

**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**

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**MEMORANDUM OF COUNSEL FOR NGĀ RŪNANGA REGARDING SCHEDULE X  
AND RULES 26, 28 AND 29**

**17 February 2023**

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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**).
2. This memorandum is filed in response to the Court's direction contained at paragraph [18](c) of the Minute dated 10 February 2023 and in response to paragraph [81] of the Fifth Interim Decision.<sup>1</sup>

## Schedule X

3. While it is grateful for the Court's invitation to advise of its position on Schedule X, Ngā Rūnanga will not pursue an amendment in relation to cultural indicators of health in the context of Schedule X for the reasons set out below.
4. To date, there has been no mapping undertaken of degraded water bodies, from a cultural indicators of health perspective, in the takiwā.
5. The time, data and resources required to undertake this mapping exercise would be substantial and a suitable work programme to carry out this exercise effectively would also need to be Rūnanga-led.
6. Given that, at the present time, there is insufficient data and resources to undertake this mapping exercise, as well as the time required for that exercise to be done appropriately, pursuing additional mapping for Schedule X has the potential to result in significant delays to the operation of the Plan. It is anticipated that the mapping exercise may be more appropriately run as part of, or alongside, FMU processes.
7. In addition, Ngā Rūnanga foresees that scope issues could be raised by other parties if such amendments were pursued at this stage and, despite its view that cultural indicators of health could well have merit in Schedule X, it does not wish to irresponsibly divert time and resources into arguments about scope.

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<sup>1</sup> *Aratiatia Livestock Limited and Ors v Southland Regional Council* [2022] NZEnvC 265 at [81].

## Other references to cultural indicators of health within the pSWLP

8. It is noted that there are multiple references to the *Ngāi Tahu indicators of health* throughout the pSWLP.<sup>2</sup> The term is also defined within the Glossary.<sup>3</sup>
9. The position and expectation of Ngā Rūnanga is that, despite it not seeking that cultural indicators of health be mapped and/or included in Schedule X, those matters will remain relevant throughout the pSWLP, including in, but not limited to, the context of Policies 2, 40 and 47.
10. For sake of clarity, it is also expected that Environment Southland, as pSWLP administrator and Treaty Partner, will appropriately fulfil its responsibilities in relation to the cultural indicators of health through future plan change processes and when performing its resource consent functions.
11. For example, Policy 40 provides that, when determining the term of a resource consent, consideration will be given to (amongst other things) the Ngāi Tahu indicators of health. It is the expectation of Ngā Rūnanga that the fact that the cultural indicators of health have not been mapped, would not affect due consideration being given to those indicators in light of the particular facts and circumstances.

## Rules 26, 28 and 29

12. Paragraph [404] of the Fifth Interim Decision states:

[404] Further to counsels' advice that the amendments proposed to Rules 26, 28 and 29 are no longer required, the court's version of the proposed plan has been updated accordingly.
13. The Court is correct in that the parties have advised that the amendments to Rules 26, 28 and 29 are no longer required, as confirmed in the Memorandum of Counsel for Environment Southland (dated 11 November 2022).
14. However, in the Consolidated Plan (Annexure 5 to the Fifth Interim Decision), amendments are recorded (in blue highlight) for Rules 26, 28 and 29.

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<sup>2</sup> Within Policy 2; Policy 40; and Policy 47.

<sup>3</sup> A tool for Papatipu Rūnanga to facilitate monitoring and provide long term data that can be used to assess land, water and taonga species health over time.

15. Ngā Rūnanga is no longer seeking the relief which was initially sought in respect of these rules, being the inclusion of references to mātaimai and taiāpure. This is primarily because the rules relate to discharges to land and therefore references to mātaimai and taiāpure are not required.
16. In light of the above, the primary position of Ngā Rūnanga is that the Consolidated Plan should not record any relief sought, in respect of Rules 26, 28 and 29. Alternatively, if the Court was minded to record the relief because it was initially sought by Ngā Rūnanga, clause (a)(x) in Rule 29 ought to be struck out.

**DATED** this 17<sup>th</sup> day of February 2023



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