake the job of tangata tiaki is to protect the fishery so that tangata whenua can have access to a healthy well managed fishery. My role as tangata tiaki covers the entire Te Waihora catchment extending from the foothills to Kaitorete Spit, encompassing the rivers, waterways, the lake and seaward out to the limit of the South Island fisheries waters.
- 1.6 Te Waihora is the receiving point for all of the water in the catchment, so its state of health or otherwise reflects the impact of activities upstream as well as those immediately around the lake. Today, I have been asked to comment specifically on customary fishing practices at Te Waihora and the importance of mahinga kai.

2. CUSTOMARY FISHING AT TE WAIHORA

- 2.1 There has always been a close interaction between Te Waihora and the people. To us, it is a taonga.
- 2.2 I started fishing at Te Waihora. I fished whenever I could go, no more than a week or two would go by without going to the lake to fish. This continues today as I continue to regularly fish at the lake.

- 2.3 Over the years I have spent fishing on Te Waihora I have come to know the biorhythms of the land and the water interactions that occur there. I have also witnessed the decline in mahinga kai, which has been well documented.
- 2.4 Te Waihora was traditionally a very good tuna (wild eel) and pātiki (flounder) fishery. That is why there were nohoanga and kāinga around the lake both pre and post European settlement.
- 2.5 Now the customary fisheries are in competition with commercial fishing. The current annual commercial harvest of the lake is still around 122 tonnes of tuna, but that is a huge decrease on what was available in the past. While there has been a partial recovery of good sized eels in recent years, the eel fishery is yet to reach the population levels it once boasted. In my experience the flounder fishery is in pretty good shape at the moment, although I believe this is more by fluke than by design.
- 2.6 I am well aware of the plethora of documents which purport to manage if not protect Te Waihora. An example I was heavily involved in is the Te Waihora Joint Management Plan (JMP). This is a document prepared under the Ngāi Tahu Settlement legislation which sets out how the lake will be jointly managed between Ngāi Tahu and the Department of Conservation. The JMP is a statutory document yet within the planning process for Variation 1, it would appear that this document has been given little weight by the Regional Council.
- 2.7 The JMP sets out the area which we are trying to protect. The challenge is finding a balance. Degradation of the lake has reduced the resilience of the customary fishery. That is not to say that it is no longer important. If anything, what remains of our mahinga kai is even more important to our continued customary activities. It cannot be replaced in another location. It is all we have; it's our connection with the place.
- 2.8 I will now outline the changes I have observed in my time at the lake. This is to help to convey an understanding of the need for the improved management and care of the lake and the wider Te Waihora catchment and my deep frustration with the lack of progress towards cleaning up my land. In fact, it would appear that as a landowner I am being asked yet again to accept the on-going degradation of my land (all 18,000 hectares of it) by my neighbours, without the ability for me as a landowner to stop it.

3. CURRENT STATE OF TE WAIHORA

- 3.1 Te Waihora has been documented as the most polluted lake in the South Island. The lake is nothing like the environment my ancestors knew, even as recently as my father and grandfather's time or even in my own childhood. It is now unfit for swimming. Public warnings are often in place to alert people to the dangers of contact with the waters of the lake.
- 3.2 First it was drained to half its natural size. Some of the areas drained were wetlands. Changes in land use have since affected the natural resilience the lake once enjoyed.
- 3.3 Farming has intensified in the area. I have seen first hand the pollution, runoff, sedimentation and drain cleaning that has occurred. Some areas are not fenced and stock are getting access to not only the tributary waterways but in some situations access to the lake itself. Many of the drains and waterways are refuges for various species and are influenced by lake level management at different times of the year. Mechanical removal of sediment from these drains and waterways removes adult and juvenile eels.
- 3.4 The middle of the lake has changed in colour from grey to green. In calm conditions, it does not clear in the shallows as much as it used to in the days before the Wahine storm. There is very little clear water in the shallows of the Lake now, only under certain conditions and never during summer. Some of our customary fisher practices such as gaffing, spearing and the use of patu (where you need to sight the fish first in order to catch it) cannot be used now due to very discoloured water.
- 3.5 There are far fewer black swans which are a native species. There were previously in excess of 80,000. Now there are around 8,000 (according to the most recent count undertaken in February 2014).¹ I am concerned that pressure on land use for breeding areas restricts the ability for cultural gathering of swan eggs.
- 3.6 There has been silting up of some areas of the lake, around the Taumutu area and the Kaituna area. Recent work by Canterbury University shows

¹ Te Waihora Lake Ellesmere Wetland Bird Count 22 February 2014. See <http://www.wet.org.nz/wp-content/uploads/2014/03/2014-Feb-22-Bird-Count.pdf>

that some of this sedimentation is significant and may have an effect on the lake openings, especially in terms of how long the lake is open to the sea. If the lake continues to degrade, I am deeply concerned that the customary fishery will be vulnerable. This will place more pressure on customary access and success which I understand may contravene our legal rights under New Zealand fisheries legislation.

- 3.7 I am also concerned about the way the lake is opened and managed. The customary fishery needs all the assistance it can get from the tools available to ensure the lake continues to be a taonga in the future of the tribe. The entire lake needs to be managed for a more saline positive environment for the health of the fishery and the re-establishment of abundant fish stocks. There is a need for the lake to drop to a level that allows sea water in and out, so that it becomes tidal at a time that fish need to enter the lake. This affects a range of species.
- 3.8 The Water Conservation Order for Te Waihora, has established a lake opening regime that caters for the overall fish population and requires decision makers to consult with customary fishers to ensure that the lake is opened in accordance with tikanga Māori. We now have the ability to open the lake at a time and at a level that is conducive to fish migrations. Since the Water Conservation Order has been in place, several successful Spring openings have taken place – these appear to have been adequate to enable recruitment. Moving forward, it will be important to ensure the retention of the good work that has been done so far.
- 3.9 However, I am concerned about the unknown situation we are now facing from the impacts of the Central Plains Water (CPW) irrigation scheme. I understand that an additional lake opening per year has been allowed, to cater for the higher volumes of fresh water that will be entering the lake from CPW. I am concerned that if this additional opening is mis-timed, it risks having a negative impact on the fishery – for example, if a lake opening due to the influence of CPW was to occur in late winter and we didn't get a recharge of the lake to trigger a Spring opening, then I consider this would have a negative impact on fish migration because fish migration into the lake may not occur.
- 3.10 Inanga/Whitebait runs are nowhere near as good as those that the kaumātua talked about, even during my time on the lake. Timing of openings for whitebait is crucial. In my experience, whitebait will be more

inclined to enter the lake with better water quality and perhaps breed in and around the lake in significant numbers.

3.11 There are different types of pātiki/flounder in the lake. Three corner flounders do not always prosper in the lake throughout their cycle. There are sometimes lots of small ones, but they do not always grow to useful size. The Timaru whites or Greenbacks are not even present in the lake as juveniles. Something is stopping them growing up and then they completely disappear from the system. This did not happen in the past.

3.12 The lake is under significant pressure. Access to mahinga kai is being threatened. What remains is so fragile and important. Te Waihora is a whole system from where I can exercise my customary right to mahinga kai and engage with the tribal property, of which I am an owner. The customary take is a right that is being impeded and must be protected.

4. **DAMNOSA HEREDITAS**

4.1 At the time of Ngāi Tahu Settlement in 1998 we thought we'd locked in ownership and protection of Te Waihora. But today we find that other people's property rights are cutting across our Ngāi Tahu property right in respect of the lake. *Damnosa hereditas* is a latin term defined in the Oxford Dictionary as an "inheritance that brings more burden than profit." It captures my feelings about the situation we (Ngāi Tahu) find ourselves in regarding Te Waihora.

4.2 As I stated earlier, I am the only surviving Ngāi Tahu witness who gave evidence about the mahinga kai values of Te Waihora at the Waitangi Tribunal hearings. Aunty Mere (Mere Kokupu Teihoka), Cath Brown, Rewi Brown, and Trevor Marsh who gave evidence alongside me, have now passed away. I am the last one standing.

4.3 Ngāi Tahu put a huge effort into the Waitangi Tribunal process regarding mahinga kai and the importance of Te Waihora to the iwi. The feelings of the tribe were succinctly expressed at that time and the evidence we gave back then is as relevant today as it ever was. To emphasise this point, the original Waitangi Tribunal evidence for Te Waihora is appended to my evidence today (see Appendix 1).

4.4 The culmination of the hearings was the Ngāi Tahu Settlement which established Ngāi Tahu as the owner, fee simple of the lake bed of Te Waihora. It has been deeply disappointing and frustrating for me to see

what has happened in the post-settlement era. Sadly, in some situations, Ngāi Tahu has not set good precedent in terms of fighting for the lake and we have missed some key opportunities. The huge promise we felt at Settlement has been shattered.

- 4.5 As the owner of the lake bed Ngāi Tahu is the owner of the vessel that serves as the receiving environment for the entire Te Waihora catchment. Our lake bed also provides the space where natural cycles and chemical processes may occur that positively contribute to the health of the water. Significantly, this includes the dilution of the lake waters that results from the 100,000,000 cubic metres of rainfall that enters Te Waihora annually – this is one of Ngāi Tahu's positive contributions to the health of the lake. By contrast, the contributions of our neighbours frequently have a negative effect. We own the lake bed fee simple but no one has defended that fee simple ownership in terms of the toxins being dumped on our land. The change from mixed farming in Canterbury to dairying is the main culprit.
- 4.6 The lake itself is a battler. My great hope is that it will have the resilience to be able to cope with the pollution that's thrown at it. But I fear that there is a tipping point at which the lake won't be able to take anymore and trying to improve water quality will be impossible.
- 4.7 I have spent the greater part of the last 30 years fighting for Te Waihora but feel that I have been a poor advocate. Where's my big success? Perhaps I haven't been persuasive enough in my advocacy? Today, I feel that no amount of bleating will ever get us anywhere. Even being here today feels like a lost cause - however I am still here, and I look to the hearing panel to uphold Ngāi Tahu's Treaty right in their decision-making. The recovery of the lake is a tough task. History will judge my efforts.

5. CONCLUSION

- 5.1 I have seen multiple impacts of changes to the lake over time. It is fast becoming the sink in this large catchment of agricultural, commercial, industrial and urban dominated landscapes. Returning the lake to its original health is so important.
- 5.2 The immense importance of the customary fishery and the relationship Ngāi Tahu has to this mahinga kai taonga means as much today as it did in the past. It is part of my family's identity.

- 5.3 The way the lake is managed artificially to the ocean has a significant impact on the outstanding values that Te Waihora holds for Te Rūnanga o Ngāi Tahu and the whānui specifically.
- 5.4 Without the ability to manage the lake for a range of other purposes important to Ngāi Tahu, the lake will reach a tipping point from which there will be no turning back.
- 5.5 If this happens, Te Waihora becomes an empty larder and a place of shame for Ngāi Tahu as a result of the actions of others.
- 5.6 My customary right is linked strongly to success and a positive outcome in the future, but it is hanging by a fine and fragile thread and I am concerned that it is close to breaking, leaving me with no connection.

Donald Brown
16 October 2014

**APPENDIX 1: Ngāi Tahu Claim. WAI 27. Evidence from the Waihora area.
Waitangi Tribunal document H-009. NGA115/B7. [Evidence presented at the
Waitangi Tribunal hearing at Ngāti Moki Marae, Taumutu in 1988].**