

**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

**STATEMENT OF EVIDENCE OF TREENA LEE DAVIDSON
ON BEHALF OF NGĀ RŪNANGA (WAIHOPAI RŪNAKA, TE RŪNANGA O AWARUA,
TE RŪNANGA O ŌRAKA APARIMA, AND HOKONUI RŪNAKA) AND TE RŪNANGA O
NGĀI TAHU**

3 August 2020

 **Simpson Grierson**
Barristers & Solicitors

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

INTRODUCTION

1. My name is Treena Lee Davidson. My experience and qualifications are set out in my evidence in chief dated 18 April 2019 on behalf of Ngā Rūnanga.
2. 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 of evidence 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.
3. I note that whilst I am employed by Te Rūnanga o Ngāi Tahu, I am bound by the Code of Conduct and professional ethics of New Zealand Planning Institute (NZPI), and am required to be impartial and unbiased in my professional opinions expressed.

SCOPE OF EVIDENCE

4. In drafting my evidence, I have considered the wording provided by the parties' planners, as well as the further refinements Mr McCallum-Clark has made to the outstanding provisions since his statement dated 20 July 2020.
5. The Second Interim Decision of the Environment Court¹ (at paragraph [7]) recognises that all objectives and policies are to be interpreted and applied in a manner that considers and recognises Te Mana o te Wai and implements it in accordance with ki uta ki tai. I consider this was central to the appeal by Ngā Rūnanga.
6. In considering the wording provided by parties' planners and the further refinements by Mr McCallum-Clark, I recognise that with Objectives 1 and 2:
 - (a) The entire plan embodies ki uta ki tai and upholding Te Mana o te Wai; and

¹ *Aratiatia Livestock Limited and Ors v Southland Regional Council* [2020] NZEnvC 93.

- (b) The plan provisions are not to be read down or considered in isolation, separate from Objectives 1 and 2.

Objective 6

7. Mr McCallum-Clark in his statement of evidence (dated 20 July 2020), at paragraphs [10] – [15], has suggested the following wording for Objective 6:

Water quality in each freshwater body, **coastal lagoon and estuary** will be:

- (a) Maintained where the water quality is not degraded; and
- (b) Improved where the water quality is degraded by human activities.
8. I agree with the inclusion of coastal lagoons and estuaries in this objective as this change addresses the concerns of Ngā Rūnanga around these being receiving waterbodies for many catchments and the resulting poor water quality in them. It also reflects the fact that these waterbodies are specifically provided for in the National Policy Statement for Freshwater Management (**NPSFW**). I consider that the addition of coastal lagoons and estuaries also aligns with the Korowai Objective of Ki uta ki tai.

Objective 9/9A

9. Mr McCallum-Clark his statement of evidence (dated 20 July 2020), at paragraphs [16] – [22], recommended that reference to ‘life-supporting capacity’ in Objective 9/9A be deleted.
10. Mr McCallum-Clark subsequently acknowledged that the term ‘life-supporting capacity’ brings with it an element of the quantum of habitat available, that is missing from the term ‘aquatic ecosystem health’. I agree with this conclusion.
11. I was comfortable with the deletion of ‘life supporting capacity’ from Objective 9/9A, in light of a proposed amendment to Objective 14 to include the ‘hauora’ of the ecosystem. If the term ‘life-supporting capacity’ were retained, I would agree that the amendment to Objective 14 is unnecessary.

Objective 9B

12. There are three unresolved issues set out in the First Interim Decision of the Environment Court² (at paragraph [183]) and the Minute of 29 June 2020 (at paragraph [10]).
13. The first issue was whether the term “regionally significant infrastructure” should be included in the pSWLP and the term “critical infrastructure” be deleted. I consider that the removal of reference to “critical infrastructure” from the objective is appropriate as “critical infrastructure” is covered by the definition of “regional infrastructure”. This is in line with my statement of evidence (dated 18 April 2019).
14. The second issue is that of submissions that identified the resource management issues addressed by Objective 9B. In the 29 June 2020 Minute, the Court (at paragraph [9]) directed planners to confer and identify issues that the pSWLP seeks to address in relation to infrastructure and whether such issues should be identified in the plan, pursuant to section 67(2)(a) of the RMA.
15. I agree with Mr McCallum-Clark in his statement of evidence (dated 20 July 2020), at paragraphs [29] and [30], that Issue INF.3 provides a useful summary of the matters that Objective 9B is focused on. I further agree that rewording of final paragraph on page 17 of the pSWLP would assist in the placing adequate emphasis on the benefits that could be derived from infrastructure. I agree with the following amendments (or those of a similar intent) to the paragraph on page 17:

Some of these activities can have positive effects on the natural environment, for example, bridges and culverts allow access across a river without disturbing the bed. Others, **activities such as infrastructure, are important to enable people and communities to provide for their** ~~have important~~ economic, **cultural**, and social **wellbeing** ~~benefits, for example, erosion control works protect community assets. However, These activities in the~~ **beds of rivers and lakes** can also have adverse effects on the environment, including generating sediment, disturbing habitat and preventing fish passage.

² *Aratiatia Livestock Limited and Ors v Southland Regional Council* [2019] NZEnvC 208.

16. The third issue responds to the Court's proposition that, properly constructed, Objective 9B is to be interpreted and applied in a manner that gives effect to Te Mana o te Wai and can be implemented in accordance with ki uta ki tai.
17. The Minute of 29 June 2020 sought clarification on whether the planning witnesses, with reference to the Interpretation Statement, agree that Objective 9B, as proposed to be amended by the Court, gives effect to the RPS. The Court also asked whether the planning witnesses agreed that "sustainable and effective" refers to both the infrastructure and the manner of development relative to the environment.
18. If this was the case, the 29 June 2020 Minute asks whether the Court's proposed wording is clear, or whether further change is recommended. In my supplementary evidence (dated 17 April 2020), at paragraph [60] I agreed with the Court's proposed wording for the reasons the Court sets out at paragraphs [175] – [180] of the First Interim Decision. If the Plan incorporates Korowai Objectives, I consider that "sustainable and effective" will mean that Te Mana o te Wai will need to be given effect to and that it is implemented in accordance with Ki uta ki tai. I maintain this position.

Objectives 13, 13A and 13B

19. In my supplementary evidence (dated 17 April 2020), at paragraph [69], I agreed with the rewording that has been advanced by the Court. I agree with the Court (at paragraph [252] of the First Interim Decision) that rephrasing the objective to focus on use and development of land and soils to enable wellbeing has greater resonance with Te Mana o te Wai than what was proposed in Decisions version.
20. I agree with the redrafting proposed by Mr McCallum-Clark, that Objective 13, 13A and 13B could be redrafted as follows:

Land and soils may be used and developed to enable the economic, social and cultural wellbeing of the region provided that:

- (a) the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land; and
- (b) the health of people and communities is safeguarded from the adverse effects of discharges of contaminants to land and water; and

- (c) ecosystems (including indigenous biological diversity and integrity of habitats), are safeguarded.

~~then land and soils are used and developed to enable the economic, social and cultural wellbeing of the region~~

Objective 14

21. For the reasons outlined in paragraphs [9]-[11] above and the changes to Objective 9/9A, I consider no changes are necessary to Objective 14 to align it with Objective 9/9A.

Objective 17

22. In my supplementary evidence (dated 17 April 2020), at paragraph [74], I considered that Objective 17 aligns with the key understandings of the Court and recognises ki uta ki tai, in that it looks to protect the natural character of wetlands, rivers and lakes as well as their form, flow variability and the habitats within them from inappropriate subdivision and development.
23. On reflection, I consider that for the reasons Mr McCallum-Clark sets out in paragraph [48] of his statement of evidence (dated 20 July 2020), deleting the words “that are of significance to the region” is appropriate.

Objective 18

24. In my supplementary evidence (dated 17 April 2020), at paragraphs [75] – [78], I concluded that if Objectives 1 and 2 are Korowai Objectives then Objective 18 may not be necessary. I retain this position and consider that the Objective could be deleted, and that the matters that Objective 18 addresses can be picked up in the policies.

Policy 3

25. I agree with Mr McCallum-Clark in his statement of evidence (dated 20 July 2020), at paragraphs [55] – [61], that no further changes be made, at this time, to Policy 3. I further agree with Mr McCallum-Clark (at paragraph [60]) that, as part of Topic B, the relevance of amendments to Policy 3 as an appropriate

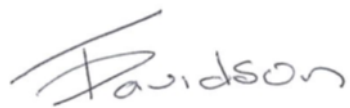
place to provide a linkage to cultural indicators of health will need to be looked at.

Physiographic Zone Policies

- 26.** Mr McCallum-Clark in his statement of evidence (dated 20 July 2020), at paragraphs [62] – [67], identifies four unresolved issues:
- (a) Whether dairy farming of cows is intended;
 - (b) Whether physiographic zone policies are to apply to farming only;
 - (c) Whether physiographic zone policies should be expressed as risk-based or effects-based; and
 - (d) If avoidance was not practicable, whether there is a potential gap in guidance.
- 27.** With respect to the first issue, I agree with Mr McCallum-Clark (at paragraph [68]) that reference to dairy farming is preferred. As Mr McCallum-Clark indicates, this will capture other forms of dairying that occur (for example sheep and goats), but will remove the risk of it excluding activities that are normal parts of dairy operations which can have an adverse effect on the environment.
- 28.** With respect to the second issue, Ngā Rūnanga has always considered physiographics applies to all activities, not just farming. These policies put a spotlight on the land (see Ms Cain’s statement of evidence dated 15 February 2019 at paragraph [19]). I therefore agree with Mr McCallum-Clark (at paragraph [70]) that, while the majority of circumstances when Policies 4 – 12 will be in relation to farming, the policies are useful for considering other discharges, for example from industries.
- 29.** The third issue was determined by the Court in its Third Interim Decision,³ confirming a risk based approach to the physiographic zone policies.

³ *Aratiatia Livestock Limited and Ors v Southland Regional Council* [2020] NZEnvC 110 at [17].

- 30.** Mr McCallum-Clark proposes in his statement of evidence (dated 20 July 2020), at paragraphs [72] – [74], that the fourth issue is addressed by amendment to the chapeau of each policy to provide more clarity and fill the potential gap, if avoidance is not considered to be practicable. I agree with the wording he has proposed as this provides greater clarity than the term “where practicable”.

A handwritten signature in black ink that reads "Davidson". The signature is written in a cursive style with a large, sweeping initial 'D'.

Treena Davidson

Senior Environmental Advisor

3 August 2020