

**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**

Planning

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MAY IT PLEASE THE COURT

INTRODUCTION

1. My name is Treena Lee Davidson. I hold a Masters in Resource Management from Lincoln University. I have 19 years' experience in planning and policy with a predominant focus on fresh water and land management. I am a full member of the New Zealand Planning Institute (**NZPI**).
2. I have been in the role of Senior Environmental Advisor with Te Rūnanga o Ngāi Tahu for three years. Prior to that I have worked in various roles directly related to environmental planning, particularly fresh water management. Most recently I worked as a senior planner with the Canterbury Earthquake Recovery Authority where I worked on matters relating to land use recovery in greater Christchurch and the Lyttelton Port Recovery Plan.
3. Prior to that I worked as a Senior Analyst, Environmental Issues for Te Puni Kōkiri for two years where I was engaged in the development of the 2014 amendments to the National Policy Statement for Freshwater Management (**NPSFW**) and across government on Māori rights and interests to fresh water. I was for five years the team leader of Water and Soil Planning at Northland Regional Council where I settled appeals on the Regional Water and Soil Plan. I also saw the Water and Soil Plan through its first plan change process and established the foundations for its second. I started out my career as a planning advisor for Ngātiwai Trust Board, assisting in providing planning advice to Councils, landowners and developers in Northland.
4. I assisted Ngā Rūnanga with drafting its submission on the review of the Proposed Southland Water and Land Plan (**pSWLP**) and oversaw the further submission process on the pSWLP. I gave expert planning evidence for Ngā Rūnanga at the Council hearings on the pSWLP.
5. 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. My qualifications are set out above. 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.

6. 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 NZPI, and am required to be impartial and unbiased in my professional opinions expressed.

SCOPE OF EVIDENCE

7. My evidence will address the following points that underpin the appeal by Ngā Rūnanga and are discussed in the evidence of Mr Skerrett, Ms Cain and Dr Kitson:

- (a) poor environmental quality in the past (including the quality of freshwater ecosystems) has had significant impacts on Ngāi Tahu ki Murihiku;
- (b) environmental quality in Southland has degraded over the last 10 years and this further impacts on Ngāi Tahu ki Murihiku;
- (c) Ki uta ki tai and Te Mana o Te Wai are the specified concepts on which this pSWLP is founded and these need to be applied throughout the pSWLP;
- (d) the degraded state requires the need for a precautionary approach that puts the needs of the environment first;
- (e) clear direction is needed in the objectives and policies to ensure that further degradation of water quality does not occur; and
- (f) it is important to ensure the rights and interests of Ngā Runanga¹ are not ignored, eroded or impeded.

8. More specifically, I will discuss the following matters in the context of the pSWLP:

- (a) the relevant statutory framework, including Part 2 of the Resource Management Act 1991 (RMA) and its relevance to matters raised in cultural evidence;
- (b) expectations to maintain and improve how the pSWLP gives effect to the statutory framework;
- (c) the pSWLP's preference for one type of use over others; and

¹ I have used Ngā Rūnanga in reference to the appeal being a joint appeal by Te Runanga o Ngāi Tahu and Ngāi Tahu ki Murihiku. Mr Skerrett discusses who Te Rūnanga o Ngāi Tahu and Ngāi Tahu ki Murihiku are in his evidence [paragraphs 24 – 28].

- (d) the effects of removing Physiographic zones from the pSWLP rules and how the plan manages water; and
- (e) matters relating to Ngāi Tahu policies that have been raised in others appeals which Ngā Rūnanga have joined as a section 274 party under the RMA.

9. In preparing my evidence I have reviewed:

- (a) the notified pSWLP;
- (b) the Section 32 Report and associated technical reports;
- (c) relevant appeals;
- (d) the Section 42A Report;
- (e) the NPSFW (with the 2017 amendments) and its predecessors 2014 and 2011;
- (f) the operative Southland Regional Policy Statement 2017;
- (g) Te Tangi a Tauria, Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan, 2008;
- (h) the submission and further submission and appeal by Ngā Rūnanga on the notified proposals (**Ngāi Tahu Submission and Further Submission**);
- (i) the Regional Water Plan for Southland, April 2010;
- (j) the evidence in chief prepared by Environment Southland; and
- (k) the other statements of evidence for Ngā Rūnanga for the Topic A hearing.

EXECUTIVE SUMMARY

10. I have been asked by Ngā Rūnanga to provide planning evidence on their appeal to the SWLP.

11. I consider there is sufficient evidence that water quality and overall environmental quality is degrading in Southland. When establishing an overall direction, the pSWLP should not be considered an interim step in terms of giving effect to the higher order documents such as the NPSFW. While the freshwater management unit (**FMU**) component might have been consciously deferred, this document is still required to show how it does and will give effect to the NPSFW.

12. Dr Kitson's evidence leaves little doubt that the quality of water in Southland, and the environment more generally, has degraded in the last ten years and impacted on Te Mana o te Wai. Accepting the status quo at 2016 increases the difficulty reversing the trend and achieving improvements and risk further degradation of water quality in Southland. This suggests to me that, as a bare minimum, bold and decisive provisions in the pSWLP to halt and/or reverse the decline in water quality (and hence give effect to the NPSFW) are required.
13. I consider amendments to Objectives 2, 6, 9A, 9B, 10, 13 and 18 in the pSWLP have weakened what was intended when the pSWLP was notified. Specific recognition of the importance of primary production and infrastructure in the pSWLP has created an imbalance which undermines recognition of Te Mana o te Wai and Ngā Rūnanga values. The evidence suggests amendments to wording that reinstate ki uta ki tai and Te Mana o te Wai as core to the pSWLP's intent.
14. The inclusion of physiographics in the pSWLP aligns with ki uta ki tai in the NPSFW and resonates with Ngā Rūnanga as a tool which looked at what the land can cope with and how this determines farming practices. Environment Southland's decision to remove physiographics from the pSWLP rules and amend the wording of the policies has weakened the intent of including physiographics. While I do not consider reinstatement of physiographics in the rules (as notified) is appropriate in the present circumstances, I do consider there is merit in the Court considering the detail of the physiographic policies to send a clear message that intensification of or new dairy farming and wintering on some land types should not occur.
15. With regard Ngāi Tahu matters that Ngā Rūnanga are a section 274 party to:
- (a) I consider it is appropriate to retain the term "interests" in Policy 1 to give effect to Objectives D1 and Policy D1 of the NPSFW.
 - (b) I suggest that "sustaining" taonga species and their habitats may be more appropriate than them being "protected" in Objective 15.
 - (c) I acknowledge that Royal Forest and Bird Protection Society (**Forest & Bird**) are seeking that Waituna Lagoon is treated as a specific catchment, but I do not suggest a preference for it being a part of Maitaha FMU or a separate FMU. I do consider that, given the degraded state of Waituna, it is most important to ensure that

discussions on the Lagoon are not lost or diminished by discussions on the Maitara River catchment.

NGĀ RŪNANGA APPEAL AND 274 MATTERS IN THIS EVIDENCE

16. The specific Ngā Rūnanga appeal points of relevance to this hearing and discussed in my evidence are:

Appeal point	Provision of proposed plan that appeal point relates to
1	General – water quality provisions in proposed plan
2	General – physiographics provisions in Plan
4	General – removal of the term historic heritage from Objectives and policies
5	Objective 2
6	Objective 6
7	New Objective 9A
8	New Objective 9B
9	Objective 10
10	Objective 13
11	Objective 18
13	Policies 5, 9, 10, 11 and 12

17. I my evidence I have also included discussion of the following matters to which Ngā Rūnanga are a section 274 party. These matters are either of direct relevance to Ngā Rūnanga or are included for completeness of discussion:

Appellant to	Provision of proposed plan that section 274 notice relates to
Royal Forest and Bird Protection Society of NZ (Forest and Bird)	Policy 46 Waituna Lagoon
Southland Fish and Game Council (Fish and Game)	Objective 15 and Policy 3
Federated Farmers of New Zealand Southland (Federated Farmers)	Policy 1
Meridian Energy	New Objective renewable energy

STATUTORY FRAMEWORK

Resource Management Act 1991

18. The purpose of the RMA as set out in section 5 is of direct relevance to the appeal of Ngā Rūnanga. In particular the need to sustain the potential of natural and physical resources for the reasonably foreseeable needs of future generations and to safeguard the life-supporting capacity of water, soil and ecosystems. Additional Part 2 matters of particular importance and relevance to the appeal require Environment Southland to:
- (a) recognise and provide for:
 - (i) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga (section 6(e)).
 - (b) have particular regard to:
 - (i) kaitiakitanga (section 7(a));
 - (ii) intrinsic value of ecosystems (section 7(d)); and
 - (iii) maintenance and enhancement of the quality of the environment (section 7(f)); and
 - (c) take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) (section 8).
19. The concepts of ki uta ki tai, Te Mana o te Wai and mahinga kai expressed in the evidence of Mr Skerrett, Ms Cain and Dr Kitson are all recognition of and ways of providing for section 6(e) and section 7(a). I consider Mr Skerrett's evidence also highlights the principles of active protection and rangatiratanga anticipated by section 8. Furthermore, I consider the request of Ngā Rūnanga to at least maintain the quality of the environment is an expression of sections 7(d) and 7(f). I would further suggest that the need for an approach that addresses ki uta ki tai also provides for sections 7(d) and (f). These further align with the purpose of the RMA in section 5.

National Policy Statement for Freshwater Management 2014 (NPSFW)

20. The pSWLP must give effect to the NPSFW. I draw specific reference here to:

- (a) Te Mana o te Wai (Objective AA1 and Policy AA1)
- (b) Integrated management (Objective C1 and Policies C1 and C2); and
- (c) Tāngata whenua roles and interests (Objective D1 and Policy D1).

21. I consider that these provisions are centrally important in relation to the concerns expressed in the appeal.
22. The inclusion of Te Mana o te Wai in the NPSFW reflects the Treaty Principles (section 8 of the RMA) and provides for the relationship of tangata whenua with fresh water (section 6(e) of the RMA). It is specifically incorporated into the NPSFW through Section AA, where it provides a korowai (cloak) for the other objectives and policies that follow. The concept is further strengthened through the National Values and Uses for Fresh Water in Appendix 1.
23. Te Mana o Te Wai needs to be considered and recognised in the management of fresh water. This is something Environment Southland has already commenced by incorporating the concept into the pSWLP. How this occurred is discussed in Ms Cain's evidence [paragraphs 84 - 92] where the concept of Te Mana o te Wai in the NPSFW resonated with Papatipu Rūnanga and, as a result, they actively sought to include in the SWLP. The resulting outcome aligning with the more directive approach to Te Mana o Te Wai introduced in 2017 in section AA of the NPSFW.
24. Objective C1 and Policy C1 require the improvement of integrated management of fresh water and the use of land in catchments. To give effect to this the pSWLP must recognise ki uta ki tai and the interactions between land, water and associated ecosystems. Mr Skerrett and Ms Cain describe the attributes of ki uta ki tai in their evidence as being "*a culturally based natural resource framework and literally means from the mountains to the sea; not in a literal or hydrological sense but a holistic one*"² and "*similar to the RMA term 'integrated management' and reflects the mātauranga that all environmental elements are connected and must be managed as such*".³
25. Policy D1 requires the reflection of tangata whenua values and interests in decision-making. Mr Skerrett and Ms Cain highlight the nature of these values

² Mr Skerretts evidence, paragraph 86.

³ Ms Cains evidence, paragraph 41.

and interests. I will discuss the extent to which these values and interests are being reflected in my evidence on specific Ngā Rūnanga appeal points.

26. I also consider the Water Quality Objectives A1 – A4 and Policies A1, A3 and A4 to be of particular relevance, and I discuss these in relation to specific matters within my evidence.
27. Importantly, I do not view the pSWLP as an “interim step” in terms of giving effect to higher order documents such as the NPSFW. Throughout the course of its development and both pre and post notification, it has been clear that the pSWLP is required to give effect to the NPSFW. While the FMU component might have been consciously deferred, this document is still required to show how it does and will give effect to the NPSFW. In my opinion, it is not satisfactory for the document to simply act as a placeholder until subsequent processes are commenced.

Other National Policy Statements and National Environmental Standards

28. My evidence also considers and discusses the National Policy Statement on Electricity Transmission 2008 and the National Policy Statement for Renewable Electricity Generation 2011. I have chosen to discuss the relevant sections of these as they relate to specific parts of my evidence rather than summarising them here.
29. I consider the New Zealand Coastal Policy Statement 2010 to be important in so far as there is a need to recognise the relationship between freshwater and the coastal environment and ki uta ki tai and the need in the NPSFW to consider the effects on estuaries. Mr Skerrett and Dr Kitson both discuss for example the migratory nature of taonga species like tuna and their dependence on a variety of water habitats during their lifecycles.

Southland Regional Policy Statement (SRPS)

30. The SRPS was made operative in 2017. **Appendix B** provides a list of the Objectives and Policies that I consider are of relevance to the pSWLP. I draw particular attention to the following takatā [tangata] whenua and water quality objectives of the SRPS - TW.1, TW.2, TW3, TW4, WQUL.1, WQUL.2, and WQUAL.3.

31. The Takatā Whenua objectives anticipate that provisions in regional plans will be established and maintained that safeguard identified environmental and cultural resources of tangata whenua from inappropriate use or development [Method TW.1]
32. I discuss the water quality objectives, to the extent that they are relevant, in my evidence.

Iwi Management Plans

33. Section 66(2)(A)(a) of the RMA requires that a council must take into account any relevant planning document recognised by an iwi authority when preparing a plan or plan change. Iwi Management Plans within the Ngāi Tahu rohe express Ngāi Tahu values, knowledge and perspectives on natural resource and environmental management issues, objectives, policies and outcomes. These are intended to achieve more meaningful rangatiratanga and kaitiakitanga in natural resource management.⁴
34. For Southland there are two iwi management plans that must be taken into account: the Te Rūnanga o Ngāi Tahu Freshwater Policy 1992 (**Appendix D**) and Te Tangi a Tauira (Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan) 2008 (excerpts are included in **Appendix A**).

Te Rūnanga o Ngāi Tahu Freshwater Policy

35. The Te Rūnanga o Ngāi Tahu Freshwater Policy complements and must be read alongside existing iwi management plans for Ngāi Tahu.
36. The Te Rūnanga o Ngāi Tahu Freshwater Policy sets out the environmental outcomes sought by Ngāi Tahu, namely that:
- (a) water is central to all Māori life. It is a taonga left by ancestors to provide and sustain life. It is for the present generation as tangata tiaki,

⁴ *Te Rūnanga o Ngāi Tahu Freshwater Policy* Section 1.2

- to ensure that the taonga is available for future generations in as good as, if not better quality;⁵
- (b) water plays a unique role in the traditional economy and culture of Kāi. Without water no living thing, plant, fish or animal can survive;⁶
 - (c) water is taonga. Water has an inherent value that should be recognised in the event of potentially competing uses;⁷
 - (d) water is a holistic resource. The complexity and interdependency of different parts of the hydrological system should be considered when developing policy and managing the water resource.⁸

Te Tangi a Tauria the Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008

37. The kaupapa of *Te Tangi a Tauria the Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 (Te Tangi)* is ki uta ki tai. The kaupapa reflects the knowledge that resources are connected from mountains to the sea and must be managed as such.⁹
38. Te Tangi is “*written as a statement that consolidates Ngāi Tahu ki Murihiku values, knowledge and perspectives on natural resource and environmental management issues*”.¹⁰ The relevant policies from Te Tangi are contained in **Appendix 1** to this evidence.
39. Mr Skerrett discusses in his evidence¹¹ the development of Te Tangi and how it relates to The Charter of Understanding between the councils of Southland its Ngāi Tahu ki Murihiku. Ms Cain¹² describes how the four aspirations of Ngāi Tahu for fresh water to Environment Southland staff in 2014 was used to demonstrate that Ngāi Tahu aspirations for freshwater derived from Te Tangi and the Ngāi Tahu Freshwater Policy have been consistent for decades and form the basis of all discussions between Ngāi Tahu, the Crown and Environment

⁵ Policy, page 6 in the Introduction section in Part One.

⁶ Policy, Part 3 entitled "Kaupapa" on page 9.

⁷ Ibid.

⁸ Ibid.

⁹ Wahi tuatahi – He Kupu Whakataki, Section 1.2 pg 24

¹⁰ Ibid, Section 1.4 pg 28

¹¹ Mr Skerrett's evidence, paragraph 31

¹² Ms Cain's evidence, paragraph 28

Southland. Ms Cain's evidence further describes that these aspirations were woven through the pSWLP as it was drafted.¹³

Conclusion on the Statutory Framework

40. The statutory framework strongly directs the Council to recognise and provide for the relationship of Ngāi Tahu with the soil and water of Southland, including:
- (a) ensuring fresh water bodies support their customary uses and cultural values, including the gathering of mahinga kai;
 - (b) safe-guarding the life-supporting capacity of soil and water;
 - (c) ensuring Ngāi Tahu is able to exercise kaitiakitanga;
 - (d) recognising Te Mana o te Wai; and
 - (e) recognising ki uta ki tai.

MEASURING WATER QUALITY FROM 2010

41. Central to the Ngā Rūnanga appeal is that it seeks water quality is maintained from 2010 to avoid further degradation of water quality. The 2010 date to maintain water quality is used by Ngā Rūnanga as this was when the Regional Water Plan became operative.¹⁴ The existing operative Regional Water Plan was the starting point for the development of the pSWLP.
42. Mr Skerrett discusses in his evidence that Nga Rūnanga were given the expectation by Environment Southland that there would be a 10% improvement in water quality over the life of the Regional Water Plan. This he states was a reduction on an original 20% improvement proposed by the Council, despite the Council acknowledging that water quality had deteriorated.¹⁵
43. The Regional Water Plan's environmental results anticipated that by 2020 (the life of the Plan):
- (a) there would be reduction of water quality in the Southland region beyond the zone of reasonable mixing for discharges;

¹³ *Ibid.*

¹⁴ It also replaced the Southland Regional Effluent Land Application Plan 30 May 1998 and the Transitional Regional Plan 1991

¹⁵ Mr Skerrett's evidence, Paragraphs 102 - 103

- (b) water quality would be maintained in Natural State Waters;
- (c) the water quality of surface water bodies would be maintained and enhanced so that it would be suitable for bathing in popular bathing sites, trout and native fish, stock drinking water and Ngāi Tahu cultural values, including mahinga kai;
- (d) an improvement in the water quality would be achieved in hill, lowland and spring-fed surface water bodies over 10 years from the date this Plan became operative (January 2010). In particular, a minimum 10% reduction in levels of microbiological contaminants, nitrate and phosphorus and a minimum 10% improvement in water clarity;
- (e) discharges to water bodies would not result in levels of toxic substances that harm humans, domestic animals including stock or aquatic life;
- (f) wherever practicable, and where effects are less adverse, discharges would be to land rather than to water;
- (g) the significant adverse effects of discharging during low flows would be avoided;
- (h) the number of surface water bodies with riparian vegetation that assists in maintaining and enhancing water quality, bank and channel stability would be significantly increased;
- (i) stormwater discharges would meet water quality standards and current ANZECC sediment guidelines by 2010;
- (j) fresh water quality would not have an adverse effect on coastal water quality; and
- (k) the establishment of new dairy farms would be undertaken in accordance with good management practices and does not result in water quality decline in the region.

44. Dr Kitson's evidence leaves little doubt that the quality of water in Southland, and the environment more generally, has degraded in the last ten years and that the goals of the Regional Water Plan 2010 were not realised. Her evidence describes how Te Mana o te Wai has been impacted:

- (a) Te Hauora o te Wai (the health of the waterbody) has been impacted in the following ways:
 - (i) there are exceedances in ecosystem health guidelines in rivers across all FMUs;

- (ii) lowland lakes in the Matakura catchment are below the bottom line for ecosystem health;
 - (iii) recent drainage activity presents continued risks to wetlands where fewer than 90% of this waterbody type still remain; and
 - (iv) the receiving environments of New River and Jacobs River estuaries are in poor health with gross areas of eutrophication and Toetoes (Fortrose) is heading on a similar path.
- (b) Te Hauora o te Taiao (the health of the environment):
- (i) nearly one quarter of the sites fail the Regional Water Plan standards, and nearly one third of the sites have deteriorating Micro-invertebrate trends; and
 - (ii) with the exception of Waiau FMU there are sites where there would be impacts on up to 20% of aquatic species from nitrate toxicity.
- (c) Te Hauora o te Tangata (the health of the people):
- (i) 64% of state of environment sites would be considered unsafe for swimming. The two freshwater Mātaitai are nearly 5 and 10 times over the swimming threshold; and
 - (ii) all the Statutorily Recognised Rivers and Waituna Lagoon have experienced Cyanobacteria (toxic algae) blooms.

45. These factors are highly material in my view, if the state of the environment when the pSWLP was notified is taken as a starting point and a “given”. The “starting point” is understandably a cause of great concern to Ngā Rūnanga, as the clear and directive wording in the notified pSWLP regarding management of water quality has been substantially weakened in the decisions version and the manner in which the water quality objectives of the NPSFW are proposed to be given effect to is unclear. This means that there is both a lack of clarity and direction for the forthcoming process of setting objectives for FMUs, and an absence of suitable controls or direction to guide consenting processes in the meantime.

46. In my opinion, accepting the status quo at notification as a “given” increases the difficulty of reversing the trend to achieve improvements and so creates significant risks of further degradation of water quality in Southland. This results

in the continuing imposition of costs in terms of cultural, recreational, and social values to the apparent benefit of economic interests and the farming sector. I do not consider this imbalance to reflect the RMA's sustainable management purpose, nor will it enable the achievement of the NPSFW water quality directives.

- 47.** I consider that establishing a date to maintain water from is anticipated also by Objective A1 and A2 of the NPSFW which require the safeguarding of life-supporting capacity and the overall water quality. NPSFW Objective A1 reinforces components of the purpose of the RMA while recognising the seriousness of degrading water quality in New Zealand.¹⁶ Objective A2 requires maintenance and improvement of the overall quality of water and specifically, improvement of water quality where this has been degraded to the point that freshwater objectives are not met (i.e. they are over-allocated). Although freshwater objectives for Southland FMUs are yet to be developed, it is important that the SWLP sets a framework that will not inhibit the setting of freshwater objectives that are consistent with the Objective A1, or the achievement of these objectives once they are set.
- 48.** The need for interim steps to address adverse water quality trends is further encouraged by Policy A4 of the NPSFW, which requires Councils to have regard to water quality until such time as a plan change is in place to give effect to Policy A1 and A2.
- 49.** In terms of the SRPS, I consider that the continued decline in water quality does not meet:
- (a) mauri and wairua are sustain or improved where degraded, and mahinga kai and customary resources are healthy, abundant and accessible to tangata whenua; (Objective TW.3)
 - (b) objectives WQUAL.1, WQUAL.2 and WQUAL.2 which seek to halt the decline and improve water quality having particular regard to nitrogen, phosphorous sediment and microbiological contaminants; and
 - (c) the need for coastal ecosystems to be maintained or enhanced (Objective COAST.3).

¹⁶ Harrison Grierson, April 2011, *Ministry for the Environment, Freshwater Management National Policy Statement, Section 32 Evaluation*; Wellington; pages 51 - 53

50. Ideally, such objectives should also be sufficiently clear and directive about necessary outcomes such that they can provide strong guidance for resource consent decision-making in the meantime and for the FMU process into the future. As I discuss below, it is my opinion that the decisions version of the pSWLP does not contain such objectives.
51. As I have previously mentioned, in Southland this is a matter of concern given that it appears that almost none of the outcomes set out in the current regime (the Regional Water Plan 2010) have been achieved. This suggests to me that, as a bare minimum, bold and decisive provisions in the SWLP to halt and/or reverse the decline in water quality (and hence give effect to the NPSFW) are required. While I accept that it is not certain that the notified version of the pSWLP would have achieved this, it is far less certain that the decisions version will. Moreover, the decisions version does not provide confidence that the FMU process will succeed in doing so.

SPECIFIC PROVISIONS

Objective 2 – Primary production

52. Ngā Rūnanga seeks the removal of the specific reference to “primary production” as it has been applied in Objective 2 which reads [emphasis added]:

*Water and land is recognised as an enabler of **primary production** and the economic, social and cultural wellbeing of the region.*

53. The appeal asserts that the specific enablement of primary production is not consistent with the NPSFW and nor does not appropriately recognise Te Mana o te Wai (which is a matter of national significance underpinning the NPSFW).
54. It is my opinion that specific mention of primary production is unnecessary and inappropriate. The express recognition of primary production being enabled (to the exclusion of other activities) is inappropriate because the activities associated with and benefits of primary production are already captured by reference to economic, social and cultural wellbeing.
55. Te Mana o te Wai puts the needs of the waterbody first. The NPSFW states that Te Mana o te Wai acknowledges and protects the mauri of the water. It requires

that in using water you must also provide for Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people). The evidence Ms Cain¹⁷ explains this in the context of Murihiku as a korowai or overarching principle for managing freshwater. Ms Cain further considers it makes the mana of water, its health and status the paramount priority. It is seen to give reverence to water, rather than regarding it solely as a commodity.¹⁸

56. I agree with Mr McCallum-Clark [paragraph 40] that land and water are important as an enabler of primary production. Equally they are important as an enabler of a range of other activities. I agree with Mr McCallum-Clark that Objective A4 and Policy A7 of the NPSFW requires that the Council must consider when giving effect to this national policy statement, how to enable communities to provide for their economic well-being, including productive economic opportunities, while managing within limits.
57. However, I consider that, as drafted, Objective 2 creates a preference for one type of use of land and water use over the other values and uses of land and water including those that rely upon Te Hauora o te Taiao (the health of the environment) like mahinga kai. This could this have the unintended consequence of providing for growth in primary production and an increase in adverse environmental effects.
58. I also consider the SRPS does not provide a preferential treatment to farming. Policy WQUAL.7 requires that social, economic and cultural benefits from the use, development or protection of water resources. This same statement is provided with regard to water quantity (Policy WQUAN.7). A similar statement is made with regard to rural land and soils (Policy RURAL.1).
59. If the Court is minded to accept that a reference to primary production can appropriately remain within the Objective in order to record its significance to the Southland Region I would recommend the following amendment:

Water and land is recognised as an enabler of the economic, social and cultural wellbeing of the region including primary production.

¹⁷ Ms Cain's evidence, paragraph 85

¹⁸ *Ibid.*

60. I maintain my view however that deletion of the reference to primary production would be more appropriate than its inclusion.

Objective 6

61. Ngā Rūnanga appealed the decision to include the use of the term “overall” in Objective 6 of the pSWLP. The decision’s version of Objective 6 reads as follows [emphasis added]:

*There is no reduction in the **overall** quality of freshwater, and water in estuaries and coastal lagoons, by:*

- (a) maintaining the quality of water in waterbodies, estuaries and coastal lagoons, where the water quality is not degraded; and*
- (b) improving the quality of water in waterbodies, estuaries and coastal lagoons, that have been degraded by human activities.*

62. Ngā Rūnanga opposes the introduction of the word overall into Objective 6 because it provides no certainty that the pSWLP will maintain or improve water quality. The addition of “overall” removes the certainty that the intent of the proposed plan is that the quality of all freshwater and water in estuaries and coastal lagoons in Southland is to be maintained or improved.
63. In the context of Objective 6 I consider that adding the word overall¹⁹ suggests that there will be trade-offs or a balancing of water quality meaning that part of a catchment or waterbody can remain degraded or become further degraded if other parts stay the same or improve. For example, higher nutrient discharges within the lower reaches of a river system might be allowed while the upper parts of the system are maintained in a higher quality state.
64. The evidence of Dr Kitson suggests that there are widespread issues with declining water quality across the region and considerable level of variability of water quality within catchments and rivers. This decline and variability in water quality could become embedded or accepted in the SWLP if “overall” is retained. Dr Kitson²⁰ also discusses how the health of a river can be affected by the

¹⁹ Overall is defined in the Oxford English Dictionary as meaning taken as a whole or in all.

²⁰ Dr Kitson’s evidence, paragraph 44

deterioration at one point of its length i.e. what happens at one point can affect all parts of the catchment, and further, all parts of the surrounding environment.

- 65.** Mr Skerrett's evidence discusses how the environment must sustain you wherever you travel.²¹ An "overall" approach would mean, as Mr Skerrett discusses, that although cultural conditions sufficient to sustain a particular cultural use may exist elsewhere in the catchment, relocation would serve to dislocate and deprive the user of their cultural context. An "overall" approach would not appropriately recognise and provide for the matters in RMA section 6(e). For that reason I consider it is appropriate that the clarity of the objective not be weakened by the addition of "overall".
- 66.** Allowing degradation would also be inconsistent with the following Objectives of the SRPS, which the SWLP must give effect to under section 67(3) of the RMA: WQUAL.1 – Water quality goals, WQUAL.2 – Lowland water bodies and WQUAL.3 – Water in natural state.
- 67.** These three Objectives do not refer to overall water quality. They read as the water quality in "all" waterbodies is maintained or improved in accordance with the NPSFW. This assumption of maintenance of all waterbodies is also provided for in the Regional Water Plan 2010 which seeks to at least maintain [Objectives 1 -3] and within the hill, lowland (hard bed), lowland (soft bed) and spring fed a 10% minimum improvement within the lifetime of the Plan [Objective 4].
- 68.** I do not consider the inclusion of "overall" in Objective 6 makes it consistent with the NPSFW or adds value by way of clarity to the objective. When the pSWLP was notified, the NPSFW 2014 required that overall quality of freshwater within a region be maintained. However, in the 2017 review of the NPSFW, it was found that it was unclear how regional councils and communities can establish whether a freshwater objective is sufficient to maintain overall water quality in terms of Objective A2 at the regional level.²² It was considered the level of uncertainty created a risk of inconsistent approaches, and increased the chances of debate and litigation.²³ It was determined that, in conjunction with an additional policy

²¹ Mr Skerrett's evidence, paragraph 77

²² MfE 2017; *Proposed amendments to the National Policy Statement for Freshwater Management, Section 32 evaluation*. Wellington: Ministry for the Environment. pg12

²³ *Ibid*

CA2 specifying minimum requirements for freshwater objectives, Objective A2 should be amended to apply to an FMU, rather than a region.²⁴

69. I consider that “overall”, as used in Objective 6 of the pSWLP, would result in the same level of uncertainty that was found to have occurred in the previous version of the NPSFW. As currently worded, Objective 6 does not provide guidance as to whether overall water quality is within an FMU, a particular waterbody or part of a waterbody, or across the Region. When combined with the weakening of other key objectives and policies in the pSWLP, the decisions version does not better give effect to the NPSFW or SRPS than the notified version, and provides little in the way of guidance or direction about the subsequent FMU process and its outcomes. I also do not consider this to be an effective way to provide interim guidance for the purposes of Policy A4 of the NPSFW until the FMUs are set. The wording creates uncertainty and makes it open to interpretation from a consenting perspective.
70. I agree with Mr McCallum-Clark [at paragraph 54] that there may be specific circumstances where a decision may lead to some level of decline in water quality. This is anticipated and provided for by the NPSFW when it uses the term overall in Objective A2. However, I also agree with Mr McCallum-Clark²⁵ that a regional council can be more stringent than the NPSFW. Environment Southland has consistently, through the development of its SRPS and the Regional Water Plan 2010, provided clear direction through objectives and policies that provided for at least maintaining water quality. I cannot accept that, given on-going degradation of water quality in the region, removing or weakening this clarity through the pSWLP better gives effect to the NPSFW.
71. I therefore maintain my opinion that the inclusion of the word “overall” is not the most appropriate way for Objective 6 to give effect to higher order directions and documents.

Objectives 9 and 9A

Historic heritage

²⁴ *Ibid*

²⁵ Evidence in Chief, Matthew McCallum-Clark at paragraph 53

- 72.** The appeal of Ngā Rūnanga notes that historic heritage is a broad term. Archaeological sites are protected under the Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPTA**). Aside from the HNZPTA requirements relating to modification of archaeological sites, statutory protection of historic heritage relies on provisions in RMA documents. Although the effects of many land use activities can be managed in district plans, historic heritage including wāhi tapu, wāhi tupuna and sites of significance can also be affected by activities that are controlled in regional plans. For example works in the bed of a river may affect a wāhi tapu site or the discharge of effluent onto an area of urupā or area where kōiwi are thought to be would be regarded as culturally offensive.
- 73.** The evidence of Ms Cain [Paragraphs 52 - 57] discusses how the Ngāi Tahu population in Murihiku was sparse and settlements and mahinga kai could be hundreds of kilometres apart with inland routes from the coast to mountains tending to follow land and features and use the waterways. Nohoanga were generally located around a lake or a river. Her evidence suggests therefore that historic heritage associated with Ngāi Tahu settlement and activity in Southland may be plentiful, over wide areas and providing minimal visible evidence of human occupation or the site(s) location. She notes that there are unrecorded archaeological sites and wāhi tapu in Southland.
- 74.** While it is accepted that it is not possible for there to be explicit rules in a regional plan which protect historic heritage, this does not mean that heritage should not be a relevant consideration for the regional council when considering consent applications which might impact on historic heritage sites and resources. There is no direction in the pSWLP to consider effects of activities on historic heritage within a consents process despite there being potential adverse effects from discharges into water or onto land, water take and use, and the use of beds of rivers and lakes on heritage sites.
- 75.** Regional councils have jurisdiction under section 30(1) of the RMA to include objectives, policies and methods in relation to historic heritage. This could be included as part of integrated management (section 30(1)(a)) and also the requirement to include objectives and policies regarding historic heritage in relation to the effects of the use, development, or protection of land which is of regional significance (section 30(1)(b)) or to address the effects from activities under the jurisdiction of the Council on wāhi tapu and wāhi taonga. Or it could as Mr McCallum-Clark describes be captured in 30(1)(c) as something the

Council may consider in a resource consent that is not directly related to its functions [paragraph 87]. Given the breadth of s30(1) of the RMA historic I agree with Mr McCallum-Clark that historic heritage there could be included in Objective 9.

76. I consider that the inclusion of historic heritage would also make it consistent with the SRPS. The SRPS requires that wāhi tapu, wāhi taonga and sites of significance to tangata whenua are appropriately managed and protected [Objective TW.4] and furthermore historic heritage is protected from inappropriate use and development (Objective HH.1). I note that the SRPS also requires that Southland's historic heritage resources are to be managed in a regionally consistent, collaborative and integrated manner (Policy HH.5). The recognition of historic heritage in the SWLP would provide for this more consistent, collaborative and integrated approach.

Splitting Objective 9 and 9A into two

77. In relation to the separation of Objective 9 and 9A into two objectives, I agree with Mr McCallum-Clark [at paragraph 95] that it is appropriate for it to be recombined into a single objective. This is consistent with the appeal by Ngā Rūnanga.

78. As notified, Objective 9 read as follows:

- (a) *The quantity of water in surface waterbodies is managed so that aquatic ecosystem health, life-supporting capacity, outstanding natural features, recreational values, natural character, and historic heritage values of surface waterbodies and their margins are safeguarded; and*
- (b) *Provided (a) is met, water is available both in stream and out-of-stream to support the reasonable needs of people and communities to provide for their social, economic and cultural wellbeing.*

79. The decision amended the Objective to read:

Objective 9

The quantity of water in surface waterbodies is managed so that aquatic ecosystem health, life-supporting capacity, outstanding natural features

and landscapes, recreational values and natural character are safeguarded.

Objective 9A

Surface water is sustainably managed to support the reasonable needs of people and communities to provide for their social, economic and cultural wellbeing.

- 80.** The Ngā Rūnanga appeal sought the reinstatement of reference to managing the needs of the surface waterbody for aquatic ecosystem health, life supporting capacity, outstanding natural features and landscapes and natural character as a priority, with water being available for in-stream and out-of-stream use provided that priority was met.
- 81.** I agree with the Ngā Runanga appeal that splitting the Objective into two diminishes Te Mana o te Wai, and suggests that the needs of the waterbodies can be balanced against the needs of people and communities for reasonable use. It is my opinion that putting the needs of the water first is required by Section AA of the NPSFW. The assurance that the needs of the water come first was appropriately provided for in the notified version of the Objective by the wording “provided that (a) is met”. I do not consider that applying the term “sustainably managed” or “supports the reasonable needs of people and communities” achieves the same outcome or the correct priority set by the NPSFW with respect to Te Mana o te Wai. As noted above, these words imply a balance between the needs to the waterbody and the needs for its use. The separation into two objectives creates unnecessary doubt as to the relative weighting that should be applied to the two objectives. In my opinion, retention of Objective 9 as notified is more appropriate at giving effect to higher order directions and documents than the decisions version.

Objectives 9B, 10 and 11 – Infrastructure

Objective 9B

- 82.** The pSWLP decision added new Objective 9B:

The effective development, operation, maintenance and upgrading of Southland's regionally significant, nationally significant and critical infrastructure is enabled.

- 83.** Ngā Rūnanga seeks Objective 9B is deleted in its entirety on the grounds that the objective and related definitions provide insufficient clarity as to what constitutes effective development, operation, maintenance and upgrading of 'regionally significant infrastructure'.
- 84.** The definition of infrastructure in the RMA covers:
- (a) pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel or geothermal energy;
 - (b) telecommunications and radio communications networks;
 - (c) the electrical network;
 - (d) water supply network, including for irrigation;
 - (e) drainage and sewerage systems;
 - (f) transport networks on land;
 - (g) ports; and
 - (h) airports.
- 85.** The definitions in the SRPS and the pSWLP for critical infrastructure, national infrastructure and regional infrastructure are overlapping subsets of infrastructure as defined in the RMA. I note that the definition of Critical Infrastructure in the SRPS, as well as referring to infrastructure, also includes all strategic facilities. The SRPS does not define strategic facilities but I understand this could include hospitals, schools, emergency operations centres and food distribution centres used during an emergency declared under the Civil Defence Emergency Management Act 2002.
- 86.** Looking at how infrastructure is addressed in the pSWLP, the activities that are defined as infrastructure are captured in provisions²⁶ relating to:
- (a) discharges from sewerage schemes;
 - (b) fresh water takes for community water schemes;

²⁶ The location of new Policy 26A infrastructure appears misplaced being within the section of the Plan "Activities that affect water quality" rather than the "Region Wide Policies" section which gives by placement suggests a narrower focus.

- (c) structures in, on, under or over the beds of rivers and lakes;
- (d) disturbance of the beds of rivers and lakes; and
- (e) the taking, damming, use and diversion of water.

- 87.** I consider these provisions are consistent with need to provide for the development, maintenance, upgrade and on-going operation of regionally significant, nationally significant and critical infrastructure and associated activities in Policy INF.1 of the SRPS and also meeting the needs of the NPSREG or the NPS for Electricity Transmission (**NPSET**). I therefore do not agree with Mr McCallum-Clark²⁷ that removing Objective 9B would mean the pSWLP fails to appropriately give effect to Policy INF.1 of the SRPS, NPSREG or NPSET. However, on consideration of objectives relating to infrastructure I consider that, with amendment, Objective 9B could be appropriately retained.
- 88.** If the objective is retained, I agree with the Ngā Rūnanga appeal that there needs to be some clarity as what constitutes enabling effective development, operation, maintenance and upgrading of infrastructure.
- 89.** Enable means “make possible for”²⁸. It suggests an activity status akin to permitted and controlled status. As indicated earlier, infrastructure covers a considerable number of activities and their effects. The objective could enable a range of adverse effects, including the establishment of dams and weirs on rivers that restrict fish passage as discussed in Dr Kitson’s evidence²⁹.
- 90.** Given the broad scope of activities that “infrastructure” covers and the environmental effects that maintenance, use, development may have, I consider a more appropriate balance in the objective would be achieved by referring to the need to enable infrastructure while providing direction on how effects will be managed. This would provide for the NPSREG or NPSET but also account for Policies A7 and B8 of the NPSFW which recognise communities should be enabled to provide for economic wellbeing (including through the benefits provided by infrastructure) but that this must managed within limits.
- 91.** I consider amending the objective to address adverse effects on the environment would address the concerns of Ngā Rūnanga, as it provides clear direction that

²⁷ At paragraph 112 of his EiC

²⁸ As defined in the Oxford English Dictionary

²⁹ Dr Kitson’s evidence, paragraphs 141 – 144.

enabling infrastructure must be undertaken with consideration of the negative impacts this may have on the environment.

92. I therefore consider that Objective 9B could be amended to read:

The effective development, operation, maintenance and upgrading of Southland's regionally significant, nationally significant and critical infrastructure is enabled while managing adverse effects on the environment.

Objective 10

93. Objective 10 reads as follows:

The national importance of existing hydro-electric generation schemes, including the Manapōuri hydro-electric generation scheme in the Waiau catchment, is provided for, recognised in any resulting flow and level regime, and their structures are considered as part of the existing environment.

94. Ngā Rūnanga seeks to delete the text “hydro-electric schemes, including the” and “and their structures are considered a part of the existing environment” from Objective 10.

95. The reason given for this in the appeal is that not all hydro-schemes within Southland are nationally important, nor should existing structures be considered a part of the existing environment, particularly where these structures are operating below what would be considered current best management practice. The changes sought by Ngā Rūnanga effectively return Objective 10 to how it was worded when notified. Ngā Rūnanga supported the notified version of the Objective which was:

The national importance of the existing Manapōuri hydro-electric generation scheme in the Waiau catchment is provided for and recognised in any resulting flow and level regime.

96. Addressing national importance first, I agree with the Ngā Rūnanga appeal that not all hydro-schemes are nationally important.

97. The NPSREG recognises as a matter of national significance:

- (a) the need to develop, operate, maintain and upgrade renewable electricity generation activities throughout New Zealand; and
- (b) the benefits of renewable electricity generation.

98. The Objective of the NPSREG is:

To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation.

99. The NPSREG provides for small and community scale electricity generation, for example those operated by Alliance Group Limited and Matura Industrial Estates at Matura on the Matura River as well as for larger schemes like Manapouri. It does not say however that all are nationally important. Instead it directs New Zealand towards meeting or exceeding Government's target for renewable electricity generation – in which hydro schemes play a part along with other renewable electricity generation like solar, wind and wave energy.

100. Policy E2 and F of the NPSREG require Environment Southland within its Plans to include provisions to provide for the development, operation, maintenance and upgrading of new and existing-hydro-electricity generation activities to the extent applicable to the region. The wording "to the extent applicable to the region" gives Environment Southland discretion as to what is appropriate for the region. There is no requirement to give all hydro-schemes in Southland the same status, when the reality is that most hydro schemes would not be nationally important on an individual basis. I note that SRPS Objective ENG.4 is that the generation and use of renewable energy resources is increased. However, as with the NPSREG this is for all renewable energy schemes not just hydro-electrical generation. Furthermore, not all hydroschemes provide sufficient benefits to balance these against the adverse effects discussed by Mr Skerrett with regard to damming water³⁰ and Dr Kitson in her evidence [paragraphs 141-144]

³⁰ Mr Skerrett's evidence, paragraph 80

- 101.** I consider that Objective 9B provides adequately for recognition of the smaller hydro-electric schemes within Southland.
- 102.** If the Objective is amended to be specific to the Manapouri Hydroscheme, then I think it would be appropriate to retain the words “*and their structures are considered as part of the existing environment*” amending the word “their” to “its”. This recognises the national significance of the structure.
- 103.** A further reservation that I have about the wording of the Objective is that it has the potential to minimise or diminish unacceptable adverse effects of existing structures for consent renewal purposes. The RMA already deals with some of these issues in section 124 – 124C, and it is my opinion that the Objective as worded may impact on those statutory provisions and change their effect.
- 104.** In my opinion Objective 10 could read as follows:

The national importance of the Manapōuri hydro-electric generation scheme in the Waiau catchment, is provided for, recognised in any resulting flow and level regime, and its structures are considered as part of the existing environment.

New Objective Renewable Energy

- 105.** Ngā Rūnanga is a 274 party to the appeal of Meridian Energy and opposes the inclusion of a new Objective to read:
- Recognise and make provision for the national significance of renewable electricity generation activities.*
- 106.** As drafted, I consider the requested objective provides little more guidance than the NPSREG does. I consider it is not helpful to include objectives that simply repeat sections or clauses of the RMA or any national instruments. If Objective 9B [as discussed in paragraphs 82 - 92] and Objective 10 [as discussed in paragraphs 93 - 104] provide for renewable energy generation, I suggest the requested new Objective would be unnecessary duplication.
- 107.** I agree with Mr McCallum-Clark [at paragraph 138] that Objective 9B and related policies adequately address the matter referred to in the requested new

objective. I therefore consider that the inclusion of this new Objective is unnecessary.

Objective 13, 13A and 13B

- 108.** The Ngā Rūnanga appeal seeks that the provision be retained as notified. Objective 13 (as notified) read:

Enable the use and development of land and soils, provided:

- (a) the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities and discharges to land;*
- (b) the discharges of containments to land or water that have significant or cumulative effects on human health are avoided; and*
- (c) adverse effects on ecosystems (including diversity and integrity of habitats), amenity values, cultural values and historic heritage values are avoided, remedied or mitigated to ensure these values are maintained or enhanced.*

- 109.** The decision on the pSWLP split the Objective into three separate Objectives which now read:

Objective 13

Enable the use and development of land and soils to support the economic, social, and cultural wellbeing of the region.

Objective 13A

The quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land.

Objective 13B

The discharges of contaminants to land or water that have significant or cumulative adverse effects on human health are avoided.

- 110.** Nga Rūnanga opposed the creation of the three new objectives on the grounds that the restructured provisions do not give effect to ki uta ki tai.

- 111.** The NPSFW defines ki uta ki tai as being from the mountains to the sea and being a part of integrated management. Mr Skerrett's evidence expands on this, explaining how it is advocated by Ngāi Tahu Whānui as being a key tool in assisting Ngāi Tahu achieve more meaningful rangatiratanga and kaitiakitanga in

natural resource management. He describes how if the realms of Tāwhirimātea, Tāne Mahuta, Papatūānuku and Tangaroa are sustained then the people will be sustained.³¹

- 112.** I consider that the Objectives as proposed provided for ki uta ki tai in that they recognised and provided for the management of soil which is a part of management of whole systems. Regional Councils are also required under Policy C1 of the NPSFW to recognise the interactions between land and water and associated ecosystems.
- 113.** I consider splitting the Objective into three removes the “provided that” which (particularly in relation to clause (b)) recognised the link between land and water, and therefore no longer recognises ki uta ki tai in the context of Policy C1 of the NPSFW.
- 114.** The new Objectives while still enabling the use and development of land and soils are now disjunctive. As such I suggest they could be traded off against each other. I consider this to be a serious weakening of the meaning and effect of Objective 13. Furthermore, as worded Objective 13 is very similar in intent to Objective 2 in that it is about recognising the inherent link of land and soils to the economic, social and cultural wellbeing of Southland.
- 115.** The decision on the pSWLP excluded 13(c). I agree with Mr McCallum-Clark [at paragraph 156] that there is merit in exploring the reinstatement of clause (c). I would further add that inclusion of 13(c) provides for Te Mana o te Whenua which, as discussed in the evidence of Ms Cain, is integral to ki uta ki tai as seen by Ngā Rūnanga.
- 116.** Taking all of these matters into account, it is my view that Objective 13 could read as follows:

Enable the use and development of land and soils, provided:

(a) the quantity, quality and structure of soil resources are not irreversibly degraded through land use activities or discharges to land;

³¹ Mr Skerrett's evidence, paragraph 86

- (b) *the discharges of containments to land or water that have significant or cumulative adverse effects on human health are avoided; and*
- (c) *adverse effects on ecosystems (including diversity and integrity of habitats), amenity values, cultural values and historic heritage values are avoided, remedied or mitigated to ensure these values are maintained or enhanced.*

Objective 18

- 117.** Ngā Rūnanga appealed Objective 18 seeking that the wording as notified be retained. Ngā Rūnanga consider the following Objective as worded in the decisions version provides little certainty as to what good management practice will achieve:

All activities operate in accordance with “good management practice” or better to optimise efficient resource use, safeguard the life supporting capacity of the region’s land, and soils, and maintain or improve the quality and quantity of the region’s water resources.

- 118.** The wording of this Objective in the pSWLP as notified read:

All activities operate at “good (environmental) management practice” or better to optimise efficient resource use, and protect the region’s land, soils, and water from quality and quantity degradation.

- 119.** I agree with Mr McCallum-Clark that the objective is intended to apply to all activities whether urban, rural or industrial [paragraph 195]. I further agree it is deliberately aimed at a high level and outlines an expectation of behaviour for all of those activities. It is not just farming practices where discharges should be managed to a minimum standard of behaviour.

- 120.** However, the need to apply good management practice within the pSWLP is predominately focused on activities associated with farming:

- (a) Freshwater Management Unit Policies 4 – 12 require the implementation of good management practice to manage the effects of water from contaminant transport;

- (b) Rule 20(a)(5) requires, as a permitted activity, a written record of good management practices in the past 12 months to be provided by the landowner to Southland Regional Council on request;
- (c) In Rule 20(d). discretion is restricted to include whether to not the applicant has taken into account reasonable and appropriate good management practices to minimise losses of contaminants and that those that will be undertaken to minimise the discharge of nitrogen, phosphorous, sediment and microbiological contaminants to water; and
- (d) Appendix N requires the Farm Environment Plan show what good management practice has been undertaken since the pSWLP was notified and will be undertaken in the next 12 months.

121. The application of good management practice to broader activities is only found in Policy 20 where, in determining the duration of a resource consent, consideration is to be given to the applicant's "adoption, particularly voluntarily, of good management practice".

122. The Ngā Rūnanga appeal sought that Objective 18 should provide for the overall aim of requiring good management practice for all water and land users in the region, irrespective of the activity status under the pSWLP. I do not consider that reverting to Objective 18 as notified would necessarily provide this relief, but that it could be better achieved by amending the Objective in part and clarifying the definition of good management practice. I acknowledge that this amendment will have implications for the content of the rule when the Court comes to consider those later in the process.

123. I consider greater clarity would be provided by removing reference to the word 'maintain' from Objective 18. In this instance I do not consider it is necessary to repeat the phrase 'maintain or improve' water quality as it is not reflective of what good management practice is intended to do. It is my experience and understanding that good management practice is not static but rather it is about continuous improvement based on changing knowledge, technology and innovation and it is not the bare minimum behaviour required. The use of the word "maintain" would not suggest this.

124. Good management practice is currently defined in the pSWLP as including "*but not being limited to, the practices set out in the various good management practice factsheets available on the Southland Regional Council's webpage*". I

do not consider the factsheets are or should be external technical matters which are usually too large or impractical to include in the Plan and therefore referenced in accordance with clause 30 of Schedule 1 of the RMA. I note that throughout the pSWLP there are helpful advice notes as to what documents might be used to show compliance with a particular provision – I suggest the factsheets could be referred to also in the advice notes where appropriate.

- 125.** However, in my opinion omitting reference to the factsheets leaves the definition is less likely to provide the clarity that Ngā Rūnanga seek. I suggest that to provide the clarity sought by Ngā Rūnanga an amendment to the definition is then necessary. I consider that the following definition could be appropriate:

Good Management Practice - a suite of practices approved by the Chief Executive of Environment Southland which equate to a quality standard for a sector to manage adverse effects on soil and water.

- 126.** I have formulated this definition from considering the discussion documents prepared by the Land and Water Forum³² and reviewing use of the term by Environment Canterbury and Greater Wellington Regional Council. Like Environment Southland, these councils have developed policies and rules that rely on the incorporation of good management practice. I consider that reference to the documents being approved by the Chief Executive of Environment Southland provides clarity as to what good management practice for a particular sector is, that this is being applied fairly and equitably and that it can change and evolve but this is through a formal process. This formal process would ensure that Ngā Rūnanga and the community have clarity and certainty as to what is expected as good management practices.

- 127.** While I have used the term good management practice throughout my evidence, Mr McCallum-Clark recommends the term good management practice be replaced with good environmental practice. I agree this could assist in avoiding the possible perception that it only applies to agricultural activities. I note there is no nationally agreed definition of what good management practice is, nor any nationally recognised term, but that the term Good Management Practice is used specifically by Environment Canterbury to mean the practices described in the

³² Land and Water Forum; May 2018; Advice on improving water quality: preventing degradation and addressing sediment and nitrogen Pages 13 - 17

document entitled “Industry-agreed Good Management Practices relating to water quality” - dated 18 September 2015. This document refers specifically to agricultural Good Management Practice and the documents and its practices are starting to be used elsewhere in the country. I agree that a change of term to good environmental practice may assist in avoiding confusion. I would however note that that Policy 17 (2) refers to “best practice” and “best practice guidelines”, Rule 36 (a)(i) to “Good Practices” and Appendix O to “best practice options”. The SRPS refers to the development of “good practice guidelines” (Method RURAL.8) and “guidance on good practice land management methods” (Method RURAL.13).

THE EFFECTS OF REMOVING PHYSIOGRAPHIC ZONES FROM THE PLAN RULES AND HOW THE PLAN MANAGES WATER

- 128.** The appeal by Ngā Rūnanga seeks that physiographics be re-instated in the pSWLP as it was notified. The reason for this is that the concept of physiographics reflects well the concept of ki uta ki tai by providing for te mana o te whenua, as discussed in Ms Cain’s evidence.³³ She also considers it “put a spotlight for land in the pSWLP. Mr Skerrett discusses how it resembled the land management approach in Te Tangi.³⁴ Also, as Mr Skerrett discusses, Ngā Rūnanga supported the use of physiographics because it underpinned an array of management approaches in the pSWLP.³⁵
- 129.** I note the Ngā Rūnanga submission broadly supported the policies and rules for physiographics in the notified pSWLP, although it did seek that that Oxidizing, Riverine and Old Maitara zones be afforded more protection than drafted.
- 130.** I note that the section 32 report made available at notification does not refer to the risks in the approach that were later identified and that resulted in the amendments to the decisions version of the pSWLP. Given this, it is not surprising that Ngā Rūnanga are disappointed with the change in approach as it was not until the section 42A report prepared for the hearing that they became aware of the full nature of concerns Environment Southland had with the application of physiographics at a farm scale. At this point they became aware

³³ Ms Cain’s evidence, paragraph 19

³⁴ Mr Skerretts evidence, paragraph 75

³⁵ Environment Southland; 19 October 2018; *Updated Evaluation Report: Proposed Southland Water and Land Plan; Prepared for the Environment Court; Pg 29*

that there may be some need to refine the approach at a property level. Evidence for Ngā Rūnanga given at the hearings suggested an approach that would provide for site-specific information in consent applications where the key contaminant pathway is shown not to reflect the physiographic zone applied to the property.

- 131.** I consider, as a planning tool, an approach which links what happens on land to the effects on waterbodies has considerable merit. The physiographics approach recognised different ways that water moves through the land and therefore the variability to risk from nutrient loss across the region. It then looked at the different levels of controls to farming based on that risk. I consider physiographics resonates with the concept of ki uta ki tai anticipated in the NPSFW.
- 132.** That physiographics was incorporated so thoroughly into the pSWLP as notified is concerning given the matters raised through the hearings process and decision. The matters summarised in Mr McCallum-Clark's evidence [paragraph 225] are, I think, fundamental considerations when drafting planning provisions, particularly rules - in particular whether or not physiographics has the ability to protect water quality risks from different land uses at a farm scale. I understand that it was the belief that this was what physiographics was intended to do that made it resonate with Ngā Rūnanga. Even more important though is the coarseness of the scale of mapping that was intended to apply at a farm scale. The use of mapping within a plan should be commensurate with the scale at which things are to be managed. So while I consider there is merit in the approach to physiographics as a mechanism, I cannot agree with the Ngā Runanga appeal point that seeks its reinstatement into the rules within the pSWLP. After consideration of the evidence of Mr McCallum-Clark, Dr Snelder and Mr Rodway, I do not believe the alternative approach suggested by Ngā Rūnanga to provide for site-specific information in consent applications [as discussed paragraph 130 above] would provide for the ability to reinstate physiographics in the rule because the mapping and source data is too coarse.
- 133.** Physiographics is a model that was created in Southland. It may be that the provisions can be developed using other tools and models that achieve the same intent. However, I would be concerned that it would take time to develop an alternative tool with the necessary rigor for use in the pSWLP. I am concerned about how or if Rule 20 in the pSWLP as drafted would achieve the same

outcomes intended by physiographics in respect to managing risks of land use according to the ability of the land to absorb that risk.

- 134.** I therefore consider that it is preferable to maintain the integrity of the physiographics approach by including stronger and more directive language in the policies relating to physiographics to guide decision-making on consent applications, and to give some direction for the FMU process. I note that this would give effect to RURAL.5 in the SRPS which requires rural land is sustainably managed and land practices are encouraged for reasons including water quality is maintained or enhanced and the mauri of the water and soils is safeguarded.
- 135.** Ngā Rūnanga has a separate appeal point on the wording of physiographic policies 5 (Central Plains), 9 (Old Mātaura), 10 (Oxidising), 11 (Peat Wetlands) and 12 (Riverine). The appeal point relates to the use of the term “*decision-making generally not granting*”. Ngā Rūnanga seek the wording “*strongly discouraging the granting of*” be used instead. The reason for the appeal point is that this provided no certainty that water quality would be maintained.
- 136.** Each of the policies provides a directive to decision making with regard to proposals increasing the number of dairy cows or increasing areas of intensive winter grazing where contaminant losses will increase as a result of the proposed activity. This is clearly directed at new or expanding activities rather than continuation of existing activities. I consider that, given the overall state of water quality referred to above and in the evidence of Dr Kitson, a precautionary approach is appropriate with regard to new activities in the interim until the FMU process develops limits and methods to manage to those limits. As the evidence of Mr McCallum-Clark [paragraph 229] identifies, I also understand from the Environment Court in *Appealing Wanaka Inc v Queenstown Lakes District Council*³⁶ that “strongly discourage” is close to but not a directive or prohibitive policy. Mr McCallum-Clark has in this instance used the wording to apply to cultivation of land in the Alpine Zone as a non-complying activity. In my opinion a strong directive discouraging farming of increased numbers of dairy cows, or increased areas of intensive winter grazing where contaminant losses will increase as a result of the proposed activity, is also appropriate. I consider this

³⁶ *Appealing Wanaka Inc v Queenstown District Council* [2015] NZEnvC 139.

direction is important in the redrafting of the rules that will be addressed when the Court comes to address this later in the process as a part of Topic B.

137. At this time I note that non-complying activity status was recognised in the pSWLP as notified for:
- (a) any increase over 20ha of intensive winter grazing Old Maitauro and peat wetlands after 2018; and
 - (b) any increase in dairy farming of cows beyond the number specified in a discharge consent for agricultural effluent after 30 May 2016 in the Old Maitauro or Peat Wetlands was a non-complying activity.
138. I also note the decision on the pSWLP considered it was appropriate that Central Plains, Oxidising and Riverine be extended the same restrictions as Old Maitauro and Peat Wetlands. This was considered appropriate to the “widely accepted aim of the Plan to ‘hold the line’ on water quality”.³⁷ The policies would prompt decision-makers to avoid enabling specific farming activities that would lead to increased losses of contaminants from areas known to be particularly susceptible to nutrient loss. However the broader decision resulted in a rules regime where any activity not meeting the permitted or restricted discretionary rules was discretionary, thus weakening the intended direction for activities in these areas.

NGĀI TAHU POLICIES

Policy 1

139. Ngā Rūnanga is a section 274 party to appeals and opposes the relief sought by Federated Farmers to remove reference to “interests” in part (3) of Policy 1. Policy 1 refers to enabling papatipu rūnanga to [emphasis added]:

... effectively undertake their kaitiaki responsibilities in freshwater and land management through Environment Southland:...

(3) *reflecting Ngāi Tahu values **and interests** in the management of and decision-making on freshwater and freshwater ecosystems in Southland/Murihiku (includes the Southland Region), consistent with the Charter of Understanding.*

³⁷ pSWLP, *Report and Recommendations of the Hearings Commissioners*; Paragraph 128

140. I agree with Mr McCallum-Clark's evidence [at paragraphs 2-4] that it is appropriate to retain the term "interests" to give effect to Objectives D1 and Policy D1 of the NPSFW. For that reason alone, I consider that the retention of this wording is appropriate.
141. Federated Farmers' appeal point relates to commercial interests of Ngāi Tahu. They are concerned that the reference could result in these being afforded greater weight than other potentially competing interests in Council decisions.³⁸
142. I agree with Federated Farmers that interests may include commercial interests. Ngāi Tahu has, for example, commercial property development, forestry, farming and tourism interests. However I consider this policy is clearly framed to refer to kaitiaki responsibilities relating to freshwater and fresh water and fresh water ecosystems.

Objective 15 and Policy 3

143. Ngā Rūnanga is a section 274 party to appeals by Fish and Game regarding both Objective 15 and Policy 3 relating to taonga species. Ngā Rūnanga in its submission on the pSWLP:
- (a) supported Objective 15 as notified and considered the amendment of the Objective in the decision to be a further improvement; and
 - (b) sought Policy 3 be amended to avoid, as a first priority, or to otherwise manage activities that adversely affect taonga species.
144. Objective 15 of the decision reads as follows:
- Taonga species, as set out in Appendix M, and related habitats, are recognised and provided for.*
145. Policy 3 provides for the management of activities that adversely affect taonga species, identified in Appendix M (**Appendix C** of this statement).

³⁸ Federated Farmers of New Zealand (Southland Province); Notice of Appeal to the Environment Court Against Decisions on the Proposed Southland Water and Land Plan (as amended 21 September 2018); Paragraph 3.

- 146.** Ngā Rūnanga support Fish and Game's appeal on Objective 15 and Policy 3. The Fish and Game appeal seeks that:
- (a) Objective 15 is reworded so that taonga species, and their related habitats, are recognised and protected rather than recognised and provided for; and
 - (b) Policy 3 is reworded to manage activities that adversely affect the taonga species and their habitats, not just the species itself.
- 147.** In relation to the proposed new wording for Objective 15, I note that protection of species implies preservation against collecting hunting, or development. As outlined in Mr Skerrett's evidence, taonga species were included in the Ngāi Tahu Treaty Settlement Act because of their fundamental importance to practicing mahinga kai.³⁹ Mr Skerrett further discusses how the clearance of land not only reduced taonga species but also access to the resources which quickly became limited and with very little protection outside of National Parks. He discusses how Ngāi Tahu furthermore have a kaitiaki responsibility to restore healthy populations of taonga species.⁴⁰
- 148.** The SRPS does not include objectives or policies specifically referring to taonga species. Policy TW.4 provides for resource management decisions are exercised in a manner that recognises and provides mahinga kai and the mauri and wairua of natural resources. Policy BIO.8 also identifies Tangata whenua values and interests to be incorporated into the management of indigenous biodiversity.
- 149.** I consider the proposed amendments to the Objective could exclude Ngāi Tahu ki Murihiku from practicing mahinga kai in a number of circumstances. This would be inconsistent with s6(e) of the RMA and with s288 NTCSA which acknowledges the cultural, spiritual, historic, and traditional association of Ngāi Tahu with the taonga species. I consider an appropriate compromise position to that of Fish and Game's appeal point would be to reword the Objective to read as follows:

³⁹ Mr Skerrett's evidence, paragraph 51.

⁴⁰ Mr Skerrett's evidence, paragraphs 57 - 61

Taonga species, as set out in Appendix M, and related habitats, are recognised and sustained.

Policy 46 Waituna Lagoon

- 150.** Ngā Runanga is a section 274 party in support of the Royal Forest and Bird Protection Society of NZ (**Forest and Bird**) appeal point that seeks to make Waituna Lagoon subject to its own separate FMU process.
- 151.** Waituna Lagoon is a statutory acknowledgement area⁴¹ I am aware that Te Ao Marama Inc are working closely with Environment Southland and other parties to improve the health of the lagoon. Ngā Rūnanga shares the concern of Forest and Bird that the values of, and therefore limits set, for Waituna could be lost in discussion of the wider catchment.
- 152.** The evidence given by Mr Ward for Environment Southland and endorsed by Dr Kitson show that it is a stressed lagoon with poor water quality that, without interventions, will continue to decline. The evidence given by Dr Lloyd for Environment Southland and endorsed by Dr Kitson⁴² also shows that a large proportion of the wetland loss (1990-2012) has occurred in the Waituna Lagoon catchment and the catchment is below the bottom line for ecosystem health.
- 153.** I agree with Ms Robertson for the Council that Waituna could be addressed as a sub-catchment within the Maitua FMU rather than as a separate FMU. I note Ngā Rūnanga supported the Plan with Waituna being a part of the Maitua Freshwater Management Unit. Whichever approach is adopted, I consider it must ensure that the necessary values and limits required to improve the Waituna Lagoon are not lost or diminished by discussions at the catchment level.

DEFINITION OF WETLAND AND NATURAL WETLAND

- 154.** Ngā Runanga are a 274 party opposing the appeal by Horticulture New Zealand to amend the definitions of wetland and natural wetland. Mr McCallum-Clark has recommended the deletion of the definition of wetland from the Plan [paragraph 275]. I agree that this is appropriate as this term is defined in the RMA and

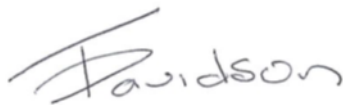
⁴¹ NTCSA Schedule 73 Statutory Acknowledgement for Waituna Wetland

⁴² Dr Kitson's evidence, paragraphs 105 and 147

repetition of RMA terms within statutory plans is unnecessary. The central concern of Horticulture NZ appeal appears to be the scope of the rules regarding wetlands and this matter will be addressed when the Court comes to consider those later in the process as a part of Topic B.

CONCLUSION

- 155.** On the basis of my assessment of the appeal points of Ngā Rūnanga listed in paragraphs 10 and 11 of my evidence, I consider that these points provide for some significant improvement to the Objectives in the pSWLP. These changes are appropriate in order to ensure the pSWLP is consistent with the SRPS, the NPSFW and the purpose of the RMA, and to address values of significance to Ngā Rūnanga. In general, I support the requests made by Ngā Rūnanga except as specifically identified in the body of this evidence.

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

18 April 2019