

BEFORE THE CANTERBURY REGIONAL COUNCIL

IN THE MATTER of 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****

**MEMORANDUM OF COUNSEL FOR NGĀ RŪNANGA REGARDING NATIONAL POLICY
STATEMENT FOR FRESHWATER MANAGEMENT 2020**

15 JANUARY 2021



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MAY IT PLEASE THE HEARINGS PANEL

Introduction

1. This memorandum is filed on behalf of Ngā Rūnanga.
2. Ngā Rūnanga is grateful for the Panel's indication that it would consider a memorandum on the interpretation and application of the National Policy Statement for Freshwater Management 2020 (**NPSFM 2020**), given the position advanced on behalf of Waimakariri Irrigation Limited (**WIL**) in a memorandum to the Panel dated 2 December 2020.
3. In preparing this memorandum, counsel have had the benefit of considering the memoranda on behalf of Christchurch City Council (**CCC**) and the Director-General of Conservation (**DoC**) dated 16 and 18 December 2020 respectively.
4. Ngā Rūnanga agrees with the substance of the position advanced by CCC and DoC, which is consistent with the position advanced to the Hearings Panel in oral submissions on behalf of Ngā Rūnanga on 1 December 2020.
5. In particular, it is noted that WIL has advanced an interpretation of the NPSFM 2020, and the need for separate consideration to be given to Part 2 of the Resource Management Act 1991 (**RMA**), only on the basis that the NPSFM 2020 was incomplete in terms of its coverage.

Procedural uncertainty

6. The WIL memorandum is clear that it does not rely on invalidity,¹ and is also clear that it does not assert uncertainty on the basis usually understood by that term.² Rather, it asserts that there is procedural uncertainty as to how the NPSFM 2020 is to be implemented which suggests that it will result in incompleteness until those processes have run their course.³
7. On this issue, Ngā Rūnanga supports and adopts the submissions made by DoC in its memorandum, specifically those at paragraphs [17]-[22].

¹ WIL memorandum, at [8]

² Ibid, at [20]

³ Ibid, at [22]-[23]

Obligations in Te Mana o Te Wai identified in the NPS-FM are derived from sustainable management

8. The position of Ngā Rūnanga is that the hierarchy of obligations relevant to Te Mana o Te Wai, as set out in part 1.3(5) of the NPSFM 2020, are all derived from the sustainable management purpose of the RMA. In that respect, it is respectfully submitted that the obligations in Te Mana o Te Wai are not matters outside the sustainable management purpose of the RMA, but are in fact derived directly from the RMA's purpose as set out in Part 2 of the RMA. Therefore it cannot reasonably be submitted that the NPSFM 2020 is incomplete.
9. What the NPSFM 2020 seeks to do is prioritise aspects of sustainable management in the specific context of freshwater. To be clear, it is submitted that this prioritisation does not amount to incompleteness in respect of giving effect to Part 2.
10. It is therefore submitted that the NPSFM 2020 is not incomplete and the recourse to Part 2 of the RMA, that WIL suggests is necessary, is not required.
11. For ease of reference, part 1.3(5) of the NPSFM 2020 and section 5 of the RMA respectively state:
 - (5) There is a hierarchy of obligations in Te Mana o te Wai that prioritises:
 - (a) first, the health and well-being of water bodies and freshwater ecosystems;
 - (b) second, the health needs of people (such as drinking water);
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

5 Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
 - (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

12. It is submitted that the first obligation in Te Mana o Te Wai, *the health and wellbeing of water bodies and freshwater ecosystems*, is derived from the references in section 5 to:

- (a) Protection of natural resources;
- (b) Sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
- (c) Safeguarding the life-supporting capacity of water and ecosystems.

13. It is submitted that the second obligation in Te Mana o Te Wai, *the health needs of people (such as drinking water)*, can be derived from the following references in section 5:

- (a) Managing the use, development, and protection of natural resources in a way, or at a rate, which enables people and communities to provide for health and safety; and
- (b) Safeguarding the life-supporting capacity of water.

14. The third obligation in Te Mana o Te Wai, *the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future*, is respectfully submitted to be derived from following parts of section 5:

- (a) Sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being; and
- (b) Sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations.

15. Other aspects of Part 2 of the RMA are also submitted to be potentially relevant to these matters, but have not been separately addressed given that the relationship between the Te Mana o Te Wai obligations and the sustainable management

purpose of the RMA as outlined in section 5 is abundantly clear. Reprioritisation of the RMA's sustainable management purpose in the NPSFM 2020, as it relates to the circumstances which apply to freshwater, cannot result in incompleteness in the NPS.

16. Furthermore, as we outline below, the NPSFM 2020 does not purport to do anything materially different in terms of its coverage or intent than the previous NPS.

The NPSFM 2020 and previous versions

17. Counsel respectfully refers the Panel to paragraphs [74]-[86] of the legal submissions on behalf of Ngā Rūnanga.
18. It is submitted that the hierarchy of obligations, which is explicitly set out in the NPSFM 2020 has always been implicit in the concept of Te Mana o Te Wai, which was the “fundamental concept” within the NPSFM 2017. Further, the NPSFM 2014 was “about recognising the national significance of freshwater for all New Zealanders and Te Mana o Te Wai”.
19. In the NPSFM 2020, the hierarchy of obligations is clarified, to ensure that the health and well-being of waterbodies and freshwater ecosystems is the **first priority**, to be considered **before** the health needs of people and the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future.
20. Although the hierarchy of obligations was always implicitly fundamental to the concept of Te Mana o te Wai, the explicit inclusion of the hierarchy outlined in the NPSFM 2020 means that it is indisputable that the health and wellbeing of waterbodies and freshwater ecosystems is to be considered before any other factors, including human use. For the reasons set out above, this prioritisation is not inconsistent with the sustainable management purpose of the RMA, nor does the hierarchy render the NPSFM 2020 incomplete.

DATED at Wellington this 15th day of January 2021



J G A Winchester / S K Lennon
Counsel for Ngā Rūnanga