

Resource Management (Form, Fees and Procedure) Regulations 2003
Form 5
Submission on a publicly notified proposal for a plan change

To: Selwyn District Council
PO Box 90
Rolleston 7643

Name of Submitter:

Mahaanui Kurataiao Ltd on behalf of Te Taumutu Rūnanga. This is a submission on Proposed Plan Change No 32, Rural-Residential Activities, to the Selwyn District Plan.

We do not consider Te Taumutu Rūnanga could gain an advantage in trade competition through this submission.

Te Rūnanga O Ngāi Tahu - Te Rūnanga o Ngāi Tahu is the tribal representative body of Ngāi Tahu Whānui. It is a body corporate established under section 16 of the TRoNT Act. 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.

In paragraph 7 of section 6 of the Settlement Act (recording the Crown's apology) Ngāi Tahu is recognised "*as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.*" It has therefore been clearly affirmed in statute that Te Rūnanga o Ngāi Tahu is the sole representative of Ngāi Tahu Whānui, the iwi that is tāngata whenua within the Ngāi Tahu Takiwā.

The Te Rūnanga o Ngāi Tahu Act 1996 (the TRoNT Act) and the Ngāi Tahu Claims Settlement Act 1998 (the Settlement Act) give recognition to the status of Papatipu Rūnanga as kaitiaki and manawhenua of the natural resources within their takiwā boundaries. Notwithstanding its statutory status as the representative voice of Ngāi Tahu Whānui "for all purposes", Te Rūnanga o Ngāi Tahu accepts and respects the right of individuals and Papatipu Rūnanga to make their own submissions to local authorities.

Te Taumutu Rūnanga

Te Taumutu Rūnanga is one of the Papatipu Rūnanga that makes up Te Rūnanga o Ngāi Tahu. The Rūnanga are the collective of the hapu and whānau of Ngāi Tahu who hold manawhenua in the takiwā that centres on Taumutu and the waters of Te Waihora and adjoining lands. Te Taumutu Rūnanga have strong cultural associations with the land and waters including waipuna (springs) of Selwyn District area, and these natural resources and the associations held, form an important part of Te Taumutu Rūnanga cultural identity. Explicit recognition of such taonga and cultural associations in rural residential development will support the well-being of tangata whenua through necessary recognition and protection of valued resources and places.

Mahaanui Kurataiao Ltd

Mahaanui Kurataiao Ltd is owned by the six Rūnanga of Christchurch and is mandated by each Rūnanga to engage in resource management on their behalf. The Rūnanga use the mechanism of Mahaanui Kurataiao Ltd, to assist the articulation of their interests, values and aspirations into decision-making process of Councils. Mahaanui Kurataiao Ltd (MKT) is an agent for the Rūnanga and has **no interests of its own in relation to the proposed activity**, except to correct or clarify matters of prior involvement from liaison with Selwyn District Council in the preparation of this plan change.

1 STATUTORY REQUIREMENTS RELEVANT TO THIS DRAFT PLAN CHANGE

Following are the requirements of the relevant legislative provisions related to protecting and enhancing tangata whenua values in relation to rural residential development. The aspects considered particularly important are highlighted in bold:

Resource Management Act 1991 (RMA)

Part II of the RMA contains a number of specific provisions relating to tangata whenua that must be considered in decisions made under the RMA:

- Sections 6(e) and 6(f) require that *"the relationship of Maori and their culture and traditions with their **ancestral lands, water, sites, wahi tapu, and other taonga**" and "the protection of historic heritage from **inappropriate subdivision, use and development**" is recognised and provided for.*
- Section 7(a) requires that particular regard is given to '**kaitiakitanga**'.
- Section 8 requires that the principles of the Treaty of Waitangi are taken into account.

Under section 74 when preparing or changing a district plan, a territorial authority shall have regard to:

- *(b) (ii) Any relevant planning document recognised by an iwi authority affected by the district plan.*

The relevant planning documents recognised by Te Rūnanga o Ngāi Tahu as the iwi authority are the Te Taumutu Rūnanga Natural Resource Management Plan; Te Rūnanga o Ngāi Tahu Freshwater Policy Statement and the Te Waihora Joint Management Plan. The relevant policies from each document are outlined below:

A: Te Taumutu Rūnanga Natural Resource Management Plan

3.3 O Te Whenua

*Policy 2. Buffer zones must have **riparian planting along the waterways**.*

3.3.4 Drainage

*Policy 5. Planting along the margins of **drains** should be used to control sedimentation, reduce weed growth and the amount of weed cutting is necessary*

3.4. Riparian zones

*Policy 1. No abstraction from **springs** and connected groundwater.*

*Policy 2. Restoration of productive capacity of **wetland ecosystems**.*

*Policy 3. No further draining of existing **wetlands***

*Policy 4 That existing wetland areas be maintained and enhanced to provide for provide for tuna (eel) habitat and other **mahinga kai***

*Policy 5 Actively encourage restoration of wetland area with **indigenous vegetation** to protect ecosystem health*

3.5.2 Indigenous flora and fauna

*Policy 1. Advocate for habitat enhancement and the restoration and reintroduction of **indigenous species** programs.*

B: Te Rūnanga o Ngāi Tahu Freshwater Policy Statement

6.2 Objective Restore, maintain and **protect the mauri of freshwater resources.**

*Policy 1. Accord priority to ensuring the availability of sufficient quantities of water of appropriate water quality to restore, maintain and **protect the mauri of the waterbody.***

*Policy 4. Protect the opportunities for Ngāi Tahu's uses of **freshwater resources** in the future.*

6.3. Policy 2. Restore and enhance the **mahinga kai values** of lakes, rivers, streams, wetlands, estuaries and riparian margins

*Policy 4. Restore access to freshwater resources for cultural activities including the harvest of **mahinga kai.***

C: Te Waihora Joint Management Plan

2.3 Nga wai

Method 2.3 (f) Advocate;

*(b) The retention and restoration of water flows in **Te Waihora tributaries** and **springs** for the maintenance of water quality and freshwater habitats.*

In addition to documents recognised by an iwi authority, there are statutory policy and planning documents and an information document that are relevant - as listed below:

1. Canterbury Regional Policy Statement

CHAPTER 12A - DEVELOPMENT OF GREATER CHRISTCHURCH

Chapter 12A provides direction for the growth, development and enhancement of the urban and rural areas of the Greater Christchurch sub-region for the period to 2041. It replaces the revoked Proposed Change No. 1 to the Canterbury Regional Policy Statement. Council is required to "give effect" to these provisions.

Objective 2: Character and Sustainability

To achieve built environments within Greater Christchurch that:

- (a) provide for quality living environments;*
- (b) retain areas of special amenity and heritage values where these are of regional significance;*
- (c) **retain values of importance to tangata whenua;***
- (e) are healthy, environmentally sustainable, functionally efficient, and economically vibrant.*

Policy 13: Rural Residential Development

Rural Residential development further to areas already zoned in district plans as at 28 July 2007 may be provided for by territorial authorities, if it does not exceed the maximum quantities for the periods set out in Table 1, Policy 6, and if it accords with the methods under this policy.

Methods

13.1 Areas within which Rural Residential development may occur shall be defined by changes to the district plan by the territorial authorities subject to the following:

- (iv) The location of any proposed Rural Residential development shall:*
 - avoid significant adverse ecological effects;*
 - not adversely affect ancestral land, water sites, wahi tapu and wahi taonga of Ngai Tahu;*
 - avoid adverse effects on existing surface water quality.*

Policy 15: Monitoring and Review

- (b) *The Canterbury Regional Council, in conjunction with the territorial authorities, shall undertake monitoring of the supply, uptake and impacts of rural residential land use and development.*

12A.6 Anticipated Environmental Results

The following are the anticipated environmental results from this Regional Policy Statement:

- (n) *Retention and improvement of the natural environment and outstanding natural features and landscapes.*
- (o) *Minimising adverse effects, including the cumulative effects of development, on the environment*

12A.7 Definitions

Outline Development Plan: means a plan prepared for the development of a Greenfields Area or Rural Residential Development in the manner outlined in Policies 8 and 13. It shall include maps, plans, and other descriptive and illustrative material as necessary to convey the information referred to in Policies 8 and 13.

2. Selwyn District Plan

The Water Objectives B1.2.2 of the Selwyn District Plan in relation to expansion of townships include reference to: not adversely affecting wahi tapu or wahi taonga and ground and surface water; maintaining or enhancing the ecological habitats values of waterbodies and their margins and mahinga kai sites.

3. Rural Residential Background Report (RRBR)

The RRBR is a non-RMA document that was prepared under the Local Government Act (LGA) and was adopted by Council in 2011. It is required 'to be considered' with a private plan change. It is also relevant under s74 of the RMA, where Council must 'have regard' to it in the preparing of a plan.

The RRBR introduces comprehensive principles and criteria that will guide rural residential development. This includes principles and criteria specifically related to tangata whenua that identifies key values of importance such as:

- *The protection of waterways, including rivers, streams, groundwater, wetlands, Te Waihora and springs, are of significance to Te Taumutu Rununga and Te Rununga o Ngai Tahu;*
- *Protecting sites of significance and securing, enhancing and maintaining indigenous biodiversity and ecosystems;*
- *The need to take into account the principles of the Treaty of Waitangi.*

2. THE SPECIFIC PROVISIONS OF THE PROPOSAL THAT THIS SUBMISSION RELATES TO IS:

The whole plan change.

This submission is that: Te Taumutu Rūnanga supports all aspects of Plan Change No 32 except for those specific matters identified below.

2.1 OUTLINE DEVELOPMENT PLANS

Te Taumutu Rūnanga supports the requirement for Outline Development Plans (ODPs) as part of rezoning land for rural-residential development; however Te Taumutu Rūnanga opposes the changes proposed to the plan which move the requirement for ODPs to be prepared by the Council to being prepared by applicants. Te Taumutu Rūnanga also submits that the Councils' Section 32

evaluation has not fully evaluated the efficiency and effectiveness of this approach. The reasons are as follows:

2.1.1 Need to Recognise and Provide for Tangata Whenua Values

Outline Development Plans (ODPs) are a key planning mechanism which can effectively recognise and provide for the protection and enhancement of tangata whenua values in the zoning and development of land. As such, Te Taumutu Rūnanga considers it is critical that tangata whenua values and wāhi taonga are identified in ODPs, and that this would occur in the development stage of preparation of an ODP. However, there is a significant change to the approach for ODPs in plan change 32 (from that in plan change 17), and we consider this puts tangata whenua values at risk of not being effectively included in the preparation of ODPs.

Tangata whenua values must be recognised and provided for in plans and plan changes, to achieve the purpose of the Resource Management Act 1991 (RMA) and to discharge the Council's duties under s32, 74 and 75 of the RMA.

Te Taumutu Rūnanga therefore support the requirement for ODPs to identify tangata whenua values and areas for protection. However, in order to ensure effective recognition and provisions for Te Taumutu Rūnanga's values it is imperative that these are clearly and appropriately identified on the Outline Development Plans (ODPs). For example, the absence of the identification of waipuna or springs in an ODP would seriously undermine the ability for the district plan to recognise and provide for the associations held by Te Taumutu Rūnanga with the ancestral waters of the area. More generally failure to recognise and provide for tangata whenua values in ODPs would on a broader scale, undermine Te Taumutu Rūnanga's cultural associations to their ancestral lands, water, sites, wahi tapu, and other taonga. This would not be consistent with Part II of the RMA in particular Sections 6(e) and 6(f) which require that "the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga" and "the protection of historic heritage from inappropriate subdivision, use and development" be recognised and provided for. Ultimately this would mean the lack of visibility of Te Taumutu Rūnanga's cultural identity and values in the development of rural residential zones.

2.1.2 Approach to ODPs

Te Taumutu Rūnanga opposes the approach of relying solely on private plan change processes to rezone land as it removes the Council's proactive role of developing ODPs and putting in place protections for tangata whenua values, which was in place under proposed plan change 17. In that original Rural Residential Plan Change, Council retained responsibility for developing ODPs for the new rural residential areas, and Te Taumutu Rūnanga was involved early on in the development and had direct input into these ODPs. This process provided rūnanga assurance that their values would be included in the ODPs. However, with plan change 32 and applicant's being required to develop the ODPs under a private plan change process, there is a risk that rūnanga will no longer have the direct, proactive and consistent input into the ODPs as they would have under the proposed PC17. It presents a concern that rūnanga would be positioned into a reactive mode, needing to challenging private plan changes at the submission and hearing stage rather than having direct, proactive input in the development of an ODP. It is important to note that the local authority cannot require an applicant for a private plan change request to consult with rūnanga as part of

developing the ODPs, or determine whether and how any values identified will be recognised and protected if consultation does occur.

Chapter 12A of the CRPS and provisions in PC32

Further, we consider the role of the private plan process to develop ODPs for rural residential development would be insufficient to adequately ensure that the ODPs would fulfil Council's responsibility to "give effect" to mandatory criteria prescribed in Chapter 12A of the CRPS for managing rural residential development. These criteria include, under Policy 13, information to ensure that the location shall *"not adversely affect ancestral land, water sites, wahi tapu and wahi taonga of Ngai Tahu"*.

In addition, we consider an ODP developed through a private plan process could also be inadequate to meet the proposed provisions in plan change 32 that protect tangata whenua values such as:

- Amendment 68, Quality of the Environment. New Policy B3.4.3(b) whereby Living 3 Zone is to meet the following strategic outcomes including *"avoid land that contain sites of significance to tangata whenua or where development would result in significant adverse effects on ecological values or indigenous biodiversity"*; and
- Amendment 86, Residential and business Development – Town Form. Policy B4.3.11. New Explanations and Reasons outline how the preparation of ODP includes the requirement of the... *"protection of significant sites and features, including sites of cultural significance to tangata whenua (ancestral land and water, springs, mahinga kai sites, wahi tapu and wahi taonga of Te Rūnanga o Ngai Tahu and Te Taumutu Rūnanga)"*.

2.1.3 Section 32 assessment under the RMA

We consider the section 32 assessment failed to adequately assess the efficiency and effectiveness of this approach to ODPs. In particular, it has not identified the cost to Te Taumutu Rūnanga of adopting Option 3 which relies upon private plan changes to zone specific sites and therefore to develop the ODPs, compared with Option 2 in which Council develops the ODPs. These costs include:

- The risk that rūnanga will no longer have a direct, proactive input into the ODPs;
- That if applicants do approach rūnanga it would be on an ad hoc basis, with different applicants undertaking different degrees of consultation;
- Inconsistency in the response from applicants to whether and how values identified by rūnanga will be protected; and
- No consideration of how to manage culturally sensitive information which rūnanga may not wish to disclose to a private applicant.

Te Taumutu Rūnanga seek the following decision from the Selwyn District Council:

Te Taumutu Rūnanga's first preference is to retain proposed PC17 as the Council developed ODPs under this process provides greater certainty to the rūnanga that their values would be included.

If, proposed plan change 32 is to proceed, then Te Taumutu Rūnanga's second preferred relief is that a process be formalised between Te Taumutu Runanga and Selwyn District Council to assure all sets are taken to:

- Encourage any private plan change applicant to consult with rūnanga in the development of ODPs; and
- That when the Council receives a plan change request, those requests are forward to rūnanga for comment before being accepted for processing under Clause 25 of Schedule 1 of the RMA; and
- That when Council reviews an ODP, it checks with Te Taumutu Rūnanga as to the degree of satisfaction with the draft ODP.

2.2 EXCLUSION OF ODPs AS A METHOD FROM ECOSYSTEMS POLICY

Te Taumutu Rūnanga oppose the deletion of Amendment 21 which was included in PC 17. Amendment 21 includes ODPs as a method for achieving Policy B1.3.2 (Ecosystems) in the District Plan.

The reasons for Te Taumutu Rūnanga's opposition:

Te Taumutu Runanga consider that including ODPs as a method to implement Policy B1.3.2 would provide an effective tool for identifying the location of ecosystems within a site that require protection.

Te Taumutu Rūnanga seek the following decision from the Selwyn District Council:

Te Taumutu Rūnanga seek the reinstatement of ODPs as a method for Policy B1.3.2 as proposed under PC17.

2.3 MONITORING

Te Taumutu Rūnanga oppose the lack of including monitoring for tangata whenua values under "Amendment 122 Part E: Appendix 1, Monitoring Schedule" of the proposed plan change 32.

The reasons for Te Taumutu Rūnanga's opposition:

Rural residential development may potentially have adverse effects on tangata whenua values such as wahi tapu and wahi taonga, biodiversity, native species, mahinga kai values, natural features, water quality, waterways, waipuna (springs) and wetlands. Monitoring provides a mechanism to ensure that these values can be protected from the effects of rural residential development.

Te Taumutu Rūnanga seek the following decision from the Selwyn District Council:

Te Taumutu Rūnanga seek the addition of the following wording to the Monitoring Schedule:

- Under 'Resource Management Aspect' - *"Review the effectiveness of the approach in recognising and protecting ancestral lands, water, sites, wahi tapu, and other taonga"*.
- Under 'Indicator' - *"Sites developed that undermined ancestral lands, water, sites, wahi tapu, and other taonga"*.
- Under "Frequency Monitoring" - *"2 yearly"*.

3. SUPPORT FOR RECOGNITION OF TANGATA WHENUA VALUES

Te Taumutu Rūnanga support the following provisions of plan change 32:

- Amendment 2. Townships and Zones –Table A4.4 Description of Townships. Table which describes the Living 3 Zone as including: *“The retention of typically rural features are encouraged in subdivision design, including the protection, maintenance and enhancement of natural and historic features that achieve amenity benefits to residence while securing ecological, cultural and conservation benefits”.*
- Amendment 68. Quality of the Environment. New Policy B3.4.3(b) whereby Living 3 Zone is to meet the following strategic outcomes including *“avoid land that contain sites of significance to tangata whenua or where development would result in significant adverse effects on ecological values or indigenous biodiversity”.*
- Amendment 69. Quality of the Environment – Policy B4.4.3 (b), Explanation and Reasons explains how rural residential development is to avoid areas identified in the Rural Residential Background Report.
- Amendment 75. Growth of Townships, Residential Density Objectives, Explanations and Reasons states that rural residential densities should align with the growth management provisions of the CRPS.
- Amendment 83. Subdivision of Land- Anticipated Environmental Results. Additional subdivision outcomes are added and include: *“avoid identified constraints, includingareas of high natural, historic or cultural value”.*
- Amendment 86. Residential and business Development – Town Form. Policy B4.3.11. New Explanations and Reasons outline how the preparation of ODP includes the requirement of the... *“protection of significant sites and features, including sites of cultural significance to tangata whenua (ancestral land and water, springs, mahinga kai sites, wahi tapu and wahi taonga of Te Rūnanga o Ngai Tahu and Te Taumutu Rūnanga)”.*
- Amendment 119. Restricted Discretionary Activities –Subdivision- Assessment Matters outlines the matters over which Council has restricted its discretion in assessing the subdivision of Living 3 Zoned land. This includes Rule 12.1.4.82: *“ The extent to which the site analysis using a comprehensive design process and rationale has been taken to recognize and where appropriate protect, maintain and enhance the following elements:*
 - Existing water courses, water bodies and springs;
 - Protect, enhance and maintain ancestral land, rivers, wetlands, groundwater, springs, Te Waihora /Lake Ellesmere, and mahinga kai sites and the wahi tapu and wahi taonga of Te Rūnanga o Ngai Tahu and Te Taumutu Rūnanga”.

The reasons for Te Taumutu Rūnanga’s support:

The above amendments to the district plan under plan change 32 explicitly provide for the protection, maintenance and enhancement of tangata whenua values. These proposed provisions at both the policy level and in the rules section, therefore, clearly identify that the protection of Te

Taumutu Rumania's cultural values as a necessary requirement for the sustainable management of rural residential activities. In particular, Amendment 69, provides clear guidelines for managing rural residential activities that include constraints identified in the Rural Residential Background Report of which there is specific reference to protecting tangata whenua values. Furthermore, Amendment 75 provides clear direction to protect tangata whenua values as outlined under Chapter 12A of the CRPS which are under '5 Statutory Requirements Relevant to the Plan Change' above.

It is noted that it is confusing that in 'Amendment 86' the 'Explanations and Reasons' for the ODP requirements are under Policy B4.3.11 (Residential and Business Development – Town Form), whereas these 'Explanations and Reasons' would be more appropriately placed as 'Explanations and Reasons' under Policy B3.4.3 (b) to explain why some land needs to be avoided.

Te Taumutu Rūnanga seeks the following decision from the Selwyn District Council:

Te Taumutu Rūnanga seeks the retention of all the amendments listed above and that the "Explanations and Reasons" in Amendment 86 for the ODP requirements are also included as "Explanations and Reasons" under Policy B4.3.3 (b).

Te Taumutu Rūnanga wishes to be heard in support of this submission at a hearing of the plan change.

Signature of Submitter (or person authorised to sign on behalf of submitter):

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Date: 4th May 2012

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