

**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 UPDATE ON
THE DEVELOPMENT OF CULTURAL INDICATORS OF HEALTH**

16 OCTOBER 2019

 **Simpson Grierson**
Barristers & Solicitors

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

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**). In accordance with point 4 in Appendix A of the memorandum filed on behalf of Ngā Rūnanga on 6 September 2019 (**6 September memorandum**) and the Court's directions dated 13 September 2019, this memorandum provides an interim report to the Court on the work programme for the development of cultural indicators of health.
2. For ease of reference, the 6 September memorandum is attached as **Appendix A** to this memorandum. Referring to the outline of the preliminary work programme set out in Appendix A of the 6 September memorandum:
 - (a) Steps 1-3 of the preliminary work programme are complete.
 - (b) Steps 5 and 6 are to be undertaken prior to the final expert conference, which is to take place in either the week of 11 November 2019 or 18 November 2019.
3. The indicators of health being developed will enable Ngāi Tahu practitioners to assess and monitor cultural thresholds and deterioration at a *regional scale*.
4. Paragraph 6 of the 6 September 2019 memorandum stated that the cultural indicators and thresholds would be developed using information that is currently available. A request for relevant information held by Environment Southland was made on 26 September 2019, and a reminder of that request was sent on 15 October 2019. As of today, 16 October 2019, most of the data requested has been supplied. An assessment of the usability of that information is yet to be made.
5. A narrative of degradation is being developed based on Te Mana o te Wai. This narrative is informed by the requirement to put the needs of the waterbody first, and the understanding that when a waterbody is no longer in a state of hauora, it is degraded.

6. Paragraph 12 of the 6 September memorandum lists matters to be considered in developing the cultural indicators of health. It is expected that these matters will form the principal elements of the cultural thresholds for degradation. In a similar way to the programme for developing ecological thresholds, it is expected that scores will be developed.
7. However, unlike analysis in relation to ecological thresholds, it is expected that the approach for analysis of cultural indicators of health and thresholds will be comparative.

DATED this 16th day of October 2019



J G A Winchester
Counsel for Ngā Rūnanga

Appendix A: Memorandum filed on behalf of Ngā Rūnanga on 6 September 2019

**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 CULTURAL
INDICATORS OF HEALTH**

6 SEPTEMBER 2019

 **Simpson Grierson**
Barristers & Solicitors

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

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 of the Court dated 5 August 2019 (**Minute**), particularly on the subject of a programme of work for cultural indicators of health.
2. Through the Minute, the Court has:
 - (a) Requested that work be completed on cultural indicators of health, which can then be used to describe what is “degraded” in relation to waterbodies in Southland;
 - (b) Directed that parties file memoranda seeking further directions from the Court as to a programme of work for cultural indicators of health; and
 - (c) Indicated that the work on cultural indicators of health is likely to be led by experts engaged by Ngā Rūnanga.
3. In light of the Court’s requests, Ngā Rūnanga sets out preliminary information on the work programme for the development of cultural indicators and thresholds. It should be noted that the information provided in this memorandum will require review and additional input through wananga with whānau and review by cultural experts.
4. The experts contributing to this memorandum recognise that they are bound by the Environment Court Consolidated Practice Note 2014 and in particular Section 7 (Code of Conduct, Duty to the Court and Evidence of an expert witness) and Appendix 3 - Protocol for Expert Witness Conferences and agree to abide by it.

Scope of the work

5. Cultural indicators of health can be narrative, visual and numeric.

6. The cultural indicators and thresholds developed by this process will be developed using information that is currently available, and will be used to describe and identify degradation of waterbodies. The work will also address questions of scale; that is, at what scale a determination of degradation can be made.
7. The indicators of health that are developed will be relevant to Ngāi Tahu ki Murihiku and will enable Ngāi Tahu practitioners to assess and monitor cultural thresholds and deterioration.¹
8. To describe degradation, the cultural indicators will be based on the attributes (with thresholds) of Te Ara Tawhito (traditional travel routes), Mahinga Kai, and Mauri. This is because these are pillars of Ngāi Tahu culture and identity. A narrative of how degradation was determined will also be provided.
9. An outline of the preliminary work programme and timetable is set out in **Appendix A**.
10. It should be noted that the cultural indicators of health implemented in the outcome of this work programme will not be a complete set of “Ngāi Tahu indicators of health”, as they will apply in the context of Policies 40 and 47 of the proposed Plan.

Matters to be considered in the development of the cultural health indicators

11. There are some matters that will be considered in the development of both the cultural health indicators and ecological health indicators:
 - (a) Both the ecological indicators of health and cultural indicators of health will refer to the two NPS-FM compulsory national values, ecosystem health and human health.
 - (b) The compulsory national values will be considered in principle alongside Ki Uta Ki Tai and Te Mana o te Wai for both sets of indicators. As detailed in paragraph 12 of the Joint Witness Statement (dated 4

¹ More detailed description of how the indicators can be used is provided in the statement of evidence of Dr Gail Tipa at dated 26 May 2017 at pages 7-18 [Council hearing].

September 2019), Ms Cain has provided context for Ki Uta Ki Tai and Te Mana o te Wai to the Rivers and Lakes experts.

- 12.** In addition, the following matters of importance will be considered in developing the cultural indicators of health:²

The principal elements identified as being of importance to tangata whenua in relation to water bodies and land include:

- Mauri and wairua - Protection of the mauri and wairua of rivers, lakes and wetlands;
- Mahinga kai - Adverse effects on mahinga kai and harvested aquatic species, including tuna (eel), kana (lamprey), inanga (whitebait), waikōura (freshwater crayfish), waikākahi (freshwater mussels) and wātakirihi (watercress);
- Wāhi tapu and other taonga - The protection of wāhi tapu and areas or resources associated with water and the beds of rivers and lakes that are of special significance;
- Special significance of particular waterbodies and Ngāi Tahu landscapes - Recognition of the special significance of particular rivers and lakes to iwi and the aspirations of iwi to develop, use and protect water.

Particular rivers, wetlands, springs and lakes have special significance to Ngāi Tahu as their identity is inextricably linked to those locations and surrounding lands and mountains. These areas accommodate and sustain specific uses and values that cannot be relocated to other locations.

- 13.** Consideration will also be given to the Iwi Management Plans for the region, being Te Tangi a Taurira and the Ngāi Tahu Freshwater Policy Statement. This is to assist with the application of thresholds to attributes.

Spatial scale

- 14.** The consideration of waterbodies and spatial scale will not be limited to those listed as Statutory Acknowledgement Areas in the Ngai Tahu Claims Settlement Act 1998 or Appendix B of the proposed Plan.

² See the Decisions Version of the Proposed Plan, at pages 8-9.

15. Consideration will not be given to Appendix E of the proposed Plan.

DATED this 6th day of September 2019

A handwritten signature in blue ink, appearing to read 'J G A Winchester', positioned above a horizontal line.

J G A Winchester
Counsel for Ngā Rūnanga

Appendix A: Outline of preliminary work programme

Step	Timeframe	Task
1	6 September 2019	Memorandum to the Court on the proposed process and work programme to identify cultural indicators of health and thresholds.
2-	By 26 September 2019	Wananga of cultural experts to identify suitable indicators and any possible data/information requirements. Data request to other agencies and to previous cultural monitoring work.
3.	14-16 October 2019	Proposed connection with science expert conferencing (14 to 16 October 2019) to look at linkages between cultural and ecological indicators of health.
4.	16 October 2019	Interim report on work programme to the Court.
5.	By 30 October 2019	Wananga of cultural experts to confirm: <ul style="list-style-type: none"> • Attributes/indicators • Spatial scale/s • Seasonal considerations • Thresholds • Assessment of state
6	By 15 November 2019	Wananga of cultural experts to reach agreement for each waterbody as to whether it is degraded or not, and how this will be visualised with respect to the outputs from step 2.
7	To be confirmed	Possible connection with science expert conferencing (TBC between the 11 and 22 November 2019)
8	By 22 November 2019	Final report to the Court.