

He tono nā

Te Rūnanga o Ngāi Tahu

ki

**The Board of Inquiry – Proposed National Policy
Statement on Freshwater Management**

e pā ana ki te

**Proposed National Policy Statement on
Freshwater Management**

23 January 2009

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1. Introduction

1.1 This submission, which is made on behalf of Te Rūnanga o Ngāi Tahu (“Te Rūnanga”), begins by setting out the following background information:

- The status of Te Rūnanga o Ngāi Tahu;
- Its ability to speak on behalf of Ngāi Tahu Whānui,
- The extent of the Ngāi Tahu takiwā, including the wealth of freshwater resources and the number of local authorities in the takiwā;
- Whakapapa and freshwater; and
- The Te Rūnanga o Ngāi Tahu Freshwater Policy and the relationship that Ngāi Tahu has with freshwater.

1.2 Te Rūnanga also wishes to set out a proviso in respect of the unresolved issue of the nature and extent of Ngāi Tahu rights in freshwater.

1.3 This submission then provides specific comment on the provisions of the Proposed National Policy Statement for Freshwater Management (“the Proposed NPS”) by identifying a series of themes that it considers require the Board of Inquiry’s particular attention. As far as possible, the submission seeks to provide the Board of Inquiry with suggested wording that addresses Te Rūnanga’s concerns.

2. Background

Te Rūnanga o Ngāi Tahu

2.1 Te Rūnanga, the tribal representative body of Ngāi Tahu Whānui, is a body corporate established on 24 April 1996 under section 6 of Te Rūnanga o Ngāi Tahu Act 1996 (“the TRoNT Act”).

2.2 Section 3 of the TRoNT Act states:

This Act binds the Crown and every person (including any body politic or corporate) whose rights are affected by any provisions of this Act.

2.3 Section 15(1) of the TRoNT Act states:

Te Rūnanga o Ngāi Tahu shall be recognised for all purposes as the representative of Ngāi Tahu Whānui.

Collective Voice

2.4 It has therefore been clearly affirmed in statute that Te Rūnanga is the sole representative of Ngāi Tahu Whānui, the iwi that is tāngata whenua within the Ngāi Tahu Takiwā. Te Rūnanga, by virtue of its statutorily recognised position

as the representative tribal body of Ngāi Tahu Whānui, makes this submission on behalf of the Ngāi Tahu tribal collective.

- 2.5 The attention of the Board of Inquiry is respectfully drawn to the special status of Te Rūnanga. Te Rūnanga notes that this submission should not be treated as a single submission, in the manner customarily adopted by Board of Inquiry, but should be accorded the status and weight due to the tribal collective, Ngāi Tahu Whānui, which it represents.
- 2.6 There are currently over 43,000 members of Ngāi Tahu Whānui whose names are registered on the roll in accordance with section 8 of the Act and this number continues to grow.
- 2.7 Notwithstanding its statutory status as the representative voice of Ngāi Tahu Whānui “for all purposes”, Te Rūnanga accepts and respects the right of individuals and Papatipu Rūnanga to make their own submissions to the Board of Inquiry.

The Takiwā of Te Rūnanga o Ngāi Tahu

- 2.8 The Ngāi Tahu takiwā (described in detail in section 5 of the TRoNT Act) covers approximately 80% of the South Island (Te Waipounamu) and approximately 50% of the entire land mass of New Zealand. The takiwā extends from Te Parinui o Whiti on the east coast to Kāhurangi Point on the West Coast. In order to assist the Board of Inquiry to appreciate the scale of the Ngāi Tahu takiwā, we have **attached** a map as Appendix 1, which depicts the boundary of the Ngāi Tahu takiwā, together with the location of the significant freshwater resources (including lakes, rivers, streams, lagoons and wetlands; but not including groundwater resources) present within the Ngāi Tahu takiwā. A second **attached** map (Appendix 2) shows the location of the boundaries of the 25 local authorities which operate within the Ngāi Tahu takiwā. As a result of its dealings with these councils, Te Rūnanga has gained extensive experience with and knowledge of council plans and policy statements relating to freshwater.
- 2.9 Approximately 70% of New Zealand’s freshwater resources are located within the Ngāi Tahu takiwā. Many of these freshwater resources are under considerable strain and are facing acute water quality and quantity issues. Accordingly, Te Rūnanga has a particularly significant interest in the manner in which our freshwater resources are managed.

Whakapapa o Te Wai

- 2.10 For Ngāi Tahu Whānui, water is not regarded merely as a resource to be utilised, but rather a prominent feature of the stories of creation and a taonga from which all Ngāi Tahu Whānui descend. Lakes, rivers and streams with a

healthy mauri are central to Ngāi Tahu's sense of identity and the overall mana of the iwi.

- 2.11 Whakapapa is the primary institutional mechanism utilised within Ngāi Tahu culture to represent and convey ecological and human interrelationships, and to describe and articulate the processes of cause and effect observed within the natural ecology. The following Whakapapa o Te Wai describes how water came into being:

O Te Wai

Nā te Pō, ko te Ao
Tana ko te Ao Mārama
Tana ko te A oTūroa,
Tana ko te Kore te Whiwhia
Tana ko te Kore te Rawea
Tana ko te Kore te Tāmaua
Tana ko te Kore Mātua
Tana ko Mākū
Te Punawai o Te Ao

From eternity came the universe
From the universe the bright clear light
From the bright light the enduring light
From the enduring light the void unattainable
From the void unattainable, the void intangible
From the void intangible the void unstable
From the void unstable the void endowed with paternity
From which came the moisture
The source of all the worlds water

- 2.12 Through whakapapa, Ngāi Tahu Whānui have an inherent responsibility to act to protect waterways from destructive human intervention so as to fulfill their spiritual obligations to ngā Atua (the gods) and ensure cultural values can continue to be enjoyed by future generations.

The Te Rūnanga o Ngāi Tahu Freshwater Policy

- 2.13 The emphasis that Ngāi Tahu places upon freshwater and on having waterbodies which possess a healthy mauri and which are fit for cultural purposes such as food gathering led Te Rūnanga to develop the Te Rūnanga o Ngāi Tahu Freshwater Policy (**attached** as Appendix 3). The Te Rūnanga o Ngāi Tahu Freshwater Policy is a “planning document recognised by an iwi authority and lodged with the council” and so therefore is required to be “taken into account” under various provisions of the Resource Management Act 1991 (“the RMA”). Although there is no explicit requirement in the RMA for the Board of Inquiry to take into account iwi management plans, it is considered that the Te Rūnanga o Ngāi Tahu Freshwater Policy is a relevant matter that the Board must consider pursuant to section 51(1)(e) of the RMA.
- 2.14 The following passages of the Te Rūnanga o Ngāi Tahu Freshwater Policy illustrate the nature of Ngāi Tahu's relationship with freshwater:

Water is central to all Māori life. It is a taonga left by ancestors to provide and sustain life. It is for the present generation, as tangata tiaki, to ensure that the taonga is available for future generations in as good as, if not better quality. [page 5]

Ngāi Tahu considers that its relationship with the waters of its rohe has been eroded over the last 150 years. Evidence produced by Ngāi Tahu to the Waitangi Tribunal documented numerous examples of the waterways within the Ngāi Tahu rohe:

- that are now severely polluted by discharges; and
- where reworking of the hydrological regime of waterways has resulted in unnatural patterns of erosion, sedimentation, drying up of flows and damage to rich mahinga kai habitats on the riparian margins. [page 5]

Papatūānuku (Mother Earth) supports life including all people, flora and fauna. Waterways represent the blood vessels that supply nourishment to her and, through her, to all living things. [page 13]

The primary management principle for Ngāi Tahu is the maintenance and enhancement of the mauri or life-giving essence of a resource. [page 13]

With respect to waterways mauri can be tangibly represented in terms of elements of the physical health of a river ecosystem. While there are also many intangible qualities associated with the spiritual presence of the river, elements of physical health which Ngāi Tahu use to reflect the status of mauri and to identify the enhancements needed include:

- aesthetic qualities e.g. clarity, natural character and indigenous flora and fauna;
- life-supporting capacity and ecosystem robustness;
- depth and velocity of flow;
- continuity of flow from the mountain source of a river to the sea;
- fitness for cultural usage; and
- productive capacity. [page 13]

The mauri should not be desecrated. Resource management agencies need to be aware that natural disasters cannot harm the mauri only those resulting from the actions of man. The mauri of a waterway is unable to protect itself against unnatural aspects of the environment. If the mauri of an entity is desecrated or defiled, the resource itself, resource users and others depending on that entity are at risk. [page 13]

Sadly, the mauri of many waterbodies have been seriously eroded by water use and development including:

- The damming of the rivers;
- Abstracting water from rivers, streams and lakes;
- The diverting of the waters;
- Mixing the waters of distinct ecosystems; and
- River protection works. [page 13]

Preservation of the integrity of valued waterways is an important aspect of the responsibilities of those members of Ngāi Tahu Whānui that are identified as the Tangata tiaki. Values (both tangible and intangible) associated with specific waterbodies include:

- the role of particular waterways in unique tribal creation stories;
- the role of those waterways in historical accounts;
- the proximity of important wāhi tapu, settlement or other historical sites in or adjacent to specific waterways;
- the use of waterways as access routes or transport courses;
- the value of waterways as traditional sources of mahinga kai food and other cultural materials; and
- the continued capacity for future generations to access, use and protect the resource. [page 14]

2.15 The Te Rūnanga o Ngāi Tahu Freshwater Policy also provides a kaupapa (policy) as to the manner in which freshwater resources should be managed. This kaupapa states:

Ngāi Tahu considers that the following principles should govern the formulation of water policies and plans within the rohe of Ngāi Tahu:

- Water plays a unique role in the traditional economy and culture of Ngāi Tahu. Without water no living thing, plant, fish or animal can survive.
- Water is a taonga. Water has an inherent value that should be recognised in the event of potentially competing uses. Taonga value refers to values associated with the water itself, the resources living in the water and the resources in the wider environs that are sustained by the water. Taking, using and disposing of water can have drastic effects on the environment and the values Ngāi Tahu accord to a waterbody.
- Water is a holistic resource. The complexity and interdependency of different parts of the hydrological system should be considered when developing policy and managing the water resource.
- Water is a commodity that is subject to competition. An understanding of the significance and value of water to Ngāi Tahu and other stakeholders is necessary to change the existing behaviour from one that prioritises consumptive uses and permits inefficient use towards one that recognises and provides for cultural and ecological values as priorities.
- Water has many stakeholders. The interdependency of different parts of the hydrological system creates many stakeholders, including other organisms and humans (both current and future generations). The RMA 1991 confirms that future generations are also stakeholders. From Ngāi Tahu's perspective, the present generation has an obligation to pass on healthy water resources to future generations.
- Water should be managed at the local level because most threats to waterbodies are local. Responsibility for management should therefore be delegated to those organisations that have a personal stake in its overall health and condition. [page 8]

2.16 Te Rūnanga has sought to implement its Freshwater Policy primarily through lodging submissions and presenting evidence in respect of policy statements, plans and resource consent applications. A number of the 18 papatipu rūnanga that make up Te Rūnanga have also developed iwi management plans, which apply the policies contained in the Freshwater Policy to the circumstances of their particular rohe.

- 2.17 Te Rūnanga now welcomes the opportunity to provide input into the Proposed National Policy Statement for Freshwater Management (the Proposed NPS).

The nature and extent of Ngāi Tahu rights in and over freshwater

- 2.18 This submission does not discuss the nature and extent of Ngāi Tahu rights in and over freshwater. This should not be construed as meaning Te Rūnanga accepts the current position. Te Rūnanga wishes to state explicitly that it believes these issues remain unresolved.

3. Support for the Proposed NPS

- 3.1 The Proposed NPS has the ability to assist in addressing the significant concerns Ngāi Tahu has about the present approach adopted in management of freshwater in New Zealand. Te Rūnanga is of the view, however, that in order for it to maximise its effectiveness, the Proposed NPS requires significant refinement and modification. The nature of these changes is set out in the remainder of this submission.
- 3.2 Te Rūnanga considers that local authorities (and the Environment Court) have struggled with the complexities of integrated management and have failed to plan for the dynamic and interconnected nature of our freshwater environment. Te Rūnanga considers that, too often, freshwater has been allocated without a clear understanding of the ecological and cultural requirements of our freshwater systems. In particular, there has been a failure to take account of the interplay between surface water and groundwater, with the result that a number of culturally significant lowland streams, lakes and lagoons have become severely degraded.
- 3.3 Te Rūnanga believes that local authorities have faced considerable difficulties developing a planning framework that is capable of managing the cumulative effects of a number of activities, especially the non-point source discharge of contaminants (such as the diffuse run-off of dairy effluent into rivers and streams). Regional and district plans do not require consent applicants to assess the combined effects of development on the intricate workings of a waterbody. In many cases, this has resulted in waterways becoming significantly degraded (and in some cases eutrophic) and generally unfit for cultural purposes.
- 3.4 A further concern is the failure of councils to recognise the significant role that riparian margins play in the overall health of a waterbody. Cultural health assessments undertaken by Te Rūnanga point to significant issues with the management of the riparian zone and the importance of this area as both a habitat for native plants, birds, fish, and other wildlife and as a buffer from the negative impacts of surrounding land use. All too often in the Ngāi Tahu takiwā,

intensive land use activities extend right up to the margin of (and in a number of cases, right into) a waterway. This is a significant contributor to the poor cultural health of many Te Waipounamu waterways.

- 3.5 Te Rūnanga is aggrieved about the fact that, almost without exception, Ngāi Tahu has been denied the ability to participate meaningfully in the management of, and decision-making regarding, freshwater resources. In the majority of cases, Ngāi Tahu's involvement in the management of freshwater resources has been relegated to that of an "affected party", with the result that we have been forced to become merely an advocate for, rather than a manager of, or decision-maker in respect of, our freshwater environment. There has been little or no recognition of the fact that Ngāi Tahu is a Treaty partner to the Crown, which by definition entails that a partnership approach be adopted.
- 3.6 The results of this exclusion are far reaching. Councils have tended to overlook their obligations under sections 5 (cultural wellbeing), 6(e) (the relationship of Māori and their culture and traditions with their water), 7(a) (kaitiakitanga) and 8 (the principles of the Treaty of Waitangi) of the RMA. Freshwater resources have been allowed to be exploited for commercial purposes without sufficient regard being had to the need to protect the cultural values of those freshwater resources. Cultural considerations have, in many cases, been a mere after-thought in significant decisions affecting freshwater. Ultimately, this has resulted in the reduction and/or loss of the mauri of many of our waterbodies.
- 3.7 The exclusion of Ngāi Tahu from management and decision-making has also limited the ability of our people to meaningfully carry out their traditional kaiakitanga obligations. The essence of what kaiakitanga means is well captured in Te Pōhā o Tohu Raumati - Te Rūnanga o Kaikōura Environmental Management Plan:

Kaitiakitanga in the resource management context means maintaining and enhancing the integrity of life – sustaining the resources we all depend upon to survive. Our philosophies are simple and rigorously imposed. We want clean water – because we eat the fish that comes from it. We want plenty of water, so that we can drink it. We want nourishing soils so we can grow our gardens to eat and our trees and birds and insects can survive. We want clean air so we can breathe easy. We need to work together because we are all part of a finely balanced ecosystem. We want all this because our kids are going to inherit this place and when you have kids you automatically become a futurist, and their future means everything to us. Kaitiakitanga means ensuring our children have all that, and that is what we are guarding. [Raewyn Solomon, Te Rūnanga o Kaikōura] [emphasis added]

- 3.8 Te Rūnanga does not consider that the current system has allowed tangata whenua to "work together" with local authorities to manage our freshwater resources. Without a proper stake in the management of our freshwater resources, the true essence of kaitiakitanga cannot be realised.

3.9 Te Rūnanga endorses the view of the Ministry for the Environment in its Section 32 Evaluation that "...we are not planning for the future of fresh water as well as we could be" (page viii) and that a national policy statement is the best way of providing the national level guidance required to address the concerns. Having said this, Te Rūnanga is of the view that, in order for it to maximise its effectiveness, the Proposed NPS requires significant refinement and modification. The nature of these changes is set out in the remainder of this submission. An amended version of the Proposed NPS tracking all of the changes sought by Te Rūnanga is **attached** to this submission as Appendix 4.

4. **Use of RMA terminology**

4.1 Where possible, the Proposed NPS should use established RMA terminology/wording and avoid the unnecessary introduction of new and untested concepts. It will be important for the Board of Inquiry that, once operative the National Policy Statement for Freshwater Management must operate within the existing RMA framework. Any unnecessary departure from this will increase the potential for costly and time-consuming litigation.

4.2 Te Rūnanga has identified the following instances in which the Proposed NPS appears to unnecessarily depart from existing RMA terminology:

- Objective 6 and policy 1(i)(iv) (both of which relate to managing demand for fresh water) introduce the undefined concept of "resilience";
- Objective 7 introduces the concept of "excessive" contamination. Determining what "excessive" means is a subjective exercise that will be likely to create confusion and debate. Therefore it should be deleted from the objective;
- Objective 8 (iwi and hapū roles and Tangata Whenua Values and Interests), policy 1(d) and policy 8 introduce the concept of "iwi and hapū" rather than "tangata whenua";
- Objective 8 and policy 1(d) introduce the concept of "involvement" rather than the more established RMA concept of "participation";
- Objective 8, policy 1(e) and (f) require Tangata Whenua Values and Interests to be "identified" without also requiring that they are "recognised and provided for"; and
- Objective 5 (addressing fresh water degradation), policy 1(h), policy 1(i)(v), policy 1(j)(ii) and policy 5(a) refer to the need to "control" or "minimise" adverse effects rather than the need to "avoid, remedy or mitigate" adverse effects and/or "manage" adverse effects.

4.3 In addition, it is proposed that references in the Proposed NPS to "adverse effects" be preceded by the phrase "actual and potential". Te Rūnanga considers that this will serve to reinforce to councils the need to proceed with caution and to consider "any potential effect of high probability" and "any potential effect of low probability which has a high potential impact" (pursuant to

the definition of “effect” in section 3 of the RMA). This will require amendment to objective 6, policy 1(h), 1(i)(v), 1(j), policy 2(c)(iii)(b), policy 3(b)(ii), policy 4(b), policy 5(a) and (b)(i) and policy 6(c).

4.4 Although the word “ensure” is not expressly used in the RMA, Te Rūnanga considers that its use in the objectives serves to strengthen the guidance and directives provided by the Proposed NPS and that it is therefore appropriate in the circumstances.

4.5 Alternative wording to address the above concerns is contained in Appendix 4. Appendix 4 also removes the Purpose of the Proposed NPS, which is considered cumbersome and unnecessary, and contains amendments proposed in respect of the Preamble of the Proposed NPS.

5. **Well-being**

5.1 Despite its prominence in the section 5(2) definition of “sustainable management”, the concept of “cultural well-being” has, hitherto, featured little in the management of, and decision-making regarding, freshwater resources. It has been the experience of Te Rūnanga that, in order to gain any recognition whatsoever of cultural values, it has been forced to rely on the protection afforded by section 6(e) of the RMA.

5.2 In these circumstances, Te Rūnanga strongly supports objective 1 of the Proposed NPS. Te Rūnanga believes that providing for the social, economic and cultural well-being of people and communities and for their health and safety must be one of the touchstones of freshwater management in New Zealand. The other key touchstone will always be the well-being of the freshwater resources themselves. At a recent hui, the comment was made that “it’s not so much what freshwater can do for us but what we can do for freshwater.”

5.3 As the Proposed NPS presently stands, the emphasis placed upon well-being in objective 1 is not followed through into the policies or any of the other objectives. Beyond the reference in objective 1, there is only one other mention of well-being in the Proposed NPS (contained in policy 4(d)).

5.4 In order for an objective to be translated into action, there is a need for it to be reinforced by a clear statement of policy. This position is clearly set out in the Ministry for the Environment’s guidance note entitled: *Drafting Issues, Objectives, Policies and Methods in Regional Policy Statements and District Plans* (2003). Accordingly, Te Rūnanga considers that there is a need to insert the following additional provisions into the objectives and policies of the Proposed NPS requiring local authorities to give effect to objective 1:

- The reference in Objective 7(c) (efficient use of fresh water) to “increasing the opportunities to increase benefits from the use of fresh water” should be replaced with wording such as “enhancing the social, economic and cultural well-being resulting from the use, development or protection of fresh water”;
- A further sub-clause should be added to policy 1(i) requiring regional policy statements to guide and direct regional and district plans to manage demands for freshwater in a manner which “enhances the social, economic and cultural well-being resulting from the use, development and protection of fresh water”; and
- A new provision of the same or similar wording as that described in the above two bullet points should be added to policy 4.

5.5 Once again, these recommendations are incorporated into the tracked version of the Proposed NPS attached as Appendix 4.

6. **Tangata Whenua Values and Interests**

6.1 Te Rūnanga supports the use in the Proposed NPS of the concept of Tangata Whenua Values and Interests. However, because the phrase is capitalised and yet no definition is provided, there is the potential for confusion to arise. In order to avoid such confusion, Te Rūnanga suggests that Tangata Whenua Values and Interests be defined as follows:

“Tangata Whenua Values and Interests” means:

- (a) the values that tangata whenua place upon Freshwater Resources and which Freshwater Resources hold for tangata whenua;
- (b) the traditional and contemporary relationships and associations that tangata whenua had/have with Freshwater Resources; and
- (c) the interests that tangata whenua have in Freshwater Resources.

For the avoidance of doubt, Tangata Whenua Values and Interests must be identified and defined by tangata whenua themselves.

6.2 Subject to the comments in this submission about the use of RMA language, Te Rūnanga supports the requirements in policy 1(e) and (f) for regional policy statements to identify Tangata Whenua Values and Interests and to guide and direct regional and district plans as to the recognition of Tangata Whenua Values and Interests.

6.3 In respect of policy 1g), however, Te Rūnanga has significant concerns about the introduction of the concept of “non-consumptive Tangata Whenua Values and Interests”. Te Rūnanga does not support the introduction of any artificial constraints on Tangata Whenua Values and Interests, which would detract from our holistic view of natural resources. It is also the case that, if the Board of Inquiry accept our submission to the effect that a definition should be ascribed to Tangata Whenua Values and Interests, then the introduction of the phrase

“non-consumptive” would be at odds with the broad wording proposed (as outlined above). Furthermore, as we have explained in paragraph 2.19, Te Rūnanga has opted at this stage to defer discussion on the issue of the extent and nature of its rights in relation to freshwater. The use of the phrase “non-consumptive” could have the effect of indirectly defining customary interests as being non-consumptive.

6.4 Te Rūnanga also considers that, if the intention of the drafters to include the phrase “non-consumptive” was to ensure that existing takes of water are not restricted in order to allow for tangata whenua’s commercial aspirations, then this can be achieved anyway via sensible implementation of policy 1(g) by regional councils. In seeking the removal of the phrase “non-consumptive”, Te Rūnanga is not suggesting that our commercial aspirations should have priority over other commercial interests. As stated in 2.18, these matters remain unresolved

6.5 Beyond this, Te Rūnanga also seeks that additional references to Tangata Whenua Values and Interests be incorporated into the following provisions of the Proposed NPS:

- Policy 1(b), so that it reads:

Identify Notable Values (including potential values) and Tangata Whenua Values and Interests of –

- (i) Any Outstanding Freshwater Resources; and
- (ii) Any Degraded Freshwater Resources; and

- Policy 1(c), so that it reads:

In accordance with Policy 1(a) and (b), guide and direct the setting in regional plans for all Freshwater Resources of the region of –

- (i) Freshwater Quality Standards; and
- (ii) Environmental Flows and Levels;

including for the protection of Notable Values and Tangata Whenua Values and Interests of any Outstanding Freshwater Resources and the enhancement or restoration of Notable Values and Tangata Whenua Values and Interests of any Degraded Freshwater Resources; and

- Add the following new clause to policy 1(i):

Recognise and provide for Tangata Whenua Values and Interests;

- Policy 4(b), so that it reads:

The sensitivity of each Freshwater Resource and its Notable Values and Tangata Whenua Values and Interests to adverse effects including effects of Land-use Development and the discharge of contaminants:

- The definition of “Degraded Freshwater Resources” and “Environmental Flows and Water Levels” so that they respectively read:

“**Degraded Freshwater Resources**” means those Freshwater Resources of a region whose Notable Values and Tangata Whenua Values and Interests have been so degraded by inappropriate Land-use Development, discharges of contaminants and/or the taking, use,

damming or diverting of fresh water as to require that priority be given to enhancement or restoration in order to achieve the purpose of the Act.

“Environmental Flows and Water Levels” means a regional rule to prevent the allocation for Consumptive Use of Freshwater Resources necessary for the purposes of protecting, maintaining, enhancing or restoring Notable Values and Tangata Whenua Values and Interests of the relevant Freshwater Resource.

- It is notable that the definition of “outstanding Freshwater Resources” already contains references to both “Notable Values” and “Tangata Whenua Values and Interests”. The other provisions of the Proposed NPS should be consistent with this approach.

6.6 The rationale behind these additions is that, as it presently stands, the definition of “Notable Values” includes the broad concept of “cultural values” but does not specifically refer to Tangata Whenua Values and Interests. The separate reference to Notable Values and Tangata Whenua Values and Interests in policy 1(g) and the definition of “outstanding freshwater resources” tends to indicate that the concepts are exclusive of one another.

6.7 An alternative to the proposed amendments would be to include Tangata Whenua Values and Interests within the definition of Notable Values, so that it reads:

“Notable Values” in relation to any Freshwater Resource includes:

- (a) Scientific, ecological and biodiversity values:
- (b) Cultural values (including Tangata Whenua Values and Interests):
- (c) Recreational (including contact recreational; eg, swimming) values.

7. **Freshwater quality (objective 3)**

7.1 Te Rūnanga is concerned about a number of features of the water quality provisions of the Proposed NPS, especially objective 3. Objective 3 states:

To ensure the progressive enhancement of the overall quality of Freshwater Resources, including actions to ensure appropriate Freshwater Resources can reach or exceed a swimmable standard.

7.2 While Te Rūnanga supports the aim of objective 3 to improve water quality, it is concerned that, as presently written, the objective is unclear and uncertain. By way of illustration:

- It is unclear what the reference in objective 3 to “progressive” is seeking to achieve. As far as we are aware, it is generally well accepted that the enhancement of the water quality of any river, stream or lake is not something which can be expected to be achieved instantaneously or overnight. Therefore, enhancement will, by definition, always occur progressively. There is no need for an express reference to “progressive”.

- The references to “overall” and “appropriate” will permit councils to allow the quality of some Freshwater Resources to continue to decline so long as the water quality of others is improving. Te Rūnanga does not support such an approach and considers that, rather than simply requiring that the average water quality of our Freshwater Resources improve, there should be an expectation that the water quality of all of our waterways will improve (or at the very least, not decline any further).

7.3 Accordingly, Te Rūnanga seeks that the references to “progressive”, “overall” and “appropriate” be deleted from objective 3.

7.4 Te Rūnanga is also concerned that both objective 3 and the definition of “Freshwater Quality Standard” fail to take into account cultural values. For Ngāi Tahu, the quality of our awa is a matter of considerable cultural significance. In order to ensure the preservation of water quality, Ngāi Tahu relied upon a traditional water classification system, which included:

- Waiora: Pure water is termed Te Waiora a Tane, and to the Maori it contains the source of life and wellbeing. It is the spiritual and physical expression of Rakinui the sky father, shedding tears at the loss of Papatuanuku, the earth. The rain is waiora.
- Wai Maori: is water in a normal and healthy state; water becomes wai maori when it comes into unprotected contact with humans. It has a mauri (which is generally benevolent) and which can be controlled by ritual.
- Waikino: is water, which has been polluted or debased, spoilt or corrupted. In waikino, the mauri has been altered so that the supernatural forces are non-selective and can cause harm to anyone.
- Waimate: is water that has lost its mauri or life force and has the potential to cause ill fortune, contamination or distress to the mauri of other living things, including people, their kai moana or their agriculture. The subtle differences between waikino and waimate seem to be based on the continued existence of a mauri (albeit damaged) in the former, and its total loss in the latter.¹

7.5 The objective of Te Rūnanga is that there be no human induced disposal of contaminants (including faecal coliforms (such as E.coli²), campylobacter³, heavy metals and sediment) into our waterways. The presence of tūtae⁴ (other than through natural sources such as birds) is, and has always been, culturally offensive to Ngāi Tahu Whānui. The discharge of contaminants to land (in

¹ The traditional water classifications draws on the classifications proposed by Douglas (1984, 1), Palmer and Goodall (1989) Rochford (2003), and Williams (2006).

² Which indicates contamination with faecal matter from the intestinal tract of a mammal or birds.

³ *Campylobacter* is a bacterial organism that causes the gastro-intestinal disease campylobacteriosis when it lodges in the walls of the intestine. The two types that affect most people in New Zealand are *Campylobacter jejuni* and *Campylobacter coli*. (<http://www.nzfsa.govt.nz/>)

⁴ Defined in the Māori Dictionary (<http://www.maoridictionary.co.nz/>) as “1. (noun) dung, excrement, shit, faeces, poo.”

circumstances where they will not enter water) is the preferred method of disposal for Ngāi Tahu Whānui.

7.6 In this context, the reference in objective 3 to the goal of ensuring that “...Freshwater Resources can reach or exceed a swimmable standard”⁵ is considered by Te Rūnanga to serve as nothing more than a bare minimum. Cultural conceptualisations require that a drinking water standard⁶ be achieved for all waterways. However, given that this may be impossible to achieve, some rūnanga may be willing to negotiate a lesser standard. The precise nature of this lesser standard will need to be determined on a case-by-case basis.

7.7 Te Rūnanga suggests that, in order to more effectively provide for the strong interest that tangata whenua have in the quality of our freshwater, objective 3 should be amended so that it reads:

To ensure the ~~progressive~~ enhancement of the ~~overall~~ quality of Freshwater Resources, including actions to ensure that the water quality of appropriate Freshwater Resources can reach or exceeds a swimmable standard and is consistent with Tangata Whenua Values and Interests.

7.8 In order to effectively encompass tangata whenua values, it is also necessary for the definition of “Freshwater Quality Standard” to be amended as follows:

“Freshwater Quality Standard” means a regional rule on freshwater quality which gives effect to this National Policy Statement and which is:

(a) no less than that required to achieve a swimmable standard; and

(b) consistent with Tangata Whenua Values and Interests.

7.9 Unless the Proposed NPS expressly requires Freshwater Quality Standards and Environmental Flows and Levels to be determined in a manner that is consistent with Tangata Whenua Values and Interests, then the potential will exist for councils to resort to the use of default mechanisms. Although freshwater management methodologies geared towards holism are evolving, there remains a tendency to base assessments solely on quantitative “hard” science. A common assumption to date has been that environmental standards with a focus on ecological needs are an acceptable surrogate for the protection of cultural values. Ngai Tahu challenges this assumption. A factor common to current methodologies is their reliance on professional expertise for their implementation and the predominance of objective, scientific philosophies and techniques, which may serve to limit the engagement of Māori. The reliance on

⁵ Which we note is an undefined concept, but which we assume is to be based upon the contact recreation standard for freshwater (which requires that no more than 260 E.coli be detected in 100ml of water).

⁶ The Drinking Water Standard for New Zealand 2005 requires that no more than 1 E.coli be detected in 100ml of water.

narrow technical/engineering based perspectives also appears contrary to the rich and diverse sources of information about the human perceptions, meanings and values ascribed to water.

- 7.10 Minhinnick (cited in Douglas 1984) challenged existing management techniques and explained that:

Great harm was done to Maori people and their relationship with their ancestral lands and waterways as a result of the mono-cultural law regime that prevailed prior to the passing of the RMA in 1991. Cultural offences could not be avoided where the law did not allow their consideration. The sole focus on biophysical impacts was particularly damaging to Maori spiritual values.⁷

- 7.11 Similarly, Burmil (1999, 106) explains:

The emphasis on technical standards has tended to place perceptual, cultural and spiritual values of water at a disadvantage in affecting water policy and management.⁸

- 7.12 The enactment of the RMA charged managers, pursuant to section 6(e) to recognise and provide for “The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga”. This clause represents a potentially enabling legislative provision. But in contemporary water management, there is still a need for methodologies that enable beliefs, values and practices to be explicitly accommodated within a framework that enables Maori to assess what sustainable freshwater management means from a cultural perspective.

- 7.13 Ngāi Tahu is concerned about the emphasis on expediency and minimising management costs as councils seek to find default management mechanisms to be applied globally across a region, rather than committing to comprehensive catchment specific assessments, or case-by-case determinations. The use of default mechanisms in the past has led to a narrow focus on the needs of instream species (often trout and salmon) with scant regard for determining cultural needs.

- 7.14 Linked to concerns about the use of default mechanisms, is the emergence of “rapid appraisal” approaches as a form of facilitated consultation. Rapid appraisal approaches are being promoted as participatory approaches to research and development. There is a distinct difference however, and in the past, rapid appraisals have not benefited Ngāi Tahu.

⁷ Minhinnick NK. In Douglas Waiora, Waimaori, Waikino, Waimate, Waitai: Maori Perceptions of Water and Environment (1984) Waikato University

⁸ Burmil, S. Daniel, T. Hetherington, J. (1999) Human Values and Perception of Water in Arid Landscapes *Urban Planning* 44 99-109

8. Integrated management

- 8.1 Integrated management is a concept familiar to and practiced by Ngāi Tahu. In carrying out its kaitiaki obligations, Ngāi Tahu Whānui have long held firm to an holistic view of the natural world. Ngāi Tahu believe that all resource management decisions must be approached from the point of view that all features of the environment (including people and organisations) are indelibly connected to all other features. Traditional Ngāi Tahu concepts such as Ki Uta Ki Tai (which literally translated means “from the mountains to the sea”) are a manifestation of the all-encompassing view that Ngāi Tahu have of the environment. Mō tātou, ā, mō kā uri, ā muri ake nei (“for us and our children after us”), highlights that decisions also have to be approached from a temporal point of view.
- 8.2 Despite the explicit references to integrated management in sections 30(1)(a) and 31(1)(a) of the RMA, Te Rūnanga considers that the management of our freshwater resources has tended to be carried out in a compartmentalised and disconnected manner. In particular, Ngāi Tahu is concerned that there has been widespread failure by local authorities (and the Environment Court) to recognise the spatial interconnections between and within environmental media (including land, water and the coast). Nowhere is this more apparent than in the unchecked impact that land use intensification has had on our freshwater resources and on the integrity of the coastal environment. A very clear example of this is the failure of consent authorities to recognise the degree to which groundwater and surface water are hydraulically connected⁹. As already mentioned, this failure has resulted in a steady and ongoing decline in the quality of many of our spring fed, lowland streams and lakes.
- 8.3 Te Rūnanga is also concerned that the granting of consents for the abstraction of water and for the discharge of contaminants into water for anything longer than a period of 15-20 years is at odds with the temporal component of integrated management. Now more than ever with the emergence of climate change, it is necessary to adapt to changing conditions by issuing water and discharge consents for shorter durations and with a more accepted ability to review conditions.
- 8.4 In this context, Te Rūnanga supports the endeavours of the Proposed NPS to promote the uptake of integrated management, but insists that all references to integrated management must be cast in broad terms. Under no circumstances should the Proposed NPS give the impression that integrated management within the context of freshwater management is anything other than an holistic and multi-faceted concept. Te Rūnanga is concerned that the present wording

⁹ Although in saying this, it is recognised that Environment Canterbury has sought to promote a view of the groundwater resource that recognises that the resource is a single interconnected system in which all water takes contribute to cumulative effects. Unfortunately, this approach has not been supported by independent commissioners. Recently, however, Environment Canterbury has prepared a scientific study of groundwater resources entitled “*Inventory of aquifer test data for the Central Plains*”, which suggests that the Canterbury Plains aquifers are a single interconnected system.

of objective 2 (ensuring integrated management of effects on fresh water) gives precisely this impression. More specifically, by limiting integrated management to "...the effects of Land-use Development and discharges of contaminants on the quality and available quantity of fresh water", objective 2 may falsely give the impression that this is all that integrated management entails. While Te Rūnanga acknowledges that integrated management most certainly includes managing (in a synthesised manner) the effects of land-use development and the discharge of contaminants, there are a number of other important dimensions of integrated management that must be provided for, including:

- The dimension of time, where the impacts of today's decisions are considered on future generations;
- The dimension of justice, where the distribution of risks and benefits (environmental, social and economic) are considered;
- A biophysical dimension where matter and energy-flows through systems are understood, monitored and accounted for;
- A values dimension, where common goals are established and competing values are balanced (e.g., recreation, commercial, spiritual significance, landscape, mauri, culture and heritage); and
- An institutional dimension to coordinate roles and responsibilities and improve communication-flow between various management authorities.¹⁰

8.5 Te Rūnanga submits that objective 2 of the Proposed NPS should be reformulated to emphasise the fact that integrated management is to be regarded as a broad and all-encompassing concept. Te Rūnanga proposes the following alternative wording:

To ensure effective integrated management (including the effects of Land-use Development and discharges of contaminants upon the quality and available quantity of fresh water) by adopting a broad, holistic and integrated approach to all levels of management and decision-making affecting Freshwater Resources.

8.6 Te Rūnanga does not consider that the specific reference to the "...coordination and sequencing of Land-use Development with investment in infrastructure for supply, storage and distribution of fresh water..." needs to be contained in the objective itself. Rather, this should be left for the policies relating to integrated management.

8.7 In order to ensure that the interconnected nature of our freshwater environment is meaningfully recognised by local authorities, Te Rūnanga recommends the inclusion of an additional objective to the following effect:

¹⁰ Drawn from Frieder, J., *Approaching Sustainability: Integrated Environmental Management and New Zealand's Resource Management Act*, page 17.

To ensure that Freshwater Resources are managed in a way, or at a rate, that recognises and provides for the interconnections (including spatial and temporal) between them.

8.8 A reference to integrated management should also be woven into objective 6 (managing demand for fresh water) as follows¹¹:

To ensure that demands (including social, economic and cultural demands) for fresh water are sustainably managed in an integrated manner that has particular regard to the following:

(a) available supply of fresh water:

(b) the need to recognise and provide for [delete “resilience against”] the biophysical effects of climate change (such as through infrastructure for supply, storage and distribution of fresh water):

(c) the adverse effects that arise from those demands.

8.9 Te Rūnanga also considers that these objectives need to be reinforced by bolstering the obligations in respect of integrated management in the policies of the Proposed NPS. In particular, Te Rūnanga seek that an additional paragraph (k) be added to policy 1 to the following effect:

Guide and direct regional and district plans as to how and in what ways the integrated management of Freshwater Resources is to be achieved in the region (as required by sections 30(1)(a) and 31(1)(a)).

8.10 It is considered that this additional policy will assist to ensure that the task of “...establish[ing], implement[ing] and review[ing] ...objectives, policies, and methods to achieve integrated management...” of freshwater resources (as required by sections 30(1)(a) and 31(1)(a)) is undertaken in a more explicit and transparent manner.

8.11 The proposed amendments are tracked in Appendix 4.

9. Definition of “Freshwater Resources”

9.1 In keeping with the expansive approach to freshwater management espoused in respect of integrated management, Te Rūnanga also considers that the definition of “Freshwater Resources” needs to be extended. In particular, Te Rūnanga seeks that the definition include estuaries and lagoons, both of which are:

- Of outstanding cultural significance (especially for activities such as the gathering of mahinga kai); and
- Heavily influenced by the freshwater environment.

¹¹ This tracked version of objective 6 also shows the other changes to this objective recommended in this submission.

9.2 The New Zealand State of the Environment Report 2007 (*Environment New Zealand 2007*) defines an estuary as:

A semi-enclosed coastal body of water with an open connection to the sea and within which sea water mixes with freshwater from land run-off, usually a river.

9.3 The United States Environmental Protection Agency provides the following definition of an estuary:

An estuary is a body of water formed where freshwater from rivers and streams flows into the ocean, mixing with the seawater. Estuaries and the lands surrounding them are places of transition from land to sea, and from freshwater to saltwater. Although influenced by the tides, estuaries are protected from the full force of ocean waves, winds, and storms by the reefs, barrier islands, or fingers of land, mud, or sand that surround them.¹²

9.4 A lagoon is similar to an estuary although may not always maintain an open connection to the sea, thus, in some cases giving it the appearance of a coastal lake (such as Te Waihora and Wainono Lagoon).

9.5 As already mentioned, Ngāi Tahu adheres to the principle of Ki Uta Ki Tai – from the mountains to the sea. This means that we must conceive of freshwater as flowing (above and below ground) from its source (whether alpine or spring fed) to the point at which it enters the sea. Whilst still contained within an estuary or a lagoon, freshwater has not yet entered the sea. Therefore, for the purposes of the Proposed NPS, the definition of Freshwater Resources must include estuaries and lagoons.

9.6 The exclusion of estuaries and lagoons from the Proposed NPS will not only result in a disintegrated approach being taken to the management of our freshwater environment, but will also risk leaving estuaries and lagoons in ‘no-mans-land’ between the New Zealand Coastal Policy Statement and the NPS for Freshwater Management. Te Rūnanga considers that estuaries and lagoons should be covered by both instruments.

9.7 Te Rūnanga also seeks that the exclusion of “any ephemeral stream or artificial watercourse” be removed from the definition of “Freshwater Resource”. The exclusion of ephemeral streams would have grave consequences for the management of many significant freshwater environments. By way of illustration, in the Upper Waitaki:

- The Upper Tekapo River to Lake George Scott is dry;
- The Pukaki River is dry until it picks up tributary flows; and

¹² <http://www.epa.gov/nep/kids/about/what.htm>

- The Lower Ohau below Ruataniwha is dry until Benmore.
- 9.8 The exclusion of ephemeral streams would create considerable difficulties in determining what was and what was not covered by the NPS (as illustrated by the Upper Waitaki example) and would result in the adoption of a compartmentalised rather than a catchment based approach. Such confusion would be exacerbated by the fact that the term “ephemeral stream” is not defined. This will be likely to lead to debate about how intermittent a stream must be before it falls into the category of ephemeral.
- 9.9 It must also be emphasised that, in many cases, streams only become ephemeral because of inappropriate flows (resulting from over-allocation of surface and groundwater). Under no circumstances must such a phenomenon be a basis for removing such waterways from the scope of the definition of “Freshwater Resources”.
- 9.10 The exclusion of ephemeral streams from the definition of “Freshwater Resources” is also at odds with the definition of a “river” in section 2 of the RMA, which includes a “continually or intermittently flowing body of freshwater...” It is therefore likely that the exclusion of ephemeral streams is inconsistent with the reference in the definition of “Freshwater Resources” to a river.
- 9.11 In respect of “artificial watercourses”, it must be recognised that, while hydro and irrigation canals are private property, they are conveying public water. When the rivers and streams are dry (or at low levels), the canals, drains and ditches are full and, in effect, become substitute habitats for fish, which are often fished by tangata whenua. Therefore, “artificial watercourse[s]” should also be recognised as being an important component of our freshwater environment and the freshwater that flows within them should come within the definition of “Freshwater Resources”, notwithstanding that “artificial watercourse[s]” (as opposed to “modified watercourse[s]”) do not fall within the RMA’s definition of “river”. If the freshwater that flows within “artificial watercourse[s]” was not covered by the NPS, then it would mean that it was exempt from the Freshwater Quality Standards, which could in turn mean that potentially excessive discharges of contaminants were allowed to occur. The result of this would be the eventual discharge of contaminated freshwater back into a river or a stream.
10. **Cumulative effects**
- 10.1 Te Rūnanga is of the view that one of the main reasons, if not the main reason, why our freshwater resources are presently under so much strain is that councils have, by and large, failed (or at least struggled) to adequately plan for and manage cumulative effects. The Proposed NPS provides a timely opportunity for central government to issue a policy based reminder to councils to proactively manage cumulative effects.

10.2 For the purposes of this submission, Te Rūnanga adopts the Environment Court's description of a cumulative effect in *Gargiulo v Christchurch City Council* [2002] 1 NZLR 337 (paragraph 38):

...any one incremental change is insignificant in itself, but at some point in time or space the accumulation of insignificant effects becomes significant.

10.3 All of the regional plans (water) in the Ngāi Tahu takiwā pay only superficial attention to the concept of cumulative effects. By way of illustration:

- The only policy based reference¹³ to cumulative effects in the Regional Plan: Water for Otago is contained in policy 7.7.5 (under the policies for point source discharges). This simply states that:

When considering applications for resource consents, to have regard to the cumulative effects of discharges of contaminants and the assimilative capacity of the water body. [page 96]

- The only policy based references to cumulative effects in Chapter 4 (water quality) of Environment Canterbury's Proposed Natural Resources Regional Plan are in relation to sewage effluent treatment and disposal systems and the protection of Community Drinking Water Supply Protection Zones.

- Issue WQN 3(d) of Chapter 5 (water quantity) of the Proposed Natural Resources Regional Plan states that:

The taking of groundwater can cause a range of adverse effects, including... a long-term decline in mean annual groundwater levels caused by the cumulative effect of abstraction from groundwater

- Objective WQN 3(b) of Chapter 5 (water quantity) of the Proposed Natural Resources Regional Plan states that:

...the cumulative effects of groundwater abstractions do not cause a significant continuing long-term decline in mean annual groundwater levels and artesian pressures in each aquifer;

- There are no policy based references to cumulative effects in the Environment Southland Proposed Regional Plan Water, although there are a number of references to cumulative effects in the explanations and reasons.

- Policy 6.4.3(c) of the West Coast Regional Council's Proposed Water Management Plan states that:

To consider granting an application for a resource consent to take water from a river, subject to a minimum flow lower than that specified in Policy 6.4.2, on a case-by-case basis, provided... [t]he application if granted, together with the cumulative effect of other existing lawful takes, avoids, remedies or mitigates adverse effects on the life supporting capacity of any waterbody.

- Policy 7.4.5(d) of the West Coast Regional Council's Proposed Water Management Plan states that:

¹³ By which is meant that the term cumulative effects is expressly mentioned in an issue, objective or policy.

When considering applications for resource consents to discharge contaminants to water to have regard to... [t]he cumulative effects of discharges of contaminants and the assimilative capacity of the water body and actual or potential effects in the coastal marine area

- Policy 8.4.2 of the West Coast Regional Council's Proposed Water Management Plan states that:

To have regard to the cumulative effects of discharges of contaminants and the assimilative capacity of Lake Brunner/Kotuku-Whakaoho.

10.4 Te Rūnanga does not consider that these provisions are sufficiently sophisticated to address the complex issues that the phenomenon of cumulative effects presents. In particular, they do not provide the level of detailed guidance that is necessary to ascertain the point in time and space at which the accumulation of insignificant effects becomes significant.

10.5 In a recent article entitled "*When is Enough, Enough? Dealing with Cumulative Effects under the Resource Management Act*" (2008)¹⁴ Philip Milne argued that the task of managing cumulative effects involves the following steps:

- Identifying the Resource – both in time and space;
- Identifying the value based components of resources;
- Determining capacity; and
- Establishing limits to the use of a resource.

10.6 In order to illustrate the complexity of this process, Milne discusses the example of the allocation of Canterbury's groundwater. At page 11, he states:

The task for the consent authority when considering further applications to take water is far from easy. The question is not as simple as asking whether the proposed take will have more than minor cumulative effects (the key criteria in the proposed NRRP for Canterbury). Rather, there are a series of questions/issues that are relevant which may be summarised as follows:

- the capacity of the relevant ground water resources (including areal and temporal variations);
- the cause and nature of the cumulative effects of existing takes (including areal and temporal variations);
- the significance of such effects if they occur;
- the point at which such effects become unacceptable (which is likely to vary between locations, years and times within the year);
- the reliability of the evidence regarding the cause and impact of existing effects;
- whether existing cumulative effects are such that no further consent should be granted, or such that later consents should be granted with more stringent conditions;
- whether there are times, locations and/or depths where additional takes can be accommodated;

¹⁴ Located on the Quality Planning website (www.qp.org.nz)

- the likely nature and degree of the additional cumulative effect caused by the new proposed take;
- the reliability of evidence as to such effects;
- whether the cumulative effects of the additional take can be adequately avoided, remedied or mitigated by way of conditions and adaptive management; and
- whether the effects of climate change are relevant.¹⁵

10.7 There is a clear need for the Proposed NPS to provide unequivocal policy guidance to councils about the need to better manage cumulative effects. Te Rūnanga considers that such guidance must begin with the addition of a new objective to the following effect:

To ensure that sustainable limits to the use and development of Freshwater Resources are identified and that, on the basis of these, measures are adopted to avoid the accumulation of insignificant effects upon Freshwater Resources becoming significant.

10.8 This objective should also be reinforced by adding a new paragraph (l) to policy 1 to the following effect:

Guide and direct regional and district plans as to the identification of sustainable limits of the use and development of Freshwater Resources (including the establishment of Freshwater Quality Standards and Environmental Flows and Levels) and the effective management of cumulative effects upon Freshwater Resources.

10.9 In addition, further references to “including cumulative effects” or “both individual and cumulative” should follow the references to adverse effects in objective 6(c), policies 1(h), 1(i)(v), 1(j)(ii), 4(b), 5(a), 5(b)(i), and 7(c). Policies 2(c)(iii)(b), 3(b)(ii), and 6(c) already do this. The language of the Proposed NPS should be internally consistent.

11. **The need for caution**

11.1 Te Rūnanga considers that, notwithstanding that the precautionary approach is implicit within the RMA itself (e.g., through the inclusion in the definition of “effect” of “...any potential effect of low probability which has a high potential impact”), there is a need for the Proposed NPS to emphasise that, our freshwater must often be managed in the face of scientific uncertainty and that, accordingly, there will often be a need to proceed with caution. Te Rūnanga considers such an approach to be especially important in the context of climate change (as identified in the Section 32 Evaluation at page 14) and the management of cumulative effects.

¹⁵ Milne suggests that with some adaptations most of these questions are equally relevant to other situations.

- 11.2 Te Rūnanga proposes that the following additional objective (which is in keeping with the wording of principle 12 of the New Zealand Coastal Policy Statement¹⁶ (NZCPS) and proposed policy 5 of the review of the NZCPS¹⁷) be included in the Proposed NPS:

To ensure that Freshwater Resources are managed in a way, or at a rate, which:

(a) recognises that our knowledge of Freshwater Resources and the effects of activities upon them may be incomplete, uncertain, unknown or little understood and that, accordingly, it may be necessary to proceed with caution; and

(b) is responsive to increased knowledge about Freshwater Resources and the effects of activities upon them.

- 11.3 In drafting this proposed objective, Te Rūnanga has sought to avoid expressly referring to the concept of the “precautionary approach” or the “precautionary principle”, which, as is evident from the following passages from the Environment Court decision in *Jackson Bay Mussels Ltd v West Coast Regional Council* (C077/04) has been the subject of much legal debate:

In summary we do not consider it is appropriate to apply the “precautionary principle: or the other policies suggested by witnesses and supported by counsel for three reasons. First a precautionary approach is already implicit in the Act and emerges in the flexibility of the standard of proof applied by the Court and (as we shall see) in the weight given to evidence that has only been “proved” to a low standard (probability). Secondly such a “principle” is an unnecessary complication in an already complex statutory and factual matrix. Thirdly, application of the precautionary principle (or any of the other rules of thumb) to our decision under s 105(1) would lead to double-counting of the need for caution. If the appropriate standard of proof is on a sliding scale between the balance of probabilities and beyond reasonable doubt, depending on the impact of the effect, the fact is that the appropriate caution has been exercised when deciding under s 104(1)(a) what the effects are to be considered under s 105. If the Court applies the “precautionary principle” as another matter under section 104(1)(i) then the need for caution will have been considered twice. [Paragraph 130 in which the Court was citing the decision in *Shirley Primary School v Christchurch City Council* [1999] NZRMA 66 at 223]

...

To this analysis we would add that the precautionary principle (as stated in the Rio Declaration) does not appear to have been directly assimilated into the New Zealand Coastal Policy Statement or the Regional Policy Statement in this case. Essentially what is discussed in those Policy Statements is not the precautionary approach from the Rio Declaration but the need for caution. Accordingly, we have concluded that neither the Coastal Policy Statement nor the Regional Policy Statement go beyond emphasising the RMA’s need for caution. We immediately acknowledge that the Act is an enabling act and is not a no risk statute (see *Shirley Primary School v Christchurch City Council* [fn14 See above] and *Clifford Bay* [fn15 Paragraphs 71-73]).

¹⁶ “The ability to manage activities in the coastal environment sustainably is hindered by the lack of understanding about coastal processes and the effects of activities. Therefore, an approach which is precautionary but responsive to increased knowledge is required for coastal management.”

¹⁷ “A precautionary approach shall be adopted towards proposed activities whose effects on the coastal environment are uncertain, unknown or little understood, but whose effects are potentially significantly adverse to that environment.”

11.4 Te Rūnanga favours an approach that simply draws attention to the need for caution and reinforces what the RMA already requires.

12. Pre-existing problems

12.1 Once it becomes operative, the Proposed NPS for Freshwater Management will enter a planning environment in which many freshwater resources are already severely degraded and/or fully/over-allocated. An indication of the extent of these problems is contained in *Environment New Zealand 2007*.¹⁸ Therefore, in order to realise the aspirations of the Proposed NPS (for example, that “...by 2035, the quality of [freshwater resources] meets the aspirations of all New Zealanders”¹⁹) it will be necessary for it to encompass both existing and future consents to take, use, dam, divert and discharge to water. Te Rūnanga considers that the Proposed NPS will need to clearly mandate councils to tackle the numerous pre-existing problems facing freshwater.

12.2 In order to address the pre-existing problems facing freshwater, it is likely to be necessary for councils to undertake extensive reviews of the conditions of existing resource consents. Many existing resource consents have been granted for the maximum duration of 35 years and on conditions, which are arguably very permissive. This situation is exacerbated by the fact that the potential increase in the transferability of permits to take water (which may come about as a result of provisions of the Proposed NPS such as policy 1(i)(iii)²⁰) will enable presently allocated but unused water to become a marketable commodity. This phenomenon is referred to as “paper over allocation” (i.e., where a user has a right to more water than is actually used). Once such water begins to be taken, we are likely to find that many of our freshwater resources will come under even more strain than they presently face.

12.3 In addition, it is likely that, in order to achieve the Freshwater Quality Standards and Environmental Flows and Levels (as required to be set by policy 1(a), (c) and 2(a) of the Proposed NPS), it will be necessary to review (and in some cases claw-back) the amount of water already allocated and the extent to which contaminants are permitted to enter waterways. Te Rūnanga considers it imperative that the task of establishing Freshwater Quality Standards and Environmental Flows and Levels is not unduly influenced by the need to accommodate existing takes, uses, dams, diversions and discharge to water. The tail should not wag the dog.

¹⁸ New Zealand’s second State of the Environment Report (prepared and published by the Ministry for the Environment).

¹⁹ As referred to in the Preamble of the Proposed NPS (page 2)

²⁰ Which states “...Guide and direct regional and district plans (including considerations for the determination of resource consent applications and notices of requirement) to manage demands for fresh water, including demands arising from Land-use Development and discharges of contaminants, in a manner which...Promotes efficient Freshwater use (including through the transferability of resource consents, where appropriate);

12.4 Te Rūnanga considers that, in terms of providing a mandate to councils to review existing resource consent conditions (including duration), policy 1(g)²¹ is a good start, but that it needs to be buttressed by the inclusion of a suitable objective and further policy guidance. Te Rūnanga proposes the following amendments:

- Objective 5 to be amended as follows:

~~To control the effects of Land-use Development and discharges of contaminants to avoid further degradation of Freshwater Resources.~~

To ensure that the existing and future effects of Land-use Development and discharges of contaminants are managed so as to avoid the degradation of Freshwater Resources.

- Objective 6 be amended as follows:

To ensure that existing and future demands (including social, economic and cultural demands) for fresh water are sustainably managed in a manner that has regard to the following:

(a) available supply of fresh water:

(b) the need to provide for resilience against the biophysical effects of climate change (such as through infrastructure for supply, storage and distribution of fresh water):

(c) the adverse effects that arise from those demands (including over-allocation of Freshwater Resources and degraded water quality).

- The definition of Consumptive Use be amended as follows:

“Consumptive Use” means any existing or future use of fresh water that alters the flows and or levels in a Freshwater Resource on either a temporary or permanent basis, including:

- storage and later release downstream of fresh water:
- permitted activities:
- takes under section 14(3)(b) and (e) of the Act:

but excludes any water that is returned to the same Freshwater Resource at or about the same location and which does not affect the spatial or temporal availability, or the physical, chemical or biological quality, of the fresh water.

- The definition of Land-use development be amended as follows:

“Land-use Development” includes existing and future land-use intensification, land-use change, and subdivision of land.

- Amend policy 2(c) as follows:

By no later than 40 working days following the date a regional policy statement or change notified pursuant to Policy 1 is made operative, every regional council must notify a proposed regional plan, change or variation to include rules to achieve the following:

(i) Require that all water permits for the Consumptive Use of fresh water ~~granted after the date of commencement of this National Policy Statement~~ include conditions for the efficient Consumptive Use of fresh water including, as a minimum, providing for the use of industry good practice and technology to achieve efficient use:

²¹ Which states “Guide and direct regional plans (including considerations for the determination of resource consent applications) to restrict existing takes, uses, damming and diversion of fresh water in order to sustain Notable Values and non-consumptive Tangata Whenua Values and Interests in times of low flow;”

(ii) Require that all water permits for the Consumptive Use of fresh water ~~granted after the date of commencement of this National Policy Statement~~ include conditions for, where appropriate, the return of fresh water to Freshwater Resources, in order to achieve the requirements of paragraph (a) of this Policy:

(iii) Require that all discharge permits affecting Freshwater Resources ~~granted after the date of commencement of this National Policy Statement~~ include conditions for –

(A) Protection against degradation of the quality of fresh water of Freshwater Resources (including through the management of activities giving rise to stormwater discharges); and

(B) Sustainable management of demands on fresh water in a manner which has regard to available supply of fresh water and adverse effects, both individual and cumulative; and

(C) Integrated management of the effects of Land-use Development and discharges of contaminants on the quality and available quantity of Freshwater Resources;

to be achieved, as a minimum, by the use of industry good practice:

- Policy 3(b) and (c) should be amended as follows:

(b) Includes rules to require that all relevant land-use and subdivision consents ~~granted after the commencement of this National Policy Statement~~ include conditions for –

(i) Protection against degradation of the quality of fresh water of Freshwater Resources (including through the management of activities giving rise to stormwater discharges); and

(ii) Sustainable management of demands on fresh water in a manner which has regard to available supply of fresh water and adverse effects, both individual and cumulative; and

(iii) Integrated management of the effects of Land-use Development and discharges of contaminants on the quality and available quantity of Freshwater Resources; and

to be achieved, as a minimum, by the use of industry good practice; and

(c) Includes rules to require that all relevant land-use and subdivision consents ~~granted after the commencement of this National Policy Statement~~ include conditions to require monitoring and reporting on matters relating to paragraph (b).

- Policy 6 should also be amended to clarify that it applies to any resource consent granted before or after the commencement of the NPS.

12.5 Te Rūnanga considers these proposed amendments to be in keeping with the achievement of the following goals identified in the preamble of the Proposed NPS:

- address existing and future constraints on the availability of Freshwater Resources
- address the effects of existing and future discharges of contaminants to Freshwater Resources

13. The need for ongoing research

13.1 Many of the difficulties facing freshwater management stem from our lack of knowledge and understanding about the complex and dynamic functioning of freshwater ecosystems and the effects of activities upon these. For example, there is considerable uncertainty surrounding:

- The interconnected nature of freshwater resources, both across time and space;

- The long term impacts upon freshwater resources of land use intensification;
- The implications that climate change will have for the way we manage our freshwater resources; and
- The extent to which we can regulate and manipulate the flow/level of rivers/lakes whilst still providing for ecological and cultural values.

13.2 Te Rūnanga considers that the NPS should send a clear message that there is a pressing need for resources to be injected into the gathering of reliable information (both qualitative and quantitative) about the operation of our freshwater resources and the effects of activities upon them. Te Rūnanga proposes that the following additional objective be added:

It is a national priority to undertake, disseminate and share research, of both a qualitative and quantitative nature, that will contribute to the enhancement of our understanding of Freshwater Resources and the actual and potential effects (both individual and cumulative) of activities upon them.

14. **Implementation**

14.1 The extent to which the potential of the Proposed NPS is able to be realised and to which it will bring about an improvement in the way we manage our freshwater resources, will depend to a large extent upon implementation. Unless regional and district councils are prepared to commit to injecting the resources that are necessary in order to give meaningful effect to the objectives and policies of the NPS, then it is likely to become a “so what” policy.

14.2 Effective implementation will by no means begin and end with the change/variation of policy statements and plans. Rather, it will be an ongoing and long-term process that will require us as a society to:

- Spend large sums of money necessary to restore degraded freshwater resources; and
- Sacrifice potentially very lucrative development opportunities in order to protect the quality of outstanding freshwater resources.

14.3 Because tough decisions such as these will need to be made, it will be important for the NPS to be formulated in the clearest and most unequivocal terms possible. There must be no room left for doubt about the expectations of the NPS or the level of commitment that will be required by councils. The NPS must send a clear message that this is not a “business-as-usual” policy and that it is time for us all to re-evaluate how we manage the many challenges facing our freshwater environment. We can no longer afford the luxury of protracted and costly delays or inertia – it is a time for action!

15. **Conclusion**

- 15.1 Ngāi Tahu's relationship with freshwater stems from the time of creation. Through whakapapa and genealogy, Ngāi Tahu Whānui are direct descendents of this natural resource. As kaitiaki, Ngāi Tahu Whānui have a deep-seated and long-standing knowledge of the intricate workings of our freshwater environments. Much of this traditional knowledge and tikanga is as equally applicable today as it was in traditional Ngāi Tahu society.
- 15.2 It is now time for New Zealand society to embrace such knowledge and to enable tangata whenua to play an active and meaningful role in the management of, and decision-making regarding, our freshwater resources. The well-being and mana of Ngāi Tahu Whānui depends on its ability to play a leadership role in freshwater management.
- 15.3 In this context, Te Rūnanga hopes that the Board of Inquiry will pay close attention to the views expressed in this submission and refine the Proposed NPS so as to more effectively provide for cultural values and knowledge.
- 15.4 Te Rūnanga wishes to be heard in support of this submission.

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