

**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 ON BEHALF OF TREENA LEE DAVIDSON
ON BEHALF OF NGĀ RŪNANGA**

Planning

20 December 2021



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INTRODUCTION

1. My full name is Treena Lee Davidson.
2. My qualifications and experience are set out in my statement of evidence for Topic A of the appeals on the Proposed Southland Water and Land Plan (**pSWLP**), dated 15 February 2019. As an amendment, I am now engaged as a senior environmental policy advisor for Aoraki Environmental Consultancy, the environmental entity of Te Rūnanga o Arowhenua, in the lower Canterbury region. I have been in this role for a year. I have however been contracted by Te Rūnanga o Ngāi Tahu to continue my work for Ngā Rūnanga on the pSWLP.
3. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and I agree to comply with it. I confirm that the issues addressed in this statement 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.
4. I note that whilst I am engaged by Te Rūnanga o Ngāi Tahu, I am bound by the Code of Conduct and professional ethics of the New Zealand Planning Institute (**NZPI**) and am required to be impartial and unbiased in my professional opinions expressed.

SCOPE OF EVIDENCE

5. This statement of evidence addresses the following:
 - (a) A summary of my statements made in my will say statement on the statutory framework.
 - (b) The Ngā Rūnanga appeal points that were addressed in conferencing.
 - (c) The outstanding Ngā Rūnanga appeal points that were not resolved in conferencing:
 - (i) Topic B3 – wetlands and indigenous biodiversity – Rule 51; and

1 This evidence does not address Topic B6 relating to the provisions affecting the Manapouri Power scheme and the Waiau River.

(ii) Topic B4 – bed disturbance – Rule 78 – modified watercourses.

6. In preparing my evidence I have read and considered the following additional documents since drafting my evidence in chief (dated 15 February 2019) and my supplementary evidence following the First Interim Decision (dated 17 April 2020) and my will-say statement (dated 11 November 2021):

- (a) the Joint Witness Statement (**JWS**) – Planning – Forestry (10 December 2021);
- (b) the JWS Planning (12 December 2021) and attachments B2, B3 and B5 (**Planning JWS**);
- (c) the JWS Ecology (01 December 2021) and Greer Memo attachment;
- (d) the JWS Science (11 November 2021);
- (e) the JWS Forestry (11 November 2021);
- (f) the JWS Farm Systems (11 November 2021);
- (g) the will-say statement of Ms Ailsa Cain (5 November 2021); and
- (h) the will-say statement of Dr Jane Kitson (5 November 2021).

EXECUTIVE SUMMARY

7. I consider the process of mediation, conferencing and discussion has resolved the majority of the remaining appeal points for Ngā Rūnanga. The exception to this are the matters of drainage of natural wetlands and the maintenance of modified waterbodies for flood control purposes.

STATUTORY FRAMEWORK

8. I addressed the matters of the NPSFM 2020 in my will-say statement and for the purpose of this evidence would like to highlight the following from my will say:

- (a) That the Topic B provisions need to be informed by or grounded in the Topic A direction, particularly in relation to ki uta ki tai, Te Mana o te Wai and hauora.
- (b) Te Mana o te Wai, as expressed in the NPSFM 2020 is not different from how it was expressed in 2014 and 2017, it is however now a “matter of national significance”. It is also clear and directive that the health and well-being of waterbodies and freshwater ecosystems is the first priority and is considered before the health of people and the ability of people to provide for their social, economic and cultural well-being.
- (c) As Ms Cain has identified at paragraph 22 of her statement of evidence (20 December 2021), Te Mana o te Wai is both a process and an outcome. It is a korowai for the whole of the pSWLP.

OUTCOME OF CONFERENCING

Matters Agreed

9. Table 1 provides list of the matters of the Ngā Rūnanga appeal as it relates it the topic references used during mediation and conferencing. In addition to the explanation given in the Planning JWS this evidence also provides a brief summary of how the resolution provided for the Ngā Rūnanga relief sought. I have not repeated the relief provided as these can be found in the Planning JWS.

Table 1: Topic reference in relation to Ngā Rūnanga relief sought in appeal

Topic Reference	Ngā Rūnanga Relief sought in Appeal
B2 Water Quality and discharges	
Policy 15 (Issue #3, #6 and #9)	Retain Policy 15 as proposed by the s42A report. Delete new Policies 15A, 15B and 15C.
Topic B5 – Farming	
Policy 16 (Issue #2, #4 and #16)	Clause 1(a) – amend to read “strongly discouraging”. Clause 1(c) – delete. Clause 3 – delete.
Rule 20 (Issue #74)	Retain rules as recommended in the Section 42A report (26 May 2017) with the exception of: <ul style="list-style-type: none"> • not permitting intensive winter grazing in Old Mataura; • limiting intensive winter grazing to 20ha on Peat Land;

	<ul style="list-style-type: none"> • intensive winter grazing in the Oxidizing zone being no greater than 20ha and non-complying if does not meet the permitted rules; and • permitted intensive winter grazing in the Riverine being on sites no greater than 20ha in size.
Whole of Plan (Issue #75)	Retain physiographics in the objectives and policies of the pSWLP (except for those changes indicated in this appeal). Reinstate physiographics in the rules relating to discharges and their effect on water quality from agriculture. Recognising however that where it is shown in application of a rule that the physiographic zone applied to the land may not be appropriate that this can be taken into account by the decision maker.
Rule 35A (Issue #101)	Include text “coastal marine area”.
Appendix N (Issue #112 and 113)	Retain Appendix N as provided for in the Section 42A Report with the following amendments: Part B: Retain clause relating to Farm Environmental Plans including known and recorded heritage sites and significant biodiversity. Include in Part B(5) the following: A good management practices section which identifies: The range of good management practices that minimises the effects on taonga species listed in Appendix N and any significant indigenous biodiversity
Ephemeral Waterbodies (Issue #116)	Delete text “excluding ephemeral rivers” wherever it occurs in the proposed plan.

Policy 15

- 10.** I consider the amendments agreed in the Planning JWS address the key concerns expressed in the Ngā Rūnanga appeal. Policy 15C has been deleted entirely removing the issue of uncertainty as to how this provision would apply when the FMU process was established. Policies 15A and 15B are now clearer that “avoid” is the first priority and then “mitigate” which better provides for at least maintaining where water is not degraded and improving it where it is.

Policy 16

- 11.** The Ngā Rūnanga appeal sought that a clear message was sent that new dairying was to be “strongly discouraged” for regionally significant wetlands and sensitive waterbodies. The amendment to Policy 16 makes it clear that this is to be avoided. While Ngā Rūnanga sought clause 3 be deleted, this was because it was considered unnecessary. The amendment in the Planning JWS makes it clear this Policy is linked to the Freshwater Management Unit discussion in accordance with the NPSFM.

Rule 20 and whole of plan physiographics

12. The Ngā Rūnanga appeal on Rule 20 was focused on ensuring the provisions appropriately considered ki uta ki tai and matched land use with land capability as a mechanism to maintain or improve water quality. The Planning JWS requires, in Appendix N, that alongside the physiographics being mapped, the risks associated with the relevant physiographic zones are considered (along with how those risks will be managed or mitigated).
13. While I consider the way in which the Planning JMS approach has incorporated physiographics is appropriate, I have a remaining concern about how the intensive winter grazing rules will recognise how land use affects water quality. This is a matter I consider is appropriate to address in any rebuttal on behalf of Ngā Rūnanga as a section 274 party.

Rule 35A

14. The Planning JWS has agreed to the inclusion of a 50 metres setback from the “coastal marine area”. I consider this provides for the Ngā Rūnanga relief which sought to provide for the connection between fresh and coastal waters and also to mitigate or avoid discharges into the coastal marine area.

Appendix N

15. The Ngā Rūnanga relief retains taonga species and heritage sites in Appendix N.

Ephemeral Waterbodies

16. The Planning JWS has agreed to remove reference to ephemeral waterbodies from the provisions. Instead the focus is on critical source areas and the need to appropriately manage these as sources of contaminants to water. I consider this approach addresses this issue appropriately and puts the focus on managing how contaminants entering water where the previous drafting expressly allowed land users to ignore these areas. I am of the view that this approach better gives effect to Te Mana o Te Wai than other available approaches.

Unresolved matters

17. Table 2 provides list of the matters of the Ngā Rūnanga appeal as it relates it the topic references used during mediation and conferencing that have not been resolved. I then discuss each matter.

Table 2: Topic reference in relation to Ngā Runanga relief sought in appeal

Topic Reference	Ngā Rūnanga Relief sought in Appeal
B3 – Wetlands	
Rule 74 (Issue #8)	Amend Rule 74 to include: <u>d) The draining of any natural wetland is a prohibited activity</u>
B4 – Bed Disturbance	
Rule 78 (Issue #13)	Add a new clause: <u>(xv) No activity in relation to drainage maintenance shall significantly adversely affect the habitat or health of any taonga species as identified in Appendix M</u>

Wetlands

18. The Ngā Rūnanga appeal sought that an amendment to Rule 74 made it prohibited to drain a natural wetland. I agree that it is more appropriate that drainage of wetlands is addressed in Rule 51, which deals with minor diversions of water (rather than through a land use rule).
19. Under Rule 51, the diversion of water from any natural wetland is a discretionary activity. I agree with the Council's preferred option that the diversion of water from a natural wetland for the purpose of land drainage should be a non-complying activity. This sends a signal that the activity should be avoided wherever possible. It recognises the significant loss of wetlands that has occurred in Southland.² However, I also consider a non-complying activity status recognises restoration of natural wetlands, scientific research, construction and maintenance of wetland utility structures and maintenance and operation of specified infrastructure and other infrastructure can and does take place in an indigenous wetland. I would also note that this would meet Policies 33 and 34 of the SWLP which state that:

Policy 33 – Prevent the reduction in area, function and quality of natural wetlands, including through drainage, discharges and vegetation removal.

² Statement of Evidence of Dr Jane Kitson (dated 20 December 2021) at paragraphs [18]-[21].

Policy 34 – Recognise the importance of wetlands and indigenous biodiversity, particularly their potential to improve water quality, offset peak river flows and assist with flood control, through encouraging:

1. The maintenance and restoration of existing natural wetlands ...

20. I note neither policy was subject to appeal and also the conclusions of the JWS for Water Quality and Ecology (Rivers and Wetlands) held 7 – 9 May 2019 remain relevant, namely:

- (a) Wetlands occupy approximately 11% of their historic extent in Southland [paragraph 31];
- (b) Wetland clearance is still continuing in Southland and has not slowed in recent decades [paragraph 32];
- (c) The major issues/concerns/factors that need to be managed are: any hydrological change, land use or development that reduces wetland area and condition [paragraph 30].

21. Given these factual circumstances, I therefore consider it appropriate that the SWLP provisions for diversions from natural wetlands are more restrictive than the NESF.

Drainage maintenance

22. The Ngā Rūnanga appeal sought to recognise and protect taonga species which the evidence of Dr Kitson indicates is not mitigated by the current Rule 78.³ Her evidence discusses how the waterways described as modified constitute a large proportion of Southland's rivers, streams and creeks. Dr Kitson's evidence further discusses how drainage works involve high levels of disturbance and create sedimentation which can impact on taonga species' survival.⁴ She further indicates that mapping and reliance on known distribution of species is inadequate.⁵

23. Dr Kitson's evidence therefore leads me to consider that the current rule does not provide for taonga species. I also do not believe from Dr Kitson's evidence that drafting or providing for additional clauses to protect taonga species' habitat is

3 Statement of Evidence of Dr Jane Kitson (dated 20 December 2021) at paragraphs [22]-[23].

4 At [24]-[25].

5 At [26].

possible given the current permissive nature of the rule. Dr Kitson's evidence [at paragraph 26] discusses how the current permitted rule allows considerable stretches of waterway to be cleared with few checks and balances. I suggest it is appropriate that an area of volume limit is applied to the rule to restrict the extent to which works can be undertaken. I am however uncertain what that trigger should be, as the Ecology JWS did not provide a specific number.

24. I consider it is appropriate to include clauses that:

- (a) restrict sediment size;
- (b) reduce the extent to which the bed is relevelled in order to retain variability in bed profile;
- (c) require trapping suspended sediment and retaining in the area being cleared;
- (d) identify if there are any fish captured or stranded by the activity, including in the spoil and any species are returned, preferably upstream of the activity immediately; and
- (e) require protection of non-diadromous galaxias through mapping their habitat extent.

25. A rule of this nature would in my view be far more appropriate from a Te Mana o Te Wai and ki uta ki tai perspective than the current rule.

26. I further consider that, at this time, there may be additional relief that would sit outside of the plan:

- (a) Good management practice guidance that must be adhered to by contractors.
- (b) Ngā Rūnanga are consulted prior to the works being undertaken and their advice is taken into account. This may include the practice of

engaging “spotters” or undertaking an ecological assessment prior to works being undertaken.

Treena Davidson

20 December 2021