

**BEFORE THE CANTERBURY REGIONAL COUNCIL**

**IN THE MATTER** of a proposed plan  
change under Schedule  
1 to the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of submissions by **TE  
NGĀI TŪĀHURIRI  
RŪNANGA** and **TE  
RŪNANGA O  
AROWHENUA AND TE  
RŪNANGA O NGĀI  
TAHU** and **TE  
RŪNANGA O NGĀI  
TAHU, TE RŪNANGA  
O KAIKŌURA, TE  
HAPŪ O NGĀTI  
WHEKE, TE  
RŪNANGA O  
KOUKOURĀRATA,  
ŌNUKU RŪNANGA,  
WAIREWA RŪNANGA,  
TE TAUMUTU  
RŪNANGA,  
TE RŪNANGA O  
AROWHENUA, TE  
RŪNANGA O WAIHAO  
AND TE RŪNANGA O  
MOERAKI (collectively  
NGĀ RŪNANGA) on  
**PROPOSED PLAN  
CHANGE 7 ON THE  
CANTERBURY LAND  
AND WATER  
REGIONAL PLAN****

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**SUMMARY OF EVIDENCE OF TREENA LEE DAVIDSON ON BEHALF OF NGĀ  
RŪNANGA**

**25 NOVEMBER 2020**

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## INTRODUCTION

1. I have provided evidence and rebuttal evidence on behalf of Te Rūnanga o Arowhenua and Te Rūnanga o Ngāi Tahu, Te Rūnanga o Ngāi Tahu and Te Rūnanga o Kaikōura, Te Hapū o Ngāti Wheke, Te Rūnanga o Koukourārata, Ōnuku Rūnanga, Wairewa Rūnanga, Te Taumutu Rūnanga, Te Rūnanga o Arowhenua, Te Rūnanga o Waihao and Te Rūnanga o Moeraki and Te Ngai Tūāhuriri (collectively referred to as **Ngā Rūnanga**). My evidence relates to planning matters.
  
2. As a starting point, my evidence generally supported the recommendations and the rationale provided in the Section 42A Report. My evidence in chief and rebuttal evidence also made suggestions to aid with the clarity of relevant parts of Plan Change 7 (**PC7**) to the Canterbury Land and Water Regional Plan (**LWRP**). In this summary, I have distilled key points from my evidence and addressed the National Policy Statement for Freshwater Management 2020 (**NPSFM 2020**).

### NPSFM 2020

3. Many planners have offered an opinion on the NPSFM 2020. Although I have already considered the NPSFM 2020 in my rebuttal statement of evidence, it is necessary for me to respond to some of the issues raised by other planning witnesses who have presented to the Panel.
  
4. Te Mana o te Wai is a paradigm shift, and it is not a new concept. It is a long standing concept within Te Ao Māori, and was introduced into the NSPFW 2014. The NPSFM 2020 has clarified and strengthened the hierarchy of obligations in Te Mana o te Wai, being:<sup>1</sup>
  - (a) First, the health and well-being of water bodies and freshwater ecosystems;
  
  - (b) Second, the health and needs of people (such as drinking water); and

<sup>1</sup> NPSFM 2020 at 1.3 Fundamental concept - Te Mana o te Wai.

- (c) Third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and into the future.
5. I consider that both the NPSFM 2017 and the NPSFM 2020 mandate the paradigm shift that the submissions and cultural evidence from Ngā Rūnanga demand. More specifically, Mr Henry and Mr Reuben have described the history and health of waterbodies, and the concerns Ngā Rūnanga have for the environment. The cultural evidence has also described the Zone Committee processes, and the way in which the Zone Implementation Programme Addendum recommendations were formulated. Their evidence suggests that the concerns of Ngā Rūnanga have been set aside, despite the necessity of a further and faster approach to ensure the haurora of the water is maintained or, where degraded, improved.
6. My opinion is consistent with that offered in the Section 42A Report, in so far as that I consider Te Mana o te Wai has not been given effect to in the PC7 provisions, and that as a result PC7 falls short of the paradigm shift anticipated by the NPSFM 2020 for both the OTOP and the Waimakariri. As such, I consider that PC7 does not give effect to the NPSFM 2020.
7. The NPSFM 2020 contains a single objective and 15 policies. I consider that the “fundamental concept” of Te Mana o te Wai, objective 2.1 and the policies all clearly intend to prioritise the needs of the water above all other considerations, including the ability of people to provide for their social, economic and cultural needs. I note here that this interpretation is consistent with the Environment Court’s “key understandings” of Te Mana o te Wai in the context of the NPSFM 2017.<sup>2</sup> More specifically, the Environment Court has recognised that providing for the health and wellbeing of waterbodies is to be at the forefront of all discussions and decisions about freshwater.<sup>3</sup>
8. I consider the NPSFM 2020 further advances the direction established in the NPSFM 2017. Not only is the hierarchy of obligations in Te Mana o te Wai explicitly set out, but the following policies require:

2 The Court shared three “key understandings” in *Aratiatia Livestock Ltd & Ors v Southland Regional Council* [2019] NZEnvC 208.

3 At [18].

- (a) Freshwater values are identified and provided for in the management of freshwater (policy 2);
  - (b) Water is dealt with in an integrated manner (policy 3);
  - (c) Integration of climate change (policy 4);
  - (d) Improvement of degraded water and to at least maintain the health and well-being of other waterbodies (policy 5);
  - (e) No further loss of the extent of natural inland wetlands and their values are protected (policy 6);
  - (f) Avoiding, to the extent practicable, the loss of extent and values of rivers (policy 7);
  - (g) Protecting the significant values of outstanding water bodies (policy 8);
  - (h) Protecting indigenous freshwater species (policy 9);
  - (i) Freshwater is allocated and used efficiently and over allocation is phased out and future overallocation avoided (policy 11); and
  - (j) 90% of Rivers that are fourth order or higher and lakes with a perimeter of 1.5kms are made swimmable by 2040 (policy 12).
9. With regard to giving effect to the NPSFM 2020, I consider that the NPSFM 2020 anticipates a process to be undertaken which is not materially different from that which Environment Canterbury has engaged in the lead up to notifying Plan Change 7.
10. Subpart 2 of the NPSFM 2020 anticipates that Freshwater Management Units are identified, values and objectives set, attributes and limits set and plans for action established (**FMU processes**). This was undertaken by the Zone Committee processes, albeit with some disappointment from Ngā Rūnanga about how far and how fast change would happen. Given the similarities, I consider that the matters before the Hearing Panel in this hearing and those that

would be before it following the NPSFW 2020 FMU processes would not be dissimilar.

11. That said, I consider that there is one material difference between the Zone Committee process and the FMU processes set out in the NPSFM 2020. Te Mana o te Wai and the health and wellbeing of waterbodies was not at the forefront of all Zone Committee discussions and decision making. To this extent, I consider the NPSFM 2020 will require radical change, particularly in catchments where “tweaking” the existing system will not improve degraded waterbodies.

### **KEY POINTS FROM EVIDENCE**

12. My evidence generally supports the recommendations in the Section 42A Report. As drafted, the Section 42A Report proposes amendments that recommended a series of changes throughout Topic A and B that further restrict or limit activities that would affect water quality or quantity.
13. I suggest however there are exceptions within the Section 42A Report that weaken the recognition of the importance of the hauora of the water, and in turn its importance to the hauora of the environment and the people - particularly with regard to mahinga kai. These are:

#### **Topic A – Omnibus**

- (a) NPSFW 2020 - the changes do not provide for the B Band that Ngā Rūnanga sought and this has implications for how mahinga kai can be safely harvested. The NPSFM 2020 compulsory value of mahinga kai is relevant, and consideration must be given to the attributes provided in Appendix 2A.
- (b) Ngāi Tahu values – amendments to the matters of restriction that relate to Ngāi Tahu values are necessary. Providing clarity through referring to specific documents or by defining terms risks alienating Ngā Rūnanga from the process. Policy 2 of the NPSFM 2020 is relevant - it requires that tangata whenua are actively involved in freshwater management and Māori freshwater values are identified and provided for.

- (c) Habitats of indigenous species – the proposed plan omits the protection of habitat for tuna and also does not apply an approach that considers the whole lifecycles of some species. Notably, policy 9 of the NPSFM 2020 requires that the habitats of indigenous species are protected.
- (d) River protection works – the proposed plan permits re-contouring and re-battering as a part of defences without any constraints. Policy 7 of the NPSFM 2020 is relevant, and it requires that the loss of river extent and values is avoided, to the extent practicable.
- (e) Managed Aquifer Recharge (**MAR**)– while my evidence largely agrees with the Section 42A Report, I consider my conclusion (that MAR would better fit as a discretionary activity<sup>4</sup> rather than restricted discretionary activity) is supported by the NPSFM 2020. In particular:
  - (i) the need to use the best information available at the time [Section 1.6] and the use of MAR in New Zealand is still fairly new;
  - (ii) it would better provide for freshwater to be managed in an integrated manner as anticipated by Policy 2; and
  - (iii) it would better provide for Ngā Rūnanga concerns to be identified and provided for as anticipated by Policy 3.
- (f) Freshwater bathing sites – my evidence agreed with the Section 42A Report. However, having reviewed the NPSFM 2020, I suggest that Waiwera (Lake Forsyth) meets the requirements for being a specified river or lake as defined in Appendix 3. Therefore this Plan Change should consider how Waiwera (Lake Forsyth) will meet the national targets for primary contact by either 2030 or 2040.

4 Statement of Evidence of Treena Davidson dated 22 July 2020 at [187]. Though I note there are grammatical errors in this paragraph and it should read "...This does address some of the concerns that having MAR as a restricted discretionary activity raised, although I consider that, given the extent of the matters of discretion, whether a discretionary activity would be more appropriate.

## Topic B – OTOP

14. Plan Change 7 does not meet the expectations of Ngā Rūnanga for water quantity levels within the Te Umu Kaha / Temuka River, Opūaha / Opuha River and the Te Ana-a-Wai / Te Ana Wai that would provide for mahinga kai species, especially large tuna. Ngā Rūnanga seek that the water to be given back to the rivers takes place within a shorter timeframe than proposed.
15. Policy 1 of the NPSFM 2020 which is to give effect to Te Mana o te Wai, Policy 3 requiring a whole of catchment approach and Policy 11 which requires that freshwater is allocated and used efficiently and all existing over-allocation is phased out are all relevant.
16. The evidence of Mr Henry and Mr King would suggest that the loss of the mana of the water has been rather rapid and that for them, to restore the mana risks multiple generations of being unable to practice or share their practice of mahinga kai that was passed down to them. As I discussed in paragraphs xx – xx above the NPSFM 2020 more clearly mandates the paradigm shift that was anticipated under the NPSFM 2017.
17. Finally, I note that a number of submitters have suggested that there is insufficient information and/or understanding about Te Mana o te Wai for the Hearing Panel to make decisions on PC7. It has also been suggested that there should be a subsequent plan change to enable some sectors of the community to better understand and plan for what a Te Mana o Te Wai regime would entail. I disagree and consider that the evidence for Ngā Rūnanga clearly identifies that what is being sought has been consistently advanced in public forums for many years. Given that PC7 is required to give effect to the NPSFM 2020, I consider that this process is the correct forum for appropriate decisions to be made rather than being some form of interim step.