

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

ENV-2018-CHC-26 to 50

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of appeals under clause
14 of Schedule 1 to the
Act relating to the
proposed Southland
Water and Land Plan

BETWEEN **WAIHOPAI RŪNAKA,
HOKONUI RŪNAKA,
TE RŪNANGA O
AWARUA, TE
RŪNANGA O ORAKA
APARIMA, and TE
RŪNANGA O NGĀI
TAHU (collectively
NGĀ RŪNANGA)**

**Appellants in ENV-
2018-CHC-47**

AND **SOUTHLAND
REGIONAL COUNCIL**

Respondent

NOTICE OF PERSON'S WISH TO BE HEARD ON NOTICE OF MOTION

2 June 2020

 **Simpson Grierson**
Barristers & Solicitors

Simpson Grierson
J G A Winchester / S K Lennon
Telephone: +64-4-924 3503
Facsimile: +64-4-472 6986
Email: james.winchester@simpsongrierson.com / sal.lennon@simpsongrierson.com
DX SX11174
PO Box 2402
WELLINGTON 6140

TO: The Registrar
Environment Court
Christchurch

1. Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (collectively **Ngā Rūnanga**), wish to be heard on a notice of motion by Ballance Agri-Nutrients Limited, Federated Farmers of New Zealand (Southland), Horticulture New Zealand and Ravensdown Limited under section 291 of the Resource Management Act 1991 (**the Act**) for a ruling on scope.
2. The notice of motion seeks a ruling that evidence relating to Objectives 1 and 3 (and consequential amendments to other Objectives) of the proposed Southland Water and Land Plan (**pSWLP**) are beyond the scope of the Ngā Rūnanga appeal, and are therefore to be excluded from the Court's consideration.
3. The notice of motion was served on Ngā Rūnanga on 22 May 2020.
4. Ngā Rūnanga opposes the notice of motion and wishes to advance the following matters:
 - (a) Ngā Rūnanga submits that the possible relief set out in the evidence of Ms Davidson to Objectives 1 and 3, and the consequential relief identified in that evidence, is within the scope of its appeal. In particular:
 - (i) The parts of the decision that were appealed include the identification of objectives and policies that create a preferential approach to primary production and regionally significant infrastructure, and provisions that prevent the recognition of the national significance of Te Mana o Te Wai and diminish Ki Uta Kia Tai;¹
 - (ii) The General Reasons for the Appeal clearly identify concerns founded in Te Mana o Te Wai and about proposed Plan provisions that enable or facilitate ongoing degradation of water quality, mauri, mahinga kai and taonga species, and

¹ Ngā Rūnanga Notice of Appeal to the Environment Court in Respect of Decisions on the Proposed Southland Water and Land Plan (17 May 2018)_at [7].

prevent the exercise of kaitiakitanga through unduly permissive provisions and processes;² and

(iii) It is therefore clear that relief which gives effect to Te Mana o Te Wai and recognises Ki Uta Ki Tai was within the contemplation of the appeal and was reasonably foreseeable.³

(b) The determination sought is premature and unnecessary for the following reasons:

(i) As set out in its Minute dated 27 May 2020, the Court is primarily concerned with the issue of the extent to which the pSWLP gives effect to the National Policy Statement for Freshwater Management (**NPS-FM**).⁴ It is submitted that the Court is subject to a statutory duty pursuant to section 67(3) of the Act to ensure that the pSWLP gives effect to the NPS-FM.

(ii) The statement of evidence of Ms Davidson was filed in response to the Court's direction that parties were to provide evidence on the implementation of the NPS-FM in the pSWLP. The Court stated that, should it be necessary to support their interpretation of the plan, the parties were to propose amending the wording of the plan.⁵

(iii) As set out in its Memorandum of Counsel,⁶ Ngā Rūnanga understood that the Court was willing to be assisted by evidence on matters relating to the architecture and drafting of Topic A provisions, should there be consequential issues relating to whether Objectives 1 and 3 adequately gave effect to the NPS-FM and Te Mana o te Wai in particular. It is therefore appropriate that the Court receives and considers the evidence prior to determining the question of scope, so

2 At [8].

3 At [8](e) in particular.

4 Minute of the Environment Court (27 May 2020) at [5](a).

5 Record of Pre-Hearing Conference pSWLP (TOPIC A) (14 February 2020) at [6](a).

6 Memorandum of Counsel for Ngā Rūnanga Confirming the Purpose of Treena Davidson's Statement of Evidence dated 17 April 2020 (20 May 2020) at [5].

that it can be appropriately informed as to whether the pSWLP gives effect to the NPS-FM and as to the possible basis for and content of a section 293 direction under the Act.

- (iv) This intention is consistent with the Court's interpretation of its expectations, as set out in the 18 May 2020 minute.⁷
- (v) Prior to the filing of the Notice of Motion, the Court had already indicated that amendments to the text of the pSWLP may be required to support its interpretation and implementation, and that parties would have an opportunity to address the Court on whether there is scope for proposed amendments (including the exercise of powers under section 293 of the Act).⁸
- (vi) The position of Ngā Rūnanga is that the Court should first hear the evidence on the merits from the witnesses at the hearing set down for 15 June 2020 before it makes a determination on scope. Put another way, it will not be clear whether there are scope issues to determine until the Court has reached a conclusion on the merits and that will require the Court to receive and consider all of the evidence, including that prepared by Ms Davidson.

5. Ngā Rūnanga will file the following supporting documents:

- (a) Affidavit of Treena Lee Davidson.

DATED this 2nd day of June 2020



J G A Winchester / S K Lennon
Counsel for Ngā Rūnanga

7 Minute of the Environment Court (18 May 2020) at [4]-[5].

8 Record of Pre-Hearing Conference pSWLP (TOPIC A) (14 February 2020) at [7].

Address for service of person wishing to be a party:

Simpson Grierson
HSBC Tower
Level 24, 195 Lambton Quay
Wellington
P O Box 2402
Wellington 6140

Attention: James Winchester

Email: james.winchester@simpsongrierson.com
Telephone: 0-4-924 3503
Facsimile: 0-4-472 6986

Note to person wishing to be heard

You must lodge the original and 1 copy of this notice with the Environment Court and, for notice of motion, with the applicant, within 15 working days after the date on which you were served with the notice of motion. The notice must be signed by you or on your behalf.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.