



MEMO

Date	Monday 11 th February 2019
To	Andrea Richardson, Environment Canterbury
CC	Aoraki Environmental Consultancy Ltd, Aukaha
From	Amy Beran and Nicola Rykers, Mahaanui Kurataiao Limited

Omnibus 2019 Plan Change- Consideration of effects on tangata whenua values

Project description:

A number of controlled and restricted discretionary rules in the Canterbury Land and Water Regional Plan (LWRP) do not include specific recognition of Māori cultural and customary activities and associated values in their matters of control or restricted discretion.

The purpose of this assessment is to identify which controlled and restricted discretionary rules in the LWRP inappropriately constrain the ability of decision-makers on resource consent applications to consider the effects on tangata whenua values, such that concerns have been raised by tangata whenua.

Scope of work:

Mahaanui Kurataiao Limited has been contracted by Environment Canterbury to undertake the following tasks:

- Review Section 5 rules in the LWRP and identify any other rules which need to be amended (to allow consideration of mana whenua values);
- Review identified rules and provide feedback, including:
 - Providing examples of mana whenua values (which may be affected by activities covered by the rules).
 - Specifying appropriate wording (as a matter of discretion or control) for each identified rule.
- Review and integrate feedback received from Aukaha and Aoraki Environmental Consultancy Limited.

If at any time you have any questions please do not hesitate to contact the Mahaanui Kurataiao office.

Hei anō

Ngā mihi



Proposed rules for amendment:

The following LWRP controlled and restricted discretionary activities rules are recommended to be amended to add 'effects on tangata whenua values' (or other appropriate wording) as an additional matter for restricted discretion:

Section 5: Region- wide Rules

5.9 Wastewater discharges

The discharge of wastewater from:

- (a) an existing on-site wastewater treatment system onto or into land in circumstances where a contaminant may enter water that does not meet one or more of the conditions of Rule 5.7; or
- (b) a new , modified or upgraded on-site wastewater treatment system onto or into land in circumstances where a contaminant may enter water that does not meet one or more of the conditions of Rule 5.8;

is a restricted discretionary activity.

Restricted discretionary matters:

1. The actual and potential environmental effects of not meeting the condition or conditions of Rule 5.7 for an existing system; and
2. The actual and potential direct and cumulative environmental effects of not meeting the condition or conditions of Rule 5.8 for a new, modified or upgraded system; and
3. The actual and potential environmental effects of the discharge on the quality and safety of human and animal drinking-water; and
4. The effect of on-site wastewater treatment system density in the local area including known on-site wastewater treatment system failures, the material health status of the community, groundwater quality, the nature of effects of current sewage disposal methods, treatment options available and affordability.

Feedback from Ngā Rūnanga: Agree with planning analysis and recommendation to include new restricted discretionary matter, allowing consideration of effects on mana whenua.

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/ considered.

Ngā Rūnanga have raised concerns regarding appropriate setbacks/buffers between discharge areas and waterbodies, and the need to include indigenous planting to provide additional filtration/ uptake of contaminants prior to entering ground. In some circumstances, concerns have also been raised about the cultural appropriateness of discharging wastewater within culturally significant areas.

Recommendation: Amend rule 5.9 to allow for consideration of the following matters-

- The extent to which identified wāhi tapu and wāhi taonga are protected.

- the effects on Ngāi Tahu values and the extent to which these are addressed by any mitigation measures including new planting and setbacks from surface waterbodies and minimum separation distance between any discharge (to ground) and the highest known groundwater.

5.11 Swimming Pool or Spa Water Discharges

The discharge of swimming pool or spa pool water into water or onto or into land in circumstances where a contaminant may enter water that does not meet one or more of the conditions of Rule 5.10 is a restricted discretionary activity.

Restricted discretionary matters:

1. The actual and potential environmental effects of not meeting the condition or conditions of Rule 5.10.

Feedback from Ngā Rūnanga: There is no specific restricted discretionary matter for (mana whenua) cultural values. The conditions of Rule 5.10 may allow for some mana whenua concerns to be indirectly considered- e.g. effects on surface waterbodies, wetlands and water quality.

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/ considered.

Ngā Rūnanga have expressed concerns about spa or swimming pool water being discharged directly to waterbodies.

Recommendation: Amend rule 5.11 to allow for consideration of the following matter – Effects on the relationship of Ngāi Tahu and Ngāi Tahu culture and traditions with ancestral lands, water, sites, wāhi tāpu and other taonga including indigenous species and mahinga kai practices.

5.13 Greywater Discharges

The discharge of greywater onto or into land in circumstances where a contaminant may enter water that does not meet one or more of the conditions of Rule 5.12 is a restricted discretionary activity.

Restricted discretionary matters:

1. The actual and potential environmental effects of not meeting the condition or conditions of Rule 5.12; and
2. The actual and potential environmental effects of the discharge on the quality and safety of human and animal drinking-water.

Feedback from Ngā Rūnanga: There is no specific restricted discretionary matter for (mana whenua) cultural values. The conditions of Rule 5.12 may allow for some mana whenua concerns to be indirectly considered- e.g. effects on surface waterbodies, the coastal marine area, or water quality (for water abstractions). Conditions also allow for concerns regarding archaeological sites and groundwater quality to be considered. Rule 5.13 further allows for consideration of effects on water quality (safety of human and animal drinking water).

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/ considered.

Recommendation: Amend rule 5.13 to allow for consideration of the following matter- **Effects**

on the relationship of Ngāi Tahu and Ngāi Tahu culture and traditions with ancestral lands, water, sites, wāhi tāpu and other taonga including indigenous species and mahinga kai practices.

5.15 Pit Toilet Discharges

The discharge of untreated human excrement via a pit toilet onto or into land in circumstances where a contaminant may enter water that does not meet one or more of the conditions in Rule 5.14 is a restricted discretionary activity.

Restricted discretionary matters:

1. The actual and potential environmental effects of not meeting the condition or conditions of Rule 5.14; and
2. The actual and potential environmental effects of the discharge on the quality and safety of human and animal drinking-water.

Feedback from Ngā Rūnanga: Agree with planning analysis and recommendation to include new restricted discretionary matter, allowing consideration of effects on mana whenua.

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/ considered.

Recommendation: Amend rule 5.15 to allow for consideration of the following matter- effects on Ngāi Tahu culture/ mana whenua values, traditions, customary uses and relationships with land and water.

5.17 Composting Toilet Discharges

The discharge of aerobically composted material from a composting toilet onto or into land in circumstances where a contaminant may enter water that does not meet one or more of the conditions in Rule 5.16 is a restricted discretionary activity.

Restricted discretionary matters:

1. The actual and potential environmental effects of not meeting the condition or conditions of Rule 5.16; and
2. The actual and potential environmental effects of the discharge on the quality and safety of human and animal drinking-water.

Feedback from Ngā Rūnanga: Agree with planning analysis and recommendation to include new restricted discretionary matter, allowing consideration of effects on mana whenua.

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/ considered.

Recommendation:

Amend rule 5.17 to allow for consideration of the following matters-

Effects on the relationship of Ngāi Tahu and Ngāi Tahu culture and traditions with ancestral lands, water, sites, wāhi tāpu and other taonga including indigenous species and mahinga kai practices.

Or

- The extent to which wāhi tapu and wāhi taonga are protected; and

- Effects of the discharge on water quality/ Ngāi Tahu values including mahinga kai and mauri of any receiving water bodies; and
- The appropriateness of any mitigation measures including setbacks from surface water bodies, minimum separation distance between any discharge (to ground) and the highest known groundwater level and new planting.

5.19 Dust Suppressant Discharges

The discharge of oil as a dust suppressant onto or into land in circumstances where a contaminant may enter water that does not meet one or more of the conditions in Rule 5.18 is a restricted discretionary activity.

Restricted discretionary matters:

1. The actual and potential environmental effects of not meeting the condition or conditions of Rule 5.18.

Feedback from Ngā Rūnanga:

There is no specific restricted discretionary matter for (mana whenua) cultural values. The conditions of Rule 5.18 may allow for some mana whenua concerns to be indirectly considered- e.g. effects on surface waterbodies, the coastal marine area and groundwater (bore or soak holes).

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/ considered.

Ngā rūnanga concerns have been raised about restricting areas that dust suppressants can be used, i.e. not within silent file areas, setbacks from sensitive areas- marae, waterways etc.

Recommendation:

Amend rule 5.19 to allow for consideration of the following matters-

Effects on the relationship of Ngāi Tahu and Ngāi Tahu culture and traditions with ancestral lands, water, sites, wāhi tāpu and other taonga including indigenous species and mahinga kai practices.

Or

- The extent to which wāhi tapu and wāhi taonga are protected; and
- The effects on Ngāi Tahu values and the extent to which these are addressed by any mitigation measures including requiring appropriate setbacks from any identified sensitive areas e.g. proximity to marae, surface water bodies, bore or soak hole, or the CMA.

5.26 Offal pits

The use of land for an offal pit and the associated discharges onto or into land in circumstances where a contaminant may enter water that does not meet one or more of the conditions in Rule 5.24 is a restricted discretionary activity where the following condition is met:

1. The disposal and discharge are the subject of a Farm Environment Plan that has been prepared in accordance with Schedule 7 Part A.

Restricted discretionary matters:

1. The actual or potential environmental effects of not meeting the condition or

conditions of Rule 5.24 or Rule 5.25; and

2. The actual or potential environmental effects of the discharge on the quality and safety of human and animal drinking-water; and
3. The quality of, compliance with, and auditing of the Farm Environment Plan.

Feedback from Ngā Rūnanga:

Agree with planning analysis and recommendation to include new restricted discretionary matter, allowing consideration of effects on mana whenua.

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/ considered.

Recommendation: Amend rule 5.26 to include matter/s of discretion which allow for consideration of the following-

Effects on the relationship of Ngāi Tahu and Ngāi Tahu culture and traditions with ancestral lands, water, sites, wāhi tāpu and other taonga including indigenous species and mahinga kai practices.

Or

- The extent to which wāhi tapu and wāhi taonga are protected; and
- Effects of the discharge on water quality/ Ngāi Tahu values including mahinga kai and mauri of any receiving water bodies; and
- The appropriateness of any mitigation measures including setbacks from surface water bodies, minimum separation distance between any discharge (to ground) and the highest known groundwater level and new planting.

5.28 On-site Refuse Disposal Pit

The use of land for an on-site refuse disposal pit and the associated discharges onto or into land in circumstances where a contaminant may enter water that does not meet one or more of the conditions in Rule 5.27 is a restricted discretionary activity where the following condition is met:

1. The disposal and discharge are the subject of a Farm Environment Plan that has been prepared in accordance with schedule 7 Part A.

Restricted discretionary matters:

1. The actual or potential environmental effects of not meeting the condition or conditions of Rule 5.27; and
2. The actual or potential environmental effects of the discharge on the quality and safety of human and animal drinking-water; and
3. The quality of, compliance with, and auditing of the Farm Environment Plan.

Feedback from Ngā Rūnanga:

Agree with planning analysis and recommendation to include new restricted discretionary matter, allowing consideration of effects on mana whenua.

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary

activities (including access) may not be explicitly recognised/ considered.

Ngā Rūnanga have raised concerns regarding appropriate setbacks/buffers between effluent discharge areas and waterbodies, and the need to include indigenous planting to provide additional filtration/ uptake of nutrients prior to entering ground.

Recommendation: Amend rule 5.28 to allow for consideration of the following matter-

Effects on the relationship of Ngāi Tahu and Ngāi Tahu culture and traditions with ancestral lands, water, sites, wāhi tāpu and other taonga including indigenous species and mahinga kai practices.

5.36 Discharge of animal effluent

The discharge of animal effluent or water containing animal effluent and other contaminants originating from:

- (a) a stock holding area; or
- (b) a stock truck holding tank that does not meet one or more of the conditions of Rule 5.35; or
- (c) an animal effluent storage facility onto or into land where a contaminant may enter water

is a restricted discretionary activity, provided the following conditions are met:

1. The discharge of animal effluent or water containing animal effluent and other contaminants:
 - (a) is not within 20 m of a surface water body (other than a wetland constructed primarily to treat animal effluent), a bore used for water abstraction or the Coastal Marine Area; and
 - (b) does not occur beyond the boundary of the property on which the animal effluent is generated unless the written approval of the property owner where the discharge occurs has been obtained; and
 - (c) is not within a Community Drinking-water Protection Zone as set out in Schedule 1; and
 - (d) has backflow prevention installed if the animal effluent or water containing animal effluent is applied with irrigation water; and
 - (e) is not to contaminated or potentially contaminated land; and
2. The discharge is the subject of a Farm Environment Plan that has been prepared in accordance with Schedule 7 Part A.

The exercise of discretion is restricted to the following matters:

1. Measures to avoid, mitigate or remedy adverse effects on aquatic ecosystems and human or animal drinking-water; and
2. Effluent and water application rates and nutrient load; and Insert matters to which discretion is restricted.
3. The effectiveness of methods to store effluent and application rates in times of adverse weather conditions, including frozen or saturated soil, or in cases of equipment failure; and
4. The proximity of any discharge site to, and actual or potential effects on, any identified site of significant indigenous biodiversity on biodiversity; and
5. The adequacy of design, construction, systems and management processes to

minimise fugitive discharges from the system, including, but not limited to, mitigation in case of equipment failure or breakage; and

6. The quality of, compliance with, and auditing of the Farm Environment Plan.

Feedback from Ngā Rūnanga: Agree with planning analysis and recommendation to include new restricted discretionary matter, allowing consideration of effects on mana whenua.

Also note that indirect consideration of mana whenua concerns may be allowed for through the conditions of 5.35- e.g. effects on surface waterbodies, the coastal marine area.

Ngā Rūnanga have raised concerns regarding appropriate setbacks/buffers between effluent discharge areas and waterbodies, and the need to include indigenous planting to provide additional filtration/ uptake of nutrients prior to entering ground.

Recommendation:

Amend rule 5.36 to allow for consideration of the following matters-

Effects on the relationship of Ngāi Tahu and Ngāi Tahu culture and traditions with ancestral lands, water, sites, wāhi tāpu and other taonga including indigenous species and mahinga kai practices.

Or

- The extent to which wāhi tapu and wāhi taonga are protected; and
- Effects of the discharge on water quality/ Ngāi Tahu values including mahinga kai and mauri of any receiving water bodies; and
- The appropriateness of any mitigation measures including setbacks from surface water bodies, minimum separation distance between any discharge (to ground) and the highest known groundwater level and new planting.
- The extent to which the mitigation and associated monitoring has been incorporated into the FEP.

5.40 Silage pits or stockpiling of other decaying organic matter

The use of land for a silage pit or the stockpiling of other decaying organic matter including compost) and any associated discharge into or onto land where a contaminant may enter water, that does not meet one or more of the conditions in Rule 5.39 is a restricted discretionary activity where the following condition is met:

1. The silage pit, stockpile, and discharge is the subject of a Farm Environment Plan that has been prepared in accordance with Schedule 7 Part A.

Restricted discretionary matters:

1. The actual or potential environmental effects of not meeting the condition or conditions of Rule 5.39; and
2. The quality of, compliance with and auditing of the Farm Environment Plan.

Feedback from Ngā Rūnanga: Agree with planning analysis and recommendation to include new restricted discretionary matter, allowing consideration of effects on mana whenua.

Recommendation:

Amend rule 5.40 to allow for consideration of the following matters-

- Effects of the discharge on Ngāi Tahu values associated with water quality and the extent to which these are addressed by mitigation measures including setbacks from

surface water bodies, minimum separation distance between any discharge (to ground) and the highest known groundwater level and new planting.

5.74 Replanting areas of plantation forests (after harvest) or planting of new plantation forests in any flow-sensitive catchment

The replanting after harvest of areas of plantation forest that does not meet conditions of Rule 5.72 or the planting of new plantation forest that does not meet one or more of the conditions of Rule 5.73, within any flow-sensitive catchment listed in Sections 6 to 15 is a restricted discretionary activity.

Restricted discretionary matters:

1. The actual or potential adverse environmental effects of forestry planting on the surface water flows in the catchment, including water allocation status, minimum flow or flow regime, in-stream values and authorised takes and use of the water; and
2. The actual or potential adverse environmental effects of forestry planting on groundwater recharge; and
3. The benefits of the forestry for slope stability, erosion control, noxious plant control, water quality, carbon sequestration and biodiversity protection; and
4. The spacing and density, and species of the planting.

Feedback from Ngā Rūnanga:

There is no specific restricted discretionary matter for (mana whenua) cultural values. The restricted discretionary matters of Rule 5.74 may allow for some mana whenua concerns to be indirectly considered- i.e. effects of forestry planting on surface water flows, instream values, groundwater recharge, water quality, biodiversity protection.

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/considered.

Ngā Rūnanga have expressed concerns regarding sediment run-off entering sensitive receiving waterbodies during harvesting activities and effects on mahinga kai and the cultural health.

Recommendation: Amend Rule 5.74 to allow for consideration of the following matters-

- Effects on water quality/ Ngāi Tahu values including mahinga kai and mauri of any receiving water bodies; and
- The appropriateness of any mitigation measures including setbacks from surface water bodies, and new planting.
- The extent to which wāhi tapu and wāhi taonga / sites of Ngāi Tahu cultural significance are protected.

5.101 Water tracers

The discharge of a water tracer to groundwater, a river, lake or artificial watercourse is a controlled activity, provided the following conditions are met:

1. The tracers are limited to the following:
 - (a) *Bacillus stearothermophilus* and *Bacillus subtilis* v. *niger*; *Lycopodium* sp. spores; or
 - (b) Baker's yeast (*Saccharomyces cerevisia*); or
 - (c) Bacteriophages; or

- (d) Rhodamine WT and Fluorescein fluorescent dyes; or
- (e) sodium chloride or potassium chloride; or
- (f) potassium bromide; and

2. The discharge is not within a Community Drinking-water Protection Zone as set out in Schedule 1.

The CRC reserves control over the following matters:

- 1. Duration and timing of the discharge; and
- 2. The volume and concentration of the tracer; and
- 3. The actual and potential environmental effects on water quality, aquatic ecosystems and sources of human or animal drinking-water.

Notification

Pursuant to sections 95A and 95B of the RMA an application for resource consent under this rule will be processed and considered without public or limited notification.

Note that limited notification to affected order holders in terms of section 95F of the RMA will be necessary, where relevant, under section 95B(3) of the RMA.

Feedback from Ngā Rūnanga:

Add additional matter-

- 4. The provision of advice on timing and duration of the release of the tracer to ECan.

5.110 Bores

The taking of water from groundwater for the purposes of carrying out bore development or pumping tests, or incidental to geotechnical investigations, and the associated use and discharge of that water that does not meet one or more of the conditions in Rule 5.109 is a restricted discretionary activity.

The exercise of discretion is restricted to the following matter:

- 1. The actual and potential adverse environmental effects of not meeting the condition or conditions of Rule 5.109.

Recommendation:

Amend rule 5.110 to allow for consideration of the following matters-

- The extent to which wāhi tapu and wāhi taonga are protected; and
- Effects of the discharge on water quality/ Ngāi Tahu values including mahinga kai and mauri of any receiving water bodies; and
- The appropriateness of any mitigation measures including setbacks from surface water bodies, minimum separation distance between any discharge (to ground) and the highest known groundwater level and new planting.

5.114A Small and Community Water Takes

The taking and using of:

(a) less than 5L/s and 10m³ per property per day of groundwater that does not meet the condition of Rule 5.113; or

(b) less than 5L/s and more than 10m³ but less than 100m³ per property per day of groundwater on a property more than 20ha in area that does not meet the condition of Rule 5.114; is a restricted discretionary activity.

The exercise of discretion is restricted to the following matter:

1. The actual and potential adverse environmental effects of not meeting the condition of Rule 5.113 or Rule 5.114.

Recommendation: Amend Rule 5.114A to allow for consideration of the following matters-

- The extent to which wāhi tapu and wāhi taonga / sites of Ngāi Tahu cultural significance are protected.
- the individual and cumulative effect of the take on Ngāi Tahu values associated with the river or lake including mahinga kai, and the mauri of the waterways.

5.115 The taking and using of water for a community water supply from groundwater or surface water is a restricted discretionary activity, provided the following conditions are complied with:

1. A Water Supply Strategy prepared in accordance with Schedule 25 is submitted with the resource consent application; and
2. Where the application seeks water for purposes other than drinking water, the application shall identify which components are not related to drinking water, and which of those are existing or new activities.

The exercise of discretion is restricted to the following matters:

1. The reasonable demand for water, taking into account the size of the community, the number of properties and stock that are to be supplied, the uses that are to be supplied and the potential growth in demand for water; and
2. The effectiveness and efficiency of the distribution network; and
3. The quality and adequacy of, compliance with and auditing of the Water Supply Strategy; and
4. The actual and potential adverse effects on other water takes, including reliability of supply; and
- 4A. The effect on the environmental flow and allocation limits within the relevant subregion Sections 6 to 15; and
5. The potential benefits of the activity to the applicant, the community and the environment; and
6. Compliance with any relevant Water Conservation Order; and
7. The need for and extent of the proposed Community Drinking-water Protection Zone; and
8. The matters set out in Schedule 1 and the way in which those matters are responded to in the proposal for which consent is sought and the assessment of effects forming part of the application; and
9. The actual and potential effects on any user of land located within the proposed Community Drinking-water Protection Zone.

Recommendation: Amend Rule 5.114A to allow for consideration of the following matters-

- The extent to which wāhi tapu and wāhi taonga / sites of Ngāi Tahu cultural significance are protected.
- the individual and cumulative effect of the take on Ngāi Tahu values associated with the river or lake including mahinga kai, and the mauri of the waterways.

5.117 Water for Construction Maintenance

The taking and using of water from any river or part of a river that is subject to a Water Conservation Order, for infrastructure construction, maintenance and repair is a

restricted discretionary activity.

The exercise of discretion is restricted to the following matters:

1. The provisions of the relevant Water Conservation Order; and
2. The location of the take, the actual and potential adverse environmental effects on the immediate vicinity and the need for any restriction to prevent the flow from reducing to zero in this vicinity.

Recommendation: Amend Rule 5.117 to allow for consideration of the following matters-

- The extent to which wāhi tapu and wāhi taonga / sites of Ngāi Tahu cultural significance are protected.
- the individual and cumulative effect of the take on Ngāi Tahu values associated with the river or lake including mahinga kai, and the mauri of the waterways.

5.120 Take and discharge water from groundwater for de-watering purpose

The taking of water from groundwater for the purpose of de-watering for carrying out excavation, construction, maintenance and geotechnical testing and the associated use and discharge of that water that does not meet one or more of the conditions in Rule 5.119 is a restricted discretionary activity.

Restricted discretionary matters:

1. The actual and potential environmental effects of not meeting the condition or conditions of Rule 5.119.

Feedback from Ngā Rūnanga:

There is no specific restricted discretionary matter for (mana whenua) cultural values. The conditions of rule 5.119 may allow for some mana whenua concerns to be indirectly considered- e.g. effects on surface waterbodies, groundwater and drinking water sources.

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/considered.

Ngā Rūnanga have also raised concerns about unnatural mixing of waters (i.e. different sources between or with catchments) as it can be culturally inappropriate.

Recommendation: : Amend Rule 5.120 to allow for consideration of the following matter-

Effects on the relationship of Ngāi Tahu and Ngāi Tahu culture and traditions with ancestral lands, water, sites, wāhi tāpu and other taonga including indigenous species and mahinga kai practices.

5.123 Take and use of surface water from a river or lake

The taking and use of surface water from a river or lake is a restricted discretionary activity, provided the following conditions are met:

1. Unless the proposed take is the replacement of a lawfully established activity affected by the provisions of section 124-124C of the RMA, the take, in addition to all existing consented takes, does not result in any exceedance of any environmental flow or allocation limit or rate of take or seasonal or annual volume limits set in Sections 6 to 15 for that surface waterbody; and
2. Unless the proposed take is the replacement of a lawfully established take affected by the provisions of section 124-124C of the RMA, if no limits are set in Sections 6 to 15 for that surface waterbody, the take, both singularly and in addition to all existing

consented takes meets a flow regime with a minimum flow of 50% of the 7-day mean annual low flow (7DMALF) as estimated by the CRC and an allocation limit of 20% of the 7DMALF; and

3. Unless it is associated with the artificial opening of a hāpua, lagoon or coastal lake to the sea, the take is not from a wetland, hāpua or a high naturalness river or high naturalness lake that is listed in Sections 6 to 15.

Restricted discretionary matters:

1A. The rate, volume and timing of the take; and

1. The actual or potential adverse environmental effects on water quality, including whether the activity, in combination with all other activities, will alter the water quality allocation status of the relevant catchment; and
2. Whether the amount of water to be taken and used is reasonable for the proposed use. In assessing reasonable use for irrigation purposes, the CRC will consider the matters set out in Schedule 10; and
3. For water used for irrigation, the management of water allocation and resulting nutrient discharges on individual farms; and
4. The potential effects on groundwater recharge where the groundwater allocation zone is fully or over allocated as set out in Sections 6 to 15; and
5. The availability and practicality of using alternative supplies of water; and
6. The effects the take has on any other authorised takes or diversions; and
7. The potential to frustrate or prevent the attainment of the regional network for water harvest, storage and distribution, shown on the Regional Concept diagram in Schedule 16; and
8. The reduction in the rate of take in times of low flow and restrictions to prevent the flow from reducing to zero as set out in policies to this Plan; and
9. Whether and how fish are prevented from entering the water intake; and
10. The provisions of any relevant Water Conservation Order; and
11. The proximity and actual or potential adverse environmental effects of water use on any significant indigenous biodiversity and adjacent dry land habitats; and
12. Where the proposed take is the replacement of a lawfully established take affected by the provisions of Section 124-124C of the RMA and is from an over-allocated surface water catchment, the reduction in the rate of take and volume limits to enable reduction of the over-allocation; and
13. Where the water is to be used for irrigation, the preparation and implementation of a Farm Environment Plan in accordance with Schedule 7 that demonstrates that the water is being used efficiently.

Feedback from Ngā Rūnanga:

There is no specific restricted discretionary matter for (mana whenua) cultural values. The restricted discretionary matters of Rule 5.123 may allow for some mana whenua concerns to be indirectly considered- i.e. effects on water quality, groundwater recharge, indigenous biodiversity and dry land habitats.

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/considered.

Ngā Rūnanga have a strong interest in the management of freshwater resources. Concerns

consistently raised include- priorities for the use, appropriate management to deliver cultural outcomes, declining water quality in the region, over-allocation of freshwater resources.

Recommendation: Amend Rule 5.123 to allow for consideration of the following matters:

- whether papatipu rūnanga have been consulted and the outcome of that consultation (and whether the activity incorporates the outcome of that consultation),
- the individual and cumulative effect of the take on Ngāi Tahu values associated with the river or lake including mahinga kai, and the mauri of the waterways.
- effects of the take on any site of historic Ngāi Tahu occupation including nohoanga sites.

5.126 The non-consumptive taking, use and discharge of water from a lake

The non-consumptive taking and use of water from a lake, river or artificial watercourse and discharge of the same water to the same lake, river or artificial watercourse is a restricted discretionary activity, provided the following conditions are met:

1. Limits have been set for that surface waterbody in Sections 6 to 15 or the lake or river is subject to a Water Conservation Order; and
2. The taking of water and subsequent discharge does not result in any exceedance of any limit set for that waterbody in Sections 6 to 15 or flow and allocation regime set out in the Water Conservation Order; and
3. Other than for the replacement of existing consents for activities provided for under Policy 4.51, the maximum distance from the point of take to the point of discharge is not more than 250 m; and
4. Other than for the replacement of existing consents for activities provided for under Policy 4.51, the take is not from a wetland, hāpua or a high naturalness lake or river that is listed in Sections 6 to 15.

Restricted discretionary matters:

1. Measures that will ensure any limits are not affected; and
2. Whether the amount of water to be taken is reasonable for the intended use; and
3. The effects the take has on any other authorised takes; and
4. The potential to frustrate or prevent the attainment of the regional network for water harvest, storage and distribution, shown on the Regional Concept diagram in Schedule 16; and
5. The reduction in the rate of take in times of low flow and the need for any additional restrictions to prevent the flow from reducing to zero; and
6. Whether and how fish are prevented from entering the water intake and/or discharge structure; and
7. The actual or potential adverse environmental effects on aquatic ecosystems, in-stream habitat, wetlands, dryland habitats, sites of significance to Ngāi Tahu, amenity and recreational values in the area of the river subject to the take; and
8. The actual or potential adverse environmental effects of both the take and any subsequent discharge on water quality.

Feedback from Ngā Rūnanga:

The restricted discretionary matters of Rule 5.123 may allow for some mana whenua concerns to be considered- i.e. actual or potential adverse effects on sites of significance to Ngāi Tahu,

instream habitat, wetlands and drylands.

However, values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/considered.

Ngā Rūnanga have a strong interest in the management of freshwater resources. Concerns have been raised for non-consumptive takes occurring in fully allocated/ over-allocated catchments, and effects on waterbodies, i.e. further declining flow (i.e. between the take and point of discharge/return).

Recommendation: Amend Rule 5.126 to allow for consideration of the following matters:

- effects of the take on Ngāi Tahu values including mahinga kai and the mauri of the waterways.

5.128 Take and use of groundwater

The taking and use of groundwater is a restricted discretionary activity, provided the following conditions are met:

1. The take is from within a Groundwater Allocation Zone on the Planning Maps; and
2. Unless the proposed take is the replacement of a lawfully established take affected by the provisions of section 124-124C of the RMA, for stream depleting groundwater takes, the take, in addition to all existing consented surface water takes, does not result in any exceedance of any environmental flow and allocation limits set in Sections 6 to 15 for that surface waterbody in accordance with Schedule 9; and
3. Unless the proposed take is the replacement of a lawfully established take affected by the provisions of section 124-124C of the RMA, the seasonal or annual volume of the groundwater take, in addition to all existing consented takes, as determined by the method in Schedule 13 does not exceed the groundwater allocation limits for the relevant Groundwater Allocation Zone in Sections 6 to 15; and
4. Unless the proposed take is the replacement of a lawfully established take affected by the provisions of sections 124-124C of the RMA, the bore interference effects on any groundwater abstraction other than an abstraction by or on behalf of the applicant are acceptable, as determined in accordance with Schedule 12.

Restricted discretionary matters:

1A. The rate, volume and timing of the take; and

1. Whether the amount of water to be taken and used is reasonable for the proposed use. In assessing reasonable use for irrigation purposes, the CRC will consider the matters set out in Schedule 10; and
2. The availability and practicality of using alternative supplies of water; and
3. The maximum rate of take, including the capacity of the bore or bore field to achieve that rate, and the rate required to service any irrigation system; and
4. The actual or potential adverse environmental effects on surface water resources if the groundwater take is within a surface water catchment where the surface water allocation limit, as set out in Sections 6 to 15 is fully or over allocated; and
5. Unless the proposed take is the replacement of a lawfully established take affected by the provisions of sections 124-124C of the RMA, the actual or potential adverse environmental effects the take has on any other authorised takes, including interference effects as set out in Schedule 12; and
6. For stream depleting groundwater takes, the matters of discretion under Rule 5.123; and

7. Whether salt-water intrusion into the aquifer or landward movement of the salt water/fresh water interface is prevented; and
8. The proximity and actual or potential adverse environmental effects of water use to any significant indigenous biodiversity and adjacent dryland habitats; and
9. The protection of groundwater sources, including the prevention of backflow of water or contaminants; and
10. Where the proposed take is the replacement of a lawfully established take affected by the provisions of Section 124-124C of the RMA and is from an over-allocated groundwater allocation zone, the reduction in the rate of take and volume limits to enable reduction of the over-allocation; and
11. Where the water is being used for irrigation, the preparation and implementation of a Farm Environment Plan in accordance with Schedule 7 that demonstrates that the water is being used efficiently.

Feedback from Ngā Rūnanga:

Agree with planning analysis and recommendation to include a new matter of discretion allowing for consideration of effects on mana whenua.

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/ considered.

Ngā Rūnanga have a strong interest in the management of freshwater resources. Concerns consistently raised include- priorities for the use, appropriate management to deliver cultural outcomes, declining water quality in the region, over-allocation of freshwater resources.

Recommendation: Amend Rule 5.128 to allow for consideration of the following matters:

- whether papatipu rūnanga have been consulted and the outcome of that consultation (and whether the activity incorporates the outcome of that consultation),
- the individual and cumulative effect of the take on Ngāi Tahu values, including mahinga kai and the mauri of the waterbodies.
- effects of the take (where there is hydraulic connection to surface water) on any site of historic Ngāi Tahu occupation including nohoanga sites.

5.133 Transfer of Water Permits

The temporary or permanent transfer, in whole or in part, (other than to the new owner of the site to which the take and use of the water relates and where the location of the take and use of water does not change) of a water permit to take or use surface water or groundwater, is a restricted discretionary activity, provided the following conditions are met:

1. The reliability of supply for any other lawfully established water take is not reduced; and
2. The seasonal or annual volume of take after the transfer is less than or equal to the volume of take prior to the transfer, or if no seasonal or annual volume has been applied, a seasonal or annual volume is applied in accordance with Schedule 10; and
3. In the case of surface water, the point of take remains within the same catchment and the take complies with the limits set in Sections 6 to 15; and
4. In the case of groundwater:
 - (a) the point of take is within the same groundwater allocation zone; and
 - (b) the bore interference effects as set out in Schedule 12 are acceptable; and

(c) in addition for stream depleting groundwater takes:

(i) the transfer is within the same catchment; and

(ii) the take complies with the limits set in Sections 6 to 15 or the limits in any relevant catchment specific plan listed in Section 2.8 of this Plan; and

(iii) the stream depletion effect is no greater in the transferred location than in the original location.

Restricted discretionary matters:

1. The nature of the transfer, whether short term, long term, partial or full, and the apportioning of the maximum rate and seasonal or annual volume in the case of a partial transfer; and
2. The appropriateness of existing conditions, including conditions on minimum flow, seasonal or annual volume and other restrictions to mitigate effects; and
3. The reasonable need for the quantities of water sought, the intended use of the water and the ability of the applicant to abstract and use those quantities; and
4. The efficiency of the exercise of the resource consent; and
5. The reduction in the rate of take in times of low flow; and
6. The method of preventing fish from entering any water intake; and
7. In a catchment where the surface water and/or groundwater allocation limits set out in Rule 5.123 and Rule 5.128 or Sections 6 to 15 are exceeded, any reduction in the rate or volume of take that may be required to assist with the phasing out of that exceedance.

Notification

Pursuant to sections 95A and 95B of the RMA an application for resource consent under this rule will be processed and considered without public or limited notification.

Note that limited notification to affected order holders in terms of section 95F of the RMA will be necessary, where relevant, under section 95B(3) of the RMA.

Feedback from Ngā Rūnanga:

There is no specific matter of discretion for (mana whenua) cultural values. It is also noted that this rule specifies that consents under it will be processed without public or limited notification. This may limit the ability for any cultural concerns to be considered, even if a matter of discretion (for cultural values was adopted).

Ngā rūnanga have previously raised concerns regarding the appropriateness of water transfer permits as this effectively allows water to be treated as a commodity and not as a taonga.

Recommendation: Amend Rule 5.133 to allow for consideration of the following matters:

- Where there is a change in use or a change in the location of use- Effects of the transfer of water on Ngāi Tahu values including mauri and mahinga kai, and
- the appropriateness of any mitigation measures including whether there will be a lesser amount of water being taken/ a proportion of the allocated water will be surrendered.

* **Note:** this is a very fundamental issue which potentially is unable to be addressed through the resource consent process

5.161 Reducing the area of a wetland

Reducing the area of a wetland for the operation, maintenance or repair of existing infrastructure or construction of new infrastructure for transport, electricity or water distribution

or reticulation, including vegetation clearance and earthworks and the taking, use, damming or diversion (including draining) of water and the associated discharge of any water onto land or into a river, lake, artificial watercourse or wetland is a restricted discretionary activity.

Restricted discretionary matters:

1. The practicality of avoiding the wetland, including alternative routes or methods; and
2. The ecological significance of the wetland, and the actual and potential adverse effects on the significant values of the wetland; and
3. Any off-setting of any actual and potential adverse effects; and
4. The magnitude and proportion of reduction in area of the wetland.

Feedback from Ngā Rūnanga:

There is no specific restricted discretionary matter for (mana whenua) cultural values. The restricted discretionary matters of Rule 5.161 may allow for some mana whenua concerns to be indirectly considered- i.e. effects on the wetland including significant values of the wetland.

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/ considered.

Ngā Rūnanga have previously raised concerns regarding protecting culturally significant sites and cultural associations, when there are no identified ecological values.

Recommendation: Amend Rule 5.161 to allow for consideration of the following matters:

- whether papatipu rūnanga have been consulted and the outcome of that consultation (and whether the activity incorporates the outcome of that consultation),
- The cultural significance of wetlands and effects of the proposed activity on Ngāi Tahu interests and values associated with wetlands, including the actual and potential effects, both individual and cumulative.
- the appropriateness of any mitigation measures including recreating new wetland areas, new planting and improved access for customary use.

5.164 Vegetation in Lake and Riverbeds- planting or removal and disturbance.

The introduction or planting of any plant, or the removal and disturbance of existing vegetation in, on or under the bed of a lake or river and any associated discharge of sediment or sediment-laden water that does not comply with one or more of the conditions of Rule 5.163, excluding conditions 2, 4, and 9, is a restricted discretionary activity.

Restricted discretionary matters:

1. The actual and potential adverse environmental effects of not meeting the condition or conditions of Rule 5.163.

Feedback from Ngā Rūnanga:

There is no specific restricted discretionary matter for (mana whenua) cultural values. The restricted discretionary matters of Rule 5.163 may allow for some mana whenua concerns to be indirectly considered- i.e. avoiding disturbance of inanga spawning habitat and enabling planting of indigenous species (that occur naturally in the catchment).

Recommendation: Amend Rule 5.133 to allow for consideration of the following matters:

- potential adverse effects of the proposed activity on Ngāi Tahu values including mahinga kai and mauri, and
- the appropriateness of any mitigation measures including new planting and improved access for customary use.

5.176 Excavation of material

The use of land to excavate material that does not comply with one or more of the conditions of Rule 5.175 is a restricted discretionary activity.

Restricted discretionary matters:

1. The actual and potential adverse environmental effects on the quality of water in aquifers, rivers, lakes, wetlands; and
2. Any need for remediation or long-term treatment of the excavation; and
3. The protection of the confining layer and maintaining levels and groundwater pressures in any confined aquifer, including any alternative methods or locations for the excavation; and
4. The management of any exposed groundwater.

Feedback from Ngā Rūnanga:

Agree with planning analysis and recommendation to include new restricted discretionary matter, allowing consideration of effects on mana whenua.

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/ considered.

Recommendation: Amend Rule 5.176 to allow for consideration of the following matters:

- The extent to which wāhi tapu and wāhi taonga / sites of Ngāi Tahu cultural significance are protected.
- Potential adverse effects of the proposed activity on Ngāi Tahu values including protecting the mauri of waterbodies (which may be at risk of potential contamination)
- The appropriateness of any mitigation measures, including imposing an Accidental Discovery Protocol, the supervision of earthworks including the qualifications and experience of the person(s) responsible for the site, and/or the opportunity to have a cultural monitor present.

5.178 Deposition of material

1. The use of land for the deposition of more than 50 m³ of material in any consecutive 12 month period onto land which is excavated to a depth in excess of 5 m below the natural land surface and is located over an unconfined or semi-confined aquifer, where the seasonal high water table is less than 5 m below the deepest point in the excavation that does not comply with the conditions of Rule 5.177 is a restricted discretionary activity.

Restricted discretionary matters:

1. The potential for adverse effects on the quality of water in aquifers, rivers, lakes, wetlands and mitigation measures; and
2. The proportion of any material other than cleanfill and its potential to cause contamination; and

3. The content and adequacy of the management plan prepared in accordance with Section 8.1 and Appendix B of “A Guide to the Management of Cleanfills”, Ministry for the Environment, January 2002.

Feedback from Ngā Rūnanga:

There is no specific restricted discretionary matter for (mana whenua) cultural values. The conditions of rule 5.177 and the restricted discretionary matters of Rule 5.178 may allow for some mana whenua concerns to be indirectly considered- i.e. concerns regarding archaeological sites and surface water (rivers, lakes) and groundwater quality (aquifers) and wetlands and appropriate mitigation measures.

Protection of wāhi tapu and wāhi taonga and other areas of cultural significance cannot be considered. Additionally values such as Kaitiakitanga, mauri, mahinga kai and other customary activities (including access) may not be explicitly recognised/ considered.

Recommendation: Amend Rule 5.178 to allow for consideration of the following matter-

- The extent to which wāhi tapu and wāhi taonga / sites of Ngāi Tahu cultural significance are protected.
- Potential adverse effects of the proposed activity on Ngāi Tahu values including protecting the mauri of waterbodies (which may be at risk of potential contamination)
- The appropriateness of any mitigation measures, including imposing an Accidental Discovery Protocol, the supervision of earthworks including the qualifications and experience of the person(s) responsible for the site, and/or the opportunity to have a cultural monitor present.

5.180 Storage and use of hazardous substances

The use of land for the storage in a portable container and use of a hazardous substance listed in Part A of Schedule 4 that does not meet one or more of the conditions in Rule 5.179 is a restricted discretionary activity.

Restricted discretionary matters:

1. Measures to avoid:
 - a. the entry of the substances or associated contaminants into groundwater, surface water, supplies of drinking-water and aquatic ecosystems; and
 - b. any actual or potential adverse environmental effects on the current or future use of the water resource, as a result of leakage or spillage of the substance, or a release of the substance as a result of a natural event; and
2. Measures to prevent or contain spills or leaks, including site layout and drainage, waste management, emergency management and leak detection; and
3. Maintenance and monitoring of the storage or use system including containment measures.

Feedback from Ngā Rūnanga:

There is no specific restricted discretionary matter for (mana whenua) cultural values. The restricted discretionary matters of Rule 5.179 may allow for some mana whenua concerns to be indirectly considered- i.e. concerns regarding surface water, groundwater quality and drinking water quality.

Recommendation: Amend Rule 5.180 to allow for consideration of the following matter-

- The extent to which wāhi tapu and wāhi taonga / sites of Ngāi Tahu cultural

significance are protected.

- Potential adverse effects of the proposed activity on Ngāi Tahu values including protecting the mauri of waterbodies (which may be at risk of potential contamination)
- The appropriateness of any mitigation measures, including imposing an Accidental Discovery Protocol, the supervision of earthworks including the qualifications and experience of the person(s) responsible for the site, and/or the opportunity to have a cultural monitor present.

Appendix 1: LWRP Policy

Transfer of Water Permits

4.71 Enable the transfer of water permits to take or use water, provided:

- (a) the transfer of water is occurring within the same surface water catchment or sub-catchment, or the same groundwater zone, as defined in this Plan;
- (b) the same or a lesser amount of water is being taken or used;
- (ba) the transferee's water take is reasonable for their proposed use as determined under the provisions of this Plan including Schedule 10 for irrigation uses;
- (c) the adverse effects of the take and use of water are not more than minor; and
- (d) that in an over-allocated surface water catchment or groundwater zone, a proportion of the allocated water is surrendered and is not re-allocated, unless there is a method and defined timeframe to phase out over-allocation set out in an applicable sub-region Section of this Plan.

4.71A Proposals to transfer water from one catchment to another are the subject of timely consultation with Ngāi Tahu on the whakapapa of the catchments, and on the effects on natural character, water quality and ecology of the catchments.

Appendix 2: LWRP- Plan Change 5

Inclusion of Mahinga Kai values

5E Management Area: Waterbodies Management¹⁶⁷ (wetlands, riparian areas, drains, rivers, lakes)

Objective:

To manage¹⁶⁸ Wetlands, riparian areas and the margins of¹⁶⁹ surface waterbodies are managed¹⁷⁰ to avoid damage to the bed and margins of a the¹⁷¹ water body, and to avoid the direct input of nutrients, sediment, and microbial pathogens.

Targets:

- (1) Stock are excluded from waterbodies in accordance with regional council rules or any granted resource consent.
- (2) Vegetated riparian margins of sufficient width¹⁷² are maintained to minimise nutrient, sediment and microbial pathogen losses to waterbodies.
- (3) Farm tracks, gateways, water troughs, self-feeding areas, stock camps wallows and other farming activities that are potential¹⁷³ sources of sediment, nutrient and microbial loss are located so as to minimise the risks to surface water quality.
- (4) Mahinga kai values are protected as a result of measures taken to protect and enhance water quality and stream health.¹⁷⁴