

**UNDER**

The Resource Management Act 1991

**IN THE MATTER OF**

Resource consent applications by  
Central Plains Water Trust

**AND**

**IN THE MATTER OF**

Submissions by **Te Rūnanga o Ngāi  
Tahu**

**BRIEF OF EVIDENCE BY DAVID O'CONNELL, GENERAL MANAGER TRIBAL  
INTERESTS FOR TE RŪNANGA O NGĀI TAHU**

**Tauparapara**

Hoki mai koe ki te pā o Ngāti Moki e

E tū ana kit e taha o te kahutai pōuri

O Te Waihora moana

E rere ana ki a tātou e

Te tuna kōhaka

Whāriki o te piharau

Repo o te inaka

Moeka o te mohoao

Tai timu tai pari

Kā wai o Mahaanui

Te taki hāruru

Ki te pikao mumura

O Kaitorete whenua

E rere ana ki a tātou e

Ka rere te manu kāhu

I ka hau āwhio

Te kaimatakana

O te māra kūmera

O Taumutu te kāinga

E rere ana ki a tātou e

Tihei mauri ora!

## **Introduction**

1. My name is David Martin O'Connell and I appear on behalf of Te Rūnanga o Ngāi Tahu. I have an Arts Degree majoring in Māori from the University of Canterbury. I completed the First Nations' Futures Institute at Stanford University, San Francisco in 2006. I have worked for Ngāi Tahu for 15 years – 10 years for the Ngāi Tahu Maori Trust Board and its successor Te Runanga o Ngai Tahu, and 5 for Te Taumutu Rūnanga – the Rūnanga with direct kaitiaki interests in Te Waihora (Lake Ellesmere) and its larger catchment area. I am an active member of Te Taumutu Rūnanga being of Ngāi Te Ruahikihiki descent.
2. Through the work for my iwi I have attained several years experience in environmental management, policy development and analysis and planning related matters largely at the feet of many Ngāi Tahu kaumātua (elders) many of which have now passed on. I am currently employed by Te Rūnanga o Ngāi Tahu as General Manager Tribal Interests which includes management responsibility for Toitū Te Whenua – the environmental unit of Te Rūnanga.
3. My work for Te Taumutu Rūnanga involved participation in many environmental issues and initiatives and included at the time attendance at the initial workshops held to consider the feasibility and community response to a central plains irrigation concept.
4. Subsequent to this, I was contracted by Te Rūnanga o Ngāi Tahu in 2001 to prepare the first Cultural Impact Assessment (CIA) on the Central Plains – Wairere Valley feasibility study. This work involved identification of Ngāi Tahu values within the proposed scheme area and an assessment of the likely or potential affects such a proposal would have on these values. This CIA was later superseded by the CIA prepared in 2005-6 by Dyanna Jolly when the proposed storage lake was changed to the Waiāniwaniwa valley.
5. Te Rūnanga o Ngāi Tahu, by virtue of the Te Rūnanga o Ngāi Tahu Act 1996, is the representative body of Ngāi Tahu whānui. Te Taumutu Rūnanga and Te Rūnanga o Ngāi Tūāhuriri are the kaitiaki Rūnanga with interests in the area of the

plains between the Waimakariri and Orakaiapākihi (Rakaia) rivers. Te Taumutu Rūnanga, Te Rūnanga o Ngāi Tūāhuriri , Te Hapū o Ngāti Wheke (Rāpaki Rūnanga), Te Rūnanga o Koukourārata, Ōnuku Rūnanga and Wairewa Rūnanga are the kaitiaki rūnanga with interests in Te Waihora and the members of the these rūnanga collectively and severally hold manawhenua status over the Te Waihora and its catchment.

### **Overview of evidence**

This evidence provides:

- a) an overview of the significance of Te Waihora and its catchment
- b) an overview of the consultation process
- c) a cultural context to Ngāi Tahu concerns about the CPW proposal
- d) a discussion of outcomes of the consultation process

### **Significance of Te Waihora and its catchment**

6. The significance of Te Waihora to Ngai Tahu can not be under estimated. Its ancestral name Te Kete Ika a Rakaihautu elevates this importance resource to the ranks of being the fish basket that belonged to the esteemed and eponymous ancestor Rakaihautu who lived some 44 generations ago. The lakes name was later superseded as Te Kete Ika a Tutekawa following claim by yet another tribally important figurehead Tutekawa who dwelt at Waikakahi on the eastern shores of the lake whilst his son Te Rakitamau lived with his family and people at Taumutu on the western shores.
7. Some 12 generations ago, as Ngai Tahu moved in and began to take control of Te Waipounamu (South Island), Te Ruahikihiki a chief, living at the time on the Kaikoura coast proclaimed a tapa (claim to place) upon hearing of the vast and plentiful fish, bird and plant life that teemed in Te Waihora. In time that was where Te Ruahikihiki established his pa Orariki and his people and descendants enriched and nourished by the lake bountiful resources.

8. The rich and plentiful resources of Te Waihora have sustained generations of Waitaha, Ngati Mamoe and Ngai Tahu peoples. It is referred to in our tribal purakau (stories) and our waiata (songs). Te Waihora was so significant to Ngai Tahu that at the time of the 1848 Kemps Purchase of Canterbury the Ngai tahu rangatira (chiefs) reserved the lake from the sale, ensuring the landscape boundary markers excluded Te Waihora from the lands that would be sold to the Crown.

9.

**Ko nga hau ki etahi waahi, ko nga kai ki Orariki**

No matter from which way the wind blows one can procure food at Te Waihora

10. Whakatauki such as this one encapsulate the values of Ngai Tahu associated with this environment and show us a glimpse of the world as it was to our tupuna (ancestors). It is these whakatauki and korero (teachings) that inspire and motivate the descendants today to uphold the mana (authority), mauri (life giving capacity), and tikanga (practises) of our people and their home.

11. Sadly today however, whakatauki such as this do not reflect the current state and condition of Te Waihora and its catchment that we should all enjoy and be proud of. The Waitangi Tribunal report on the Ngai Tahu Claim reminded us of the tendency of the Crown (including its agents) to promote development such as agriculture at the expense of Ngai Tahu values and wellbeing. “We were deeply impressed with the very real sense of loss and deprivation which the failure of the Crown to preserve Ngai Tahu’s rights to food resources of Waihora has caused past and present members of the Ngai Tahu people.”

12. This sentiment was recently reiterated by the Environment Court in *Lynton Dairies Ltd v Canterbury Regional Council* (C108/05), in which the Court in commenting on its site visit said:

[97] To the east of State Highway 1 things change significantly. The area has clearly been subject to extensive land management over the last 100 years, with the aim of converting what was formerly wetlands to pastoral farm land. Much of that is now occupied by dairying and is extensively irrigated. There was very limited evidence to

satisfy us that there had been active management of the waterways in this area and we were disappointed to see waterways, including the Irwell, Selwyn, Hanmer Drain, Doyleston, Boggy Creek and Hart Creek all subject to little or no riparian planting or fencing.

....

[100] We were shocked at the ever-present effluent smell from all of these waterways and the clear evidence of poor management, excess effluent levels and contamination.

[101] Te Waihora (Lake Ellesmere) was a significant shock to the Court. The lake is eutrophic, green in colour and seems to be devoid of any riparian management. For example, stock seem to have free access to the water, the margins appear to be subject to chemical spraying regimes and lake levels manipulated for farming rather than the natural values. The lake water is in a serious ecological condition and is in urgent need of attention. Riparian management is required as an absolute minimum.

13. Whilst Te Waihora has been drained and polluted for at least 130 years, what remained of it in 1997, at the time of the Heads of Agreement to settle the Ngai Tahu Claim, was still considered by the tribe as being important to see its ownership returned as a tribal taonga.

14. The subsequent Ngai Tahu Deed of Settlement and Ngai Tahu Claims Settlement Act 1998 saw the transfer of fee simple title of the bed of Te Waihora to Te Runanga o Ngai Tahu and the establishment of a joint management framework between the Department of Conservation and Ngai Tahu.

15. Through this joint management plan Ngai Tahu have committed to the notion that it is prepared to contribute significant tribal resources to the restoration and rejuvenation of Te Waihora for the benefit of the biodiversity that the lake supports and for all people that come to enjoy the wetland.

16. Te Runanga o Ngai Tahu continues to hold grave concerns, noting the conversion and intensification of a large percentage of the catchment to date, with the actual

and potential affects the Central Plains Water proposal will bring to this overall significant environment. Te Runanga remains unconvinced that these affects will in any way contribute positively to the restoration and rejuvenation of our taonga – a taonga that has been duly returned to us by the Crown.

### **Consultation Process**

17. As referred to in my introduction, the consultation processes began in 2001 as part of feasibility studies undertaken by CPWL to determine the best options for the base irrigation scheme. The purpose of the Cultural Impact Assessment (CIA) was to provide a general indication of the cultural implications of various scenarios for the scheme.
18. Following this first CIA the scheme was modified with the most significant change being the relocation of the storage lake from Wairere Valley to Waianiwaniwa.
19. In 2005 Te Rūnanga o Ngāi Tahu was approached by Central Plains Water Ltd. to engage in a consultative process. The base scheme by this time was more defined and there was an established knowledge of the likely cultural effects that would require closer assessment. It was the expectation of Ngai Tahu that information and cultural advice from 2001 CIA would be incorporated into the new Base Scheme.
20. It was agreed that a new Cultural Impact Assessment should be prepared using updated information on the Base Scheme. Dyanna Jolly was approached to work with Te Rūnanga o Ngāi Tahu, Te Taumutu Rūnanga, and Te Ngāi Tūāhuriri Rūnanga to prepare a CIA in August 2005.
21. The process of preparing the Cultural Impact Assessment relied on a range of methods – hui (identifying key cultural issues and ways to address those issues), site visits to key areas of the scheme with iwi and CPW representatives, interviews & small group discussions, preparation and review of draft reports.
22. The process was designed to clearly identify the actual and potential effects of the Scheme on Ngāi Tahu cultural values, and to formulate appropriate recommendations to enable CPWL to avoid, remedy or mitigate identifiable adverse effects.

23. The CIA was prepared based on Scheme information provided by CPW representatives (from URS New Zealand Ltd. and GHD).

24. A final CIA report was provided to URS New Zealand Ltd. in October 2005. The report identifies five main areas of concern with respect to potential and actual effects of the CPW Scheme on Ngāi Tahu cultural values and interests. Very broadly, these were:

- (a) *The effects of water abstractions on rivers and cultural associations with them:* For example, the proposed abstraction from the Waimakariri, and the flow regime set out in the Waimakariri River Regional Plan (WRRP) to protect the river, are viewed as inconsistent with protecting the relationship of Ngāi Tahu with the ancestral river and the wāhi tapu and wāhi taonga associated with it.
- (b) *The potential effects on resources and values of significance to Ngāi Tahu as a result of transfers and mixing of waters between and within catchments:* The need to avoid discharge of mixed Waimakariri – Rakaia water to the flows of the Waimakariri, Rakaia, Waikirikiri/Selwyn or other natural surface waterbodies is a significant cultural issue for Ngai Tahu. Firstly is the issue of unnaturally mixing the Whakapapa (genealogies) of the various rivers. Secondly is the physical changes that will take place when glacial waters enter the Waikirikiri/Selwyn River altering the nature of the rain fed river system. Further, and in a more modern context, are the significant biosecurity risks (e.g. didymo) associated with mixing waters between waterways.
- (c) *Effects related to the storage reservoir in the Waianiwaniwa valley:* The proposed storage reservoir is located in an area with a high density of sites and features of cultural significance, including registered archaeological sites. The potential to disturb sites of significance, including urupā, is highly likely. The need for comprehensive archaeological survey of the area was identified as a priority, in order to provide information needed to fully and effectively assess the cultural impacts. Further issues of cultural importance identified were effects on taonga species (e.g. kōwaro/Canterbury mudfish),

potential for tuna / eel habitat, water quality issues and dam/reservoir vulnerability.

(d) *The effects of canal construction and use on the landscape:* Six areas of the proposed canal system have the potential to adversely affect archaeological sites, both known and unknown. Archaeological survey information was needed to assess risk to cultural values. The potential for the Scheme to influence the presence and abundance of native biodiversity on the central plains landscape through the incorporation of native biodiversity objectives into canal design was also an issue of cultural importance.

(e) *Cultural impacts associated with increased water availability and subsequent land use change on the central plains.* The need for implementable, effective and enforceable tools and processes to ensure that existing effects of farming on the landscape are not exacerbated with the availability of more water was a key kaupapa of the CIA. Ngāi Tahu will not accept any adverse effects on Te Waihora and lowland streams as a result of the CPW scheme.

25. The report also provides 38 recommendations for measures to address Ngāi Tahu concerns. The recommendations are consistent with the four operational Iwi Management planning documents for the region (*Te Taumutu Rūnanga Natural Resource Management Plan 2002; Te Whakatau Kaupapa: Ngāi Tahu Resource Management Strategy for the Canterbury Region 1990; Te Rūnanga o Ngāi Tahu Freshwater Policy Statement 1999; Te Waihora Joint Management Plan 2005*).

26. An important outcome of the CIA process was that CPWL needed to provide Ngāi Tahu with the same degree of certainty regarding environmental sustainability and protection of the relationship between Ngāi Tahu and their ancestral lands and waters, as it is striving to provide for shareholders in terms of irrigation supply. Ngāi Tahu sought assurance that the Scheme was not being driven by economic forces at the expense of the land, water, biodiversity and cultural heritage of the central plains.

27. An outcome of the CIA was that Ngāi Tahu became aware of the potential benefits associated with the CPW Scheme, particularly in terms of improving farming

activities and reducing pressure on groundwater. Equally, however, the potential for further exacerbation of existing problems was a prominent theme.

28. A further outcome of this process was the focus for Ngāi Tahu in preparing a CIA not being to support or oppose the Scheme but rather the intent of the CIA was to provide good information to enable meaningful discussion between parties about how to address cultural concerns. For Ngāi Tahu, how CPW addressed the recommendations in the CIA was just as, if not more important than the report itself.

29. It was the understanding of Ngāi Tahu that the CIA would form part of the project Assessment of Environmental Effects and provide a basis for discussions with CPW about how to find the best fit between the project and the protection of Ngāi Tahu values and interests.

30. In addition to the CIA, a further aspect of the consultative process was the appointment of two Ngāi Tahu persons to the CPW Trust. In 2003, sometime after the initial formation of the CPW Trust, the Selwyn District Council and the Christchurch City Council issued a directive seeking the appointment of a Ngāi Tahu person to the Trust. Following subsequent discussions, it was agreed that it would be more appropriate for there to be two Ngāi Tahu persons appointed.

31. In mid 2004, Ms Clare Williams and Mr Viv Smart were selected by Ngāi Tahu and appointed to the CPW Trust. The purpose of their role was to provide advice to the Trust about the values and issues pertaining to Ngāi Tahu.

32. It is important to emphasise that, although Clare Williams and Viv Smart were there to add a Ngāi Tahu voice to the CPW Trust process, they were not in fact official representatives of Ngāi Tahu or of ngā rūnanga. Rather, they were appointed to the Trust as individuals who possessed cultural expertise. At no stage, did Clare Williams or Viv Smart ever receive instructions from Ngāi Tahu about what to say or how to vote, or report back to Ngāi Tahu about their actions.

### **Post CIA Consultation**

33. The second cultural impact assessment that was prepared for CPW established a firm basis for consultation and provided them with the information needed to enable

a meaningful consultation process to address adverse effects on Ngai Tahu values. Best practice for Ngai Tahu has suggested that parties come together to discuss the recommendations provided in the CIA, and possible implications for the forthcoming resource consent application process.

34. The post CIA consultation between Ngai Tahu and CPW occurred via four hui, over the period 6 March 2006 to 28 July 2006. The purpose of the hui were to address the 38 recommendations contained in the CIA, with the aim of achieving mutually acceptable outcomes.

35. With some issues both Ngai Tahu and CPW reached agreement, whilst others required more information, others could not be agreed to, and others were considered by CPW to be beyond the scope of their ability to address them. More specifically, several scenarios characterised the outcomes arising from the recommendations:

- (a) Recommendations supported / agreed to by CPWL (e.g. cultural monitoring consent conditions)
- (b) Recommendations not or unlikely to be supported by CPWL (e.g. avoiding 40m<sup>3</sup>/s take from Waimakariri; requiring existing groundwater consent holders within scheme boundary to surrender consent).
- (c) Recommendations that were only partially addressed (e.g. management of operational by-wash to avoid mixing of waters; investigation of the use of wetlands for operational by-wash management)
- (d) Recommendations whereby resolution could not occur due to the quality or quantity of information available (e.g. effects on Te Waihora; biosecurity risks, need for archaeological survey information in order to fully and effectively assess risk).
- (e) Recommendations whereby the issue was considered beyond the scope of CPWL's ability to address the matter (e.g. how to recognise and provide for Treaty of Waitangi based development rights in water with respect to the proposed water abstractions).

36. A draft mitigation summary, prepared by URS New Zealand Ltd. with support from GHD Ltd., was provided at the last consultation hui in July 2006. The summary was intended as a working document to be furthered by both parties.
37. Following the four hui, numerous action points and unresolved issues required follow up such as the provision of additional information to Ngāi Tahu, organisation of archaeological surveys, and finalisation of the mitigation summary. Unfortunately, to my knowledge, little or no further progress has been made in this respect.
38. An important issue that arose during post CIA consultation was whether the CPW Scheme was storage based, and thus centred on harvesting peak or high river flows, or a run of river scheme with continuous takes to minimum flow, using storage to provide water when river water is unavailable. We believe that the original Scheme plans first presented to Ngāi Tahu, and upon which the CIA was prepared, changed significantly. It became very apparent to Ngāi Tahu that the scheme had now become a predominately “run of river” scheme as opposed to one largely based on storage. During the post CIA consultation this issue was discussed at length, and in some instances hindered the ability to reach resolution on report recommendations.

#### **Outcomes: Resolution of Ngāi Tahu issues**

39. As a result of the consultation process, it became evident that the CPW Scheme had the potential to cause significant adverse effects on Ngāi Tahu values.
40. In my opinion, it is unfortunate that, despite the post CIA hui that were held, CPW largely failed to seize the opportunity to address the outstanding concerns and recommendations identified in the CIA. To the contrary, it is my view that the consultation process stalled from mid July 2006. In fact, there was a period of nearly 18 months from mid 2006 to the end of 2007 when Ngāi Tahu received no word from CPW as to what was being done to address the outstanding cultural issues. This led to the development of a feeling among Ngāi Tahu whānui that CPW was not seriously committed to recognising and providing for Ngāi Tahu’s ongoing relationship with the central plains area, especially the lowland catchment.
41. There are a number of areas of specific concern, including:

**(a) Lack of reliable information**

A fundamental principle of consultation is providing sufficient and appropriate information to enable informed decision-making. Much of the difficulty experienced by Ngāi Tahu in its assessment of the cultural impacts of the CPW proposal was due primarily to the unavailability of relevant or necessary information. For example, in the 2001 CIA (feasibility studies), Te Rūnanga identified the need for a comprehensive archaeological survey. The need for such a survey was emphasised again in the 2005 CIA. In particular, the 2005 CIA stressed that, without a comprehensive archaeological survey, NT was simply unable to fully and effectively assess the nature and extent of the impacts of the proposed water enhancement scheme upon sites of cultural significance.

Unfortunately, due to CPW budgetary constraints a comprehensive archaeological assessment of the type requested was never undertaken by CPW. The best it could do was to undertake a preliminary (and in Ngāi Tahu's opinion unsatisfactory) assessment.

Ngāi Tahu also considers that the actual and potential effects of the proposal on the lowland catchment remain extremely uncertain. By way of illustration, during a consultation hui for the 2005 CIA a key question was raised; namely:

Is the Central Plains Scheme compatible with the “*General Policy Objectives*” and “*Vision*” for Te Waihora, as set out by Ngāi Tahu in the Taumutu Natural Resource Management Plan and the Te Waihora Joint Management Plan respectively (see Appendix 2 and 3)?

No meaningful response to this question has yet been provided by CPW. In this context, Ngāi Tahu remains unsatisfied that the scheme will be able to ensure the avoidance of any adverse effects to Te Waihora. For example, Ngāi Tahu does not consider that CPW has adequately assessed the following effects on Te Waihora and its catchment:

- As a consequence of more water used in the project area, the water table in areas such as Leeston and Southbridge (not to mention Taumutu) may rise by as much as 1 m. Can these areas cope with such an increase?
- There is potential for operational by-wash to be released into lower catchment areas;
- More water in lower catchment areas may be used to justify further land intensification in these areas;
- Changes to water quantity in lower catchment areas may necessitate changes in the lake opening regime for Te Waihora (which to date, is a further area that has not been assessed by CPW); and
- The distinct possibility that the proposal will result in the introduction into lowland streams and Te Waihora of unsustainable levels of nitrates and phosphates.

***(b) Inadequate assessment of cultural effects in AEE***

A key reason why Ngāi Tahu spent so much time working with CPW to prepare the CIA report was to enable it to produce a more comprehensive Assessment of Environmental Effects (AEE). In my view, CPW failed to take advantage of this opportunity and ended up producing an AEE that contained only a very limited discussion of the cultural implications of the proposal.

In addition, despite the attention dedicated to the relevance of iwi management plans in the CIA, the CPW AEE failed to take any account whatsoever of the three Iwi Management Plans that are directly relevant to the Central Plains project. Te Rūnanga o Ngāi Tahu is extremely disappointed by the lack of any meaningful discussion in the AEE of what it considers to be valuable guidance, information and advice contained in the Ngāi Tahu Freshwater Policy (2000), the Te Taumutu Rūnanga Natural Resources Plan (2002), and Te Waihora Joint Management Plan (2005), which is a Joint Management Plan, prepared pursuant to section 177 of the NTCSA.

***(c) CIA not provided to ECan alongside AEE & consent applications***

I also wish to express my disappointment that CPW's representatives refused to agree to Ngāi Tahu's frequent requests to provide Environment Canterbury with a copy of the 2005 CIA. Not only is it disappointing that CPW refused (for whatever reason) to agree to such a seemingly reasonable request, but also that Environment Canterbury was not minded to make a formal request of the applicant under section 92 to provide the CIA.

Ngāi Tahu believes that, if the CIA had been made available to ECan during the pre-notification stage of the application process, then at least some of the information deficiencies could have been avoided. As the application presently stands, however, we are left with a position whereby Ngāi Tahu (and the public) has been forced to base its assessment of this large scale, invasive and complex proposal upon incomplete and inadequate information.

***(d) Cultural issues not well reflected in Environment Canterbury Section 42A report***

Quite likely because of the failure of CPW to provide Environment Canterbury with a copy of the CIA, we are now also in receipt of an officer's section 42A report that contains little or no meaningful discussion of cultural values and the effects of the scheme upon those values. For Ngāi Tahu a measure of the success of a consultation process is how well the outcomes of a CIA are reflected in the decision-making process of the Consent Authority. On this basis, I am forced to conclude that the consultation process, despite its initial potential, ended up being largely unsuccessful.

**Conclusion**

42. It is my overall opinion that, from a cultural perspective, there remain too many unanswered questions to be able to justify granting consent to CPW for its proposed water enhancement scheme. Fundamental issues such as the impacts of the proposal upon significant cultural sites and the effects of the scheme upon the much treasured lowland catchment remain outstanding.