

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 9: Cultural and Natural Heritage, Stage 3)

**Further joint memorandum of Counsel
for Ngāi Tahu and Christchurch City
Council reporting on work programme
relating to Ngāi Tahu values topic**


Dated: 8 April 2016

lane neave.

141 Cambridge Terrace
PO Box 13149
Christchurch
Solicitor Acting: J M G Leckie
Counsel Acting: D van Mierlo
Email: deanvanmierlo@gmail.com
Phone: 03 7311070

- Previous ~~directions~~ relating directions
modified, as requested
at paras 24 - 25.

- A ~~new~~ ^{comprehensive} Minute setting out
all ^{update} ~~relating~~ directions
will be issued for
convenience,


11/4/16

MAY IT PLEASE THE HEARINGS PANEL

Introduction

1. This memorandum is filed jointly on behalf of Te Rūnanga o Ngāi Tahu and nga rūnanga (**Ngāi Tahu**), and the Christchurch City Council (**the Council**), in accordance with paragraph 12 of the parties' joint memorandum dated 24 March 2016, and the resultant reporting and evidence exchange Orders dated 30 March 2016.

Summary in general terms of outcome of the map review exercise, including the Council and Ngāi Tahu's position in relation to revised maps, and options for landowner and community engagement.

2. Ngāi Tahu and the Council have progressed the workshop and hui described in paragraphs 5 and 6 of the joint memorandum of 24 March 2016.
3. The outcome of these meetings, and the previous meetings associated with the work programme undertaken by the Council and Ngāi Tahu is a broad level of agreement on some matters, but also identification of other matters where agreement has not been reached. In many instances, agreements reached remain subject to drafting of revised plan provisions to reflect that agreement.
4. The agreements reached include;
 - (i) That there should be a separate chapter 9.5 in the Replacement District Plan that contains objectives, policies and methods (including rules) relating to Ngāi Tahu values and Sites of Ngāi Tahu Cultural Significance.
 - (ii) That the Replacement District Plan should include planning maps of the Sites of Ngāi Tahu Cultural Significance, broadly reflecting those sought through the Ngāi Tahu submission, but with refinement of some sites.
 - (iii) That there are refinements to the mapping of a number of Sites of Ngāi Tahu Cultural Significance which can be made and have been agreed by experts for Ngāi Tahu and the Council. In some cases this

refinement has resulted in a reduction of the extent of the mapped site.

- (iv) That the Replacement District Plan will need to carefully identify and cross reference to rules in Chapters other than Chapter 9.5, where those rules are relevant to the recognition or protection of Sites of Ngāi Tahu Cultural Significance.
 - (v) That where there are 'gaps', in terms of the activities regulated by those other rules, the exemptions that apply, or the areas to which they apply, and the effective recognition and protection of Sites of Ngāi Tahu Cultural Significance, the Replacement District Plan should address those gaps. This may be by way of rules contained in the new Chapter 9.5, and/or amendments to rules in other chapters.
5. There are also a number of issues which remain outstanding between Council and Ngai Tahu, and which the parties wish to discuss further through mediation. These are addressed further in this memorandum, and include;
- (i) Whether the Replacement Plan should include larger catchment based mapped areas of Nga Turanga Tupuna sites, or a new fourth category of site known as Nga Tu Tohu Whenua. These larger areas were mapped as an idea by the cultural mapping experts, however issues of scope and fairness arise with the introduction of such larger mapped areas at this stage of the Replacement Plan process. Ngai Tahu wish to emphasise that they are not seeking the inclusion of significantly enlarged Nga Turanga Tupuna, or replacement Nga Tu Tohu Whenua, mapped sites in the Replacement Plan. The Council agrees that issues of scope and fairness would arise were rules to be proposed in relation to these larger mapped areas. However, the Council wishes to explore these mapping representations, and other uses they may have. For the avoidance of doubt, the Council records that it does not wish to pursue any use of these maps that would give rise to issues of scope.
 - (ii) The appropriate wording of provisions in the Replacement Plan relating to notification of resource consent applications within or affecting Sites of Ngai Tahu Cultural Significance. At a high level, there is agreement between Council and Ngai Tahu that applications for consent should be considered for notification to Nga Runanga

where such applications affect Sites of Ngai Tahu Cultural Significance. Ngai Tahu considers that the Replacement Plan should record that applications for resource consent in the coastal environment, Nga Wai sites and applicable setbacks, and wahi tapu will be notified to nga rūnanga. Similarly in relation to significant applications within Nga Turanga Tupuna sites. However the wording of appropriate provisions remains to be resolved. The Council requires further time to confirm its position in relation to notification and engagement with Ngāi Tahu on consent applications in relation to these sites.

- (iii) Similarly, there is high level agreement that in relation to these sites, the Replacement Plan should also record that Council will engage with nga rūnanga at an early opportunity regarding applications for consent. Again, however, the wording of provisions remains to be resolved.

Categories of Sites of Ngāi Tahu Cultural Significance.

- 6. The Ngāi Tahu submission identified three types, or categories, of Sites of Ngāi Tahu Cultural Significance.

Wahi Tapu

- 7. Agreements, and outstanding issues between the Council and Ngāi Tahu are broadly as follows;
 - (i) Wahi Tapu sites as identified in the Ngāi Tahu submission and Heritage New Zealand submission should be included in the replacement District Plan. In some instances the mapping of these sites has been refined.
 - (ii) An additional wahi tapu site at Rapaki should also be included. This was identified in the submission of Heritage New Zealand¹.
 - (iii) Rules to recognise and protect wahi tapu/wahi taonga values are required. In some instances these may be provided through other Chapters, but where there are gaps in terms of activities or areas regulated, these gaps should be filled.

¹ Heritage New Zealand, Submission 3674, page 4.
NGA91486 4836525.1

- (iv) Kaitorete spit, (Site ID 64) between Te Waihora/Lake Ellesmere, and the Pacific Ocean has an additional level of complexity associated with it due to its large area and very significant cultural values. This will require further consideration by the Hearings Panel. Similar complexity issues also arise with respect to the nearby Waikākahi Pa site (Site ID 7 and 36, 45 and 64).
- (v) Council supports the mapping of silent files to indicate areas with a higher probability of encounter with sensitive tangible and/or intangible Ngāi Tahu values.
- (vi) The Ngāi Tahu submission identifies the Wahi Tapu areas for inclusion in the Replacement Plan, which include the silent file areas as identified in Te Whakatau Kaupapa, and the Mahaanui Iwi Management Plan. The silent file areas included in the notified version of the Plan differ to the silent files as set out in the Ngāi Tahu submission, Te Whakatau Kaupapa and the Mahaanui IMP. The notified plan omits two silent files and the remainder are smaller in size. While the Council supports the identification of these silent file areas in the schedules and on planning maps, it considers that the rules, as notified in the Replacement Plan process (which carry over those provisions from the Banks Peninsula District Plan) should only be applied to the silent files areas included in the notified proposed plan, and not to the larger geographic extents as identified in the iwi management plan documents. Again, this difference of view may require consideration by the Hearings Panel.
- (vii) The Council is agreed that it is desirable for the relevant rūnanga² to be kept informed of applications for resource consent within the geographic extents of silent files as per Te Whakatau Kaupapa and the Mahaanui IMP, and to ensure Ngāi Tahu has the ability to engage in the statutory decision making process for such consent applications. The exact way in which this would be achieved and how it will be reflected in the plan provisions has not yet been agreed, but will be the subject of further discussion. Council also agrees that it is desirable that it consult with nga rūnanga regarding such applications.

² In some instances, more than one rūnanga may need to be notified as more than one rūnanga may recognise areas as being within their takiwā.
NGA91486 4836525.1

Nga Turanga Tupuna

7. Agreements, and outstanding issues between the Council and Ngāi Tahu are broadly as follows;
- (i) Review of mapping of these areas resulted in the idea of enlargement of a number of ellipses to follow catchment boundaries being explored by the experts for Ngāi Tahu and the Council. Ngai Tahu and Council recognise that such enlargement creates potential scope issues, in particular if proposed rules were to apply within those areas. The Council wishes to explore ways in which these mapping representations may be used, that do not give rise to scope issues.
 - (ii) Mr Pauling has also proposed the idea of a new fourth category, Ngā Tū Tohu Whenua, for larger catchment based areas, to replace four Nga Turanga Tupuna sites as sought in the Ngāi Tahu submission. Ngāi Tahu and the Council are concerned about the scope for this proposed new category given its geographical extent. Ngāi Tahu is not seeking inclusion of the Nga Tu Tohu Whenua areas in the Replacement Plan as a replacement for the Ngā Turanga Tupuna sites. The Council wishes to explore ways in which these mapping representations may be used, that do not give rise to scope issues.
 - (iii) Issues regarding notification to nga rūnanga of applications for consent within Nga Turanga Tupuna sites remain outstanding. As do issues associated with engagement between Council and Ngai Tahu regarding applications for consent. These matters are also likely to require consideration by the Hearings Panel.

Nga Wai

8. Agreements, and outstanding issues between the Council and Ngāi Tahu are broadly as follows;
- (i) Council is agreed that all Nga Wai sites should have waterbody setbacks attached to them and that this would be an appropriate regulatory method. Council and Ngāi Tahu are currently reviewing the schedules, maps, and Chapter 6 waterbody classifications to ensure these setbacks are appropriate for Nga Wai sites.

- (ii) The Council wishes to further consider its position in relation to notification and engagement with Ngāi Tahu on consent applications in relation to these sites.

Revised Maps and schedules

9. Ngāi Tahu and Council are agreed that the Replacement District Plan should include a schedule of Sites of Ngāi Tahu Cultural Significance including a short description, along with overview maps, and more detailed maps showing the Sites of Ngāi Tahu Cultural Significance at an appropriate scale. The intent is that the overview maps will identify the location of sites in relation to key geographical features or district boundaries, while the planning maps will enable plan users to identify the boundary of specific sites at an appropriate scale.
11. Ngāi Tahu and Council will address the methodology for and mapping of sites, at mediation and in supplementary evidence to be filed. Specific site boundaries for some sites are also likely to be the subject of discussions in mediation.
12. As noted above, an outstanding mapping issue is the idea of enlargement of some Nga Turanga Tupuna ellipses to include wider catchments, and the replacement of some of these with the Nga Tu Tohu Whenua classification. Ngāi Tahu is not seeking such changes be included in the Replacement Plan.

Other Matters

Strategic Directions Objective for Water/Wai

12. In their joint memorandum dated 30 March, the parties proposed to update the Panel on the Strategic Directions Objective for Water/Wai (Strategic Water Objective) in this reporting memorandum. Council, Ngāi Tahu and the Crown have had extensive discussions regarding a new Strategic Water Objective. No final agreement has been reached, although on a number of occasions the parties have felt that agreement has been very close.
13. Ngāi Tahu's preferred Strategic Water Objective remains that filed as Exhibit 3 in the Coastal Environment hearing. A clean version is appended to this memorandum at Appendix 1. Since the Coastal Environment hearing, the Council has proposed a new Strategic Water Objective. Council's preferred

Strategic Water Objective will be included as part of materials circulated prior to mediation (discussed further below).

14. This matter will likely require further consideration by the Hearings Panel at the reconvened hearing.

Interrelationship between Chapter 9.2 and Chapter 4 Papakāinga/Kāinga Nohoanga Zones.

15. Council and Ngāi Tahu are agreed that;
 - (i) Significant landscape and Natural Character in the Coastal Environment (NCCE) overlays will not apply to Māori land within the Papakāinga/Kāinga Nohoanga zones.
 - (ii) Permitted activities in outstanding landscape and high natural character in the coastal environment zones will be permitted activities where they overlap with papakāinga/kāinga nohonga zoned land, and any other activity will be a restricted discretionary activity within the papakāinga/kāinga nohonga zone.
 - (iii) Provisions for activities in outstanding landscapes, high natural character in the coastal environment, significant indigenous vegetation, and significant cultural sites within the papakāinga/kāinga nohonga zones will be written into chapter 4, rather than being cross referenced in chapter 9.

Land owner and community engagement

16. Counsel are mindful of the issue of engagement with stakeholder landowners where they may be affected by the proposed plan provisions to recognise and provide for Ngāi Tahu's relationship and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga.
17. It is noted that the following Parties made further submissions in response to the Ngāi Tahu submission on chapter 9.
 - *CERA/Crown;*
 - *Environment Canterbury*
 - *Andrew McKay;*
 - *Kirsty Inwood;*
 - *Ray Wood;*

- *Five Blends Holdings Limited and Foxton Properties;*
- *the Radford Family; and*
- *Vodafone NZ Ltd, 2Degrees Mobile Ltd, Spark NZ Trading Ltd, Enable and Chorus.*

In addition, *Federated Farmers'* interest in this matter is also clearly noted. As is that of *Heritage New Zealand*.

18. Furthermore, at the Coastal Environment hearing Ms Ferguson for Council noted the following additional Parties as examples which she considered "possibly" should be involved in further engagement regarding plan provisions concerning this issue in light of their "particular area of interest on Banks Peninsula".³

- *Rod Donald Banks Peninsula Trust*
- *Akaroa Civic Trust*

19. Ngāi Tahu and Council are agreed that mediation with these Parties on the revised Chapter 9.5 proposal, and the outcome of the Ngāi Tahu - Council work programme is desirable.

20. The Parties note that mediation has been set down by the Secretariat for Wednesday 13 April, as requested by, and in accordance with an agenda supplied by, the Council. Ngāi Tahu were not consulted regarding that agenda, and are concerned that Council's proposed new chapter 9.5, referencing to rules in other chapters, and proposed maps remain uncertain, and have not been pre-circulated to Ngāi Tahu or other Parties who may be interested. To address this concern Council agrees to circulate its proposed new chapter 9.5, including referencing to rules in other chapters, , and other parties who RSVP for attendance at the mediation, 24 hours prior to the mediation commencing. The proposed maps will be made available to parties at the mediation. Council will at the same time pre circulate its preferred Strategic Objectives Direction for Water, so that this too may be considered in mediation.

Timetable to reconvened hearing

22. Counsel understand from correspondence with the Independent Secretariat that the hearing of this matter may be reconvened for 9th and 10th of May

2016. Existing directions provide for any revised plan provisions and Council evidence to be filed by 15 April 2016, and any further Ngāi Tahu evidence to be filed by 22 April 2016.

23. Counsel respectfully request the addition of two further timetabling steps, to assist in the efficient reconvening of the hearing of this matter.
24. The first proposed additional step is in recognition that the evidence timetable does not currently include a date for filing evidence of submitters other than Ngāi Tahu. It is respectfully submitted that any submitter evidence be filed by Friday 22 April 2016, at the same time as Ngāi Tahu's evidence.
25. The second proposed additional step is in recognition that there is no opportunity for filing rebuttal evidence. It is respectfully submitted that any rebuttal evidence be filed by Friday 29 April.
26. It is respectfully submitted that these requested additions to the evidence timetable would enable the reconvened hearing to commence on or any time after 9 May, as is most convenient for the Hearings Panel.



D van Mierlo / JMG Leckie
Counsel for Te Rūnanga o Ngāi Tahu and ngā rūnanga



M Conway / W Bangma
Counsel for Christchurch City Council

Attachment 1

Strategic Direction Objective for Water/Wai, as proposed by Ngāi Tahu.

3.3.X Water/Wai features and values, Te Tai o Mahaanui and the coastal environment

- a. The critical importance of water/wai to life in the district, including surface freshwater, groundwater and in the coastal environment is recognised and provided for through:
 - i. an integrated approach to managing land use activities, based on the principle of 'Ki uta ki tai' 'from the mountains to the sea'.
 - ii. land use, subdivision or development which ensures that the values and characteristics associated with water bodies, their catchments and the connections between them are maintained (or enhanced where degraded); and adverse effects on significant water bodies and the District's potable water/wai supplies are avoided.
 - iii. protecting, and enhancing where degraded, the life-supporting capacity and intrinsic ecological and cultural values of water, water bodies and the linkages between them throughout the District, particularly the Ōtākaro/Avon River, Ihutai/Avon-Heathcote Estuary, Lyttelton Harbour, Akaroa Harbour and Te Tai o Mahaanui and the coastal environment.
 - iv. ensuring that Ngāi Tahu values and cultural interests in the coastal environment, water bodies and their margins are protected, adverse effects on Nga Wai water bodies, including springs are avoided, and natural and cultural values are enhanced where they have been degraded.