

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

ENV-2018-CHC-26 to 50

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of appeals under clause
14 of Schedule 1 to the
Act relating to the
proposed Southland
Water and Land Plan

BETWEEN **WAIHOPAI RŪNAKA,
HOKONUI RŪNAKA,
TE RŪNANGA O
AWARUA, TE
RŪNANGA O ORAKA
APARIMA, and TE
RŪNANGA O NGĀI
TAHU (collectively
NGĀ RŪNANGA)**

**Appellants in ENV-
2018-CHC-47**

AND **SOUTHLAND
REGIONAL COUNCIL**

Respondent

**MEMORANDUM OF COUNSEL FOR NGĀ RŪNANGA CONFIRMING THE PURPOSE
OF TREENA DAVIDSON'S STATEMENT OF EVIDENCE DATED 17 APRIL 2020**

20 May 2020

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MAY IT PLEASE THE COURT

1. This memorandum of counsel is filed on behalf of Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima, and Te Rūnanga o Ngāi Tahu (collectively **Ngā Rūnanga**).
2. It responds to the Court's direction in its Minute dated 18 May 2020 (**Minute**), seeking that counsel for Ngā Rūnanga confirm the purpose of the evidence of Ms Treena Davidson on objectives other than Objectives 1 and 3.

Interpreting the Court's directions

3. In the Interim Decision,¹ the Court stated that (our emphasis):²

Specifically, the parties are to address the interpretation and implementation of **Te Mana o te Wai** and **ki uta ki tai** in this plan and any other matter they consider relevant to the scheme of the plan in general.

4. Ngā Rūnanga recognise that the Court's understanding expressed in the Interim Decision was that Te Mana o Te Wai and ki uta ki tai primarily related to Objectives 1 and 3 respectively. As such, Ngā Rūnanga understood the focus of the Court's directions to be Objectives 1 and 3.
5. As the Court identified in paragraph [2] of its Minute however, it has previously reflected that the proposed Plan did not implement the National Policy Statement-Freshwater Management 2017 (**NPS-FM**) and that the higher order provisions in the proposed Plan are, in many respects, weakly drawn. Combined with the Court's reservation in the preamble of Annexure 1 to the Interim Decision that the decision was "final" subject to submissions on the scheme architecture, Ngā Rūnanga understood that the Court was willing to be assisted by evidence on matters relating to the architecture and drafting of Topic A provisions, should there be consequential issues relating to whether Objectives 1 and 3 adequately gave effect to the NPS-FM and Te Mana o te Wai in particular.
6. Bearing in mind these factors, and for the reasons set out below, Ngā Rūnanga considered cultural and planning evidence not limited solely to Objectives 1 and

¹ *Aratiatia Livestock Limited & Ors v Southland Regional Council* [2019] NZEnvC 208.

² At [347].

3 was necessary to reconcile the Court's observations and directions and was likely to assist the Court. It fully accepts however that decisions about scope/jurisdiction and the proper conduct of the proceedings are for the Court. It has been open about scope issues throughout, including in Ms Davidson's statement.

The intentions of Ngā Rūnanga

7. To directly respond to paragraph [4] of the Minute, Ngā Rūnanga is not expressly inviting the Court to make the changes to the provisions as set out in Ms Davidson's statement. Rather, the primary intention of Ngā Rūnanga and Ms Davidson in providing this evidence was to indicate that the proposed Plan could be clearer in its intentions, and better give effect to the NPS-FM.
8. As an expert planning witness and consistent with her duties under the Court's Code of Conduct, Ms Davidson was intending to assist the Court with expert evidence which was within her expertise. She was not intending to be an advocate for the position outlined in her evidence.
9. In terms of the substance of Ms Davidson's evidence, Ngā Rūnanga also understood the Court to be wary of the fact that the drafting and interpretation of Objectives 1 and 3 could have consequential implications for other higher order provisions. This possibility appeared to be recognised and expressly accounted for in the Interim Decision at [347] and Annexure 1, and the Court's Record of the Pre-Hearing Conference held on 10 February 2020.³
10. Based on the evidence of Ms Cain and Ms Davidson, it is submitted that Objectives 1 and 3 cannot be considered in isolation. Therefore, in offering evidence on the other higher order provisions, Ngā Rūnanga was aiming to:
 - (a) assist the Court by considering the possible implications of casting Objectives 1 and 3 as korowai objectives; and
 - (b) offer an expert planning assessment, based on the cultural evidence, as to whether those implications necessitate other drafting changes.

³ All of these matters are recorded in the Court's Minute

11. It is respectfully submitted that the evidence provides a basis for the Court to conclude⁴ that drafting changes could be the most appropriate course in order to ensure that the Topic A provisions:
- (a) better implement the NSP-FM; and
 - (b) appropriately reflect and implement Te Mana o Te Wai.
12. Put another way, Ngā Rūnanga understood the Court to be inviting parties to consider what the higher-order provisions might have looked like, had the proposed Plan been drafted with a proper appreciation and understanding of Te Mana o te Wai and ki uta ki tai. Furthermore, these matters are submitted to be closely related to the Court's request that parties advise the Court how the proposed Plan takes into account the principles of the Treaty of Waitangi.⁵ Ms Cain's expert evidence directly addresses that point.

DATED this 20th day of May 2020



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

⁴ Either through the scope provided by the appeals or potentially through the exercise of its discretion under section 293 of the Resource Management Act 1991.

⁵ See [5] of Record of Pre-Hearing Conference held on 10 February 2020.