



21 MARCH 2024

Canterbury Regional Council
P O Box 345
CHRISTCHURCH

Attention:
RMA Hearing Commissioners
G Ryder (Chair), N Philips, and H Giles

Tēnā koutou, ko tēnei mihi atu ki a koutou, kā mema o te komiti, kā kaiwhakawa o kā mea e pa ana tēnei kaupapa taumaha, me ki, o tātou nei rohe moana, he taoka o tātou nei whānau, hapū me te iwi. Ki a rātou kua whetu rakitia, te huka wairua, haere, moe mai, oki oki mai, kati.

FURTHER SUBMISSION – Canterbury Regional Council Global Rivers Consents

Canterbury Regional Council – CRC222040, CRC222041, CRC222043

Application by Canterbury Regional Council (trading as Environment Canterbury) to discharge agrichemicals to air, land, and water within or adjacent to all waterways within the Canterbury Region for exotic weed control, over a duration of 20 years.

1. **TOITŪ TE MANA, TOITŪ TE WHENUA: TE RŪNAKA**
 - 1.1 This letter is written on behalf of Te Rūnanga o Waihao, whose takiwā is affected by the proposed global consent for the Canterbury region. Te Rūnanga o Waihao exercises rakatirataka and kaitiakitaka over natural resources within the area to which the application relates.
 - 1.2 The takiwā of Te Rūnanga o Waihao centres on Wainono, sharing interests with Te Rūnanga o Arowhenua to Waitaki, and extends inland to Ōmārama and the Main Divide.
 - 1.3 Te Rūnanga o Waihao (**‘Waihao’**) represents the rights and interests of Kāi Tahu whānau who whakapapa to the area of South Canterbury in the Waihao takiwā.
 - 1.4 A representative of Waihao has provided direction on this application.

2. BACKGROUND

2.1 On 27 July 2023, Waihao submitted to Environment Canterbury ('**ECan**') on the publicly notified consent application lodged by Canterbury Regional Council ('**the Applicant**'), opposing the application and requesting to be heard.

2.2 The submission on behalf of Waihao addressed the following concerns:

- i. The need for further time for Waihao to fully assess the application and the actual and potential effects.
- ii. Although Waihao had originally provided Affected Party Approval, considerable time had elapsed since the Applicant had undertaken consultation with rūnaka.
- iii. Waihao held particular concerns about the effects upon ecological values and the cultural landscape.
- iv. Waihao was also concerned about how the Applicant planned to facilitate the process given the number of papatipu rūnaka involved.

2.3 The following information has since been reviewed:

- i. Submissions made by other papatipu rūnaka with influence in the application area;
- ii. The reporting officer's s42A Report ('**Officer's Report**') and draft proposed conditions.

3. THE POSITION OF WAIHAO

3.1 Waihao remains **opposed** to the application as applied for.

3.2 Having reviewed the Officer's Report, Waihao have outstanding concerns with the officer's assessment of adverse effects on the mauri of waterbodies; effects on cultural values; and recommended consent duration.

4. REASONS FOR WAIHAO'S POSITION

4.1 Adverse effects on the mauri of waterbodies

4.1.1 *Officer's Report*

The Officer's Report addresses the extent to which the application is consistent with the National Policy Statement for Freshwater Management 2020 ('**NPS-FM**') and Te Mana o Te Wai. The reporting officer "generally concur[s] with the applicant's assessment of the NPS-FM objective and policies."¹ The Officer's Report summarises the Applicant's position as follows:

Maintaining flood protection and drainage networks to be free of pest and weed species also has ecological benefits for the waterbody... The ecological benefits associated with the proposed activity is [sic] consistent with prioritising the health and well-being of waterbodies and freshwater ecosystems as the first obligation in Te Mana o Te Wai.²

¹ S42A Report, para 444.

² S42A Report, para 441.a.

4.1.2 Rūnaka comment on Te Mana o Te Wai

- a. The sole objective of the NPS-FM is as follows:

2.1 Objective

(1) *The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way 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.*

- b. Te Mana o Te Wai has the meaning as set out in clause 1.3 of the NPS-FM:

1.3 Fundamental concept – Te Mana o te Wai

Concept

- (1) *Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. **It protects the mauri of the wai.** Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.*
- (2) *Te Mana o te Wai is relevant to all freshwater management and not just to the specific aspects of freshwater management referred to in this National Policy Statement.*

- c. To comply with the NPS-FM and apply the concept of Te Mana o Te Wai to “all freshwater management,” an assessment of effects must consider how a proposal may adversely affect the mauri of the wai. The hierarchy of obligations sets the inherent “health and wellbeing” of the waterbody as the first priority, in order that mauri be protected or restored.
- d. Mauri – as a part of te ao Māori – has no direct equivalent in the English language, but can be approximated as the inherent ‘life-force’ of things animate and inanimate. When the mauri of the wai is degraded, the cultural and spiritual values of mana whenua are offended.
- a. Waihao **supports** the submission made by Mahaanui Kurataiao Limited (‘MKT’), on behalf of Ngāi Tūāhuriri Rūnanga, Te Hapū o Ngāti Wheke (Rapaki) Rūnanga, Te Rūnanga o Koukourārata, and Waiwera Rūnanga. Waihao draws attention to the following passages of the MKT submission:

The National Policy Statement for Freshwater Management (2020) states that effect must be given to Te Mana o Te Wai. This means that the **health and mauri of water must be protected** before any other considerations.

Water is a significant cultural resource that connects Papatipu Rūnanga to the environment and the culture and traditions of the tūpuna.

Fundamental to mana whenua perspectives on freshwater is that water is a taonga, and water management should reflect this importance.

Mauri and Mahika kai should be recognised as key cultural and environmental indicators of the cultural health of waterways and the relationship of Papatipu Rūnanga to water.

The release of agrichemicals in, or near, waterbodies is a Te Mana o Te Wai concern that directly impacts the hierarchy of Obligation Level 1 - the health and well-being of water bodies and freshwater ecosystems, as set out in the National Policy Statement for Freshwater Management (2020). The flow on effects also impacts the hierarchy of Obligation Level 2 – the health needs of people (NPS-FM 2020). The council are required to give effect to treaty principals [sic], specifically the impacts on the Mahika kai rights and interests.

... The ecological and cultural restoration of waterways throughout Waitaha is of upmost importance to Papatipu Rūnanga. While mana whenua recognises the need for weed management to aid the river morphology, enhance natural character and indigenous biodiversity, **the “cost-effective” use of agrichemicals should not be at the expense of the mauri of the waterways.**

- e. Waihao takes the view that the Officer’s Report does not appropriately assess the effects of the proposed activity in terms adverse effects upon the mauri of waterbodies, as raised in the MKT submission. Agrichemical discharges to or over water create temporary or transient adverse effects upon the mauri of the wai, and upon the ability for mana whenua to undertake mahika kai practices as an expression of cultural values. Waihao is also concerned about accumulative adverse effects upon wai māori and riverine environments.
- f. An assessment of an activity’s cultural and ecological effects cannot ignore temporary or transient adverse effects upon wai māori. Deference to the potential ‘net positive’ or ‘long-term’ gains to indigenous biodiversity is the incorrect approach to assessing effects upon mauri as required by Te Mana o Te Wai. Put another way: temporary or transient adverse effects from the application of agrichemicals can be regarded as *primary* or *direct effects* of the activity upon the health, well-being, and mauri of the wai. Potential long-term gains to biodiversity may be *secondary* or *indirect effects* of weed control upon the health, well-being and mauri of the waterbody.
- g. For the present application, it may be the case that an assessment which appropriately addresses effects upon mauri (including temporary or transient adverse effects) will reach the same conclusion about the correct way to apply the effects management hierarchy to the proposed activity. However, the assessment as adopted in the Officer’s Report does not demonstrate this is so.

4.1.3 Rūnaka comment on adverse effects upon cultural values

- a. Waihao reiterates that agrichemical discharges to and over water are culturally offensive and can degrade the mauri of waterbodies. Furthermore, agrichemical discharges pose a risk to tāoka species such as īnanga, and prevent mana whenua from undertaking mahika kai practices in their takiwā.
- b. It is recognised by the reporting officer that “the proposed activities, without robust effects management measures, could have significant actual and potential adverse effects on mana whenua and cultural values.”³

³ S42A Report, para 410.

- c. The expert evidence of M Shearer, called by the Applicant, re-states that adverse effects upon cultural values were the “trigger” for resource consent:

[discussing Condition 37] While I respect the need to protect culturally significant areas within and surrounding rivers, the implication of this condition is that we could not spray anywhere. Many or all rivers or waterways we propose to spray under this consent application are culturally significant. As Jolene Irvine has discussed in her evidence, this is the trigger for requiring a consent in the first place.⁴

- d. Waihao reiterates that it is for papatipu rūnaka as cultural experts to identify the threats upon their cultural values, tāoka species, and places of cultural significance. This enables mana whenua to exercise their rakatirataka and kaitiaki responsibilities in relation to resource consent applications in their takiwā. The cultural expertise of mana whenua enables the decision-maker to make an informed decision as to a proposal’s actual and potential adverse effects on cultural values. The corollary is that mana whenua inform – and, at minimum, be consulted on – how to avoid, remedy, or mitigate those adverse effects.
- e. Each papatipu rūnaka has intentions and aspirations for their respective takiwā. Further, rūnaka may share interests in a particular waterbody or landscape. As stated in Waihao’s submission dated 27 July 2023, Waihao remains concerned about how the Applicant plans on facilitating the process for this global consent, given the number of papatipu rūnaka with influence in the application area.

4.1.4 Relief sought

- a. Waihao **supports** the recommendation of the MKT submission:

If the consent is granted, sensitive areas, including wāhi tapu, wāhi taonga, silent file areas, Mahika kai areas, or other areas of significance to Papatipu Rūnanga, are excluded from the spray zone.

- b. If the decision-maker were of a mind to grant these consents, Waihao would be supportive of the creation of an Agrichemical Strategic Management Plan (‘ASMP’) as a condition of consent. As part of the ASMP, Waihao would support a condition requiring the consent-holder to undertake progressive reduction of agrichemicals over the lifespan of the consent, as stipulated by draft Conditions 9 and 10 of the Officer’s Report.
- c. To avoid or mitigate actual and potential adverse effects upon cultural values in tāoka species (such as īnanga), Waihao would support, as a condition of consent, avoidance of herbicide use in sensitive habitats and in key spawning seasons so as to protect īnanga. This condition is supported by the expert aquatic ecology evidence called by the Applicant, in support of exclusion zones to protect īnanga.

Dr Grey’s evidence states that:

In summary I consider a register of sensitive ecological sites to be a useful component of this consent provided that conditions or work plans are species and habitat specific and

⁴ Statement of Evidence of Melissa Shearer on behalf of Canterbury Regional Council (Applicant), 11 March 2024, p.32.

commensurate to the degree of risk posed by herbicide application.

...In the case of Canterbury mudfish and inanga, I believe avoidance of herbicide use, setbacks and controlled timing of herbicide application are required to avoid impacts.⁵

- d. Robust consultation with kā papatipu rūnaka would be required in order to ensure that adverse effects on cultural values are appropriately addressed in respect of the waterbodies and cultural values across different takiwā. This is necessary to ensure that avoidance and mitigation measures are culturally appropriate to address the associated adverse effects.
- e. The *Advice Note* for proposed Condition 9 is inconsistent with Waihao's concerns about how the Applicant will facilitate the development of an ASMP. In particular, Waihao remain concerned about how the Applicant will consider or implement alternatives for agrichemical spraying across waterbodies and sites of significance in multiple takiwā:

9: AGRICHEMICAL STRATEGIC MANAGEMENT PLAN

...

Advice note: Should any party listed in Condition (9)(i) choose not to take up this offer of consultation, or if no comment is received within twenty (20) working days of receiving the invitation for consultation from the consent holder, this does not constitute non-compliance on this consent condition.⁶

- f. Waihao seeks that this *Advice Note* is **deleted**. Alternatively, this *Advice Note* should be amended to stipulate a greater window for engagement.
- g. Should the decision-maker be of a mind to decline these consents, Waihao **supports** the submission of Te Rūnanga o Kaikōura, who sought the following outcome:

To oppose the application & **work alongside Mana whenua to design an alternative approach** to exotic weed control.

4.2 Consent duration

4.2.1 Officer's Report

- a. Canterbury Regional Council applies for a consent duration of 20 years. The Officer's Report recommends a duration of 15 years. The officer goes on to state –

However, I have also considered that should the decision makers be of a different opinion on duration, a **10-year duration may be appropriate to satisfy that cultural impacts of agrichemical spraying have been appropriately taken into account**. Alternatively, a 20-year duration may also be appropriate if the decision makers are of the opinion that there is enough certainty in the conditions, monitoring and review conditions that a longer duration term is warranted.⁷

⁵ Evidence of Duncan Peter Gray – Freshwater ecology and water quality – Dated 1 March 2024, para.78.

⁶ S42A Report, p.102.

⁷ S42A Report, para 575.

4.2.2 *Rūnaka comment*

- a. Waihao **opposes** a consent duration of 20 years, as applied for.
- b. The Officer's Report acknowledges that a consent duration shorter than 15 years would be required to minimise adverse impacts upon cultural values. Given this statement, it is unclear why the reporting officer has not adopted the shorter duration in their final recommendation to the decision-maker.
- c. Waihao **supports** the pre-lodgement comments provided by Aoraki Environmental Consultancy Limited, on behalf of Te Rūnanga o Arowhenua:

The consent sought is across Canterbury. For this reason, it is requested that ECan apply a **short consent duration to allow the mauri and mana of specific waterbodies and how they are to be managed, to be appropriately discussed and incorporated into the future management of the waterbodies** within the takiwā of Arowhenua ki uta ki tai.⁸

4.2.3 *Relief sought*

Should the decision-maker be of a mind to grant these global consents, Waihao may support a short consent duration as an 'interim' approach to controlling weeds in Waitaha | Canterbury.

5. DECISION ON WHETHER TO BE HEARD

Te Rūnanga o Waihao confirms that it **no longer wishes to be heard**.

E noho ora mai

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⁸ CRC222040, CRC222041, CRC222043 Application: Appendix 10 Summary of Consultation, pp.4–5.