

**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

**MEMORANDUM OF COUNSEL FOR NGĀ RŪNANGA REGARDING PROPOSED
CONTENT OF TOPIC A AND TIMETABLE**

26 SEPTEMBER 2018



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MAY IT PLEASE THE COURT

1. This memorandum of counsel is filed on behalf of Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (collectively Ngā Rūnanga). It is filed in response to the Minute of the Court dated 12 September 2018 and the memorandum of counsel for the Southland Regional Council (**Council**) dated 19 September 2018.
2. Ngā Rūnanga wish to comment in particular on the proposed content of Topic A, and on the proposed timetable suggested by the Council. It will also address a matter raised at the pre-hearing conference regarding the physiographics evidence for the Council. Each of these matters are addressed in turn below.

Topic A

3. It is submitted that there are a number of material omissions from Topic A as proposed by the Council, and some areas where further reasons are required as to why the Council's inclusion of matters in Topic A is appropriate. These are identified below, along with a brief discussion in support of the points identified.

Issues – including the state of the environment

4. The Council's memorandum proposes to include the A1 Issues in Topic A. This is supported by Ngā Rūnanga.
5. The first appeal point in the Ngā Rūnanga appeal relates to the issues in pages 15-18 of the decisions version of the proposed plan. In particular, there is a general appeal point as to whether the water quality provisions of the proposed plan require the maintenance and enhancement of water quality using January 2010 as the starting point, being the date when the Regional Water Plan for Southland became operative. In that respect, it is not accepted by Ngā Rūnanga that there are no appeals that appear to directly challenge the content of the issues of the proposed plan itself¹.
6. Ngā Rūnanga consider the 2010 date is important as it is their understanding that this shaped how the objectives and policies of the notified proposed plan were drafted as well as the assumptions that inform the physiographics provisions and proposed FMU processes. It is also of central importance in

¹ Memorandum of Counsel for the Council dated 19 September 2018, para 8

terms of Te Mana o te Wai (addressing the needs of the water body first) and the way the proposed plan as notified sought to maintain and improve water quality and quantity.

7. Te Mana o te Wai is central to the statement of national importance in the National Policy Statement for Freshwater Management (**Freshwater NPS**), and this provides a further reason why this matter should be considered in Topic A.

Ephemeral water bodies

8. Appeal point 3 in the Ngā Rūnanga appeal relates to the general exclusion of ephemeral water bodies from the proposed plan, including in particular from Objective 16. Ephemeral water bodies are critical source areas for contaminants that are excluded from good management practice policy/provisions. Removing these from provisions managing water means farming activities may adversely impact on water quality.
9. This is an issue of fundamental concern to Ngā Rūnanga, as the removal of these references in provisions prevent the recognition of the national significance of Te Mana o te Wai and diminish ki uta ki tai by expressly removing ephemeral rivers from being protected. The uncertainty in the proposed plan provisions as to where a “water body” commences is problematic and is an important structural issue. Including this as a Topic A matter would provide clear direction in Topic B as to what, particularly on hill country, is and is not being regulated for the purposes of managing discharges into water bodies and about activities that could affect water bodies.

Wetlands

10. Ngā Rūnanga seeks that the definitions of “wetland” and “natural wetland”, and Appendix A (Regionally Significant Wetlands) be included in Topic A. Ngā Rūnanga is an appellant and a section 274 party on these matters.
11. Defining what constitutes a wetland is considered important to guide how the provisions (in particular the rules) of the proposed plan are interpreted – ie what is a natural wetland and what are Regionally Significant Wetlands. The scope of the appeals and 274 Parties attached to this appeal point would suggest that mediation of these matters in Topic B will be difficult. It also raises similar issues to those identified regarding ephemeral water bodies.

Policy 14 and Policy 17A

- 12.** Policy 14 relates to exceptions to discharges to land rather than water, and Policy 17A relates to progressively implementing measures to reduce overflows from community waste water schemes. Ngā Rūnanga is an appellant and a section 274 party on these matters.
- 13.** Ngā Rūnanga considers that these policies shape the rules that follow in that they establish when it is appropriate to discharge effluent to water rather than to land. The matter of discharges to land or to water of effluent is not addressed in the current Objectives in Topic A, and it is suggested that guidance on these Policies as a part of Topic A would provide clear direction in mediating discharge rules in Topic B.
- 14.** Furthermore, the issue of whether effluent discharges to water are provided for in the proposed plan raises issues of fundamental cultural concern to Ngā Rūnanga.

Policies 15A – C, and Appendix E

- 15.** The Council appears to have resiled from its indication at the pre-hearing conference that these policies should be included in Topic A.
- 16.** Ngā Rūnanga considers that these policies are pivotal in determining whether the proposed plan could be said to be giving effect to the Freshwater NPS, and also as to whether there is any effective direction or control as to what the FMU process will address or achieve.
- 17.** Despite the Court identifying in its Minute that the omission of the FMU policies was an oversight and should be included², the explanation in the Council's memorandum as to why it proposes to exclude them from Topic A is not accepted.

² See Court's Minute dated 12 September 2018, paras [9] and [10]

Timetable

18. The Council's memorandum proposes two alternative timetables at paragraph 14. Both timetables have the evidence in chief for appellants being filed and served on 25 January 2019.
19. Ngā Rūnanga is concerned at the potential difficulties for appellants to prepare and file evidence in chief, particularly if it is substantial (which it will be if Topic A is expanded as sought by Ngā Rūnanga). It is also necessary to bear in mind the need to review the evidence in chief for the Council over the Christmas/school holiday period (which is 15 December 2018 to 4 February 2019). While a nominally generous period is provided for appellants' evidence in chief to be prepared, in reality December and January is a limited and disrupted period and the proposed timetable will no doubt cause difficulties for a number of witnesses. In particular, technical witnesses are likely to have summer monitoring commitments, quite apart from holiday and travel commitments. Ngā Rūnanga submits that it would be fairer for the evidence-in-chief for appellants to be finalised on 15 February 2018.
20. It is also submitted that the timetables proposed by the Council include unnecessary steps in terms of rebuttal evidence, the content of which should be relatively clearly ascertained from the evidence in chief filed and relatively confined in nature. The two steps for rebuttal evidence of appellants and section 274 parties should therefore be combined into one.
21. Finally, many Mana Whenua (including likely cultural and other expert witnesses for Ngā Rūnanga) exercise their customary rights and embark for the Tītī Islands in early-mid April (the season officially commences on 1 April) through until mid to late May. Therefore, provision for all parties rebuttal evidence (other than the Council's) to be completed no later than 12 April is appropriate. For these reasons, Ngā Rūnanga seeks the following timetable:

Council's evidence in chief (EIC)	14/12/18
Appellants' EIC	15/2/19
Supportive s274 parties' EIC	1/3/19
Opposing s274 parties' EIC	15/3/19
Witness conferencing	15 – 29/3/19
Joint witness statements due	29/3/19
All parties except Respondent rebuttal	12/4/19
SRC rebuttal	3/5/19
SRC filing evidence etc	10/5/19

Council's witnesses

22. The Court's Minute of 12 September 2018 identifies an issue raised by Ngā Rūnanga at the pre-hearing conference about the Council's physiographics witness³.
23. It is understood, through discussions with counsel for the Council, that the officer formerly employed by the Council who was instrumental in the development of physiographics for the proposed plan, Dr Clint Rissmann, will not be called as a witness for the Council for the Topic A hearing (or indeed at all in this process).
24. Ngā Rūnanga considers that Dr Rissmann would be ideally placed to provide highly relevant information to the Court regarding this important issue and, given his expertise, it is submitted that he should give evidence if physiographics is within the Topic A hearing.
25. It is understood however that Dr Rissmann will not agree to be called as a witness for specific parties, and it may be necessary for a subpoena to be issued. This is not a particularly desirable situation and it is submitted that it may be appropriate in the circumstances for the Court to consider calling Dr Rissmann as its own witness.

DATED this 26th day of September 2018



J G A Winchester
Counsel for Ngā Rūnanga

³ Ibid at [17]