

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH**

**I TE KOTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE**

IN THE MATTER of the Resource Management Act 1991
(the **Act**)

A N D

IN THE MATTER of appeals pursuant to clause 14 of the
First Schedule to the Act

BETWEEN **Aratiatia Livestock Limited**

(ENV-2018-CHC-000029)

... (continued on last page)

Appellants

A N D **SOUTHLAND REGIONAL COUNCIL**

Respondent

**STATEMENT OF EVIDENCE OF SUSAN CLARE RUSTON
ON BEHALF OF BALLANCE AGRI-NUTRIENTS LIMITED, RAVENSDOWN LIMITED,
FEDERATED FARMERS OF NEW ZEALAND (SOUTHLAND), AND HORTICULTURE
NEW ZEALAND**

PLANNING (TOPIC A)

8 MAY 2020

Introduction

1. My full name is Susan Clare Ruston.
2. I am an environmental planner and Director of Enspire Consulting Limited. My qualifications and experience are set out in my Statement of Evidence dated the 22nd of March 2019.
3. I have been engaged by Ballance Agri-Nutrients Limited, Ravensdown Limited, Federated Farmers of New Zealand (Southland), and Horticulture New Zealand to prepare evidence for these proceedings.

Code of Conduct for Expert Witnesses

4. I confirm that I have read the Environment Court's Code of Conduct for Expert Witnesses, as contained in section 7 of the Environment Court's Practice Note 2014, and I agree to comply with it.
5. The data, information, facts and assumptions that I have considered in forming my opinions are set out in my evidence that follows. The reasons for the opinions expressed are also set out in the evidence that follows.
6. I confirm that the matters addressed in this brief of evidence are within my area of expertise, with the exception of where I confirm that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from my opinions expressed in this brief of evidence. I have specified where my opinion is based on limited or partial information and I have identified any assumptions I have made in forming my opinions.

Scope of evidence

7. This evidence has been prepared in response to requests from the Environment Court¹ set out in the Interim Decision of the Court dated the 20th of December 2020 (Decision No. [2019] NZEnvC 208)², the Minute of the Environment Court dated the 4th of February 2020 and the Record of Pre-Hearing Conference dated the 14th of February 2020.
8. In particular, in paragraph 80 of the Interim Decision the Court seeks *“further submissions and evidence on whether Objectives 1 and 3 (Te Mana o te Wai) should be identified as the Korowai Objectives and korowai be defined as a method of plan interpretation”*; and at paragraph 347 of the Interim Decision the Court states that *“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.”*
9. Accordingly, this evidence addresses the following:
 - a) Adoption of Objectives 1³ and 3⁴ as korowai objectives; and
 - b) The evidence of Treena Davidson (dated the 17th of April 2020) where Ms Davidson ‘suggests’ that Objective 2 (*“Water and land are recognised as enablers of the economic, social and cultural wellbeing of the region”*) be *“deleted in its entirety”*.

¹ Hereafter referred to as **‘the Court’**

² Hereafter referred to as **‘the Interim Decision’**

³ Objective 1 in the Interim Decision reads *“Land and water and associated ecosystems are sustainably managed as integrated natural resources, recognising the connectivity between surface water and groundwater, and between freshwater, land and the coast”*.

⁴ Objective 3 of the interim decision reads *““The mauri of water will be acknowledged and protected so that it provides for te hauora o te taiao (health and mauri of the-environment) and te hauora o te wai (health and mauri of the waterbody) and te hauora o te tangata (health and mauri of the people).”*

Executive summary

10. In response to the requests from the Court identified in paragraph 8 of this evidence, if differentiated objectives are to be adopted, in my opinion there needs to be a compelling need for differentiation, and the differentiation itself needs to be clearly documented within the provisions of the plan.

11. In this regard,
 - a) I consider that there is no higher order planning document directing the proposed Southland Water and Land Plan⁵ to differentiate Objective 1 and, based on the reasons set out in this evidence, in my opinion, there is no other compelling reason to differentiate Objective 1. Without differentiation, the recognition of connectivity and integrated management of natural resources sought by Objective 1 would continue to underpin the application of all other objectives (and policies) in the pSWLP; since without differentiation, all objectives are read together, no one objective is subordinate to another, and therefore no one objective can be overlooked;

 - b) There is no higher order planning document directing the pSWLP to differentiate the protection of the mauri of water and, based on the reasons set out in this evidence, in my opinion, there is no other compelling reason to differentiate Objective 3. Further to this, the application of Objective 3 as a higher order objective would, in my opinion, be particularly problematic. This is due to there being, in my opinion, considerable uncertainty and breadth of possible interpretations of the concepts included in Objective 3, tensions within the objective itself that is created by its broad focus, and a resulting need to draw clarity from what would become lower order objectives within the pSWLP (or beyond);

⁵ Hereafter referred to as **'the pSWLP'**

- c) I therefore recommend not differentiating the objectives, and at the same time including an explanation in the pSWLP that clarifies that all of the objectives are to be read together and that, given the nature of Objectives 1 and 3, these objectives should always be considered in decision making under the pSWLP.
12. With respect to Ms Davidson's 'suggested' deletion of Objective 2, in my opinion, 'repetition' (as referred to by Ms Davidson) is not a compelling reason to delete Objective 2, and further to this, I see no compelling reason for such a deletion. If Objective 2 was to be deleted, I consider this would weaken the pSWLP in terms of meeting Objective A4 of the NPS-FM. Objectives A4 of the NPS-FM and 2 of the Interim Decision are broad and are not restricted to 'allowing' the use of a particular resource. Rather they also lead a regional council to consider the cost (impacts) of their decisions (in terms of water and related land matters) to the economic, social and cultural wellbeing of Southland. Accordingly, I recommend that Objective 2 be retained.

Objectives 1 and 3 as Korowai Objectives

13. As previously identified, at paragraph 80 of the Interim Decision, the Court seeks "*further submissions and evidence on whether Objectives 1 and 3 (Te Mana o te Wai) should be identified as the Korowai Objectives and korowai be defined as a method of plan interpretation*". In particular, with respect to Objective 3, the Court notes that "*It is our tentative view that this approach would better accord with the matters of national significance in the NPS-FM and is a more appropriate way to ensure that the integrated and holistic wellbeing of a freshwater body will be directly connected with the use of water and land.*" (paragraph 77 of the Interim Decision).
14. In considering the merits, or otherwise, of adopting objectives that have a differentiated status in a plan, I have first looked to whether there is anything that would prevent, or compel, the adoption of such objectives. Having considered the regional plan making provisions within of the Act, the

requirements of the National Policy Statement for Freshwater Management as amended in 2017⁶ and the requirements of the National Planning Standards 2019, I consider the option to adopt differentiated objectives is available to plan makers (that is it is not prevented) while no regulation compels their use.

15. If differentiated objectives are to be adopted, in my opinion there needs to be a compelling need for differentiation, and the differentiation itself needs to be clearly documented within the provisions of the plan.
16. From the evidence of Ms Davidson (dated the 17th of April 2020), Mathew McCallum-Clark (dated the 17th of April 2020), and Ailsa Cain (dated the 17th of April 2020), I understand that there was an expectation during the plan making process that Te Mana o te Wai and ki uta ki tai were to be embedded throughout the plan. This relationship is referred to in Mr McCallum-Clark's evidence as the "golden thread". The effectiveness of this embedding has been challenged through the appeal process, and has led to the Interim Decision advancing the differentiation of Objectives 1 and 3 as korowai objectives.
17. In considering whether there is a compelling need to differentiate Objective 1, the requirements of sustainable management cannot, in my opinion, be fulfilled without recognising the connectivity that has been expressed in Objective 1. Understanding freshwater and individual waterbodies as components of larger natural systems that need to be managed in an integrated manner is core to resource and environmental management. It is not a new concept, and it naturally underpins all sustainable resource management decision making.
18. Where differentiation is not adopted, all objectives are read together, no one objective is subordinate to another, and therefore no one objective can be overlooked. Accordingly, without differentiation, all of the objectives of the

⁶ Hereafter referred to as **'the NPS-FM'**

pSWLP would be required to be read together; and ‘the sustainable management of land, water and associated ecosystems as integrated natural resources and the recognition of the interconnectedness of surface water and groundwater, and freshwater, land and the coast’ would therefore underpin the application of all other objectives (and policies) in the pSWLP. This underpinning reflects, in my opinion, that Objective 1 is less a resource management outcome (or goal) that is to be achieved, and more a statement of how a resource management objective is to be achieved.

19. For completeness, and as previously discussed, no higher order planning direction leads to the need to distinguish Objective 1. Rather, a similar objective of integrated management within the NPS-FM, Objective C1⁷, is not distinguished from the other objectives in the NPS-FM. While a regional council can include provisions in their plan that are more stringent than the NPS-FM (provided they are not inconsistent with the NPS-FM), I can see no compelling reason to differentiate Objective 1 from the other objectives in the pSWLP.
20. In considering whether there is a compelling need to differentiate Objective 3 I note that the NPS-FM also does not require such a differentiation. Further to this, while the NPS-FM identifies Te Mana o te Wai as a matter of national significance and an integral part of freshwater management, and that the health and well-being of freshwater bodies should be at the forefront of all discussions and decisions about fresh water, the NPS-FM’s own Te Mana o Te Wai objective, Objective AA1 (“*To consider and recognise Te Mana o te Wai in the management of fresh water*”), is not distinguished and must be read together with the other objectives.
21. If an objective is to be differentiated, in my opinion, the meaning of the objective itself must be clear and the clarity cannot rely on drawing meaning

⁷ Objective C1 of the NPS-FM reads “*To improve integrated management of fresh water and the use and development of land in whole catchments, including the interactions between fresh water, land, associated ecosystems and the coastal environment*”

from objectives that have not been differentiated in the same way. In my mind, there is considerable lack of clarity within Objective 3. This stems from, in combination, the requirement to protect the mauri of water, where mauri has a large breadth of meaning; and that the protection of mauri is for the purpose of providing for the health and mauri of the environment, the waterbody and the people.

22. Within the Southland Regional Council's decisions version of the pSWLP, mauri is defined as "*Essential life force or principle; a metaphorical quality inherent in all things, both animate and inanimate.*"⁸ Given this, it is difficult to clearly grasp what would be required in a practical sense to 'protect' the mauri; and, in my opinion, it would be difficult to clearly measure whether this objective is being achieved.
23. Further to this, and in a broad sense, I understand that the mauri of the people relates to wellbeing and this extends beyond physical wellbeing to also include mental wellbeing and the social, economic and cultural wellbeing of the people. Protecting the mauri of the people must therefore involve the people, and this is reflected in Policy AA1(b) of the NPS-FM (Policy AA1 is connected to Objective AA1, being the Te Mana o te Wai objective) which requires that "*values identified through engagement and discussion with the community, including tangata whenua, must inform the setting of freshwater objectives and limits*".
24. Further, there is tension within the objective itself that is created by its broadly encompassing focus (that is, protecting the mauri of water so that it provides for the environment, the waterbody and the people). The other objectives within the pSWLP provide guidance on the details of achieving the health and mauri of the environment, the waterbody and the people, but through the

⁸ It is possible that this definition has a typographical error in it and that "metaphorical" is meant to be "metaphysical". The Environment Court's hearing of appeals on the definitions section of the pSWLP has yet to be progressed.

differentiation of Objective 3, they would be 'lower order' objectives and should not be drawn upon to give meaning to the differentiated objective. Indeed, to do so would bring you back to reading the objectives together.

25. If Objective 3 was differentiated from the other objectives, in my opinion, the definition of mauri in combination with the objective of protecting it, provides significant scope for legal challenges to the decisions of the Southland Regional Council. Such challenges would detract from efficient and effective planning and consenting processes in Southland (including the development of the freshwater management unit chapters of the pSWLP), and work against providing for the health and mauri of the environment, the waterbody and the people.
26. Based on the lack of a higher order planning direction to differentiate the protection of the mauri of water, the scale of uncertainty and breadth of possible interpretation within the concepts included in Objective 3, and the need to draw clarity from what would become lower order objectives within the pSWLP (or beyond), I can see no compelling reason to differentiate Objective 3, and, in my opinion, the application of Objective 3 as a higher order objective would be particularly problematic.
27. I now consider whether the differentiation (that is the proposed relationship between the higher order objectives and the other objectives) has been clearly defined for inclusion in the plan.
28. In this regard I note that the Interim Decision refers to Objectives 1 and 3 as being an "*overarching statement*"⁹ that "*all other objectives and policies would be read in the light of*"¹⁰; and Mr McCallum-Clark (following discussions with Ms Davidson and Ms Cain) has proposed including the following statement in the pSWLP "*Objectives 1 and 2 are a korowai, meaning they provide a cloak or*

⁹ Paragraph 39 of the Interim Decision.

¹⁰ Paragraph 77 of the Interim Decision.

overarching statement on the management of water resources” and “The korowai is always to be considered during resource consent decision-making and the development of future plan changes: and the subsequent objectives are to be interpreted in the context of this korowai”¹¹. In contrast, Ms Davidson refers to Objectives 1 and 3 sitting “across the plan” and that they should be “elevated above the other Objectives to ensure that there is no doubt that this is how the Plan should be interpreted and applied through policies and rules”¹². Ms Davidson considers that “Elevating Objectives 1 and 3 to give them an overarching status would make it clear that: they should not be interpreted narrowly, they have priority, and that other objectives should therefore not be considered as having the same status”.¹³ This contrast highlights the need to clearly state the relationship between the objectives within the plan.

29. With respect to the relationships described by the Interim Decision and Mr McCallum-Clark’s evidence (referred to in paragraph above), these appear to be leaving the objectives in the pSWLP undifferentiated and able to be read together, while advising users of the plan of the expectation that these objectives must be considered when considering any other objective (and policy) in the plan. In my opinion, it would be helpful to set out in the pSWLP the expectation that these objectives should always be considered in decision making under the pSWLP, while also being clear that no differentiation is intended by such a statement.
30. For the reasons outlined in paragraphs 14 to 25 of my evidence I do not agree with the ‘elevation’ (or differentiation) proposed by Ms Davidson. If however, such elevation is also the expectation of the Court and Mr McCallum-Clark (meaning I have misinterpreted the expectations of the Court and Mr McCallum-Clark that I have set out in paragraphs 28 and 29 above), then I consider that the statements proposed for inclusion in the plan by Mr

¹¹ Paragraphs 31 and 33 of Mr McCallum-Clark’s evidence. Note Mr McCallum-Clark’s reference to Objective 2 reflects the Court’s Interim Decision to re-order Objectives 1, 2 and 3.

¹² Paragraph 11 of Ms Davidson’s evidence

¹³ Paragraph 14 of Ms Davidson’s evidence

McCallum-Clark do not go far enough. If differentiation is to be adopted, in my opinion, there needs to be a clear statement about what objectives have a higher order to the remaining objectives, how this order is to be applied in decision making, and how tensions between the higher and lower order objectives should be resolved.

31. In summary, there is no higher order planning document requiring the differentiation of Objectives 1 and 3; I can see no compelling reason to provide such differentiation; the details of differentiation have yet to be fully defined; and I consider that the application of Objective 3 as a higher order objective would be particularly problematic given the many and broad matters being protected and provided for within it. Based on these findings, I consider that it is more helpful not to differentiate the objectives in the pSWLP and, instead, to allow all objectives to be read together.

Objective 2

32. At paragraph 47 of Ms Davidson's evidence, Ms Davidson 'suggests' that Objective 2 (that is "*Water and land are recognised as enablers of the economic, social and cultural wellbeing of the region*") be "*deleted in its entirety*". Ms Davidson considers that "*economic, social and cultural wellbeing are adequately addressed in the other Objectives and there is no need to repeat these matters in Objective 2*" (paragraph 46 of Ms Davidson's evidence).
33. I do not support Ms Davidson's 'suggestion', rather I consider that deletion of Objective 2 would detract from the pSWLP in terms of consistency with the requirements in Objective A4 of the NPS-FM. Objective A4 seeks "*To enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing freshwater quality, within limits.*" Objectives A4 of the NPS-FM and 2 of the Interim Decision are broad and are not restricted to 'allowing' the use of a particular resource. Rather they also lead a regional council to consider the cost (impacts) of their

decisions (in terms of water and related land matters) to the economic, social and cultural wellbeing of Southland.

34. In addition, I do not consider forms of repetition to be a reason to delete objectives. Indeed, if it was then arguably Objective 3's broad reach (that is, the protection of the mauri of water so that it provides for the health and mauri of the environment, the waterbody and the people) would also lead to a number of other objectives being deleted.
35. In my opinion, forms of repetition, in themselves, are not necessarily problematic in objective setting, provided contradictions and unnecessary tensions are avoided. Often, forms of repetition are used to elaborate on particular matters of detail that more general direction setting objectives do not specify. With respect to Objective 2, I do not consider that contradictions or unnecessary tensions exist between this objective and the other objectives in the plan. Rather I consider Objective 2 to be a broad goal that focuses on achieving recognition of water and land as an enabler of economic, social and cultural wellbeing in Southland, while the related objectives give focus to achieving more specific goals for the region.

Conclusion

36. In response to the Court seeking "*further submissions and evidence on whether Objectives 1 and 3 (Te Mana o te Wai) should be identified as the Korowai Objectives and korowai be defined as a method of plan interpretation*" (paragraph 80 of the Interim Decision); and the Court directing that "*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*" (paragraph 347 of the Interim Decision), and for the reasons set out in this evidence, I conclude the following:

- a) There is no higher order planning document directing the pSWLP to differentiate Objective 1 and, in my opinion, there is no other compelling reason to differentiate Objective 1;
- b) There is no higher order planning document directing the pSWLP to differentiate the protection of the mauri of water and, in my opinion, there is no other compelling reason to differentiate Objective 3. Further to this, given the considerable uncertainty and breadth of possible interpretations of the concepts included in Objective 3, and the need to draw clarity from what would become lower order objectives within the pSWLP (or beyond), the application of Objective 3 as a higher order objective would, in my opinion, be particularly problematic;
- c) I recommend not differentiating the objectives, and at the same time including an explanation in the pSWLP that clarifies that all of the objectives are to be read together and that, given the nature of Objectives 1 and 3, these objectives should always be considered in decision making under the pSWLP; and
- d) In my opinion, there is no compelling reason to delete Objective 2, and further to this, if Objective 2 was to be deleted I consider this would weaken the pSWLP in terms of meeting Objective A4 of the NPS-FM.

37. I thank the Court for affording me the time to present this evidence.



Susan Ruston

8th of May 2020

List of appellants

ENV-2018-CHC-26	Transpower New Zealand Limited
ENV-2018-CHC-30	Wilkins Farming Co
ENV-2018-CHC-36	Director-General of Conservation
ENV-2018-CHC-37	Southland Fish and Game Council
ENV-2018-CHC-38	Meridian Energy Limited
ENV-2018-CHC-39	Alliance Group Limited
ENV-2018-CHC-40	Federated Farmers of New Zealand
ENV-2018-CHC-41	Heritage New Zealand Pouhere Taonga
ENV-2018-CHC-47	Waihopai Rūnaka, Hokonui Rūnaka, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima and Te Rūnanga o Ngāi Tahu
ENV-2018-CHC-50	Royal Forest and Bird Protection Society of New Zealand Incorporated