

**BEFORE THE SPECIAL TRIBUNAL FOR THE NGARURORO AND CLIVE RIVERS
WATER CONSERVATION ORDER
AT NAPIER**

IN THE MATTER of the Resource Management Act 1991
(the Act)

AND

IN THE MATTER of a Special Tribunal appointed under
s202 of the Act to consider an application
for a Water Conservation Order made by
New Zealand Fish and Game Council, the
Hawke's Bay Fish and Game Council,
Ngāti Hori ki Kohupatiki, Whitewater New
Zealand, Jet Boating New Zealand, and
the Royal Forest and Bird Protection
Society of New Zealand (the Applicants)
in relation to the Water Conservation
Order

The Special Tribunal Richard Fowler QC (Chair)
Alec Neill
Dr Roger Maaka
Dr Ngaire Phillips
John McCliskie

**STATEMENT OF EVIDENCE OF CHARLOTTE JOSEPHINE MARY
DRURY FOR HORTICULTURE NEW ZEALAND**

25 January 2019



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INTRODUCTION

Qualifications and experience

1. I am the Director of View Research and Resource Management Limited. I hold a Bachelor of Science (Geography) and a Masters in Regional and Resource Management from Otago University.
2. I have over 13 years experience in resource management practice, having been employed for over a decade by the Hawke's Bay Regional Council in a number of roles that have enabled me to develop particular expertise in the areas of consenting, and policy development and implementation.
3. I am a member of the Hawke's Bay Resource Management Law Association committee, and until recently was also a member of the Hawke's Bay Planners Group committee.
4. I am also currently studying towards a Doctorate of Philosophy through Massey University's School of Agriculture. Although I have not yet completed my PhD, I believe it is relevant to note here as my study is well advanced and my research explores what drives change in land managers on-farm management practices.
5. Whilst I note that this is not an Environment Court hearing, I confirm that I have read and am familiar with the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014. I agree to comply with that Code. Other than where I state I am relying on the evidence of another person my evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Involvement in project

6. I have been engaged by Horticulture New Zealand (**HortNZ**) since early 2018 to assist the organisation with providing planning support for local growers in the Hawke's Bay region. HortNZ recognised the need to have a local resource management practitioner, experienced in freshwater matters, to provide support to local growers who are engaged in this WCO process, as well as the TANK collaborative process.

7. In this capacity I was able to attend (as an observer) meetings of the TANK collaborative group and did so regularly during 2018. Although not without its challenges, what struck me, and I believe cannot be argued about the TANK collaborative planning process, is the level of the commitment that all members of the TANK group have shown to the collaborative process since its commencement in 2013. Group members have dedicated hundreds of hours to attending meetings; reading and providing feedback on written documentation prior to and after meetings; and liaising with other members of the organisations or interest groups that they represent. Although members of the TANK group represent a wide range of views, I observed that even amongst those members who had strongly opposing views, there was a respect for, and tolerance of each other's opinions and point of view, developed over the extended period of time that the collaborative group have been meeting.

8. Alongside my work, I have been undertaking my PhD study which seeks to understand what drives change in land managers on-farm practices. I have chosen to use a case study approach, with the location of my study being the southern Hawke's Bay catchment of the Tukituki River. I have interviewed farmers, as well as people associated with the Hawke's Bay Regional Council, and other rural professionals in an effort to gain insights into what genuinely drives land managers to change their on-farm practices. What has emerged from my data is evidence of land managers having to grapple with and endeavour to balance a vast array of factors in making decisions about how they manage their land. They are constantly adapting their approaches in an effort to make their operations more sustainable. Although my research has been undertaken in a different catchment in Hawke's Bay, I believe it is relevant, and worthwhile noting here, because my data suggests that to enable land managers to manage their land in a sustainable way, planning regulations pertaining to land and water need to provide some flexibility and ability to adapt. To not do this will potentially inhibit the ability of land managers to sustainably manage their operations – the very type of behaviour that we can all agree should be encouraged and enabled, and is the primary purpose of the RMA.

9. Aside from my professional involvement with both the WCO and TANK processes, I am also familiar with the Ngaruroro and Clive Rivers from a recreational perspective as a result of being an active multi-sporter living in Hawke's Bay. I have kayaked both rivers many times, and have also cycled extensively throughout the catchments of both rivers.

Purpose and scope of evidence

10. This evidence outlines the key reasons, from a planning perspective, why HortNZ opposes the application for a Water Conservation Order for the lower Ngaruroro River (being the Ngaruroro River below the Whanawhana Cableway), and the Clive River. This opposition is based on the following reasons:
 - (a) A preference to support the outcomes of the TANK collaborative planning process;
 - (b) Failure of the draft WCO to provide for primary and secondary industry;
 - (c) The failure of the applicants to demonstrate that the waters of the lower Ngaruroro and Clive Rivers are 'outstanding' for the values identified in the draft WCO.
11. In preparing my evidence I have reviewed all the relevant application documents and evidence of the Applicants and the relevant planning instruments¹. I have also reviewed the evidence for HortNZ. In addition, I have also had the opportunity to review the evidence of Dr Phil Mitchell for the Regional Council, and Mr Peter Matich for Federated Farmers. Dr Mitchell and Mr Matich cover a number of matters in their evidence which are consistent with my views. I will refer to Dr Mitchell and Mr Matich's evidence as appropriate as I cover similar matters in my evidence.
12. I note that both Dr Mitchell and Mr Matich provide an extensive analysis of the planning framework as it applies to

¹ Namely the National Policy Statement for Freshwater Management 2014 (amended 2017), the National Policy Statement for Renewable Electricity Generation 2011, the New Zealand Coastal Policy Statement (Dec 2010), the Hawke's Bay Regional Resource Management Plan (including the Regional Policy Statement and the Regional Plan), Proposed Change 5 to the Hawke's Bay Regional Resource Management Plan, and TANK Plan Change 9 – Draft Plan Review, Version 8 (December 2018), and the Hastings District Plan.

the lower reaches of the Ngaruroro River and the Clive River. Rather than repeat their analysis here I adopt and endorse what they have said, particularly their identification of the key planning instruments in this instance being the National Policy Statement for Freshwater Management 2014 (amended 2017) and the Hawke's Bay Regional Resource Management Plan (RRMP), including Plan Change 5 (to the Regional Policy Statement component of the RRMP). I include additional comments on their evidence as appropriate below.

PREFERENCE TO SUPPORT OUTCOMES OF TANK COLLABORATIVE PLANNING PROCESS

13. As a national level organisation, HortNZ has recognised the need to provide support for the local growers who have represented the interests of all horticulturalists growing within the TANK catchments, on the collaborative group. HortNZ acknowledges the importance of members of the collaborative group living locally as it is the local community that should be at the forefront of determining what values are of importance to them, and what limits they want to establish to protect those values.
14. While there is some similarity in the values identified within Draft 8 of the TANK plan change (Plan Change 9), and those identified in Version 3 of the Draft WCO there are some important distinctions. I note that those values identified in the WCO² only represent the views of a small sector of the community – specifically New Zealand Fish and Game Council, Hawke's Bay Fish and Game Council, Operation Patiki Ngati Hori ki Kohupatiki, Whitewater NZ, Jet Boating New Zealand, and the Royal Forest and Bird Protection Society of New Zealand. In comparison, the values identified through the Plan Change 9 process (shown in Figure 1 (pg. 9) of the Draft Plan Change (Version 8, Dec 2018), I believe, more accurately reflect the diversity of values that the local community believe are important. Mr Matich expresses similar views, particularly in paragraph 17.12 of his evidence.

² The values or characteristics identified in the WCO are significant in accordance with tikanga Maori, cultural and spiritual purposes, habitat for avifauna, habitat for native fish, contribution for outstanding habitat for native fish in the Upper Ngaruroro Waters, jet boating amenity and recreation and scientific and ecological values – water quality.

15. As is illustrated by the fact that there are still a number of areas of Draft Plan Change 9 on which consensus has not yet been reached, the range of competing and conflicting aspirations of the community make collaborative planning processes challenging, time consuming and relatively resource hungry. However, such planning processes need to be led by the local community who can consider all of the issues facing a catchment. There is a growing acknowledgement of the critical importance of local communities being actively engaged in making decisions about how they wish to sustainably manage their natural and physical resources, particularly for natural resources as highly contested as freshwater. This is particularly critical when trade-offs are necessary, as they increasingly are. It is the local people and the community who should decide how best to provide for their social, economic and cultural well-being, while simultaneously managing the use, development and protection of natural and physical resources.
16. I believe a growing preference for community led planning processes is illustrated/supported by the recent insertion of Part 4, titled 'Collaborative planning process', into Schedule 1 of the RMA via the Resource Legislation Amendment Act 2017.
17. I agree with Dr Mitchell's view that the planning documents that will result from the plan change processes that have been initiated in the Hawke's Bay will be comprehensive and robust, and greatly enhanced by having been founded on community collaboration. I also share Mr Matich's concerns (expressed in paragraph 20.21 of his evidence) that if approved, the proposed WCO could undermine the existing collaborative plan change process, which would be highly regrettable given the existing stakeholder commitment that has supported that process to date.
18. While currently still possible under the RMA, it is my opinion that a water conservation order process, with its narrow scope and options available, and lack of flexibility (as set out in Sections 199 and 200 of the Act), struggles to provide the flexibility that is now required to manage the plethora of issues that exist in a catchment as complex as the lower Ngaruroro and Clive River Catchments. At the very least, in my opinion, it is a resource management tool that should only be utilised in instances where a plan change process to give effect to the

NPSFM has not been initiated, which is not the case in this instance. Further to this, I agree with Dr Mitchell's view (paragraph 110) that the NPSFM provisions provide a superior planning tool framework for protecting all of the relevant values of the Lower Ngaruroro.

19. From a horticulture perspective, it is particularly important for plans and policy statements to provide some flexibility to enable the horticulture community to adapt and change to cope with the changes in water demand that will result from the changing climate, as well as the changing demands of society which include such things as (but is certainly not limited to) changes in consumer food preferences, growing conditions, biosecurity issues, global markets etc. In paragraph 10.5 of his evidence, Mr Matich notes that farmers also require flexibility because they are constantly responding to external influences, and need the ability to be agile and adapt.
20. Policy statements and plans are better suited to providing this necessary flexibility than a water conservation order. A preference for planning instruments that are adaptable (such as Draft Plan Change 9, Version 8), rather than a WCO, is consistent with the views expressed by Dr Mitchell at paragraph 18 of his evidence.

Clarity in 'single' piece of legislation

21. For planning regulations to be applied consistently and in a manner that really does constitute sustainable management, there needs to be as much clarity and cohesion in them as possible.
22. The development of policy is a challenging and lengthy process that seeks to strike a balance between the competing demands of multiple parties in fulfilling the sustainable management purpose of the RMA. Despite the best intentions of all involved, there can remain inconsistencies within a plan, or between documents, or at best a lack of clarity about how new regulations are intended to be implemented. This was certainly my experience with Plan Change 6 (the Tukituki Plan) in which I was extensively involved with its implementation, from both a regulatory perspective (consenting) and also a land management perspective. It would be naïve to believe that all involved

could resolve this issue by focusing on producing the 'perfect' plan in which no such gaps existed, and, as I have previously highlighted, in the ever changing environment that we live in today there is a need for our planning documents to provide some flexibility and ability to adapt.

23. The requirement, as set out in Section 67 of the Act, that a regional plan must "give effect" to any regional policy statement, national planning standard and national policy statement provides certainty that there is good integration amongst these documents.
24. A regional plan is required by Section 67 to "not be inconsistent with" a water conservation order. In my opinion, this requirement does not give the same level of comfort that the two pieces of regulation will work seamlessly together. Concerns about the proposed WCO adding complexity and uncertainty to resource consenting processes are also raised in the evidence of Ms Gillian Holmes (for HortNZ), and I share these concerns.
25. I think it is also relevant to note that there are a limited number of water conservation orders in place in New Zealand, and none³ that have come into force since the NPSFM was introduced in 2011. The approval of a water conservation order in this case would simply seem to create another piece of regulation that has to be considered alongside the plethora of other planning documents we must now consider when making any application for resource consent. It is my opinion that the proposed Water Conservation Order for the lower Ngaruroro and Clive Rivers would not achieve anything that the Hawke's Bay Regional Council Plan Change processes already underway (specifically Plan Changes 5 and 9) will not ultimately achieve. This is consistent with the view expressed by Dr Mitchell for the Regional Council in paragraph 111 of his evidence, and also the views of Mr Matich for Federated Farmers.

NEED TO PROVIDE FOR PRIMARY AND SECONDARY INDUSTRY

26. Section 207(b) states that a special tribunal considering an application for a water conservation order shall have regard

³ The most recently approved Water Conservation Order was in August 2008 for the Oreti River.

to the needs of primary and secondary industry, and of the community. Clearly for an organisation such as HortNZ we would consider this to be one of the key matters that the Special Tribunal should consider because it is horticultural growers whom the organisation represents who constitute a large proportion of the primary and secondary industry within the lower Ngaruroro and Clive River Catchments.

27. I think it is pertinent to note that Section 207 does not limit that consideration to the current needs of primary and secondary industry. The future needs of primary and secondary industry also need to be had regard to. This is a pertinent point, as at paragraph 36(b) of his evidence Mr Carlyon clearly states that Version 3 of the WCO provides for the current needs of primary industry. In sub-section (c) Mr Carlyon further clarifies what he believes is provided for in the 3rd Draft of the WCO, being that replacement resource consents for existing or like activity would not be prevented by the Order. In paragraph 117 he again states that existing enterprise, existing consented volumes, the ability to transfer or aggregate existing consented volumes, is not affected by the WCO.
28. In paragraph 19 of Mr Carlyon's evidence he states that the future aspirations of industry may be affected by the WCO, however they will be "equally impacted" by the requirements of the NPSFM, the RPS, and the regional plan. I disagree with this view. Version 8 of Draft Plan Change 9 clearly makes provision for water storage and augmentation (this is discussed further below), and includes objectives and policies that seek to enable and support permit holders to develop innovative, flexible and responsive approaches to the management and use of water (e.g. Objectives 13 and 14). This could include innovative approaches such as the 'global water permit' applied for and held by the Twyford Co-operative Company, which has seen 53 irrigators effectively pool their existing individual permits to create one 'global' permit that, while not allocating any additional water, has improved the security of supply for irrigators, while also enabling them to use water more efficiently. The possibility of 'global' consents is specifically identified in Policy 49(g).
29. 'Innovative', 'flexible' and 'responsive' are not terms that I would use to describe a water conservation order, and therefore I again question the need for one in circumstances such as these when there are plan changes in progress that

will ensure that the HBRC will meet its requirements in giving effect to the NPSFM.

30. With regards to enabling, or providing an opportunity for the abstraction of water at high flows that can be stored and used at a later date, I do accept that the 3rd draft of the WCO has been amended in an effort to enable this. However, the Draft of Plan Change 9 also includes provisions related to water storage. Given the draft nature of Plan Change 9, its provisions are still subject to change. Locking in the high flow abstraction regime as set out in the draft WCO creates the potential for there to be inconsistency between a WCO (if one is to be approved) and the operative version of Plan Change 9, which is only likely to lead to difficulty in administering the layers of regulation, and could inadvertently make it difficult for applicants to be granted consent to take high flow water.
31. I also feel it necessary to address the fact that Mr Carlyon appears to assume there is a direct relationship between further water allocation, and intensification of land use. I do not agree with this assumption, and in support of my view provide examples of circumstances in which this would not be the case. The allocation of new water could provide water for the irrigation of different types of horticultural crops whose nutrient losses are lower than existing crops, or may address water deficits that develop with existing crops as a consequence of climate change. The allocation of new water could also enable the irrigation of a new block of land, whose soil type and topography is better suited to use for horticultural purposes than areas currently being utilised. These are three quite legitimate, non-fanciful examples of the allocation of new water not resulting in intensification, and in fact, potentially resulting in positive effects for water quality.
32. As outlined in the evidence of Ms Michelle Sands and Mr Stuart Ford (for HortNZ), primary industry, and specifically horticulture, plays a very significant role in the Hawke's Bay Community. While this is easily quantified from an economic perspective (which is done so in the evidence of Mr Ford), the economic activity generated by the horticulture industry also results in significant positive social effects for the community, through employment and so on. As also outlined in the evidence of Ms Sands, and somewhat unique to Hawke's Bay, is the key role that secondary industries associated with primary horticultural production, such as Heinz Watties and

McCains, also play in the fabric of the Hawke's Bay community.

33. A need to provide greater protection for food, beverage and fibre production values was raised in the evidence of Mr Chris Keenan, on behalf of HortNZ, for Stage 1 of this hearing, because those activities (food, beverage and fibre production) are critical to providing for the ongoing wellbeing the Hawke's Bay community. I note that Objective LW1 of Change 5 to the RPS provides specific recognition of such values in Subsection 6 (underline added):

OBJ LW 1 Integrated management of fresh water and land use and development

Fresh water and the effects of land use and development are managed in an integrated and sustainable manner which includes (in no particular order):

- 1. protecting the quality of outstanding freshwater bodies in Hawke's Bay;*
- 1A. protecting the significant values of wetlands;*
- 2. the maintenance of the overall quality of freshwater within the Hawke's Bay region and the improvement of water quality in water bodies that have been degraded to the point that they are over-allocated;*
- 2B. establishing where over-allocation exists, avoiding any further over-allocation of freshwater and phasing out existing over-allocation;*
- 3. recognising that land uses, freshwater quality and surface water flows can impact on aquifer recharge and the receiving coastal environment;*
- 4. safeguarding the life-supporting capacity and ecosystem processes of fresh water, including indigenous species and their associated fresh water ecosystems;*
- 5. recognising the regional value of fresh water for human and animal drinking purposes, and for municipal water supply;*
- 6. recognising the significant regional and national importance value of fresh water use for production and processing of beverages, food and fibre;*
- 7. recognising the potential national, regional and local benefits arising from the use of water for renewable electricity generation;*
- 8. recognising the benefits of industry good practice to land and water management, including audited self-management programmes;*
- 8A. recognising the role of afforestation in sustainable land use and improving water quality;*
- 9. ensuring efficient allocation and use of water;*
- 10. recognising and providing for wairuatanga and the mauri of fresh water bodies in accordance with the values and principles expressed in Chapter 1.6, Schedule 1 and the objectives and policies in Chapter 3.14 of this Plan;*

12. recognising and providing for river management and flood protection activities; and

13. recognising and providing for the recreational and conservation values of fresh water bodies; and

14. promoting the preservation of the natural character of the coastal environment, and rivers, lakes and wetlands, and their protection from inappropriate subdivision, use and development.

34. While parts of Plan Change 5 remain under appeal, this particular sub-section is not. The recognition of the need to protect these values through their specific inclusion in Objective LW1, I believe provides further evidence to support my view that the plan change processes already initiated by HBRC (Plan Changes 5 and 9) are better suited to providing protection for the wide range of values that the community has identified as being important, than the proposed WCO.

FAILURE OF DEMONSTRATE 'OUTSTANDING' VALUES

35. As clearly outlined in the evidence of Dr Vaughan Keesing and Mr Rob Greenway, filed on behalf of HortNZ, the test for 'outstanding' is not met in the lower Ngaruroro River for aquatic ecology and recreational values. I understand other parties will also be addressing this matter in some detail.
36. On this basis it appears that the 'characteristics or features' identified in Schedule 2 of the WCO application for habitat for avifauna, habitat for native fish, and jet boating amenity and recreation are not in fact outstanding, and therefore the need for a WCO, the purpose of which is to recognise and sustain outstanding values, is not justified in this instance.

CONCLUSION

37. In conclusion, I believe that the Water Conservation Order is not necessary to protect the values and attributes of the lower Ngaruroro and Clive Rivers. The plan change processes initiated by HBRC, particularly Plan Change 9 that has utilised a collaborative catchment planning approach, will ensure that regional planning documents give full effect to the requirements of the NPSFM in an integrated fashion, and will ensure the sustainable management of these waters, and will better provide for the needs of primary and secondary industry, which is critically important to the ongoing wellbeing of the TANK, and Hawke's Bay community.

38. Notwithstanding the fact that HortNZ's evidence shows that the 'outstanding' test is not met for several of the values identified in the draft WCO, declining this application will also avoid the potential to disengage a community that has invested a significant amount of time and effort in collaboratively developing a plan that identifies the values that are important to them, how they wish to deal with the complex array of competing interests that exist, and how they will seek to sustainably manage their freshwater resources.

Charlotte Josephine Mary Drury

25 January 2019