

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

CIV - 2011 - 409 - 2492

CIV:

**UNDER** the Environment Canterbury  
(Temporary Commissioners and  
Improved Water Management)  
Act 2010

**IN THE MATTER** of the Proposed Waipara  
Catchment Environmental Flow  
and Water Allocation Regional  
Plan

**BETWEEN** **TE RUNANGA O NGAI TAHU**  
an entity created by Te Rūnanga  
o Ngāi Tahu Act 1996

**Appellant**

**AND** **CANTERBURY REGIONAL**  
**COUNCIL** Local Authority  
constituted under the Local  
Government Act 2002

**Respondent**

**NOTICE OF APPEAL UNDER SECTION 66 OF THE ENVIRONMENT  
CANTERBURY (TEMPORARY COMMISSIONERS AND IMPROVED  
WATER MANAGEMENT) ACT 2010  
2 December 2011**

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**ANDERSON LLOYD**  
LAWYERS  
CHRISTCHURCH

Solicitor: JM Crawford / SJ Eveleigh

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**To:** The Registrar of the High Court at Christchurch

**And to:** The Canterbury Regional Council

**TAKE NOTICE** that Te Rūnanga o Ngāi Tahu ("the Appellant"), the Appellant in the proceeding identified above, gives notice that it is appealing to the Court against the decision of the Canterbury Regional Council ("the Council") on the Waipara Catchment Environmental Flow and Water Allocation Regional Plan ("the Plan"), served on the Appellant on or about 14 November 2011 upon the grounds that the decision is erroneous in law.

1. The Appellant appeals against the following particular parts of the Council's decision relating to:
  - 1.1 Minimum flows as provided in Table 1 in the Plan;
  - 1.2 The size of allocation blocks as provided in Table 1;
  - 1.3 Transfer of consents as provided for in Policy 3.1 and Rule 8.1 of the Plan;
  - 1.4 Exclusion of provisions to address review of existing consents, including the decision in respect of Policy 3.5; and
  - 1.5 Objectives, policies, methods and other provisions of the Plan that relate to the above matters.

2. The specific grounds of the Appeal are:
  - 2.1 The decision does not give effect to the National Policy Statement for Freshwater Management ("the NPS"), as required by law:
    - a. The NPS contains a number of objectives and policies that are relevant to the allocation of water in the Waipara River Catchment. In particular, Objective B2 seeks to phase out existing over-allocation and avoid any further over-allocation of the fresh water resource. This is further supported by the policy framework in the NPS, including Policy B1 which provides for the setting of appropriate environmental flows and/or levels for waterbodies and Policy B6 which requires every regional council to set a defined timeframe and methods in regional plans by which over-allocation must be phased out, including by reviewing water permits and consents to help reduce the total amount of water allocated. The Council has failed to give effect to the NPS in determining the flow and allocation regime set out in the Plan, and in considering the appropriateness of policies and rules related to partial restrictions, transfer of consents and review of existing consents.
    - b. The Council also appears to have made a distinction between authorised water takes and actual abstraction of water. In doing so, the Council erred in law and failed to give effect to the NPS.
  - 2.2 The Council erroneously found that it could not include provisions in the Plan related to the term or review of existing consents. The Council has in particular erred in law in deciding that it would be a fetter of its discretion under section 128 of the Resource Management Act 1991 to include any policy guidance on these matters. Provided that the Council is not unlawfully fettering its discretion, it is appropriate to provide such provisions in the Plan.

- 2.3 The Council erroneously concluded that it was restricted from including rules to implement partial restrictions on the exercise of water takes, on the basis that this was outside the scope of submissions that were made on the Plan. The Appellant says that there was jurisdiction for the Council to include such provisions in the Plan as a result of submissions lodged on the Plan. In any event, such a step ought to be taken in order to fulfil the Council's legal obligation to give effect to the NPS. This is not achieved by a policy initiative that contemplates future investigation of the potential introduction of potential restrictions.
- 2.4 The Council took into account irrelevant considerations in setting an allocation regime, including the viability of existing consents should they be reviewed to give effect to that allocation regime.
- 2.5 The Council took into account matters which were irrelevant and were not supported by evidence, namely the likelihood of augmentation of other catchments relieving demand for and abstraction of water from the Waipara catchment.
3. The Appellant alleges that these errors give rise to the following Questions of Law:
  - 3.1 Whether the Council has failed to give effect to the NPS?
  - 3.2 Whether the Council, in determining the flow and allocation regime, has erred in making a distinction between authorised water takes and actual abstraction of water?

- 3.3 Whether the Council in approving the Plan has erred in law in deciding that it could not include a policy framework for consent reviews?
  - 3.4 Whether Council had jurisdiction to amend the provisions of the Plan related to partial restrictions on the exercise of water takes?
  - 3.5 Whether Council took into account irrelevant considerations when reaching its decision on the Plan, in terms of the viability of consents should they be reviewed and the likelihood of augmentation in other catchments reducing the abstraction from the Waipara catchment?
  - 3.6 Whether Council's erred in law in concluding that augmentation in other catchments was likely to reduce abstraction from the Waipara catchment, without evidence reasonably capable of supporting that conclusion?
4. The Appellant seeks orders from this Court:
    - 4.1 That the appeal be allowed and the Council's decision be set aside; and
    - 4.2 That the Plan be amended to:
      - a. implement rules for partial restrictions to ensure that flows within the catchment are not held at artificially low levels for prolonged periods of time;

- b. provide for an increase in minimum flows over time to encourage storage and augmentation of the river system as this becomes available; and
- c. set the "A" allocation block at a level which is considered to be sustainable and which properly gives effect to the NPS; and
- d. include policy guidance in the Plan related to the transfer of allocated but unused water where any allocation block has been exceeded; and
- e. include policy guidance in the Plan related to the term and review of existing consents; and
- f. such consequential amendments to the Plan's objectives, policies, methods and other provisions that may be required to give effect to the grounds of this Appeal;

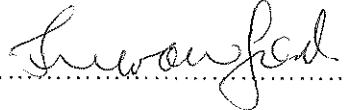
or;

4.3 That the matter be referred back to the Canterbury Regional Council for reconsideration in light of the findings of this Honourable Court;

and;

- 4.4 That the Council pays the Appellants' costs of and incidental to this appeal.

Dated 2 December 2011



**J M Crawford / S J Eveleigh**

Counsel for the Appellant

This document is filed by **JENNIFER MARIE CRAWFORD**, Solicitor for the Appellant, of the firm Anderson Lloyd whose address for service is at the offices of Anderson Lloyd Lawyers, 18a Birmingham Drive, Middleton, Christchurch. Documents may be:

- a. Posted to the solicitor at Anderson Lloyd Lawyers, PO Box 13831, Christchurch 8141, or
- b. Transmitted to the solicitor by facsimile to Anderson Lloyd Lawyers, Fax No. 03 379 0039.



## NOTICE OF DATE OF CASE MANAGEMENT CONFERENCE FOR APPEAL

J M Crawford  
Anderson Lloyd (Christchurch)  
P O Box 13-831  
DX WP20309  
Christchurch

**DATE:** 05 December 2011      **TRACK:** Swift HC - Appeals  
**REFERENCE NO:** CIV-2011-409-002492  
**CASE NAME:** Te Runanga O Ngai Tahu v Canterbury Regional Council

Take notice that a Case Management Conference will be held on this appeal as follows:

**Date:**                      **Wednesday 8th day of February 2012 at 9.30 AM**  
**Place:**                      **High Court, Christchurch HC, Venue to be advised**

Please note the **list of standard directions** for appeals and the other information and requirements set out on the back of this notice.

### Notification to other parties

You must give notice of the date and time of this conference to everyone who has been, or is to be, served with a copy of the notice of appeal or originating application. You should ensure that the appeal is served without delay, and in good time before the conference.

### Conference memorandum

Unless excused by the Court, you must, not later than 2 working days before the case management conference being the **2nd/February/2012** file and serve a joint memorandum or your own memorandum (see reverse for details). Please note the standard directions require that proposed timetables run forwards from the conference date, and not backwards from the date of hearing (whether fixed or prospective).

### Cancellation of conference

The Court may cancel the case management conference if, after reading memoranda, the Court is satisfied that all orders sought can be made by consent, and the attendance of counsel is not required. You are required to attend unless notified by the Court that the conference is cancelled.

If you have any queries please contact Jessica Babe, (03) 962 4000, Jessica.Babe@justice.govt.nz.

Jessica Babe  
Deputy Registrar

**Copy to:** Canterbury Regional Council

### High Court

High Court, Christchurch, DX WX10021, Christchurch, New Zealand  
Telephone: (03) 962 4000 Fax: (03) 962 4302

CI0231\_Notice\_of\_Date\_of\_Case\_Management\_Conference\_for\_Appeal (In Person)



## CONFERENCE INFORMATION AND REQUIREMENTS

### ATTENDANCE

The attendance of counsel instructed to appear in the case, or of the solicitor responsible for the case, is required. The parties may attend the conference but are not required to do so unless unrepresented by counsel.

In Courts other Auckland, Wellington and Christchurch, it may be necessary for the case management conference to be conducted by telephone. If this is the case, you will be advised. In such case, please ensure that you notify the Court of your appropriate contact details.

### CONFERENCE MEMORANDUM – r.7.5 (3) - (5)

Unless excused by the Court, you must, not later than 2 working days before the case management conference file a joint memorandum or your own memorandum. Any memorandum must –

- (a) estimate the time required for the hearing; and
- (b) suggest the costs category for the appeal for the purpose of rule 14.3 and, where applicable, for the purpose of rule 20.13; and
- (c) advise if any party has been granted legal aid under the Legal Services Act 2000 or has applied for legal aid and is awaiting a decision; and
- (d) if a full Court is sought, set out the reasons for that; and
- (e) in the case of an appeal under Part 20, specify any directions in Schedule 6 (see below) that should be deleted or modified, and why; and
- (f) in the case of an appeal under Part 26, specify any directions in Schedule 6 that would be appropriate for the appeal, and
- (g) set out any additional directions sought, and why.

You may file this memorandum by facsimile.

### Schedule 6 - Standard directions for appeals

- 1 The appeal will be heard (*at [time] on [date]*) [*or*] (*at a time and date to be allocated by the Registrar*).
- 2 The time for the hearing is estimated to be [half days or days].
- 3 The appeal is categorised as a category [type] proceeding for the purposes of rule 14.3.
- 4 The appellant must pay security in the sum of amount (\$) not later than 10 working days after the conference.
- 5 Unless detailed and specific points on appeal have been included in the notice of appeal, the appellant must file and serve, not later than 10 working days after the conference, points on appeal that clearly state the issues on appeal.
- 6 If the appeal involves a significant issue under the New Zealand Bill of Rights Act 1990, or an issue affecting New Zealand's international obligations or the Crown's obligations under the Treaty of Waitangi, or an issue arising in the appeal is otherwise of significant public interest, the Judge may direct that the Solicitor General be served with the notice of appeal, and with documents subsequently filed in the appeal.
- 7 The appellant must file and serve, not later than 20 working days after the conference, a common bundle of paginated and indexed copies of all relevant documents, including, if applicable,—
  - (a) the reasons for the decision; and
  - (b) the sealed order or judgment appealed from; and
  - (c) the pleadings; and
  - (d) the statements of evidence or affidavits; and
  - (e) the exhibits; and
  - (f) the notes of evidence, to the extent that they are relevant to the issues on appeal.
- 8 If a party insists on including a document in the common bundle even though another party objects to its inclusion on the ground that it is unnecessary or irrelevant, the objection must be recorded for the purpose of any award of costs relating to the inclusion of the document.
- 9 The appellant must file and serve, no later than 25 working days after the conference,—
  - (a) the appellant's submissions; and
  - (b) chronology (if relevant).
- 10 The appellant's submissions must contain—
  - (a) references to any specific passages in the evidence that the appellant will refer to at the hearing; and

- (b) a list of the names and correct citations of any authorities mentioned.
- 11 The respondent must file and serve, not later than 30 working days after the conference,—
- (a) submissions that meet the requirements set out in clause 10; and
- (b) if the respondent disagrees with the appellant's chronology, a separate chronology noting areas of disagreement.
- 12 The appellant must prepare a bundle of any authorities referred to in the submissions provided in accordance with clauses 9 and 11 that the appellant or the respondent considers ought to be produced to the court. The bundle may be produced at the hearing of the appeal or filed before the appeal is heard.
- 13 If the appeal is to be heard by a single Judge, 1 copy of each document must be filed.
- 14 If the appeal is to be heard by a full court, 2 copies of each document must be filed.