

**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 ATTACHING TOPIC B,  
TRANCHE 1, FINAL TRACKED CHANGE RELIEF**

**27 July 2022**

---

**Solicitor acting**

 **Simpson Grierson**  
Barristers & Solicitors

Simpson Grierson  
S K Lennon  
Telephone: +64-4-924 3509  
Facsimile: +64-4-472 6986  
Email: sal.lennon@simpsongrierson.com  
DX SX11174 PO Box 2402  
SOLICITORS  
WELLINGTON 6140

**Counsel acting**

James Winchester  
Telephone: 06 883 0080  
E-mail: [jw@jameswinchester.co.nz](mailto:jw@jameswinchester.co.nz)  
The Office  
Level 1, 15 Joll Road  
PO Box 8161  
Havelock North

**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. The final relief being pursued by Ngā Rūnanga for the Topic B Tranche 1 appeal points is set out in **Appendix A** to this memorandum.
3. As has been submitted to the Court in both this 'Disputed Provisions' hearing and the 'All of Parites' hearing, the position of Environment Southland is well-aligned with that of Ngā Rūnanga. Ngā Rūnanga continues to have confidence in this alignment, and supports the proposed drafting of Mr McCallum-Clark on many provisions that have been the subject of this hearing.

**DATED** this 27<sup>th</sup> day of July 2022



---

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

## **Appendix A**

### **Final relief sought by Ngā Rūnanga for Topic B, Tranche 1**

#### **Annotations to text**

**Black** strikethrough and underlined text – agreed in Planning JWS (10 December 2021)

**Brown** strikethrough and underlined text – suggested changes by Ngā Rūnanga

## **TOPIC B2**

### **Policy 15A – Maintain water quality where standards are met**

As provided at paragraph [21] of the Supplementary Statement of Evidence of Matthew McCallum-Clark in response to the Court's Minute dated 25 March 2022 (6 April 2022).

### **Policy 15B – Improve water quality where standards are not met**

As provided in **Appendix A** to the Supplementary Statement of Evidence of Treena Lee Davidson on behalf of Ngā Rūnanga on Policies 15A and 15B (20 May 2022).

Alternatively, Ngā Rūnanga would also support the wording for Policy 15A provided at paragraph 26 of the Supplementary Statement of Evidence of Matthew McCallum-Clark in Response to Court's Minute dated 25 March 22 (6 April 2022).

### **Policy 15C – Maintaining and improving water quality after FMU processes**

~~Following the establishment of freshwater objectives and limits under Freshwater Management Unit processes, and including through implementation of non-regulatory methods, improve water quality where it is degraded to the point where freshwater objectives are not being met and otherwise maintain water quality where freshwater objectives are being met.~~

### **Rule 5 Discharges to surface waterbodies**

As provided at page 46 of the Statement of Evidence of Matthew McCallum-Clark on behalf of the Southland Regional Council (11 February 2022).

### **Rule 13 – Discharge from subsurface drainage systems**

As provided at page 5 of the Supplementary Statement of Evidence of Matthew McCallum-Clark on behalf of Southland Regional Council (20 May 2022).

### **Rule 14 – Discharge of fertiliser**

As provided at page 47 of the Statement of Evidence of Matthew McCallum-Clark on behalf of the Southland Regional Council (11 February 2022).

## TOPIC B3

### Rule 51 - Minor Diversions of Water

*[Remainder of Rule remains the same]*

(e) The diversion of water from a natural wetland for the purpose of land drainage is a noncomplying activity.

### Rule 74 – Wetlands

Drainage of wetlands is more appropriately dealt with under Rule 51 – Minor Diversions of Water. See above.

## TOPIC B4

### Rule 78 – Weed and sediment removal for drainage maintenance

(a) The removal of aquatic weeds and plants and sediment from any modified watercourse for the purpose of maintaining or restoring drainage outfall, and any associated bed disturbance and discharge resulting from carrying out the activity, is a permitted activity provided the following conditions are met:

- (ai) general conditions (e), (f), (g), (h) and (l) set out in Rule 55A;
  - (i) the activity is undertaken solely to maintain or restore the drainage capacity of a modified watercourse that has previously been modified or maintained for drainage maintenance or restoration purposes at that location;
  - (ii) the activity is restricted to the removal of aquatic weeds and plants or sediment deposits, provided that at least 95% of the sediment removed shall have a grain size of less than 2mm;
  - ~~(iia) the removal of river bed material, other than aquatic weeds, plants, mud or silt is avoided as far as practicable;~~
  - (iii) any incidental bed disturbance is only to the extent necessary to undertake the activity and must not result in lowering of the bed below previously modified levels;
  - (iv) upon completion of the activity, fish passage is not impeded as a result of the activity;
  - (v) the operator takes all reasonable steps to return any fish captured or stranded by the activity to water immediately preferably to a location upstream of the activity;
  - (vi) between the beginning of June and the end of October, there is no disturbance of the spawning habitat of trout; and
  - (xiii) where the modified watercourse is spring-fed, removal of aquatic weeds and plants is only to the extent that is necessary to undertake the activity and is kept to the absolute minimum; and
  - ~~(xiv) the modified watercourse is not shown in Map Series 8 as a habitat of threatened native fish.~~
  - ~~(xv) no activity in relation to drainage maintenance shall significantly adversely affect the habitat or health of any taonga species as identified in Appendix M.~~

**Note:** *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

(b) The removal of aquatic weeds and plants and sediment from any modified watercourse for the purpose of maintaining or restoring drainage outfall and any associated bed disturbance and discharge resulting from the carrying out of the activity that cannot meet one or more of the conditions of Rule 78(a) is a discretionary activity.

## **TOPIC B5 – FARMING**

### **Policy 16 – Farming activities that affect water quality**

As provided on pages 13 and 14 of the Joint Witness Statement (25 July 2022). Ngā Rūnanga has no preference over the drafting of clause (c1).

### **Policy 18 – Stock exclusion from water bodies**

As provided at page 50 of the Statement of Evidence of Matthew McCallum-Clark on behalf of the Southland Regional Council (11 February 2022).

### **Rule 20 – Farming**

As provided at pages 51-53 of the Statement of Evidence of Matthew McCallum-Clark on behalf of the Southland Regional Council (11 February 2022).<sup>1</sup>

### **Rule 20A – Intensive Winter Grazing**

As provided at pages 53-54 of the Statement of Evidence of Matthew McCallum-Clark on behalf of the Southland Regional Council (11 February 2022).

### **Rule 25 – Cultivation**

As provided at pages 55-56 of the Statement of Evidence of Matthew McCallum-Clark on behalf of the Southland Regional Council (11 February 2022).

### **Rule 70 – Stock exclusion from water bodies**

Note: Ngā Rūnanga is only a party to that part which relates to *ephemeral rivers*.

Beef & Lamb is no longer seeking the deletion of *ephemeral river* and proposes the term remain in the rule - see Appendix A of Memorandum of Counsel for Beef & Lamb New Zealand Limited setting out final version of relief sought (25 July 2022).

Ngā Runanga is supportive of retaining the reference to *ephemeral rivers*.

### **Definition of *ephemeral river***

If Rule 70 is to refer to *ephemeral river*, then retain the Decisions version of the definition for *ephemeral river*.

---

<sup>1</sup> The general position of Ngā Rūnanga on Rule 20 aligns with that of Environment Southland. It is recognised that there have been some discussions with various witnesses during the hearing as to possible amendments to Rule 20. Ngā Rūnanga is generally supportive of the evidence provided by Mr McCallum-Clark to date, and is likely to support any redrafting of Rule 20 offered by Mr McCallum-Clark.

## Ephemeral River

Rivers which only contain flowing or standing water following rainfall events or extended periods of above average rainfall.

### Definition of *critical source area*

As provided in Planning JWS (10 December 2021), see Attachment B5 – Farming, pages 7-8. Set out below for ease of reference.

### Critical source area

- (a) a landscape feature like a gully, swale or a depression (including ephemeral flow paths) that accumulates runoff (sediment and nutrients) from adjacent flats and slopes, and delivers it to surface water bodies (including lakes, rivers, artificial watercourses and modified watercourses) or subsurface drainage systems.; ~~and~~
- (b) a non-landscape feature that has high levels of contaminant losses, such as, silage pits, fertiliser storage areas, stock camps and laneways.
- ~~(b) areas which arise through land use activities and management approaches (including cultivation and winter grazing) which result in contaminants being discharged from the activity and being delivered to surface water bodies.~~

~~Ephemeral rivers - Rivers which only contain flowing or standing water following rainfall events or extended periods of above average rainfall.~~

## Appendix N

As provided at pages 60-63 of the Statement of Evidence of Matthew McCallum-Clark on behalf of the Southland Regional Council (11 February 2022), with the addition of a new FEMP objective (b1) for Intensive Winter Grazing, and Winter Grazing Plan requirements as agreed in the Joint Witness Statement (25 July 2022).<sup>2</sup>

## Schedule X

Ngā Rūnanga is supportive of the inclusion of maps in Schedule X, to identify degradation (in line with Objective 6). However, it must be made clear within Schedule X that cultural indicators of health have not been used to identify degradation on the maps and therefore, the maps do not display cultural degradation.

---

2 The general position of Ngā Rūnanga on Appendix N aligns with that of Environment Southland. It is recognised that there have been some discussions with various witnesses during the hearing as to possible amendments to Appendix N. Ngā Rūnanga is generally supportive of the evidence provided by Mr McCallum-Clark to date, and is likely to support any redrafting of Appendix N offered by Mr McCallum-Clark.