

**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

**WILL-SAY STATEMENT OF TREENA LEE DAVIDSON
ON BEHALF OF NGĀ RŪNANGA**

5 NOVEMBER 2021

 **Simpson Grierson**
Barristers & Solicitors

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

INTRODUCTION

1. My full name is Treena Lee Davidson.
2. My qualifications and experience are set out in my statement of evidence for Topic A of the appeals on the Proposed Southland Water and Land Plan (**pSWLP**), dated 15 February 2019. As an amendment, I am now engaged as a senior environmental policy advisor for Aoraki Environmental Consultancy, the environmental entity of Te Rūnanga o Arowhenua, in the lower Canterbury region. I have been in this role for a year. I have however been contracted by Te Rūnanga o Ngāi Tahu to continue my work for Ngā Rūnanga on the pSWLP.
3. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and I agree to comply with it. I confirm that the issues addressed in this statement are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
4. I note that whilst I am engaged by Te Rūnanga o Ngāi Tahu, I am bound by the Code of Conduct and professional ethics of the New Zealand Planning Institute (**NZPI**), and am required to be impartial and unbiased in my professional opinions expressed.

SCOPE OF STATEMENT

5. This will-say statement addresses the following:
 - (a) the supplementary statement of evidence of Mr Matthew McCallum-Clark, dated 22 October 2021;
 - (b) the National Policy Statement for Freshwater Management 2020 (**NPSFM**);
 - (c) how the proposed track-changed relief filed and served on behalf of Ngā Rūnanga on 29 November 2021 implements the relevant Objectives and Policies of the pSWLP; and
 - (d) any further technical advice that is required to inform my opinion on the wording of the pSWLP provisions.

6. In preparing this will-say statement I have read and considered the following additional documents since drafting my evidence in chief (dated 15 February 2019) and my supplementary evidence following the First Interim Decision¹ (dated 17 April 2020):
- (a) the Decisions Version of the pSWLP (1 March 2021);
 - (b) mediation agreements dated 30 March 2021 (B1), 1 April 2021 (B2), 11 May 2021 (B6) and 26 May 2021 (B3);
 - (c) the NPSFM;
 - (d) the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NESF**);
 - (e) the Supplementary Statement of Evidence of Mr Matthew McCallum-Clark: Topic B Overview (28 October 2021);
 - (f) the will-say statement of Ms Ailsa Cain (5 November 2021); and
 - (g) the will-say statement of Dr Jane Kitson (5 November 2021).

THE SUPPLEMENTARY STATEMENT OF EVIDENCE OF MATTHEW MCCALLUM-CLARK, 22 OCTOBER 2021

7. I broadly agree with the statements Mr McCallum-Clark makes in his supplementary statement of evidence. I agree with his outline of the key findings of the Topic A decisions² and the update on the NPSFM 2020³ and outline of the NESF.⁴
8. I am not involved in Environment Southland's freshwater planning process so I cannot comment on this process.⁵

1 *Aratiatia Livestock Ltd v Southland Regional Council* [2019] NZEnvC 208.

2 At [15]-[35].

3 At [36]-[40].

4 At [42]-[48].

5 Mr McCallum-Clark comments on this process at [56]-[62].

9. I consider Mr McCallum-Clark has summarised the remaining fundamental issues for the Topic B hearing.⁶ However, I do not think this list should be seen to undermine the importance of the significant matters to Ngā Rūnanga within Topic B, such as:
- (a) The alignment of Topic B provisions with the Topic A provisions. The rules and policies within Topic B are not informed by or grounded in the Topic A provisions, particularly in relation to ki uta ki tai, Te Mana o Te Wai and hauora. Ms Cain expands on this issue in her will-say statement.
 - (b) The protection of taonga species during drain maintenance and preventing the drainage of natural wetlands.
 - (c) The degraded state of many waterways in Southland. Many require significant improvement such that they move towards a state of hauora. Topic B provisions will need to support movement.
 - (d) The indicators of health, including the cultural indicators of health, need to be incorporated and used in the pSWLP, including Topic B provisions. This will go some way to ensuring the Topic B provisions support movement towards hauora for Southland waterways.⁷ This matter particularly appears to underpin the farming provisions in particular but is also applicable to the issues around the Lake Manapōuri hydro-electrical scheme. Dr Kitson expands on these issues in her will-say statement.

THE NPSFM 2020

10. While I largely agree with Mr McCallum-Clark's summary of the NPSFM 2020,⁸ I have some additional observations.
11. I agree with Ms Cain (at paragraph 11 of her will-say statement) that Te Mana o te Wai is both a process and an outcome. The First Interim Decision on Topic A clearly established that Te Mana o te Wai is a korowai for the pSWLP. All provisions in the plan ought to be aligned with, and read in light of, Te Mana o e Wai.

6 At [63]-[70].

7 As outlined in Mr McCallum-Clark's supplementary statement of evidence at [35], the Court noted in the first Interim Decision that the indicators of health should apply on an interim basis and that additional consideration was required to assess how these will be included and used in the pSWLP.

8 At [36]-[40].

12. I do not consider Te Mana o te Wai, as expressed in the NPSFM 2020, as different from how it was expressed in the 2014 and 2017 iterations. Rather than being referred to as the “fundamental concept” in the NPSFM 2017, Te Mana o te Wai was referred to as the “matter of national significance”.
13. When comparing the references to Te Mana o te Wai in the two texts, the one significant difference is that the hierarchy of obligations is clarified. In the NPSFM 2020, this hierarchy of obligations is clarified, to ensure that the health and well-being of waterbodies and freshwater ecosystems is the **first priority**, to be considered **before** the health needs of people and the ability of people and communities to provide for their social, economic and cultural well-being, now and in the future.
14. As the First Interim Decision (that pre-dated the NPSFM 2020) indicates, this hierarchy was always implicitly fundamental to the concept of Te Mana o te Wai.
15. However, in my view, the higher order provisions of the NPSFM 2020 are clearer and more directive than those of its predecessor. The explicit inclusion of the hierarchy included in the NPSFM 2020 means that it is now indisputable that the health and wellbeing of waterbodies and freshwater ecosystems is to be considered before any other factors, including human use.

HOW THE PROPOSED TRACK CHANGED RELIEF FILED AND IMPLEMENTS THE RELEVANT OBJECTIVES AND POLICIES

16. **Appendix A** to this statement contains a table of the Topic B appeal points by Ngā Rūnanga and the relief sought, that was filed and served by Ngā Rūnanga on 29 November 2021. I agree with the proposed relief sought. I have included in the table alongside the relief sought how the relief sought would better implement the relevant objectives and policies.

ANY FURTHER TECHNICAL ADVICE THAT IS REQUIRED

17. In terms of technical advice that is needed to support the relief sought, I suggest the following:
 - (a) Expertise to guide the drafting of the conditions relating to drain maintenance in order to protect the habitat and health of taonga species.

- (b) Expertise to review the provisions of the NESFM and where necessary make recommendations to Rule 20 to ensure that the areas of land identified as being at risk of nutrient loss are not further degraded.
- (c) Expertise is needed to ensure clarity on what is an ephemeral river and by addressing critical source area provisions, these avoid or minimise the effects on rivers.
- (d) Expertise is needed to identify the matters that discretion should be restricted to with regard to Rule 52A for the Manapōuri hydro-electric generation scheme.



Treena Lee Davidson
5 November 2021

Appendix A

Recommended relief for Topic B planning provisions

All tracked changes and assessments are against the Objectives and Policies in the Southland Water and Land Plan, Part A Decisions Version, operative in Part as of 22 February 2021.

Amendments to the text: new text shown as underlined and text to be deleted shown as struck-through. Changes that have been agreed between the parties in blue tracking, and all changes suggested by a party in relation to unresolved issues in red tracking.

TOPIC B1 – WATER TAKES

The remaining Ngā Rūnanga interests in this Topic B1 are as a section 274 party.

TOPIC B2 – WATER QUALITY AND DISCHARGES

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies
3	Should the decision version be replaced with the notified version as it is now no longer protection oriented, or is redundant?	Policy 13	<p><i>Amend Policy 13 to read:</i></p> <p>2. Manage land use activities and discharges (point source and non-point source) to enable the achievement of Policies 15A, 15B and 15C. <u>land and water so that water quality and the health of humans, and domestic animals and aquatic life, is protected.</u></p>	<p><i>With the amendments to Policies 15A, 15B and 15C, I am comfortable that this relief does not need amendment.</i></p>	<p>The wording of Policies 15A, 15B and 15C did not recognise uses of water including cultural use.</p> <p>I consider without the amendments proposed to Policies 15A, 15B and 15C that Policy 13 would not meet Objectives 1, 2 or 3.</p> <p>Policies 15, 15B and 15C provide for an approach that puts the needs of the waterbodies first, before other uses are considered. This approach is consistent with both</p>

					Te Mana o Te Wai and ki uta ki tai. However, see recommendation on deletion of Policy 15C.
6	Should the decision version of Policies 15A, 15B and 15C be replaced with the s42A report version?	Policy 15	<p><i>Delete new Policies 15A, 15B and 15C and replace with the s42A version. Where the s42A version read:</i></p> <p><u>Maintain and improve water quality by:</u></p> <p><u>1. despite any other policy in this Plan, avoiding new discharges to surface waterbodies that will reduce water quality beyond the zone of reasonable mixing;</u></p> <p><u>1A. avoiding, remedying or mitigating the adverse effects of existing discharges to surface waterbodies, beyond the zone of reasonable mixing;</u></p> <p><u>2. avoiding point source and non-point source discharges to land that will reduce surface or groundwater quality, unless the adverse effects of the discharge can be avoided, remedied or mitigated;</u></p> <p><u>3. avoiding land use activities that will reduce surface or groundwater quality, unless the adverse effects</u></p>	<p>Policy 15A</p> <p>Where existing water quality meets the Appendix E Water Quality Standards or bed sediments meet the Appendix C ANZECC sediment guidelines, maintain water quality by:</p> <p>1. avoiding, where reasonably practicable, or otherwise remedying or mitigating any the adverse effects of new discharges, so that beyond the zone of reasonable mixing, those standards or sediment guidelines will continue to be met (beyond the zone of reasonable mixing for point source discharges); and</p> <p>2. Requiring any application for replacement of an expiring discharge permit to demonstrate how the adverse effects of the discharge are avoided, remedied or mitigated, so that beyond the zone of reasonable mixing those standards or sediment guidelines will continue to be met.</p>	I consider the wording proposed for Policy 15B now implements Objectives 1, 2 and 7.

			<p><u>can be avoided, remedied or mitigated; and</u></p> <p><u>4. avoiding discharges to artificial watercourses that will reduce water quality in a river, lake, modified watercourse, natural wetland or lagoon beyond the zone of reasonable mixing; so that:</u></p> <p><u>1. water quality is maintained where it is better than the water quality standards specified in Appendix E “Water Quality Standards”; or</u></p> <p><u>2. water quality is improved where it does not meet the water quality standards specified in Appendix E “Water Quality Standards”; and</u></p> <p><u>3. groundwater quality meets the Drinking-Water Standards for New Zealand 2005 (revised 2008) where water is used for drinking; and</u></p> <p><u>4. ANZECC sediment guidelines (as shown in Appendix C of this Plan) are met; and</u></p> <p><u>5. additionally, in the case of existing discharges, improves water quality where water quality is</u></p>	<p>Policy 15B</p> <p>Where existing water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines, improve water quality including by:</p> <p>1. avoiding where practicable and otherwise remedying or mitigating any adverse effects of new <u>point source</u> discharges <u>to surface water</u> on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines beyond the zone of reasonable mixing; and</p> <p><u>1a. avoiding where reasonably practicable and otherwise remedying or mitigating any adverse effects of other new discharges on water quality or sediment quality that would exacerbate the exceedance of those standards or sediment guidelines; and</u></p> <p>2. requiring any application for replacement of an expiring discharge permit to demonstrate how and by when adverse effects will be avoided where <u>reasonably</u> practicable and otherwise remedied or mitigated, so that beyond the zone of reasonable mixing water quality</p>	
--	--	--	--	--	--

			<u>degraded, to the point of being overallocated.</u>	will be improved to assist with meeting those standards or sediment guidelines (beyond the zone of reasonable mixing for point source discharges).	
9	Should Policy 15C be deleted as the FMU processes will provide this guidance?	Policy 15C	<p><i>Delete 15(C) in its entirety:</i></p> <p>Policy 15C—Maintaining and improving water quality after FMU processes</p> <p>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.</p>	<p>Policy 15C</p> <p>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.</p>	While Policy 15C implements Objective 6, I consider it is unnecessary to have this provision. The establishment of FMU freshwater objectives under the NPSFM 2020 will provide direction on how specific water bodies are maintained or improved.

TOPIC B3 – WETLANDS AND INDIGENOUS BIODIVERSITY

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
8	Should the drainage of any natural wetland be a prohibited activity?	Rule 74	<p><i>Amend Rule 74 to include:</i></p> <p><u>d) The draining of any natural wetland is a prohibited activity.</u></p>	<p>Rule 74</p> <p>(a) The use of land within a wetland for the purposes of:</p> <p>(i) maintaining or enhancing the wetland, or</p> <p>(ii) maintaining existing authorised structures within the wetland; <u>or</u></p> <p><u>(iii) removing plant matter for the purpose of mahinga kai undertaken in accordance with Tikanga Maori;</u></p> <p>is a permitted activity provided the following conditions are met:</p> <p>(1) there is no destruction or removal of any indigenous vegetation from any natural wetland, <u>unless the activity is for the purpose of mahinga kai undertaken in accordance with Tikanga Maori;</u></p> <p>(2) there is no reduction in the size of the wetland;</p>	<p>I do not consider the Rule 74, as drafted, would implement Objective 17, which provides for the preservation of natural character of wetlands.</p> <p>I further consider that the provision would better reflect clause 54 of the NESFM 2020. Though I note that at the time of writing the Government was reviewing the changes to the NESFM 2020 rules for indigenous wetlands.</p>

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
				<p>(3) there is no flooding or ponding caused on any land owned or occupied by another person; and</p> <p>(4) there is no establishment of pest plant species that:</p> <p>(A) are listed in the Regional Pest Management Strategy for Southland 2013 or any replacement plan prepared under the Biosecurity Act, or Biosecurity NZ Register of Unwanted Organisms, in circumstances where the planting of those pest plant species is restricted under the Biosecurity Act; or</p> <p>(B) may damage existing biodiversity values of the wetland; or</p> <p>(C) will form the dominant vegetation type in the wetland.</p> <p>(ab) The use of land within a wetland for commercial peat harvesting is a discretionary activity provided the following conditions are met:</p>	

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
				<p>(i) the applicant can show, by way of aerial photographs or other documentary evidence, that a commercial peat harvesting operation occurred within the wetland at some time during the period between 30 June 2006 and 30 June 2016; and</p> <p>(ii) there is no establishment of pest plant species that:</p> <p>(1) are listed in the regional Pest Management Strategy for Southland 2013 or any replacement plan prepared under the Biosecurity Act, or Biosecurity NZ Register of Unwanted Organisms, in circumstances where the planting of those pest plant species is restricted under the Biosecurity Act; or</p> <p>(2) may damage the existing biodiversity values of the wetland; or</p>	

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
				<p>(3) will form the dominant vegetation type in the wetland.</p> <p>(b) The use of land within a wetland (excluding a natural wetland) that is for one or more of the purposes listed in Rule 74(a) but which does not comply with the conditions of Rule 74(a), or the use of land within a wetland that is not a natural wetland that is not for one or more of the purposes listed in Rule 74(a), is a discretionary activity.</p> <p>(c) The use of land within a natural wetland that is not for one or more of the purposes listed in Rule 74(a) or 74(ab) is a non-complying activity.</p> <p><u>(d) The draining of any natural wetland is a prohibited activity.</u></p>	

TOPIC B4 – BED DISTURBANCE

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
13	Should this rule protect taonga species and their habitat that are established in modified watercourses?	Rule 78	<p><i>Rule 78 – Weed and sediment removal for drainage maintenance</i></p> <p>...</p> <p><u>(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.</u></p>	Suggested wording is provided in Appendix B.	I consider Rule 7 as drafted does not implement Objective 17 but also does not implement Objectives 1, 2 and 4.

TOPIC B5 – FARMING

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
2	Should Policy 16 include the term “strongly” in front of “discouraging” for new intensive farming activities in proximity to	Policy 16	<p><i>Clause 1(a) – amend to read “strongly discouraging”. Clause 1(c) – delete. Clause 3 – delete:</i></p>	<p>Policy 16</p> <p>1. Minimising the adverse environmental effects (including on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal</p>	<p>Amendment to Clause 1(a) better implements Objectives 14 and 15.</p> <p>I consider the deletion of Clause 1(c) avoids confusion or pre-empting how freshwater is</p>

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
	regionally significant wetlands and sensitive waterbodies?		1. Minimising the adverse environmental effects (including on the quality of water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes, and	estuaries and salt marshes, and groundwater) from farming activities by: (a) strongly discouraging the establishment of new dairy farming of cows or new intensive winter grazing activities in close proximity to Regionally Significant Wetlands and Sensitive Water bodies identified in Appendix A; and	managed for farming and intensive winter grazing when Freshwater Objectives and Limits are established.
4	Should policy 16 be amended to remove direction for applications submitted following the development of freshwater objectives and limits under the fmu process?	Policy 16	groundwater) from farming activities by: (a) Strongly discouraging the establishment of new dairy farming of cows or new intensive winter grazing activities in close proximity to Regionally Significant Wetlands and Sensitive	(b) ensuring that, in the interim period prior to the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities will generally not be granted where: (i) the adverse effects, including cumulatively, on the quality of groundwater, or water in lakes, rivers, artificial	Clause 3 is deleted because it is unnecessary. The Clause could set an expectation that, while a decision maker has flexibility to aggregate consents, consent durations of more than 5 years will occur in most instances.
5	Should policy 16 be amended to delete direction on consideration matters for aggregate consents and	Policy 16	Water bodies identified in Appendix A; and (b) ensuring that, in the interim period prior to the development of freshwater objectives	(i) the adverse effects, including cumulatively, on the quality of groundwater, or water in lakes, rivers, artificial	

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
	consent durations?		<p>under Freshwater Management Unit processes, applications to establish new, or further</p> <p>intensify existing, dairy farming of cows or intensive winter grazing activities will generally</p> <p>not be granted where:</p> <p>(i) the adverse effects, including cumulatively, on the quality of groundwater, or</p> <p>water in lakes, rivers, artificial watercourses, modified watercourses, wetlands,</p> <p>tidal estuaries and salt marshes cannot be avoided or mitigated; or</p> <p>(ii) existing water quality is already degraded to the point of being overallocated; or</p>	<p>watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes cannot be avoided or mitigated; or</p> <p>(ii) existing water quality is already degraded to the point of being overallocated; or</p> <p>(iii) water quality does not meet the Appendix E Water Quality Standards or bed sediments do not meet the Appendix C ANZECC sediment guidelines; and</p> <p>(c) ensuring that, after the development of freshwater objectives under Freshwater Management Unit processes, applications to establish new, or further intensify existing, dairy farming of cows or intensive winter grazing activities:</p> <p>(i) will generally not be granted where freshwater objectives are not being met; and</p>	

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
			<p>(iii) water quality does not meet the Appendix E Water Quality Standards or bed</p> <p>sediments do not meet the Appendix C ANZECC sediment guidelines; and</p> <p>(c) ensuring that, after the development of freshwater objectives under Freshwater</p> <p>Management Unit processes, applications to establish new, or further intensify existing,</p> <p>dairy farming of cows or intensive winter grazing activities:</p> <p>(i) will generally not be granted where freshwater objectives are not being met; and</p> <p>(ii) where freshwater objectives are being met, will generally not be granted unless</p>	<p>(ii) where freshwater objectives are being met, will generally not be granted unless the proposed activity (allowing for any offsetting effects) will maintain the overall quality of groundwater and water in lakes, rivers, artificial watercourses, modified watercourses, wetlands, tidal estuaries and salt marshes.</p> <p>2. Requiring all farming activities, including existing activities, to:</p> <p>(a) implement a Farm Environmental Management Plan, as set out in Appendix N;</p> <p>(b) actively manage sediment run-off risk from farming and hill country development by identifying critical source areas and implementing practices including setbacks</p>	

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
			<p>the proposed activity (allowing for any offsetting effects) will maintain the overall</p> <p>quality of groundwater and water in lakes, rivers, artificial watercourses, modified</p> <p>watercourses, wetlands, tidal estuaries and salt marshes.</p> <p>2. Requiring all farming activities, including existing activities, to:</p> <p>(a) implement a Farm Environmental Management Plan, as set out in Appendix N;</p> <p>(b) actively manage sediment run-off risk from farming and hill country development by identifying critical source areas and implementing practices including setbacks from water bodies, sediment traps, riparian planting, limits on areas or duration of exposed</p>	<p>from water bodies, sediment traps, riparian planting, limits on areas or duration of exposed soils and the prevention of stock entering the beds of surface water bodies; and</p> <p>(c) manage collected and diffuse run-off and leaching of nutrients, microbial contaminants and sediment through the identification and management of critical source areas within individual properties.</p> <p>3. When considering a resource consent application for farming activities, consideration should be given to the following matters:</p> <p>(a) whether multiple farming activities (such as cultivation, riparian setbacks, and winter grazing) can be</p>	

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
			<p>soils and the prevention of stock entering the beds of surface water bodies; and</p> <p>(c) manage collected and diffuse run-off and leaching of nutrients, microbial contaminants</p> <p>and sediment through the identification and management of critical source areas within individual properties.</p> <p>3. When considering a resource consent application for farming activities, consideration should be given to the following matters:</p> <p>(a) whether multiple farming activities (such as cultivation, riparian setbacks, and winter grazing) can be addressed in a single resource consent; and</p>	<p>addressed in a single resource consent; and</p> <p>(b) granting a consent duration of at least 5 years.</p>	

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
			(b) granting a consent duration of at least 5 years		
74	Should reference to physiographic zones be reinstated in Rule 20 as per the Section 42A Report recommendations (with some exceptions) as a mechanism to maintain or improve water quality?	Rule 20	<p>Retain rules as recommended in the Section 42A report (26 May 2017) with the exception of:</p> <ul style="list-style-type: none"> • not permitting intensive winter grazing in Old Mataura; • limiting intensive winter grazing to 20ha on Peat Land; • intensive winter grazing in the Oxidizing zone being no greater than 20ha and non-complying if does not meet the permitted rules; and • permitted intensive winter grazing in the Riverine being on sites no greater than 20ha in size. 	<p>I do not agree with the reinstatement of the physiographic rules in the Plan as they were notified in 2016.</p> <p>However, I do agree that there is a need to ensure that the relationship between activities on the land and their effects on water are provided for.</p> <p>I consider that technical experts should review the provisions of the NESFM and, where necessary, amend the provisions of Rule 20 to ensure that those areas of land identified as being an increased risk on some soil types to nutrient loss are not further degraded, particularly with regard to permitted activities in the Plan.</p>	I consider that, as drafted, Rule 20 does not meet Objectives 1, 2, 6, 13, 14 and 18. It also does not implement the physiographic policies 4 – 12.
75	In light of the court's provisional approval for the inclusion of the physiographic zone maps in the plan, what is the	Whole of plan	<p>Retain physiographics in the objectives and policies of the pSWLP (except for those changes indicated in this appeal).</p> <p>Reinstate physiographics in the rules relating to discharges and their effect on water quality from agriculture.</p>		

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
	appropriate method of inclusion and what changes, if any, are required to the detail of the maps?		Recognising however that where it is shown in application of a rule that the physiographic zone applied to the land may not be appropriate that this can be taken into account by the decision maker.		
101	Should a setback of 50 m to the coastal marine area be included?	Rule 35A	<p><i>Amend 35(a)(iii)(1) to read:</i></p> <p>(iii) the feed pad/lot is not located: (1) within 50 metres from the nearest sub-surface drain, lake, river (excluding ephemeral rivers), artificial watercourse, modified watercourse, natural wetland, <u>coastal marine area</u> or another feed pad/lot on the same landholding; or...</p>	<p>(a) The use of land for a feed pad/lot is a permitted activity provided the following conditions are met: ...</p> <p>(i) if accommodating cattle or deer, each feed pad/lot services no more than 120 adult cattle, or 250 adult deer, or equivalent numbers of young stock at any one time;</p> <p>(ii) animals do not remain on the feed pad/lot for longer than three continuous months;</p> <p>(iii) the feed pad/lot is not located:</p> <p>(1) within 50 metres from the nearest sub-surface drain, lake, river (excluding ephemeral rivers), artificial</p>	This amendment better implements Objectives 1 and 6 in particular.

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
				watercourse, modified watercourse, natural wetland, coastal marine area or another feed pad/lot on the same landholding; or ...	
112	Has Appendix N become too broad, such that it no longer provides certainty as to what activities will be implemented to achieve Good Management Practice?	Appendix N	<p><i>Retain Appendix N as provided for in the Section 42A Report with the following amendments:</i></p> <p>Part B:</p> <p>Retain clause relating to Farm Environmental Plans including known and recorded heritage sites and significant biodiversity.</p> <p>Include in Part B(5) the following:</p>	<p>The matter of inclusion of heritage sites has been addressed the following:</p> <p>The FEMP contains a map(s) or aerial photograph(s) of the landholding at a scale that clearly shows the locations of:</p> <p>...</p> <p>(i) any heritage site recorded in the relevant district plan, on the New Zealand Heritage List/Rārangi Kōrero or on the New Zealand Archaeological Association website.</p>	The addition better implements Objectives 2, 4, 5 and 15 in particular.
113	Should Part B (5) include Good Management Practices that minimises the effects on taonga species listed in Appendix N and any significant	Appendix N	<p>A good management practices section which identifies:</p> <p><u>The range of good management practices that minimises the effects on taonga species listed in Appendix N and any significant indigenous biodiversity.</u></p>		

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
	indigenous biodiversity?				
116	Should ephemeral rivers be excluded from the provisions of the plan? (specific examples from appeals include the land use rules and objective 16.)	Ephemeral and Intermittent rivers throughout plan, including Objective 16	<p>Delete new rule 20(aa) in its entirety:</p> <p><i>Rule 20—Farming</i></p> <p><i>(aa) Unless stated otherwise by Rules 20, 25, 70 or any other rule in this Plan:</i></p> <p><i>(i) intensive winter grazing; or</i></p> <p><i>(ii) cultivation; or</i></p> <p><i>(iii) the disturbance by livestock including cattle, deer, pigs or sheep;</i></p> <p><i>in, on or over the bed of an ephemeral river is a permitted activity.</i></p>	<p>I suggest the following relief in addition to the relief sought by Ngā Rūnanga:</p> <p>Critical source area - (a) a landscape feature like <u>an ephemeral river</u>, a gully, swale or a depression 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) 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.</p>	The relief sought by Ngā Rūnanga implements Objectives 1, 2, 6 and 7.

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
				<p>If this change is made I suggest the following additional amendments contained in Appendix C.</p> <p>I do however suggest technical expertise is needed to ensure clarity on what is an ephemeral river and by addressing critical source area provisions these avoid or minimise the effects on rivers.</p>	

TOPIC B6 – INFRASTRUCTURE AND WAI AU / MANAPŌURI POWER SCHEME

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
2	Does Policy 26 give preference to new generation activities in addition to existing	Policy 26	<p><i>Amend Policy 26 to read:</i></p> <p>Policy 26 – Renewable energy</p> <p>Recognise and provide for the national and regional significance of renewable electricity generation</p>	<p>Policy 26</p> <p>Recognise and provide for the national and regional significance of renewable electricity generation activities (including the existing Manapōuri</p>	The additional wording gives a preference to new generation activities where the policy was originally intended to apply to existing renewable resources

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
	renewable sources?		<p>activities (including the existing Manapōuri hydro-electric generation scheme in the Waiau catchment), the national, regional and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading, when:</p> <ol style="list-style-type: none"> 1. allocating surface water for abstraction, damming, diversion and use; and 1. 2. considering all resource consent applications for surface water abstractions, damming, diversion and use. 	<p>hydro-electric generation scheme in the Waiau catchment), the national, regional and local benefits of renewable electricity generation activities, the need to locate the generation activity where the renewable energy resource is available, and the practical constraints associated with its development, operation, maintenance and upgrading, when:</p> <ol style="list-style-type: none"> 1. allocating surface water for abstraction, damming, diversion and use; and 2. considering all resource consent applications for surface water abstractions, damming, diversion and use. 	
15	What is the appropriate activity status for water takes for the Manapōuri Hydro-	Rule 52A	Redraft so new Rule 52A is a restricted discretionary activity.	<p>Rule 52A</p> <p>(a) Despite any other rules in this Plan, any activity that is part of the Manapōuri hydro-</p>	I consider a restricted discretionary activity status would better meet Objectives 1, 2, 4 and 5, 9/9A and 11 while

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
	electric Generation Scheme?			electric generation scheme, for which consent is held and which is the subject of an application for anew consent for the same activity and is:	also still providing for Objective 10.
18	Should the effects of the activity on mahinga kai, taonga species, and the spiritual and cultural values and beliefs of tangata whenua be considerations when processing resource consent applications in relation to the Manapōuri Hydro-electric Generation Scheme?	Rule 52A	See above and add: <u>adverse effects on mahinga kai, taonga species and the spiritual and cultural values and beliefs of the tangata whenua.</u>	(i) the taking or use of water; or (ii) the discharge of water into water or onto or into land; or (iii) the discharge of contaminants into water or onto or into land; or (iv) the damming or diversion of water; is a controlled <u>restricted discretionary</u> activity provided the following conditions are met: (1) the application is for the replacement of an expiring resource consent pursuant to section 124 of the Act; (2) where the replacement consent is for the taking or use of water, the rate of take and volume is not increasing, and the use of water is not changing; and (3) where the replacement consent is for the taking or	

Issue #	Issue	Provisions	Ngā Rūnanga Appeal – scope for change	Proposed track changed relief filed and served by Ngā Rūnanga on 29 November 2021	How the recommended relief implements the relevant objectives and policies.
				<p>use of water, the rate of take and volume complies with any relevant flow and level regimes set out in this Plan.</p> <p>The Southland Regional Council will reserve its control restrict its discretion to the following matters:</p> <p><i>[Technical experts identify the matters that discretion should be restricted to – though this should include:</i></p> <ul style="list-style-type: none"> - <i>The amount of water that can be taken</i> - <i>The effect on the Waiau river of the take</i> - <i>The consent duration</i> - <i>The adverse effects on mahinga kai, taonga species, and the spiritual and cultural values and beliefs of tangata whenua.]</i> <p><i>An application for resource consent under Rule 52A(a) will be publicly notified.</i></p> <p>....</p>	

Appendix B
Topic B4, Issue 13 amendments

SUGGESTED AMENDMENTS TO 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 drainage resulting from carrying out the activity is a discretionary activity where it takes place within the habitat of non-diadromous galaxiids as mapped on xxx.
- (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 carrying out the activity in the areas of threatened species as mapped on xxx, is a restricted discretionary activity.

The Southland Regional Council will restrict its discretion to the following matters:

1. the location, extent and frequency of the works; and
 2. any effects on river morphology and dynamics (including erosion or deposition), aquatic and riverine ecosystems and habitat, taonga species, natural character and amenity values, navigation hazard, public access, recreation values and the spiritual and cultural values and beliefs of the tangata whenua.
- (c) The removal of aquatic weeds and plants and sediment that are not subject to Rules 78A or 78B 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;
 - (aia) the area cleared annually is no more than 200 metres within any 1km or 20% of the branch of the watercourse – whichever is the lesser.
 - (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~~;
 - (iia) the removal of river bed material other than aquatic weeds, plants and/or mud or silt is avoided as far as practicable; [Alternatively – a provision along the lines of “the removal of bed material is, as far as practicable confined to the removal of unconsolidated fine sediment that has been deposited at the site since the bed was last cleared”]
 - (iib) the removal of riparian vegetation is avoided, where reasonably practicable;
 - (iii) any incidental bed or bank disturbance is only to the extent necessary to undertake the activity and must not result in lowering of the bed below previously modified levels and the bed is not excessively levelled to maintain variability in the profile of the bed;
 - (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 identify if there are any fish captured and stranded by the activity including in the spoil and any fish discovered are immediately returned to the water above the site of the works occurring. return any fish captured or stranded by the activity to water immediately;

- ~~(x) Suspended sediment released by the activity is trapped and retained within the reach being cleared as far as practicable;~~
- (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, the 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.~~

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*

Appendix C

Topic B5, Issue 116 amendments

**SUGGESTIONS TO PROVISIONS IN THE PLAN RELATING TO EPHEMERAL RIVERS
IF DEFINITION OF CRITICAL SOURCE AREA IS AMENDED**

Provision	In addition to amending the definition of critical source area I suggest the following:
Policy 16	Would now manage ephemeral as it did not before
Policy 18	Retain as worded.
Rule 14	Suggest this needs to be looked at in terms of the runoff as a critical source area,
Rule 20(aa)	Delete
Rule 25	Suggest strengthening to include critical source are protection
Rule	Retain as worded.
Rule 40	Retain as worded.
Rule 42	Retain as worded.
Rule 59A	Retain as worded.
Rule 70	Retain as worded.
Appendix L.2 Stream depletion effects	Not sure there is scope to change this provision
Appendix N – maps must show critical source areas and good management practices must show how they will reduce sediment and nutrient losses from critical source areas.	Retain as worded.