

**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 RESPONDING TO COURT'S
DIRECTIONS DATED 2 APRIL 2019 ON EXPERT CONFERENCING**

10 APRIL 2019

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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 responds to the Minute and directions of the Court dated 2 April 2019 (**Minute**), particularly those directions regarding expert conferencing for the topic of surface water quality and freshwater ecology.
2. In paragraph 7(iii) of its Minute, the Court directed that expert conferencing for the topic of surface water quality and freshwater ecology take place on Monday 29 and Tuesday 30 April 2019 with Commissioner Jim Hodges. Ngā Rūnanga understands and accepts the Court's reasons for departing from the timetable and agenda filed by the Respondent following consultation with the parties, but has identified that the Court's direction could cause difficulties for effective conferencing taking place.
3. In particular, the Respondent set out the availability of the various relevant experts in Appendix A of its 27 March 2019 memorandum regarding expert conferencing. As per Appendix A, Dr Kitson (Ngā Rūnanga's environmental science expert), is listed as unavailable for conferencing on 29 and 30 April 2019.
4. The reason that Dr Kitson is unavailable is that she will be in the Tītī islands exercising her customary rights from 18 April 2019. At this stage, she is expected to return for the week of 6 May when circumstances permit.
5. The harvesting of muttonbirds and associated traditions have huge cultural significance for Ngā Rūnanga. The harvest occurs annually between April and May and Ngā Rūnanga has previously advised the court and parties of this issue in order to seek accommodation of this important customary right in various timetables.
6. While ordinarily the inability of a witness to attend in person might be able to be overcome by use of video or audio-conferencing, those options are not possible in this instance. The Tītī islands are remote and only accessible by boat or helicopter, and there is no mobile telephone coverage on Dr Kitson's island. Other communication options are unsuitable and only used in emergency (eg. VHF radio, which has a very limited battery life).
7. As such, while Ngā Rūnanga understands the inconvenience that might be caused due to the unavailability of its key scientific expert, it respectfully wishes to advise

that Dr Kitson is simply unavailable to participate in conferencing on 29 and 30 April. No doubt the Court and parties will appreciate that this situation is unavoidable but, if it is considered necessary, Ngā Rūnanga are prepared to obtain an affidavit identifying of the cultural significance of tītī harvesting to assist the Court in assessing a request for alternative directions.

8. In light of the above, Ngā Rūnanga respectfully request that the Court directs expert conferencing on this topic for alternative dates that allow Dr Kitson to be present. The earliest that Dr Kitson would be available would be 6 – 8 May. She can also available later that week.
9. Counsel would be prepared to participate in a judicial telephone conference if that was considered useful.

DATED this 10th day of April 2019



J G A Winchester
Counsel for Ngā Rūnanga