

**BEFORE COMMISSIONERS APPOINTED BY THE CANTERBURY
REGIONAL COUNCIL**

UNDER the Resource Management Act 1991

IN THE MATTER applications for resource consents by Lyttelton Port
Company for capital and maintenance dredging

TABLED AT HEARING

Application:

Date: 8 May 2017

**SUMMARY AND RESPONSE EVIDENCE OF
PHILIPPA ALISON LYNCH FOR TE HAPŪ O NGĀTI WHEKE,
TE RŪNANGA O KOUKOURĀRATA, NGĀI TAHU SEAFOOD, AND
TE RŪNANGA O NGĀI TAHU**

8 May 2017

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INTRODUCTION/BACKGROUND

1. Kia ora koutou, my name is Philippa Lynch.
2. I provided planning evidence in chief dated 4 April 2017, in support of the submission by Ngāi Tahu.
3. My qualifications and experience are as set out in my evidence in chief.
4. Section 104 of the Resource Management Act 1991 (RMA or 'the Act') sets out the matters to which the Hearing Panel must have regard to when considering the resource consent applications lodged by the Lyttelton Port Company (LPC).
5. In terms of section 104(1), and subject to Part 2 of the Act (which contains the Act's purpose and principles), the Hearing Panel must have regard to-
 - (a) *Any actual and potential effects on the environment of allowing the activity;*
 - (b) *Any relevant provisions of a national environmental standard, other regulations, a national policy statement, a New Zealand coastal policy statement, a regional policy statement or a proposed regional policy statement, a plan or proposed plan; and*
 - (c) *Any other matters the consent authority considers relevant and reasonably necessary to determine the application.*
6. I will provide a summary on each of these matters in turn, including comment on the application in terms of Part 2 of the Act, along with comments regarding any changes to issues identified since my evidence in chief was submitted. In addition, I will also provide comment on the accidental discovery protocol condition proposed by LPC.

ASSESSMENT OF EFFECTS

7. As was stated in my evidence in chief, I consider the main matters of particular concern to Ngāi Tahu can be split into two categories of effects:

- Physical effects (direct and indirect) on water quality and mahinga kai; and
- Cultural effects on rangatiratanga and kaitiakitanga

Physical effects (direct and indirect) on water quality and mahinga kai

8. It is my understanding from the evidence of Mr Oldman and Dr Pritchard that the fundamental issues which remain between themselves and Dr Beamsley relate to the harbour model (or models) used by Dr Beamsley not including wind, waves, and resuspension in combination with a moving dredger. Mr Oldman and Dr Pritchard advise that in their opinion, the failure to address these issues limits the ability for informed decisions about the application to be made and undermines any assessment of effects on which this knowledge is based.
9. LPC's predictions that rocky reef and soft sediment ecological communities will not be affected is contingent on the modelling that sediment plumes will not reach those communities. However if their modelling is incorrect (based on the issues identified by Mr Oldman and Dr Pritchard) then there is a real possibility that sediment plumes may move to areas inhabited by these communities. Based on the uncertainty regarding the accuracy of the model, Dr Hepburn and Dr Marsden have been unable to use the results of this plume modelling to determine what the adverse effects on rocky reefs, soft sediment communities and consequently mahinga kai are likely to be. At present, the Ngāi Tahu ecological experts have stated that the effects could range anywhere from negligible to severe.
10. Based on the reasons above, Ngāi Tahu considers that additional information is required before the actual and potential effects of LPC's proposal on water quality and mahinga kai can be accurately determined.
11. In my evidence in chief, I was unable to recommend any consent conditions which I considered would be able to address the level of uncertainty in effects determined by the Ngāi Tahu experts, to ensure that the effects on water quality and mahinga kai were avoided, remedied or mitigated. Given the fundamental issues that I understand still remain between the Ngāi Tahu technical experts and Dr Beamsley regarding the accuracy of the model to predict the

extend of the turbidity plume, my position regarding consent conditions has not changed from that stated in my evidence in chief.

12. I note that in paragraphs 24 and 25 of the summary and response evidence of Mr Purves dated 4 May 2017, that Mr Purves advises that there is always uncertainty inherent in dealing with future events particularly in relation to the marine environment. I agree with Mr Purves that there is always uncertainty inherent in dealing with future events, but wish to emphasise that Mr Oldman and Dr Pritchard are highlighting fundamental flaws with the approach used by Dr Beamsley and both Mr Oldman and Dr Pritchard state that Dr Beamsley's approach is not consistent with best practice in New Zealand or internationally.
13. In paragraph 25 Mr Purves notes that dredging is not a novel activity, nothing that Ms Anderson in particular has had considerable experience in similar types of dredging projects. I wish to emphasise that as the primary predictive component of this application, hydrodynamic modelling forms the foundation of the assessment of effects, which has guided the placement of the monitoring locations that Ms Anderson will be obtaining data from and that the modelling is also tied to the setting of trigger levels.

Cultural effects on rangatiratanga and kaitiakitanga

14. Mr Tasman Gillies states in his evidence that as kaitiaki, Ngāi Tahu seek to preserve the mauri of the environment they are responsible for. Mr Gillies also states that those who hold mana whenua and mana moana in an area, are the only people who can lead the exercising of kaitiakitanga over mahinga kai.
15. In relation to rangatiratanga, Mr Gillies advises that this is the ability for kaitiaki to make decisions in fulfilling their role as kaitiaki. To Mr Gillies, rangatiratanga and kaitiakitanga go hand in hand and give mana whenua the authority to make decisions involving the mauri and mahinga kai of their mana moana.
16. As stated in my evidence in chief, there are mātaimai reserves in both Lyttelton Harbour and Koukourāata which provide for the protection of mahinga kai and the marine environment through tikanga-based management of fisheries. As advised by Mr Henry Couch, mātaimai reserves assist Ngāi Tahu to sustain customary fishing practices and

knowledge. Mr Couch considers mātaimai are an active form of kaitiakitanga within a contemporary context.

17. In addition to outlining the potential physical effects of the dredging and disposal on the environment, the 2016 CIA Update also advises that some activities can have a cultural effect without a detectable physical impact. For example, even if there are no detectable effects on water quality beyond the footprint of the dredging activity in Whakaraupō/Lyttelton Harbour, there may be an effect on how manawhenua experience and engage with the harbour as a result of continuous dredging¹.
18. Mr Tasman Gillies expands on these cultural effects in his evidence. Mr Gillies explains *"When I look at a map of Whakaraupō and consider the channel, I see damage that cannot be undone. The dredging of the channel is a cut that runs along the length of Whakaraupō leaving behind a permanent scar. The expanded channel and the new spoil grounds will (provide) further permanent degradation of the mauri of the harbour. As kaitiaki, Ngāi Tahu seek to preserve the mauri of the environment they are responsible for."*
19. The Ngāi Tahu submission makes the point of not opposing the dredging in principle, but states that *"further development of the Port should only happen if there can be a net gain in mahinga kai"*. Mr Tasman Gillies advises that this is a position of compromise. A net gain is necessary because the dredging will permanently change the harbour and alter the mana and mauri of the harbour as a mahinga kai in ways that cannot be directly mitigated or remedied. Mr Gillies also makes the point that a net gain in mahinga kai can only be achieved through the enabling of those that hold mana whenua and mana moana.
20. In my evidence in chief, I have proposed a draft consent condition based on the elements that Mr Tasman Gillies discusses in relation to achieving a net gain in mahinga kai through an integrated enhancement programme. The draft condition included wording to give LPC the ability to enable Ngāi Tahu to exercise kaitiakitanga over mahinga kai.

¹ 2016 CIA Update pg 16

21. I wish to highlight that the consent condition in my evidence in chief was only in draft and Ngāi Tahu was hoping to reach agreement on the detail of this condition before or during the hearing. I note that the summary of evidence of Mr Tasman Gillies provides details on discussions which have been progressing between LPC and Ngāi Tahu regarding co-governance of a legal entity to deliver a net gain in mahinga kai. It is my understanding that these discussions are still on-going and that sufficient detail has not yet been confirmed that would enable the drafting of an offset consent condition wording to be progressed at this stage. I am aware that it is the position of Ngāi Tahu that this co-governance arrangement needs to be included as a consent condition to provide certainty to Ngāi Tahu that it will offset the adverse effects on cultural effects from LPC's proposal that cannot be avoided, remedied or mitigated.

RELEVANT PLANNING PROVISIONS

New Zealand Coastal Policy Statement 2010

22. In terms of the New Zealand Coastal Policy Statement 2010, I consider the most relevant policies to this application are:
- Policy 2 – The Treaty of Waitangi, tangata whenua and Māori heritage. In particular policy 2(f) which relates to providing opportunities for tangata whenua to exercise kaitiakitanga over waters and fisheries in the coastal environment.
 - Policy 3 – Precautionary approach.
 - Policy 11 – Indigenous biological biodiversity. Policy 11(b)(iv) relates to protecting indigenous biodiversity in the coastal environment by avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects of activities on habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes.
23. Based on the considerable uncertainty which remains in relation to the size of the adverse effects associated with the application, I cannot conclude that the current proposal is consistent with these policies.

Canterbury Regional Policy Statement 2013

24. In terms of the Canterbury Regional Policy Statement 2013, I consider the most relevant policies to this application are:
- Policy 8.3.6 - Regionally significant infrastructure. In relation to regionally significant infrastructure in the coastal environment, this policy provides (among other provisions) for the expedited recovery of the Lyttelton Port, including its repair, rebuild and reconfiguration. This provision requires the avoidance, remediation or mitigation of adverse effects on the environment and must take into account (amongst other matters) the integrated management of Whakaraupō /Lyttelton Harbour in the recovery and future development of the Lyttelton Port, including provisions for the many ecological, cultural, recreational and amenity values and uses of that area.
 - Policy 9.3.4 - Promotes ecological enhancement and restoration. This policy relates to promoting the enhancement and restoration of Canterbury's ecosystems and indigenous biodiversity, in appropriate locations, where this will improve the functioning and long term sustainability of these ecosystems.
25. Based on the considerable uncertainty which remains in relation to the size of the adverse effects associated with the application, I cannot conclude that the current proposal is consistent with these policies.
26. Policy 9.3.6 of the Canterbury Regional Policy Statement relates to limitations on the use of biodiversity offsets. This policy provides a criteria for the use of biodiversity offsets. The criteria includes: (amongst other matters) that the offset will only compensate for residual adverse effects that cannot otherwise be avoided, remedied or mitigated; that the residual adverse effects on biodiversity are capable of being offset and will be fully compensated by the offset to ensure no net loss of biodiversity; there is a strong likelihood that the offsets will be achieved in perpetuity; and where the offset involves the on-going protection of a separate site, it will deliver no net loss, and preferable a net gain for indigenous conservation.

27. While this policy relates to biodiversity, I still consider the concepts in it useful when consider offsets for cultural effects.
28. The cultural evidence provided by Ngāi Tahu, particularly the evidence by Mr T Gillies, explains that there will be adverse effects on cultural values from the proposal that LPC cannot avoid, remedy or mitigate. As stated earlier, Manawhenua and LPC are currently in discussions regarding an offset condition that would provide a net gain for mahinga kai to address these adverse cultural effects.
29. In my opinion, based on the identification of residual cultural effects that cannot be avoided, remedied or mitigated, I consider that the current application is not consistent with this policy. However, I consider that the identification of agreeable offset condition wording for a net gain in mahinga kai by LPC and Ngāi Tahu would enable the LPC application to become consistent with this policy.

Regional Coastal Environment Plan for Canterbury 2005 (RCEP)

30. In terms of the Regional Coastal Environment Plan for Canterbury 2005, I consider the most relevant policy to this application is Policy 10.1.4 which relates to Lyttelton Harbour Relationships. This policy recognises that development of the port will result in some effects which cannot be avoided or mitigated. In those circumstances, LPC will undertake those activities while ensuring that “effort is made to achieve a net gain in mahinga kai”.
31. In my opinion, the reference in the policy to “effort” being made to achieve a net gain, rather than “net gain being achieved” is not a gloss on the strength of the direction about outcome. Rather, it recognises that there is no recognised process to determine how a ‘net gain’ is achieved or any standard as to what level or type of net gain is acceptable. I consider that in this instance, there is opportunity not only to make “effort” but to achieve actual demonstrable net gains. As stated earlier, LPC and Ngāi Tahu are currently discussing a co-governance offset condition to enable a net gain in mahinga kai.
32. I consider that unless there are clear outcomes in a consent condition which produce a real net gain, Policy 10.1.4 will not be met. Because reasonable net gain outcomes are available, not to achieve them

would mean insufficient effort is being made, and hence this would result in the application not being consistent with this policy.

33. In my opinion, based on the identification of residual effects that cannot be avoided, remedied or mitigated by LPC, and that Ngāi Tahu and LPC are currently in discussions regarding a net gain condition, I consider that the current application could be amended to include this measure to enable the application to not be inconsistent with this policy.

OTHER MATTERS

34. As stated in my evidence in chief, in relation to section 104(1)(c), I consider the Te Tai o Mahaanui (Selwyn to Banks Peninsula Coastal Marine Area) Statutory Acknowledgement established under the Ngai Tahu Claims Settlement Act 1998, mātaihai reserves provided for under the Fisheries (South Island Customary Fishing) Regulations 1999, the Mahaanui Iwi Management Plan 2013, the Whakaraupō Catchment Management Plan (which is currently being drafted) and the Replacement Christchurch District Plan are all relevant and necessary matters to determine the application.

PART 2 OF THE RMA

35. Based on the concerns raised in the Ngāi Tahu evidence which I have summarised above, I consider there is too much uncertainty with the current LPC application to conclude that the matters of national importance under section 6(e) have been recognised and provided for, that the current application enables Ngāi Tahu to exercise kaitiakitanga in terms of section 7(a) of the RMA, nor that the application is consistent with Section 8 of the RMA as there is too much uncertainty with the current application to conclude that there is sufficient information for Ngāi Tahu to undertake rangatiratanga over their resources and taonga.

ACCIDENTAL DISCOVERY PROTOCOL CONDITION

36. Appendix 2 of the evidence in chief prepared by Mr Purves dated 28 March 2017, includes draft channel deepening conditions. On page 31 of appendix 2, condition 16 contains proposed wording for an accidental discovery protocol. I have proposed new condition wording below to ensure that the condition wording is consistent with the legal

requirements under the Heritage New Zealand Pouhere Taonga Act 2014. The main change I have made to the wording is to ensure that the role of Heritage New Zealand when archaeological material is discovered is made clear.

37. In addition to the proposed consent wording below, I consider another condition or sub-condition is required to explain how the consent holder will be checking to see if any accidental discoveries have been made. Earlier discussions with LPC regarding this potential process were had before their application was lodged and I am aware that LPC indicated that a coarse screen could be fitted somewhere on the dredger to collect larger objects. It was proposed that dredge staff could check this screen to see if any material of interest needed to be inspected by Heritage New Zealand.

Proposed consent wording - Accidental Discovery Protocol condition

- (a) In the event of any discovery of archaeological material, the consent holder shall immediately:
 - (i) Cease dredging operations in the affected area and mark off the affected area; and
 - (ii) Advise the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager of the disturbance; and
 - (iii) Advise the Southern Regional Office of Heritage New Zealand of the disturbance.
- (b) If the archaeological material is determined to be koiwi tangata (human bones) or taonga (treasured artefacts) by Heritage New Zealand, the consent holder shall immediately advise the office of Te Hapū o Ngāti Wheke of the discovery.
- (c) If the archaeological material is determined to be koiwi tangata (human bones) by the Heritage New Zealand, the consent holder shall immediately advise the New Zealand Police of the disturbance.
- (d) Work may recommence if Heritage New Zealand, following consultation with Te Hapū o Ngāti Wheke, if the site is of Māori origin, provides a statement in writing to the Canterbury Regional Council, Attention: RMA Compliance and Enforcement Manager that appropriate action has been undertaken in relation to the archaeological material discovered. The Canterbury Regional Council shall advise the consent holder on written receipt from Heritage New Zealand that dredging work can recommence in the affected area.

DATE 8 May 2017

Philippa Lynch



Mahaanui

Iwi Management Plan 2013

Ngāi Tūāhuriri Rūnanga
Te Hapū o Ngāti Wheke (Rāpaki)
Te Rūnanga o Koukourārata
Ōnuku Rūnanga
Wairewa Rūnanga
Te Taumutu Rūnanga

6.6 WHAKARAUPŌ

This section addresses issues of particular significance in the Whakaraupō (Lyttelton Harbour) catchment (Map 15).

Whakaraupō has a rich history of Ngāi Tahu land use and occupancy, and strong tradition of mahinga kai. The harbour was named after the raupō reeds that were once plentiful at Ōhinetahi at the head of the harbour. Kaimoana such as pipi, tuaki, kutai, pāua, tio, kina and pūpū, and ika such as pātiki, pātiki rori, pīoki, hoka, aua, pāpaki, koiro and hokarari provided an abundant and reliable supply of mahinga kai for tāngata whenua and their manuhiri. The restoration of kaimoana values to the Whakaraupō is a key kaupapa for the kaitiaki Rūnanga in this catchment.

Whakaraupō is part of Te Tai o Mahaanui (Selwyn-Banks Peninsula Coastal Marine Area) Coastal Statutory Acknowledgement Area), as per schedule 101 of the NTSCA 1998 (see Appendix 7).

“Tāngata whenua know the Harbour very well. Many generations of whānau knowledge provide a base upon which the present residents exercise their kaitiakitanga in both traditional and contemporary ways.”

Ngā Paetae Objectives

- (1) Restoration of the cultural health of Whakaraupō, including elimination of wastewater discharges, reducing sedimentation and achieving a water quality standard consistent with the Harbour as mahinga kai.
- (2) The wāhi taonga status of the catchment's waterways and waipuna is recognised and provided for.
- (3) Natural and cultural landscape values associated with the Whakaraupō catchment are enhanced through restoration of indigenous biodiversity values.
- (4) Tāngata whenua continue to contribute to, and influence, community issues and projects within the catchment.
- (5) Sites and places of cultural significance, including wāhi tapu and wāhi taonga, are protected from inappropriate land use and development.
- (6) Kaimoana is managed according to Ngāi Tahu values and tikanga, enabling the sustainable customary harvest of these resources in Whakaraupō.