Before the Independent Hearings Panel

In the Matter of	the Resource Management Act 1991
And	
In the Matter of	the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014
And	
In the Matter of	the Proposed Christchurch Replacement Plan (**Chapter 8: Subdivision, Stage 2**)

Evidence in Chief of **Lynda Marion Weastell Murchison** on behalf of Te Rūnanga o Ngāi Tahu and Ngā Runanga (Submitter 1145/Further Submission 2821)

Dated: 14 October 2015

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Introduction

1. My name is Lynda Marion Weastell Murchison.

(i) I hold the qualifications and experience set out in my statement of evidence for the Strategic Directions Hearing dated 28th November 2014.

(ii) I am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note (2014) and confirm that I have complied with it in preparing this evidence. In particular I confirm that my evidence is within my area of expertise and the opinions I have expressed are my own except where I have stated that I have relied on the evidence of other people. I have not omitted any facts known to me that may be material in influencing my evidence.

Scope of Evidence

2. My evidence addresses the provisions for subdivision within the Papakāinga Zone, in particular 8.3.1.1 Table 1 - Minimum Allotment Size Residential zones, Papakāinga Zone, standards 1 and 2 in the proposed Replacement Christchurch District Plan **(the plan)**.

3. Te Rūnanga o Ngāi Tahu (Te Rūnanga) and nga rūnanga made a further submission on Christchurch City Council's submission seeking deletion of standards 1 and 2.

4. My evidence:

   (i) Briefly describes my understanding of the Papakāinga Zone as notified in the plan and the nature of submissions made by Te Rūnanga/nga rūnanga; and

   (ii) Explains why, in my professional opinion, it isn't appropriate to confirm the provisions for subdivision in the Papakāinga Zone at this stage.

5. The documents I have considered or referred to in preparing my evidence include:

   (i) The provisions of Chapter 8 of the plan, and the submission by Christchurch City Council and further submission of Te Rūnanga/nga rūnanga on Chapter 8, Rule 8.3.1.1. Table 1 Minimum Allotment Size Residential Zones, Papakāinga Zone standards 1 and 2.

   (ii) The provisions of Chapter 4 Papakāinga Zone in Phase 2 of the plan as notified and the submission by Te Rūnanga/nga rūnanga on that chapter;

(iii) The evidence of Mr Alan Matheson on behalf of the Christchurch City Council;

(iv) The decision of the Hearings Panel on Chapter 3 Strategic Directions; and

(v) The Order in Council and Statement of Intent.

Executive Summary

6. I do not consider that standard 1 specifying the tangata whenua status of who may develop Papakāinga zone is an appropriate matter to be included as part of the provisions for the Papakāinga Zone.

7. Given the potential variation in the number and nature of activities provided for within the Papakāinga zone, in my view standard 2 would also be inappropriate.

8. As a first preferred alternative, I believe the provisions for subdivision in the Papakāinga Zone are best determine alongside consideration of the provisions for land uses within the zone.

9. Alternatively, deleting standards 1 and 2 is appropriate in my opinion as the consent authority retains control to ensure allotments are of a suitable size and shape for the proposed land use.

Papakainga Zone Provisions

10. The Papakāinga Zone in the plan as notified applies to areas of land shown on the planning maps as Papakāinga Zone.

11. My understanding is that the purpose of this zone is to enable Ngāi Tahu mana whenua to provide for customary activities and associated land uses on their ancestral lands. Objective 4.1.1. in the plan as notified reads:

"Ngai Tahu Manawhenua (sic) within the District are able to exercise kaitiakitanga over land in Papakainga zones, to the fullest extent practicable, subject to health and safety and amenity standards."

12. The zone provisions include a list of land uses as permitted activities with conditions relating to recession planes and setbacks.

13. The planning maps show Papakāinga zones on Banks Peninsula and at Nga Hau E Wha National Marae in Pages Rd, Aranui.

14. Te Rūnanga/nga rūnanga have lodged a submission on the Papakāinga Zone chapter seeking substantial amendments to the objective, policies, rules and the planning maps.

15. These changes have been sought because Te Rūnanga/nga rūnanga are not satisfied the current provisions and zonings are the most appropriate way to provide for papakainga development in the plan.

16. At paragraph 4.2 of his evidence Mr Matheson outlines what he understands to have been a consultation process with Mahaanui Kurataio Ltd and representatives of nga rūnanga in the preparation of these zones. I am not sure the relevance of that statement for a hearing on the subdivision chapter but as it has been stated in evidence, I am obliged to note two things:

(i) Te Rūnanga o Ngai Tahu is the iwi authority as specified in Te Rūnanga o Ngāi Tahu Act 1996 (s15). My understanding is that Mahaanui Kurataio Ltd takes substantial measures to inform agencies that engaging with it is not a substitute for discharging statutory duties to consult with the iwi authority,

(ii) Secondly, as part of Phase One of the Replacement Christchurch District Plan Te Rūnanga received copies of the draft chapters for comment prior to notification. My understanding is that Te Rūnanga was expecting the same process for phases 2 and 3, but that this did not occur.

17. As indicated in evidence by Mr. Matheson, since submissions closed there have been discussions between representatives of Te Rūnanga, the Crown and the Council on the provisions for the Papakāinga Zone in the plan.

18. My understanding is that these discussions were undertaken on a 'without prejudice' basis and no agreements informal or otherwise have yet been reached. However I accept it is necessary to illustrate for the Hearings Panel that there may be potential for substantial changes to the Papakāinga Zone and that some of those changes may be relevant to the matters covered in standards 1 and 2.

19. In particular, there has been some discussion about the status of land to be included in the zone, in particular whether the land must be held under Te Ture Whenua Maori Act 1993, or whether landholders must be descendants of those Ngai Tahu registered in the 1848 tribal census. At our last meeting on Friday 2nd October I advised Mr Matheson this was still a matter Te Rūnanga was considering and at the time of writing my understanding is that no conclusion has been reached.

20. I understand Te Rūnanga is also considering the most appropriate planning option to provide for development of the land; eg operative zones, deferred zones, using policy framework and plan change requests.

21. To the best of my knowledge, at the time of writing no agreements, formal or informal have been reached between Christchurch City Council, the Crown and Te Rūnanga over the provisions of the Papakāinga Zone or the areas of the zone.

22. There are points of difference between the parties particularly around the size of the zones, and the inclusion of Nga Hau E Wha National Marae in the zone. However the parties are working constructively on these matters with the aim of recommending agreed amendments to the provisions in the plan.

23. The submission of Te Rūnanga/nga rūnanga and consequent discussions with the Council and the Crown, indicate that any amendments to the Papakāinga Zone provisions agreed by Ngāi Tahu will be based around the following principles:

    (i) The zoning is specifically to provide for the economic and social well-being of whanau who whakapapa to the hapu who hold mana whenua over the area, in accordance with the original intent of the setting aside of the Māori Reserves in the District.

    (ii) The Papakāinga Zone needs to provide for a variety of land uses associated with customary occupation and use of these areas.

    (iii) The plan must provide for the development and use of land held as Māori land under Te Ture Whenua Maori Act 1993, which means consideration will need to be given to the restrictions on subdivision and alienation under that legislation.

    (iv) The development of a substantial portion of this land should occur through comprehensive development plans that address natural hazard risk; access and utility services; development design and layout.

    (v) Provision should be made for rezoning additional land for Papakainga Development in areas of ancestral settlement, particularly where land which is held as Māori Reserve is not suitable for the purpose.

Subdivision Provisions

Extent of Papakāinga Zone

24. At paragraph 4.3 of his evidence, Mr Matheson states that the Papakāinga Zone is to apply to original Māori reserve land. While some original Māori reserve land is included in the proposed zones, relying on the data held by Te Rūnanga on the location of the original Māori reserves, there are also areas of original Māori reserve that are not included.

25. However, I am uncertain as to the relevance of the extent of the Papakāinga Zones to the issue of subdivision. To my mind it is the land use provided for within the zone which drives the appropriate subdivision rules, rather than the location(s) and size of the zone.

26. The subdivision of land is a legal process that facilitates the division of land into allotments and the issuing of Certificates of Title, which in turn, gives the Title holder the ability to control the use of the land and in most cases the right to sell it. Subdivision is either a precursor to or subsequent upon the development of land for a certain use or uses.

27. In my experience drafting district plans, the provisions for subdivision are closely linked to the land use provisions in a zone. Consequently subdivision provisions tend to be drafted alongside or subsequent to land use provisions, and drafted considering matters such as: the variety of land uses anticipated within a zone; the provisions for residential density; the requirements for access and standards of infrastructure required; and any special landscape or amenity values.

28. Within an urban environment it is usual practice to ensure land is subdivided into allotments of an appropriate size and shape, and provided with access and connections to utility services, suitable for the land uses most likely to occur within the zone; for example, residential, commercial or industrial

29. Within a rural environment, in my experience there is typically more variety in the land uses which are associated with subdivision; including in some cases no change in the land use, such as when a farm is subdivided between family members. Consequently there will be a greater range of appropriate standards for access, utility services, allotment size and shape, etc. Therefore, district plans often have fewer conditions on the rules and reserve more matters to the control or discretion of the consent authority for subdivision in a rural context.

30. Considering the variety of land uses provided for within Papakāinga Zones in the plan, and the amendments to the zone provisions requested in submissions, in my opinion it is most appropriate that the provisions for subdivision in the Papakāinga Zone be finalized alongside the land use provisions for that zone.

31. If that is not the approach adopted, then, given the potential variety in land use activities provided for within the Papakāinga Zone, in my view it would be appropriate to remove standards 1 and 2. Under Rule 8.3.1.5 the Council retains a discretion as to where the allotment is of a sufficient size and dimension for the existing or any proposed use. I understand from Mr Matheson's evidence this may now be a controlled rather than restricted discretionary activity.

32. The submission by Te Rūnanga/nga rūnanga, on the Papakāinga Zone requests the inclusion of provisions to enable development in those zones in accordance with an approved comprehensive development plan. If the Hearings Panel is of a mind to agree with that proposition in due course, it may also be appropriate to introduce provisions to make subdivision a controlled activity without notification or service on affected parties, where the subdivision is being undertaken in accordance with an approved comprehensive development plan for the zone.

33. My understanding is that one of main concerns for mana whenua with the Papakāinga Zone provisions is to avoid multiple planning and consenting processes. Having subdivision provisions that recognise that the associated land use has already been considered and approved in either the plan preparation process, or through a comprehensive development plan, would help address this concern. It would also be in accordance with the Order in Council Statement of Expectations and Objective 3.3.2 as amended by the Hearings Panel decision on Chapter 3 Strategic Directions.

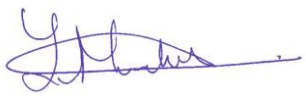
Suggested Amendment to Subdivision Rule

34. My suggestions to address the provisions for subdivision in the Papakāinga Zone would be:

(i) As a first preference to consider rules for subdivision within the Papakāinga Zone alongside the land use provisions for that zone; or

(ii) As a second preference to amend Rule Table 1 Minimum Allotment Size Residential Zone, Papakāinga by deleting standards 1 and 2.

(iii) Any consequential amendments to ensure consistency of the approach with the outcomes of the hearing on the Papakāinga Zone chapter.



Lynda Murchison

14th October 2015