

**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 REGARDING TOPIC A AND
WETLANDS DEFINITION**

9 NOVEMBER 2018



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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). It is filed in response to the minute and directions of the Court dated 5 November 2018.
2. The Court has directed that Ngā Rūnanga file and serve a memorandum clarifying whether it proposes amendments to the definitions of “wetland” and “natural wetland” and, if so, setting out proposed amendments. In providing this response and clarification, it is noted by Ngā Rūnanga that the Court has directed that Appendix A (Regionally Significant Wetlands) is excluded from Topic A.
3. By way of context, the specific relevance of the definitions is to Objectives 14 and 17 of the Proposed Southland Water and Land Plan (**pSWLP**) which are within Topic A, and to Rule 74. Ngā Rūnanga has three appeal points on Rule 74,¹ but has not appealed Objectives 14 or 17.² It also has an appeal point on Appendix A.
4. Ngā Rūnanga is a party to an appeal by Horticulture New Zealand³ (**HortNZ**) which has sought amendments to the definitions of “wetland” and “natural wetland”. Ngā Rūnanga has opposed the relief in the HortNZ appeal relating to those definitions. Given that it is not an appellant Ngā Rūnanga cannot propose amendments to the definitions, but rather raises the relevance of the definitions to Topic A.
5. We record that counsel for HortNZ and the Council have been in contact regarding this matter and confirmed their clients' views that the definitions should be Topic B matters. Ngā Rūnanga understands the reasons for those views but is not yet satisfied that the definitions should be deferred to Topic B for the reasons outlined below.

¹ Including seeking deletion of new rule 74ab regarding peat wetlands

² It supports Objectives 14 and 17. The only party that has appealed Objectives 14 and 17 is the Royal Forest & Bird Protection Society of NZ Inc, (ENV-2018-CHC-000050), but the appeal is not specifically relevant to wetlands. Ngā Rūnanga is however a party to this appeal.

³ ENV-2018-CHC-000028

6. The pSWLP refers to “wetland” in objectives 14 and 17 and then uses “natural wetland” throughout some parts of the pSWLP and “wetland” in other parts. Indeed, in some parts of the pSWLP it uses both terms (for example, Rule 74).
7. Rule 74 would suggest there is a hierarchy between wetlands, natural wetlands and regionally significant wetlands in terms of how they are to be protected. The definition would suggest that natural wetlands are a subset of wetlands and then regionally significant wetlands in Appendix A are a further subset of natural wetlands.
8. The concern of Ngā Rūnanga is that the objectives need to be considered with a clear understanding of the definition of “wetland” and the distinction or hierarchy between that definition and that of “natural wetland” and the list of “regionally significant wetlands” in Appendix A.
9. Accordingly, for the purpose of Topic A, it is submitted that it is important to determine what the relevant objectives are seeking to protect: “wetlands” generally, or “natural wetland”/regionally significant wetlands if there is a distinction between these matters, as Rule 74 implies. It is for that reason that Ngā Rūnanga considers the definitions relevant to Topic A. It accepts that the specific scope and meaning of the definitions is probably a Topic B matter.
10. It may be that this issue is one that could be the subject of mediation or expert caucusing for Topic A between the relevant parties with an interest in the definitions and relevant pSWLP provisions. Ngā Rūnanga confirms that it would be willing to participate in such processes should that be directed by the Court.

DATED this 9th day of November 2018



J G A Winchester
Counsel for Ngā Rūnanga