

**Before the Independent Hearings Panel**

**In the Matter of** the Resource Management Act 1991

**And**

**In the Matter of** the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

**And**

**In the Matter of** the Proposed Christchurch Replacement Plan (**Chapter 5: Natural Hazards**)

**Brief of evidence of Timothy Mark Vial for  
Te Rūnanga o Ngāi Tahu and Ngā  
Rūnanga (Submitter 1145)**

Dated: 20 February 2015

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## **Introduction**

1. My name is Timothy Mark Vial.
2. I hold Degrees of Bachelor of Arts and Bachelor of Laws from the University of Otago, a Postgraduate Diploma in Museum Studies from Massey University, and a Master of Regional and Resource Planning from the University of Otago. I am a Full Member of the New Zealand Planning Institute and an accredited hearings commissioner.
3. I have worked in resource management for over 12 years. I am the Principal Planner at Kāi Tahu ki Otago Limited, a regional Kāi Tahu environmental consultancy. Previously I worked for the Dunedin City Council as a Planner.
4. I whakapapa to the Kāi Tahu hapū of Ngāi te Ruahikihiki and I am a member of Te Rūnanga o Ōtākou.

## **Code of Conduct**

5. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note (updated 1 December 2014) and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

## **Outcomes of Expert Conferencing**

6. I attended planning expert conferencing that was held on 12, 13, 28 and 29 January 2015 and signed the conferencing statement.
7. I support the outcomes in the conferencing statement dated 29 January 2015 and the amendments to the Proposal (Attachment A - Evidence of Janice Carter: the Proposal).

## **Scope of evidence**

8. I have been asked by Te Rūnanga o Ngāi Tahu (**Te Rūnanga**) and Te Ngāi Tūāhuriri Rūnanga, Te Hapū o Ngāti Wheke (Rapaki), Te Rūnanga o Koukourārata, Ōnuku Rūnanga, Wairewa Rūnanga, and Te Taumutu

Rūnanga (collectively **ngā rūnanga**) to provide evidence in relation to the changes sought by Te Rūnanga and ngā rūnanga to the Proposal.

9. My evidence:
  - (a) Focuses on amendments that are additional to the Proposal. These amendments are required, in my opinion, to achieve consistency throughout Chapter 5 and the rest of the Proposed Plan, and do not substantively change the outcomes agreed through conferencing.
  - (b) Responds to the evidence of the Christchurch City Council.
10. In preparing my evidence I have reviewed the following documents:
  - (a) The Land Use Recovery Plan (**LURP**);
  - (b) The Natural Environment Recovery Programme for Greater Christchurch (**NERP**) which forms part of the Recovery Strategy for Greater Christchurch/Te Mahere Haumanutanga o Waitaha;
  - (c) The Canterbury Regional Policy Statement (**CRPS**), particularly Chapter 11: Natural Hazards;
  - (d) The Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014, including the Statement of Expectations in Schedule 4; and
  - (e) Mahaanui – Iwi Management Plan 2013 which in terms of section 74(2A) of the Resource Management Act 1991 is a relevant planning document recognised by the iwi authority.

### **Sites of Ngāi Tahu Cultural Significance**

11. Te Rūnanga and ngā rūnanga requested a definition be added to Chapter 2 for “sites of Ngāi Tahu cultural significance”. This was discussed in the brief of evidence of Lynda Murchison on Chapter 3 – Strategic Directions at paragraphs 42 – 45.
12. During conferencing, amendments were made to the Natural Hazards Chapter to provide for the effects of activities on “sites of cultural significance to Ngāi Tahu”, which uses slightly different wording to “sites of Ngāi Tahu cultural significance”.

13. Although this may seem a minor point, Te Rūnanga specifically uses the term “sites of Ngāi Tahu cultural significance” to be consistent with the language in the Proposed Plan which refers to “cultural values” per se, and to “Ngāi Tahu cultural values” being those values particular to Ngāi Tahu whānui.
14. Accordingly, “sites of Ngāi Tahu cultural significance”, would be consistent with the definition sought, other amendments to Chapter 3 – Strategic Directions and elsewhere in the Plan. **Attachment 1** lists the provisions in the Proposal where the amended term should be applied.

### **Effects of physical mitigation works**

16. One of the key issues raised by Te Rūnanga and ngā rūnanga is the need to recognise and manage potential adverse effects of natural hazard mitigation measures on the natural environment and on sites of Ngāi Tahu cultural significance.
17. I agree that a duty to avoid, remedy or mitigate adverse effects of natural hazard works and other mitigation measures on the natural environment and on Ngāi Tahu cultural values is part of achieving the purpose of the RMA. Such provision is also necessary to give effect to the CRPS and would be consistent with the LURP.
18. The CRPS – Chapter 11 provides a regional planning framework for managing the effects of natural hazards. Policy 11.3.7 – ‘Physical mitigation works’ directs that new physical works to mitigate natural hazards will be acceptable only where:
  - (a) The natural hazard risk cannot reasonably be avoided; and
  - (b) Any adverse effects of those works on the natural and built environment and on the cultural values of Ngāi Tahu, are avoided, remedied or mitigated.
19. I suggest that the following amendment (marked in red) to Policy 5.2.5 of the Proposal (the blue text being changes already proposed through expert conferencing) is required to give effect to this regional policy:

#### **5.2.5 Policy ~~Worsening, adding or~~Transferring hazard risk**

a. Ensure that subdivision, use and development, or hazard mitigation proposals do not:

~~i. worsen the adverse effects of any known natural hazard;~~

~~ii. create a new hazard; or~~

iii.i transfer or increase create unacceptable risk or adverse effects to other people, property, infrastructure or the natural environment; or

ii. adversely affect sites of Ngāi Tahu cultural significance.

20. I note that in conferencing Policy 5.5.5 was amended to give effect to CRPS – Policy 11.3.7 in a similar way and so amending Policy 5.2.5 as proposed would be consistent.

#### **Response to the Evidence of Andrew Long for Christchurch City Council**

21. The matters for discretion reserved for RD5 set out in Rule 5.8.1.2 are addressed at Page 28 of Mr Long's evidence. I note that Mr Long has omitted the matter "effects on sites of Ngāi Tahu cultural significance" which were added during expert conferencing<sup>1</sup>. I am uncertain as to why Mr Long has omitted this, but whatever the reason, I record that I support the expert conferencing version of RD5.




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**Timothy Mark Vial**

**20 February 2015**

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<sup>1</sup> See page 18 of Ms Carter's Attachment A which includes the matter.

## **Attachment 1 – References to ‘Sites of Ngāi Tahu Cultural Significance’**

Provisions of the Proposal which use the term ‘Sites of Cultural Significance to Ngāi Tahu’ rather than the preferred term: ‘Sites of Ngāi Tahu Cultural Significance’:

**Policy 5.2.5 (a)** – Transferring risk

**Policy 5.5.5 b. iv.** – Hazard mitigation works for slope instability in the Port Hills and across Banks Peninsula.

**Rule 5.8.1.2 RD5 d. iv.** - Residential zones - Activities and earthworks in Floor level and Fill Management Areas: Restricted discretionary activities

**Rule 5.8.3.2 RD5 e. iv.** - Commercial and industrial zones - Activities and earthworks in Floor Level and Fill Management Areas: Restricted discretionary activities.

**Rule 5.10.3 a. vii.** - Slope Instability Management Areas – D5 (Discretionary Activity 5) to D28 (Discretionary Activity 28) assessment matters for land use resource consent applications.

**Rule 5.10.4 a. x.** - Slope Instability Management Areas - D1 (Discretionary Activity 1) to D13 (Discretionary Activity 13) and D20 (Discretionary Activity 20) to D24 (Discretionary Activity 24) assessment matters for subdivision or earthworks resource consent applications.