

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

UNDER	The Resource Management Act 1991 (RMA)
IN THE MATTER	Appeals under clause 14(1) of the First Schedule of the Act in relation to the Proposed Southland Water and Land Plan
BETWEEN	MERIDIAN ENERGY LIMITED Appellants
AND	SOUTHLAND REGIONAL COUNCIL Respondent

STATEMENT OF EVIDENCE OF MARGARET JANE WHYTE

FOR

MERIDIAN ENERGY LIMITED

8 May 2020

Judicial Officers: Judge Borthwick

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TE RUNANGA O NGAI TAHU, HOKONUI RUNAKA, WAIHOPAI RUNAKA, TE RUNANGA O AWARUA AND TE RUNANGA O ORAKA APARIMA
(ENV-2018-CHC-47)

PETER CHARTRES
(ENV-2018-CHC-48)

RAYONIER NEW ZEALAND LTD
(ENV-2018-CHC-49)

ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NZ INC
(ENV-2018-CHC-50)

Appellants

AND

SOUTHLAND REGIONAL COUNCIL

Respondent

INTRODUCTION

Qualifications and Experience

- 1 My name is Margaret Jane Whyte.
- 2 My qualifications and experience and a declaration of interest are as set out in my evidence in chief in relation to Topic A matters appealed by Meridian Energy Limited (Meridian Energy) dated 15 February 2019.

Code of Conduct

- 3 I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court's Practice Note 2014. I have complied with the practice note when preparing my written statement of evidence and will do so when I give oral evidence before the Environment Court.
- 4 The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
- 5 Unless I state otherwise, this evidence is within my knowledge and sphere of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

SCOPE OF EVIDENCE

- 6 This evidence addresses the architecture of the Plan, particularly the relationship between Objectives 1, 3 and 10, if Objectives 1 and 3 are identified as Korowai Objectives. In this evidence I have been asked by Meridian Energy to focus particularly on the relationship between Objective 1, Objective 3 and Objective 10, rather than on the whole suite of objectives, because of the singular importance to Meridian Energy of Objective 10 which now relates exclusively to the Manapouri Power Scheme (**MPS**).
- 7 The matters addressed in my evidence are:
 - (a) The consequence for the implementation of the Plan, if the Plan architecture is changed by identifying Objectives 1 and 3 as Korowai Objectives. In particular I consider the consequences for Plan implementation under three alternative assumptions about the purpose of the Korowai Objectives. The three alternative

assumptions I have based my planning assessment on are that the purpose of identifying Objectives 1 and 3 as Korowai Objectives is:

- (i) to identify that Objectives 1 and 3 are mandatory relevant considerations to all decision making under the Plan including future plan changes, with no change in the relative weight or status of the objectives relative to any other objectives; or
 - (ii) to establish a degree of deliberative emphasis to be given to Objectives 1 and 3 that is to be taken into account by all decision making under the Plan including future plan changes, but which the weight to be afforded to the outcomes in the objectives in any particular decision is still context dependent; or
 - (iii) to establish a clear hierarchy with respect to the outcomes sought in Objectives 1 and 3 over other objectives to be applied to decision making under the Plan including future plan changes.
- (b) A discussion of the specific wording and approaches to identifying Objectives 1 and 3 as Korowai Objectives put forward in the evidence of:
- Matthew McCallum-Clark for the Southland Regional Council.
 - Treena Davidson for Ngā Rūnanga and Ngāi Tahu.
- (c) Providing any alternative drafting addressing matters raised in my evidence.

8 I do not provide any evidence or evaluation regarding the meaning of Te Mana o te Wai, Ki uta ki tai or the principles of the Treaty of Waitangi.

OVERALL CONCLUSIONS

9 Having considered the above matters in my evidence, my key conclusions are:

- (a) Amending the architecture of the Plan has the potential to change:
 - (i) the relationship and balance between the objectives and how they are to be considered, including Objective 10, and

- (ii) the implementation of provisions to achieve these objectives, including policies and rules, only some of which are, subject to consideration in the Part B Appeal matters¹.
- (b) The degree of change to the architecture of the Plan, and the consequence of any change to the relationship of Objectives 1 and 3 and other objectives, including Objective 10, is highly dependent on the intent of the Korowai Objectives and the wording used either within them or to introduce them. In particular whether:
 - (i) Objectives 1 and 3 are identified as Korowai Objectives to reinforce that these objectives address matters that are relevant to, and must be considered as part of, all decisions and matters relating to water within the pSLWP. This does not fundamentally change the way the pSLWP, particularly Objective 10, would be considered and implemented; or
 - (ii) Objectives 1 and 3 are identified as Korowai Objectives and are provided with some deliberative emphasis as to their consideration within the relevant decision-making framework. The approach emphasises the importance of Objectives 1 and 3. However, it does not fundamentally change the way the pSLWP, particularly Objective 10, would be considered and implemented, due to the subject matter of these objectives and the way the pSLWP is structured; or
 - (iii) Objectives 1 and 3 are identified as Korowai Objectives and a form of hierarchy is afforded to the outcomes of these objectives. This means that the achievement of Objectives 1 and 3 as Korowai Objectives is identified as being more important than and is to be achieved before the other objectives. This does fundamentally change the approach and implementation of the pSLWP and will change the way Objective 10 is considered as it would be a subordinate or secondary objective. It would also likely change how subsequent policies and rules are to be considered. This is because the achievement of Objectives 1 and 3 will in all situations be the primary consideration,

¹ Including, but not limited to Policies 21, 22, 33, 44 and Rules 8 and 56.

with those objectives to be achieved in advance of the consideration of other objectives. If the intent of the pSLWP is that within the Waiau FMU Objective 10 is to be considered alongside Objectives 1 and 3 in any future plan change process including the future Freshwater Management Unit (FMU) processes then under this approach changes to the wording of Objective 10 would be necessary to achieve that outcome.

MATTERS CONSIDERED

10 In preparing my evidence I have considered the following:

- (a) The evidence of Meridian Energy's company witness – Mr Feierabend
- (b) The Interim Decision of the Environment Court dated 20 December 2019² (Interim Decision)
- (c) The evidence of Southland Regional Council, Te Rūnanga o Awarua, Te Rūnanga o Oraka Aparima (collectively Ngā Rūnanga), and Te Rūnanga o Ngāi Tahu (collectively Ngāi Tahu) in particular:
 - Mr McCallum-Clark for the Southland Regional Council
 - Ms Davidson for Ngā Rūnanga and Ngāi Tahu
- (d) The National Policy Statement for Renewable Electricity Generation (NPSREG)
- (e) The National Policy Statement for Freshwater Management 2014, incorporating the changes made in 2017 (NPSFM 2014 and NPSFM 2017)
- (f) The Southland Regional Policy Statement (SRPS).

11 In my consideration of Objective 10 I have applied the wording provided in Annexure 1 to the Interim Decision which is:

“Objective 10 is decided in part and amended:

The national importance of the existing ~~hydro-electricity-generation schemes, including the~~ Manapōuri hydro electricity generation scheme in

² [2019] NZEnvC 208

the Waiau catchment, is provided for and recognised in any resulting flow and level regime, and their structures are considered as part of the existing environment.”

- 12 My consideration of Objective 10 for the purpose of this evidence assumes the objective does not address enhancement of the Manapōuri Power Scheme. Mr Feierabend in paragraph 58 of his evidence has stated that “Meridian is content to rely on Objective 9B as providing a suitable basis from which any future MPS enhancement proposal can be assessed, thereby giving effect to the SRPS requirements. On this basis Objective 10 will not need to refer to enhancement...” I have not addressed matters relating to enhancement in my evidence. I understand any questions from the Court to Meridian arising from the Interim Decision’s discussion of Objective 10 will be addressed in a subsequent process.

KOROWAI OBJECTIVES

- 13 The matter I address in this evidence relates to the how Objectives 1 and 3 are addressed within the pSLWP, and any consequences if these are identified as Korowai Objectives. I also address any wording to be included to identify Korowai Objectives within the proposed Southland Water and Land Plan (pSLWP).

- 14 This responds to paragraph 80 of the Interim Decision which states:

“Secondly, we will seek 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.”

- 15 In my evidence I have focussed my consideration on any change to the relationship of Objectives 1 and 3 and Objective 10.

- 16 The wording of objective 1 is not subject to amendment in the Interim Decision and is:

Objective 1

“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.”

- 17 The wording of objective 3 is subject to amendment in the Interim Decision and is identified to be reworded to:

“The mauri of waterbodies 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).”

- 18 The wording of Objective 10 is subject to amendment in the Interim Decision and decided in part (see paragraph 11 above).

- 19 In my opinion the key matter that influences the implementation of the pSLWP in the context of a consideration of Objectives 1 and 3, and their relationship with Objective 10 is not necessarily whether or not objectives 1 and 3 are explicitly identified as Korowai Objectives, but what the korowai identification actually relates to. In particular I draw a distinction between whether the korowai status relates to how these objectives are to be considered in the context of the pSLWP or whether it relates to the outcomes that are to be achieved by these objectives in the pSLWP.

- 20 I consider that there are three main ways any Korowai Objectives could function in the Plan. I now briefly address each of these and consider the implications for each in relation to the relationship between Objectives 1 and 3, and Objective 10.

Approach 1 – providing clarity of consideration

- 21 The first approach I have identified in addressing the korowai concept relates to Objectives 1 and 3 being identified as Korowai Objectives in a manner that reinforces that these objectives address matters that are relevant to, and must be considered as part of, all decisions and matters relating to water within the pSLWP. This approach would mean that it is clear that these objectives are to be considered in all circumstances, but in terms of outcome they will be considered alongside any other relevant objectives. The final consideration and emphasis between the objectives will be determined based on the facts and circumstances that exist in any particular situation within the decision-making framework. Effectively this approach reinforces what I understand to be the current approach of the pSLWP. I have described this approach as providing clarity as to the consideration of Korowai Objectives.

- 22 Under this approach Objectives 1, 3 and 10 will all be relevant in addressing matters affecting the MPS and the Waiau Catchment. I consider that under this approach both the relationship between Objectives 1, 3 and 10, and the matters addressed within each objective do address the relevant matters relating to the management of fresh water and provision for renewable electricity generation in the SRPS, the NPSFM and the NPSREG as relevant to the circumstances.

Approach 2 – providing deliberative emphasis

- 23 The second approach I have identified to address the korowai concept is that Objectives 1 and 3 are identified as Korowai Objectives and are provided with some deliberative emphasis as to their importance or weighting for consideration within any relevant decision-making framework. This approach would mean that these objectives are to be considered in all circumstances, but that they are identified as being key considerations within the context of any consideration of other objectives. I consider this approach means that any final consideration of the outcomes of the objectives will still be determined based on the facts and circumstances that exist in any particular situation within the relevant decision-making framework. However, the decision makers and users of the Plan are provided explicit direction that the Korowai Objectives are to be recognised and considered. I describe this approach as providing deliberative emphasis as to the consideration of these objectives when considering the particular facts and circumstances that exist within any decision making framework.
- 24 Under this approach Objectives 1, 3 and 10 will all be relevant in addressing matters affecting the MPS and the Waiau Catchment. In addressing any matters relevant to the MPS all would be key considerations in any decision making process. This is because of the deliberative emphasis placed on the Korowai Objectives and because of the national significance of the MPS. This approach would be consistent with how I consider the objectives of the pSLWP would likely be applied in the Waiau Catchment irrespective of a korowai. This is borne out in Policy 44 which is explicit in requiring that the concepts that are central to Te Mana o te Wai are given particular regard in FMU limit setting processes alongside other values established by tangata whenua and the community. As with the first approach to korowai I discuss at paragraphs 21 and 22 I consider that under this second approach both the

relationship between Objectives 1 and 3, and 10, and the matters addressed within each objective do address the relevant matters addressing water and renewable electricity in the SRPS, the NPSFM and the NPSREG as relevant to the circumstances.

Approach 3 – ascribing hierarchy of outcome

- 25 The third approach I have identified is that Objectives 1 and 3 are identified as Korowai Objectives and priority is afforded to the outcomes of these objectives. This means that the achievement of the outcomes in Objectives 1 and 3 as Korowai Objectives are identified as being more important than, and are to be achieved before, the outcomes in other objectives. I see this approach as effectively establishing a hierarchy between the objectives with Objectives 1 and 3 being first order objectives where the outcomes are to be achieved prior to, or like a prerequisite, to the remaining objectives. Effectively all other objectives would be subordinate to Objectives 1 and 3. Whether Objectives 1 and 3 were achieved would be the key focus for any decision making, including future FMU processes. I describe this approach as ascribing hierarchy of outcome.
- 26 With respect to specific considerations relating to the relationship between Objectives 1, 3 and 10 in situations affecting the MPS situated in the Waiau Catchment I consider that this approach will change the consideration of Objective 10, in that it will be subservient to Objectives 1 and 3.
- 27 Any implementation of Objective 10, unless the wording of Objective 10 is amended, would be subservient to achieving the outcomes in Objectives 1 and 3. What such an approach to Korowai Objectives does is to elevate and prioritise the achievement in Objectives 1 and 3 above the consideration of any other national values and uses for water that may also be identified in the FMU objectives and limit setting process under the NPSFM 2017, including hydro-electric power generation which is identified in Appendix 1 of the NPSFM 2017 as an “Other National Value”. This priority would apply irrespective of the particular facts and circumstances that exist in any situation, including in the case of the MPS in the Waiau FMU, its recognition in the SRPS as a nationally important source of renewable electricity.

- 28 I consider that to elevate and prioritise the achievement in Objectives 1 and 3 prior to the consideration of any other national values, irrespective of the particular facts and circumstances, would need to be carefully examined to see whether the result would still give effect to the NPSREG (particularly the Objective, Policy B(a) and (b), Policy C1 and Policy E2) and SRPS (particularly Objective ENG.4, Policy ENG.2, Method ENG.1(b), Objective WQUAN.2 and Policy WQUAN.3).
- 29 If Objective 10 is not intended to be subservient to Objectives 1 and 3, in order to give effect to the higher order planning documents then some changes to the wording of Objective 10 would be required. Further it would be important to recognise in the wording applying to the korowai that there are situations where not all objectives, in all situations, are subservient. I have addressed options for wording in Appendix 1.
- 30 I am of the view that particular consideration should be given to whether it is appropriate to explicitly identify Objective 10 as not being subservient to Korowai Objectives. My reason for drawing a distinction between Objective 10 which addresses the nationally significant MPS and other objectives is due to the existence of the NPSREG which the regional plan is to give effect to. There is a clear relationship between the management of water, the NPSREG and the MPS that Objective 10 addresses. While there are other National Policy Statements to be given effect to, such as the National Policy Statement on Electricity Transmission 2008 (NPSET), which is relevant to the matters addressed in Objective 9B, I have not identified there being such a strong relationship with the NPSET and the management of water to the extent that identifying the outcomes in Objectives 1 and 3 would weaken giving effect to the NPSET in relation to Objective 9B.

Considering the approaches suggested by the other planners

- 31 Both Mr McCallum-Clark³ and Ms Davidson⁴ have considered the implications of having Korowai Objectives for the interpretation of the remainder of the objectives, including Objective 10, and Mr McCallum-Clark has considered any unintended consequences that this may have.

³ Statement of Evidence Mr McCallum-Clark Paragraph 35 and in relation to Objective 10 Paragraph 38.

⁴ Statement of Evidence Ms Davidson Paragraph 43 and in relation to Objective 10 Paragraph 63 and 65.

- 32 In relation to Objective 10:
- (a) Mr McCallum-Clark considers that “in my opinion, with the specific recognition of Objectives 1 and 3 as korowai, it could be difficult to reconcile Objective 10 where the existence of the dam structure, and abstraction and diversion of a very high percentage of flow, may be inconsistent with the hauora of that water body.”
 - (b) Ms Davidson in paragraph 63 states “I consider adoption of a korowai structure would change how Objective 10 reads. If the Korowai Objectives are applied, this Objective is no longer a “stand-alone” objective potentially prioritising operations associated with the Manapōuri hydro-electric generation scheme. I consider that adopting a korowai structure means that any consideration of limit and flow regime will also need to consider ki uta ki tai and the mana of the Waiau River. I consider that this consequence would be appropriate.” In paragraph 65 she states “regardless of whatever the initial intent behind Objective 10 was, I consider that it is still possible to interpret and apply the Objectives in a way that is consistent with Te Mana o te Wai and a ki uta ki tai approach”.
- 33 I do not fully agree with either Mr McCallum-Clark or Ms Davidson for reasons I address below. However irrespective of our varying opinions as to the relationship of any Korowai Objectives and Objective 10 the variance in our opinions illustrates how important it is, should the Court determine that some changes to the pSLWP are required to better provide for the Korowai Objectives, for clarity and certainty to be provided as to how the Korowai Objectives apply relative to other objectives.
- 34 If the focus of the korowai is on the way Objectives 1 and 3 are to be considered relative to other objectives then I do not agree with Mr McCallum-Clark that the existence of the dam structure, and abstraction and diversion would necessarily be inconsistent with Objectives 1 and 3 if they were expressed as korowai. However, if focused on the outcome and the Korowai Objectives were effectively prerequisite outcomes that must be achieved prior to other objectives being addressed then I concur with Mr McCallum-Clark that it would likely be more difficult to reconcile Objective 10 with this. I consider this result may fail to give effect to those higher order planning provisions that relate to renewable electricity generation generally and the MPS specifically.

- 35 With respect to Ms Davidson’s evaluation, with or without Korowai Objectives, I have never viewed Objective 10 as being a “stand-alone objective”. I understand that any consideration of a limit and flow regime addressed within any FMU process for the Waiau Catchment would include consideration of all relevant objectives, including Objectives 1, 3 and 10. This is consistent with my understanding of the FMU Process Policies (Policies 44–47) of the pSLWP.
- 36 With respect to the ability to interpret and apply Objective 10 in a way that is consistent with Te Mana o te Wai and a ki uta ki tai approach I agree with Ms Davidson that this is possible. However, as I identified when addressing the views of Mr McCallum-Clark if Objectives 1 and 3 are prerequisite objectives the ability to reconcile these with Objective 10 is in my view more uncertain.
- 37 Having considered the three broad approaches available to Korowai Objectives, I now address the specific wording and approaches set out in the evidence of both Mr McCallum-Clark and Ms Davidson.
- 38 Mr McCallum-Clark and Ms Davidson have set out their views as to a potential approach and wording that could be used to ascribe the Korowai Objectives. I have recorded these below:

Mr McCallum-Clark (minimum level of clarity)⁵

“Objectives 1 and 2 are a korowai, meaning they provide a cloak or overarching statement on the management of water resources.”

OR

Mr McCallum-Clark (greater level of clarity)⁶

“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.”

Ms Davidson

⁵ Evidence of Mr McCallum-Clark Paragraph 31 with Paragraph 33 stating that “this statement contains a minimum level of clarity and certainty, but is adequate” .

⁶ Evidence of Mr McCallum-Clark Paragraph 33 stating “I would support greater clarity and certainty through even more explicit wording, by adding..” .

“These objectives are a korowai, meaning they provide a cloak or overarching statement on the management of land and water that must be considered when considering the Objectives of the Plan”.

- 39 Mr McCallum-Clark and Ms Davidson have sought to include a statement describing what is meant by any Korowai Objectives rather than amending the objectives themselves⁷.
- 40 As a general comment, based on my experience in both writing and interpreting statutory plans I consider that prescribing a meaning or intent to a provision, such as an objective, by any means other than within the objective itself is less than ideal. Such an approach can lead to uncertainty as to the status of, and how such explanatory provisions are to be interpreted.
- 41 I have reviewed the proposed wording put forward by Mr McCallum-Clark and Ms Davidson. While they both intend to provide clarity and certainty as to what is meant by their suggested additions I consider shortcomings remain with the wording that has been provided.
- 42 To me, the wording put forward by Ms Davidson, that “these objectives are a korowai, meaning they provide a cloak or overarching statement on the management of the land and water that must be considered when considering the Objectives of this Plan”, identifies that the Korowai Objectives must be considered.
- 43 In the context of the three approaches I have outlined in my evidence this wording fits within approach one – that these Korowai Objectives are to be considerations in decision making. This would involve the korowai and other objectives all being appropriately considered and weighted in the decision-making process. In the case of the korowai, they are always to be considered and in the balance of any decision making process. There is some potential the statement could be interpreted as also fitting within approach two whereby there is a deliberative emphasis provided as to the consideration of the objectives but they are still to be considered along with any other relevant objectives. In both of these situations the statement leads me to the view that when addressing the outcome that these objectives are seeking, any consideration and weighting of values

⁷ Evidence of Mr McCallum-Clark Paragraphs 34 and 37

will occur based on the particular facts and circumstances that exist at the time of any future decision making process.

- 44 In reading the evidence of Ms Davidson I am not confident however that Ms Davidson and I have a shared and consistent understanding of what the korowai statement means. I reach this view having looked at the way her evidence describes the relationship of the Korowai Objectives and the remaining objectives. The following examples I have drawn from her evidence illustrate this:
- (a) Paragraph 14 – where she states “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”.
 - (b) Paragraph 36 – where she states “...I now consider there is considerable merit and having Objectives 1 and 3 identified as strategic or Korowai Objectives. This would ensure that Objectives 1 and 3 will drive step changes in the philosophy and management approach for fresh water which the Plan states it is founded upon, and which are required by the NPSFM. It will also ensure that they are given priority over the other Objectives, which will in turn protect against Te Mana o te Wai being minimised in the same way it was by the Hearings Panel”.
 - (c) Paragraph 38 – where she states “If the Korowai approach is adopted, some consequential changes will be needed in order to correctly reflect the hierarchy and approach – for example amending Objective 6.”
 - (d) Paragraph 39 – where she states “If made Korowai Objectives, Objectives 1 and 3 will have a priority and the other Objectives should not be considered as having the same status. The elevation of Objectives 1 and 3 to Korowai Objectives will affect the other Objectives because, as a result, they will need to “put the needs of the waterbody first””.
- 45 With respect to Mr McCallum-Clark I am not confident that his two statement options (the first containing a minimum level of clarity and certainty and his second longer statement providing greater clarity and

certainty) are simply different ways of expressing the exact same matter. Rather, I consider that the statements could be read as saying two different things. In particular:

- (a) The short statement expresses that Objectives 1 and 3 provide an overarching statement on the management of water resources. My understanding of the meaning of overarching is that it can be taken to mean something that includes or affects everything or everyone. In this context this means that Objectives 1 and 3 are relevant to and affect consideration of all matters pertaining to water. In this regard on my scale of approaches one, two or three I would place statement as being within either approach one (identifying that these objectives are to be considerations for any decision making relating to water) or potentially within approach two (identifying there is some deliberative emphasis provided on these objectives). However, in both these situations when you get to the point of addressing the outcomes of these objectives any weighting and determination of relative outcomes and values, will along with the outcomes in any other relevant objectives, be based on the particular facts and circumstances that exist at the time or in that context.
- (b) With respect to the longer statement I see the first part of this statement to be consistent with the statement and evaluation I have addressed in a. above in that “The korowai is always to be considered during resource consent decision-making and the development of future plan changes”. The part that potentially alters the meaning of the statement is the addition of “and the subsequent objectives are to be interpreted in the context of this korowai”. The key words to me are “subsequent objectives” and “in the context of”. I read this to mean that the meanings of all other objectives are to be influenced by the Korowai Objectives. My interpretation of this would be that all other objectives are to be interpreted in a manner subservient to the Korowai Objectives. I consider this statement is more akin to approach three as addressed in my evidence.

- 46 My purpose in addressing these matters is not to express a judgement or view as to the appropriateness or inappropriateness of the Korowai Objectives or how they should be expressed. Rather it is to illustrate the importance of providing clarity and certainty around exactly how Korowai Objectives are to operate, and ensure that the way Korowai Objectives

are expressed links in with and does not create confusion when implementing the rest of the pSLWP. In particular, if objectives 1 and 3 are afforded a different priority than other objectives it is important to be clear as to whether it is a priority relating to the consideration of the objectives or whether it is a priority as to the achievement of the outcomes of the Korowai Objectives.

OVERALL CONCLUSION

- 47 The meaning, intent and implications for interpreting the plan and in particular the relationship between Objective 10 and Objectives 1 and 3 (if the status of those objectives is to be changed) is dependent on the intent of the Korowai Objectives and the words that describe them.
- 48 If described as overarching matters that are to be considered in any decision-making process relating to water, I do not identify any issue, conflict or unintended consequence with the consideration of Objective 10. The relevant matters in Objectives 1, 3, 10 and any others relevant will be considered and determination of the relative values will be based on the particular facts and circumstances that exist at the time of any decision.
- 49 However, if the Korowai Objectives provide a hierarchy with respect to outcome then this would change the way Objective 10 will be applied. If the intent in the pSLWP is to still enable the consideration of Objective 10 alongside the Korowai Objectives and make decisions on water matters relating to the MPS and the Waiau Catchment based on the facts and circumstances that exist at the time of any decision, along with any change describing the Korowai Objectives some change to wording in Objective 10 would be needed. I consider this would best be achieved by setting out the relationship that is to apply between Objectives 1, 3 and other objectives in the korowai description and setting out the relationship between Objective 10 with the Korowai Objectives within Objective 10.
- 50 In Appendix 1, I have provided possible wording relating to the three key approaches for addressing Korowai Objectives that I have addressed in my evidence. The wording I have suggested is based on the wording provided in the evidence of Mr McCallum-Clark. The approach I have taken is:

- (a) Approach One (Consideration) – In the korowai description I have reinforced that the Korowai Objectives must be considered. I have not identified any changes to Objective 10.
- (b) Approach Two (Deliberative Emphasis) – In the korowai description I have reinforced that the Korowai Objectives are always to be recognised. This wording is consistent with the approach in the NPSFM 2017⁸ which is to consider and recognise. I have not identified any changes to Objective 10
- (c) Approach Three (Hierarchy of Outcome) – In the korowai description I have reinforced that the Korowai Objectives are always to be recognised. This wording is consistent with the approach in the NPSFM 2017⁹ which is to consider and recognise. I have also been explicit that the outcomes in the Korowai Objectives have priority over the outcomes expressed in other objectives, unless otherwise stated. I have identified two options with respect to Objective 10 to identify that it is not subservient to the Korowai Objectives.

51 I have not considered whether the changes to Objective 10 I discuss in Appendix 1 are within the scope of any appeals or alternatively whether the changes can be considered as consequential changes (assuming whatever changes are made to the Korowai Objectives are in scope of the appeals).



Margaret Jane Whyte

8 May 2020

⁸ NPSFM Objective AA1 To consider and recognise Te Mana o te Wai in the management of fresh water.

⁹ NPSFM Objective AA1 To consider and recognise Te Mana o te Wai in the management of fresh water.

Appendix 1 – Possible Wording

The wording addressed below is based on the wording for a statement of Korowai in the evidence of Mr McCallum-Clark. My additions and changes to this wording is shown in strike-through and underlined.

Approach One – (Consideration)

Korowai Objectives¹⁰

Objectives 1 and 3¹¹ are a korowai, meaning they provide a cloak or overarching statement on the management of water resources that must be considered.

No change would be required to Objective 10.

Approach Two – (Deliberative Emphasis)

Korowai Objectives

Objectives 1 and 3 are a korowai, meaning they provide a cloak or overarching statement on the management of land and water. The korowai is always to be considered and recognised 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~~

No change would be required to Objective 10.

Approach Three – (Hierarchy of Outcome)

Objectives 1 and 3 are a korowai, meaning they provide a cloak or overarching statement on the management of land and water that must be considered and recognised ~~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.~~ The outcomes in the Korowai Objectives have priority over the outcomes expressed in other objectives, unless otherwise stated.

Objective 10 (if it is to have a status not subservient to Korowai Objectives). I have identified two drafting options:

¹⁰ Evidence of Mr McCallum-Clark Paragraph 31 (minimum level of clarity and certainty described in Paragraph 33)

¹¹ I have retained the reference to Objective 3 as this is consistent with the way this objective is referenced in the statement of evidence. However, it is acknowledged that if the objectives are reordered then this number would change.

The national importance of the existing Manapōuri hydro electricity generation scheme in the Waiau catchment, is provided for and recognised in any resulting flow and level regime. This objective is not subservient to the Korowai Objectives.

OR

The national importance of the existing Manapōuri hydro electricity generation scheme in the Waiau catchment, is provided for and recognised in any resulting flow and level regime. This objective is to be considered with, but is not subservient to, the Korowai Objectives.