

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

**UNDER** the Resource Management Act 1991

**IN THE MATTER** of appeals under Clause 14 of the First Schedule of the Act

**BETWEEN**

**TRANSPOWER NEW ZEALAND LIMITED**  
(ENV-2018-CHC-26)

**FONTERRA CO-OPERATIVE GROUP**  
(ENV-2018-CHC-27)

**HORTICULTURE NEW ZEALAND**  
(ENV-2018-CHC-28)

**ARATIATIA LIVESTOCK LIMITED**  
(ENV-2018-CHC-29)

**WILKINS FARMING CO**  
(ENV-2018-CHC-30)

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**STATEMENT OF REBUTTAL EVIDENCE OF MATTHEW MCCALLUM-  
CLARK ON BEHALF OF THE SOUTHLAND REGIONAL COUNCIL  
22 May 2020**

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Judicial Officer: Judge Borthwick

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Respondent's Solicitor  
PO Box 4341 CHRISTCHURCH 8140  
DX WX11179  
Tel +64 3 379 7622  
Fax +64 379 2467

Solicitor: P A C Maw  
(philip.maw@wynnwilliams.co.nz)

**WYNNWILLIAMS**

**GORE DISTRICT COUNCIL, SOUTHLAND DISTRICT  
COUNCIL & INVERCARGILL DISTRICT COUNCIL**  
(ENV-2018-CHC-31)

**DAIRYNZ LIMITED**  
(ENV-2018-CHC-32)

**H W RICHARDSON GROUP**  
(ENV-2018-CHC-33)

**BEEF + LAMB NEW ZEALAND**  
(ENV-2018-CHC-34 & 35)

**DIRECTOR-GENERAL OF CONSERVATION**  
(ENV-2018-CHC-36)

**SOUTHLAND FISH AND GAME COUNCIL**  
(ENV-2018-CHC-37)

**MERIDIAN ENERGY LIMITED**  
(ENV-2018-CHC-38)

**ALLIANCE GROUP LIMITED**  
(ENV-2018-CHC-39)

**FEDERATED FARMERS OF NEW ZEALAND**  
(ENV-2018-CHC-40)

**HERITAGE NEW ZEALAND POUHERE TAONGA**  
(ENV-2018-CHC-41)

**STONEY CREEK STATION LIMITED**  
(ENV-2018-CHC-42)

**THE TERRACES LIMITED**  
(ENV-2018-CHC-43)

**CAMPBELL'S BLOCK LIMITED**  
(ENV-2018-CHC-44)

**ROBERT GRANT**  
(ENV-2018-CHC-45)

**SOUTHWOOD EXPORT LIMITED, KODANSHA  
TREEFARM NEW ZEALAND LIMITED, SOUTHLAND  
PLANTATION FOREST COMPANY OF NEW ZEALAND**  
(ENV-2018-CHC-46)

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

**PETER CHARTRES**  
(ENV-2018-CHC-48)

**RAYONIER NEW ZEALAND LIMITED**  
(ENV-2018-CHC-49)

**ROYAL FOREST AND BIRD PROTECTION SOCIETY  
OF NEW ZEALAND**  
(ENV-2018-CHC-50)

**Appellants**

**AND**

**SOUTHLAND REGIONAL COUNCIL**

**Respondent**

## Introduction

- 1 My full name is Matthew Eaton Arthur McCallum-Clark.
- 2 My qualifications and experience are set out in my Statement of Evidence in Chief dated 14 December 2018, and updated in my Statement of Evidence in Chief dated 17 April 2020.
- 3 As with my Evidence in Chief, I confirm that I have read and am familiar with the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014. I agree to comply with that Code. Other than where I state that I am relying on the evidence of another person, my evidence is within my area 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 Rebuttal Evidence

- 4 In my rebuttal evidence I provide a response on a topic basis. I have addressed all the briefs of evidence, other than that of Ms Cain. For the avoidance of doubt, the evidence responded to is:
  - (a) Evidence in Chief of Jane Whyte for Meridian, dated 8 May 2020;
  - (b) Evidence in Chief of Susan Ruston for Ballance, Ravensdown, Federated Farmers and HortNZ, dated 8 May 2020;
  - (c) Evidence in Chief of Linda Kirk for the Director General, dated 13 May 2020;
  - (d) Evidence in Chief of Ben Farrell for Fish & Game and Forest & Bird, dated 27 April 2020;
  - (e) Evidence in Chief of Janan Dunning for Gore DC, Southland DC and Invercargill CC, dated 8 May 2019;<sup>1</sup>
  - (f) Evidence in Chief of Treena Davidson for Ngā Rūnanga and Te Rūnanga o Ngāi Tahu, 17 April 2020; and
  - (g) Evidence in Chief of Andrew Feierabend for Meridian, 8 May 2020.

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<sup>1</sup> It is assumed that this date should be 2020.

- 5 The topics I address are:
- (a) What is intended by Korowai Objectives. This includes a summary of the conclusions of each planning witness;
  - (b) The Treaty of Waitangi;
  - (c) Changes to other objectives; and
  - (d) Miscellaneous points.

### **What is intended by Korowai Objectives**

- 6 I have read and considered the Evidence in Chief of all witnesses in relation to the Korowai Objectives. From considering the various statements of evidence it is apparent that most planners consider that Objectives 1 and 3 should be referenced as Korowai Objectives.<sup>2</sup> There appears to be a number of different opinions as to how that should be implemented with respect to other Objectives, and indeed the remainder of the provisions of the Proposed Southland Water and Land Plan (**pSWLP**).
- 7 In considering the evidence, I have noted that when the various planners explain their reasoning, there appears to be some discrepancy between how the Korowai Objectives are described and the actual wording changes suggested. In my opinion, these differences could lead to future debate and uncertainty as to the meaning of the Korowai Objectives, if the pSWLP is not specific and certain.
- 8 I have set out, in **Attachment 1** to this evidence, a table summarising the wording suggested for the pSWLP by each planning witness and selected extracts from their reasoning that typify what I understand the witnesses to be intending. For completeness, I note that Ms Ruston is of the opinion that Objectives 1 and 3 should not be differentiated in any way, and that Ms Whyte has provided an

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<sup>2</sup> With the exception of Ms Ruston.

analysis of various options for wording changes to the pSWLP, without expressing a particular preference.<sup>3</sup>

- 9 Ms Ruston has suggested that there needs to be a “compelling” need for differentiation of the Objectives, and that in her opinion, such a reason does not exist.<sup>4</sup> In my opinion, the use of “strategic objectives” is becoming more common in the current generation of district and regional plans. The National Planning Standards enable the use of strategic objectives but does not set out their meaning in relation to other objectives. From reviewing a number of regional and district plans, the meaning ascribed to strategic objectives is not consistent. While there is a clear and logical implication that ‘strategic’ objectives are superior in some way, the degree of flexibility for subsequent provisions differs. In some plans the strategic objectives are clearly elevated, and other objectives are required to give effect to them. In other plans, the nature of the strategic objectives is more that they are a statement of overall outcome and must be considered in certain circumstances. I have set out the wording of a number of other plans in **Attachment 2** to this evidence, to illustrate both this difference and the reasonably common use of strategic objectives. Therefore, as there is no standard approach from the planning witnesses, and no consistency in current practice, it has further confirmed to me the need for the pSWLP to be specific as to its intent for the Korowai Objectives.
- 10 I disagree with Ms Ruston’s implication that ‘elevation’ should not occur on the basis that this has not been directed by a higher order planning document.<sup>5</sup> As has been identified in the analysis of other district and regional plans, the use of strategic objectives is relatively common and responds to a variety of local circumstances that are not specifically referred to in higher order planning documents. In any event, it is my opinion that the National Policy Statement for Freshwater Management (**NPS-FM**), and its statement regarding the

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<sup>3</sup> At para [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.”

<sup>4</sup> At paras [15], [19], [26].

<sup>5</sup> At para [19].

national significance of fresh water and Te Mana o te Wai<sup>6</sup> would likely qualify as support from a higher order document.

- 11 Ms Ruston is also concerned about unintended consequences of ‘elevation’.<sup>7</sup> As is set out below, these concerns are possibly addressed through a consideration of the degree of elevation of Objectives 1 and 3.
- 12 In considering the statements of evidence, I agree with the analysis by Ms Whyte in categorising the degree of elevation into three tiers which she referred to as:
- (a) Tier 1 – Consideration
  - (b) Tier 2 – Deliberative Emphasis
  - (c) Tier 3 – Hierarchy of Outcomes
- 13 In my analysis below, I use Ms Whyte’s description and differentiation into these three tiers.

***Tier 1 – Consideration***

- 14 Mr Dunning and Ms Ruston both appear to be in support of relatively equal status between Objectives 1 and 3 and the remainder of the Objectives, and in my opinion would best be characterised as ‘consideration’. Ms Ruston’s support of this appears both more certain and clearer.<sup>8</sup> Mr Dunning reasons at times that there should be relative equality, but also a “lens of Te Mana o Te Wai”,<sup>9</sup> which to me indicates something more than just consideration. However, in other paragraphs, he is clear that the Korowai Objectives should be considered ‘alongside’ other objectives and weighted on a case by case basis.<sup>10</sup> Overall, I am less clear about what outcome Mr Dunning considers is most appropriate.
- 15 Ms Ruston identifies uncertainty with mauri as a concept, and the general difficulty with the measurability of Objective 3.<sup>11</sup> I agree that it

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<sup>6</sup> At page 7.

<sup>7</sup> At para [25].

<sup>8</sup> At para [36c].

<sup>9</sup> At para [21].

<sup>10</sup> At para [18].

<sup>11</sup> At para [22].

can be difficult to define complex concepts in a simple and measurable way, and I agree that it is generally desirable that objectives are measurable. However, I do not consider that this is a reason why an objective should or should not be elevated. It is an issue that is equally relevant to the objective whether it is elevated in any way or not. In my opinion, while Objective 3 may be difficult to 'measure' it is still capable of assessment as to whether it is being achieved in individual decision-making. Further, I consider it can be assessed as to whether it has been achieved in more general reporting, such as in accordance with section 35 of the RMA, through a range of environmental and cultural data, including cultural indicators of health. I also note that resolution of the perceived 'tensions' within the Objective that Ms Ruston identifies<sup>12</sup> are, in my opinion, relevant more generally to the interpretation of Te Mana o te Wai.<sup>13</sup> They are not unique to Southland or the pSWLP, and may well require resolution through the legal challenge that Ms Ruston is concerned about.<sup>14</sup>

### ***Tier 2 – Deliberative Emphasis***

16 Ms Whyte identifies this categorisation as always needing to consider and recognise the Korowai Objectives. As identified above, Mr Dunning's evidence is somewhat inconsistent as to the level of elevation of Objectives 1 and 3. In my opinion, Mr Dunning's suggested addition to the wording of the Plan would fall into this category (notwithstanding that his reasons for the addition suggest he fits within Tier 1).

### ***Tier 3 – Hierarchy of Outcomes***

17 In the discussion of the Korowai Objectives, it would appear that Ms Kirk, Ms Davidson and Mr Farrell consider that Objectives 1 and 3 should be elevated, so that all other objectives are subservient to them. In my opinion, the actual wording sought to be included in the

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<sup>12</sup> At para [24].

<sup>13</sup> See for example Mr Farrell's contention at para [56] that "Te Mana o Te Wai supports the use of water for commodity reasons (on the basis the health of the people includes economic health, not just physical health)."

<sup>14</sup> At para [25].



pSWLP by Ms Kirk and Ms Davidson does not necessarily express this with clarity.<sup>15</sup>

- 18 Mr Farrell identifies the difference between “korowai” and “golden thread”.<sup>16</sup> He also identifies at paragraph [43] a quotation of part of the introduction of the pSWLP and describes this as “intentionally applying a Korowai approach”. In my opinion, what these drafting methods or concepts are called, or the degree of understanding of them, is relatively less important than the outcomes that the pSWLP delivers. For example, in the paragraph Mr Farrell has quoted, I do not consider that to be a statement of an “intentional Korowai” but rather an explanation of how the pSWLP responds to tāngata whenua themes and issues. I note that in the preamble and introduction sections of the pSWLP there are other paragraphs of a similar nature on other topics and themes in the pSWLP.
- 19 Mr Farrell suggests that other provisions need to “give effect to, or not be inconsistent with the Korowai Objectives 1 and [3]”.<sup>17</sup> In my opinion, “give effect to” and “not be inconsistent with” are different tests, and likely to lead to different outcomes. In my opinion, the drafting of the pSWLP was not undertaken in a manner that deliberately considered all other provisions to “give effect to Objectives 1 and 3” and I do not support that addition. However, I do consider that other provisions should not cut across or clearly go against Objectives 1 and 3, especially if that potential conflict is not resolved within the pSWLP.

***Further consideration***

- 20 Having considered the various briefs of evidence lodged and the reasoning of the witnesses, along with the need for additional clarity I have identified earlier,<sup>18</sup> I am of the opinion that the Korowai Objectives should be considered to have more than deliberative emphasis, and any inconsistency between the Korowai Objectives and any subsequent objectives explicitly resolved.

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<sup>15</sup> See Attachment 1 for detailed analysis.

<sup>16</sup> At para [44].

<sup>17</sup> At para [54].

<sup>18</sup> At para [7].

21 However, I do not consider that all other Objectives should be clearly subservient to these two Objectives to the degree that all other provisions of the plan must “give effect to” them.

22 I am particularly mindful of how the NPSFM characterises this, using words such as ‘forefront of all discussions and decisions’ and ‘recognising Te Mana o te Wai as an integral part’. In my opinion, this implies a persuasive and pervasive influence, rather than an exclusive direction:<sup>19</sup>

By recognising Te Mana o te Wai as an integral part of the freshwater management framework it is intended that the health and well-being of freshwater bodies is at the forefront of all discussions and decisions about fresh water, including the identification of freshwater values and objectives, setting limits and the development of policies and rules. This is intended to ensure that water is available for the use and enjoyment of all New Zealanders, including tangata whenua, now and for future generations.

23 Having further considered the issue, my preferred wording is:

Objectives 1 and 2 are a korowai, meaning they provide a cloak or overarching statement on the management of water resources. The korowai is always to be at the forefront during resource consent decision-making and the development of future plan changes; and the subsequent objectives of this Plan are to be interpreted in the context of this korowai.

### **Treaty of Waitangi**

24 Mr Farrell has helpfully included a significant explanation of Chapter 3 of the Regional Policy Statement (**RPS**), and has included various quotes and extracts to illustrate his point.<sup>20</sup> I have appended Chapter 3 of the RPS to my evidence as **Attachment 3**, so that the full context and content can be understood. While I do not strictly agree with some of Mr Farrell’s analysis and the way he has highlighted

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<sup>19</sup> Final paragraph on the National significance of fresh water and Te Mana o te Wai statement on page 7 of the National Policy Statement for Freshwater Management 2014 (as amended 2017).

<sup>20</sup> At para [13].

certain points, I note that in conclusion he generally comes to a similar point,<sup>21</sup> in that we both agree that the pSWLP may not achieve the principle of “active protection” at the present time. As I have identified, this will be a focus for the consideration of subsequent provisions of the pSWLP and the FMU plan change to come.

- 25 Mr Farrell also states that the NPSFM is “probably incomplete or inadequate” with respect to Part 2 of the RMA.<sup>22</sup> In looking at background documents to the Minister for the Environment’s decision to amend the NPSFM in 2017, I note that a thorough assessment was undertaken against Part 2. I have included a copy of this assessment (which was adopted by the Minister in his decision) as **Attachment 4**.

### **Objectives**

- 26 As I stated in my Evidence in Chief, I do not support wholesale changes to the remainder of the Objectives.<sup>23</sup> In my opinion, some of the changes sought by some planning witnesses are for reasons that are not to do with the korowai status of Objectives 1 and 3. For example, Ms Davidson has suggested deletion of Objective 2, concluding that it is ‘unnecessary’ rather than there being a specifically identified or unresolvable conflict with Objectives 1 or 3.<sup>24</sup> Further, Mr Dunning suggests changes to Objective 8 that are of a technical nature and not related to Objectives 1 or 3.<sup>25</sup>
- 27 In my opinion, there are two aspects of the suggested changes to Objective 6 that may need further consideration.
- 28 Ms Kirk suggests adding “or improved” where water is not degraded.<sup>26</sup> While I am not opposed to that addition, in my opinion the improvement focus should be squarely on degraded waterbodies and therefore I question whether the additional words will result in any meaningful change.

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<sup>21</sup> At para [18].

<sup>22</sup> At para [26].

<sup>23</sup> At para [35], McCallum Clark 17 April 2020.

<sup>24</sup> At para [47].

<sup>25</sup> At para [34].

<sup>26</sup> At para [63].

29 Ms Davidson, Ms Kirk and Mr Farrell identify a minor issue with respect to the coastal marine area. Ms Kirk and Ms Davidson suggest the inclusion of estuaries and coastal lagoons within this Objective<sup>27</sup> and Mr Farrell comments on the application the pSWLP to the coastal environment and the coastal marine area.<sup>28</sup> In my opinion, the integrated management of water bodies means that effects on the coastal marine area, and estuaries in particular, are critically important considerations. This has always been the intention through drafting the pSWLP and aligns with the technical evidence given in the first hearing before this Court.<sup>29</sup> However, in drafting the pSWLP there was a clear understanding that a coastal plan needs to be developed with a somewhat different process and requires input and approval of the Minister of Conservation. On this basis, it has been made clear in the pSWLP that the rules of the pSWLP do not to apply to the coastal marine area.<sup>30</sup> While I support Objective 6 specifically referring to estuaries and coastal lagoons, which in Southland normally fall in the coastal marine area, that is on the proviso that such an addition does not trigger a coastal plan process.

### Miscellaneous

30 Mr Feierabend suggests that the way Te Mana o te Wai is reflected in the Interim Decision is not what the Council or plan drafters anticipated. I note that in my Evidence in Chief<sup>31</sup> I speak for myself, and I would not characterise my reaction to the Interim Decision as Mr Feierabend has.

31 Mr Farrell makes strong statements in relation to the plan architecture, korowai objectives and, in particular, the clear understandings of the plan drafters.<sup>32</sup> As one of the plan drafters, I have explained my understanding in my Evidence in Chief, and as a

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<sup>27</sup> At para [64] of Kirk, who also suggests addition of estuaries; and para [54] of Davidson, who suggests addition of estuaries and coastal lagoons.

<sup>28</sup> At para [10].

<sup>29</sup> See Statement of Evidence of Nicholas Ward on behalf of the Southland Regional Council dated 14 December 2018.

<sup>30</sup> See page 7 of pSWLP: "For the avoidance of doubt, no rule in this Plan applies in the coastal marine area."

<sup>31</sup> At para [21].

<sup>32</sup> Particularly at para [65].

description of what I know and recall, prefer my own statements to those of Mr Farrell.

- 32 Mr Farrell suggests embedding Ngā Rūnanga cultural indicators of health into the pSWLP, for the assessment of plan provisions and activities. While I have not considered the merits of such a suggestion, I note that this approach would be a significant shift from the current pSWLP structure. While I note that Mr Farrell has not proposed any wording, his suggestion that cultural indicators of health could be a 'measure of appropriateness of proposed new provisions' would suggest a status akin to an objective. In the absence of any detail or wording from Mr Farrell, I do not agree with the suggestion.

**DATED** this 22<sup>nd</sup> day of May 2020



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Matthew McCallum-Clark

## Attachment 1 – Summary of Expert Witness Views on Korowai Objectives

Witness	Korowai objectives wording	Para	Korowai objectives discussion / reasoning	Para		
Whyte for Meridian	<p><u>Option One (Consideration):</u> Objectives 1 and 3 are a korowai, meaning they provide a cloak or overarching statement on the management of water resources that must be considered.</p>	50(a), full wording in Appendix 1	[...] This does not fundamentally change the way the pSLWP [...] would be considered and implemented.	9(b)(i)		
			<p><u>Option Two (Deliberative Emphasis):</u> 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.</p>	50(b), full wording in Appendix 1	[...] The approach emphasises the importance of Objectives 1 and 3. However, it does not fundamentally change the way the pSLWP [...] would be considered and implemented, due to the subject matter of these objectives and the way the pSLWP is structured.	9(b)(ii)
	[...] 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.	23				
	<p><u>Option Three (Hierarchy of Outcome):</u> 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. The outcomes in the Korowai Objectives have priority over the outcomes expressed in other objectives, unless otherwise stated.</p>	50(c), full wording in Appendix 1			[...] 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. 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, with those objectives to be achieved in advance of the consideration of other objectives. [...]	9(b)(iii)
					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.	29
	[...] 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.	46				
Ruston for Ballance, Ravensdown, Federated	No wording provided, but recommends that objectives are not differentiated, and recommends including an explanation in the pSWLP that clarifies that all of the objectives are	36(c)	[...] the option to adopt differentiated objectives is available to plan makers (that is it is not prevented) while no regulation compels their use.	14		
			In considering whether there is a compelling need to differentiate Objective 1, the requirements of sustainable management cannot, in my opinion, be	17		

Witness	Korowai objectives wording	Para	Korowai objectives discussion / reasoning	Para
Farmers and HortNZ	<i>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.</i>		<i>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.</i>	
			<i>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 pSWLP would be required to be read together; and 'the sustainable management [...]' 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.</i>	18
			<i>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 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.</i>	24
			<i>Based on the lack of a higher order planning direction to differentiate the protection of the mauri of the 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.</i>	26
			<i>[...] 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.</i>	30
			<i>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</i>	36(c)

<b>Witness</b>	<b>Korowai objectives wording</b>	<b>Para</b>	<b>Korowai objectives discussion / reasoning</b>	<b>Para</b>
			<i>read together and that, given the nature of Objectives 1 and 3, these objectives should always be considered in decision making under the pSWLP.</i>	
Kirk for the Director General	<i>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 implementing the Provisions of this Plan.</i>	50(1)	<i>I consider that Objectives 1 and 3 should be elevated above the other objectives and “korowai” should be identified as a method of plan interpretation with some minor rewording to some objectives as a result.</i>	15
			<i>[...] the effect of identifying Objectives 1 and 3 as the Korowai Objectives, will mean they have a priority status over the other objectives in the pSWLP. The other objectives should not be considered as having the same status as korowai, as all objectives need to “put the needs of the waterbody first”.</i>	43
			<i>I agree with the Court that the Korowai Objectives of Ki uta ki tai and Te Mana o Te Wai provide the fundamental management lens to apply to all provisions in the pSWLP. This means that Objectives 1 and 3 should be elevated above the other objectives and “korowai” should be identified as a method of plan interpretation with some rewording to some objectives as a result.</i>	110
			<i>The Korowai Objectives provide the paradigm for the management of land and water resources in the Southland Region to be woven as the golden thread through the pSWLP. In doing so, the korowai paradigm aligns the management tools with tangata whenua and community values and aspirations to maintain and improve the connectivity between water, land and people. [...]</i>	111
Farrell for Fish & Game and Forest & Bird	<i>Objectives 1 and 2 are a korowai, meaning they provide a protective cloak or overarching philosophy that places ki uta ki tai and the protection of the mauri of the water at the forefront of all plan development and resource consent decision-making processes relating to water resources. In this plan all provisions are to give effect to, or not be inconsistent with the Korowai Objectives 1 and 2.</i>	54	<i>A Korowai approach literally brings the high priority status of the water to the forefront of the planning framework. It is overarching in that it explicitly applies to every provision, including each objective and, consequently, every provision in the plan. Consequently, a Korowai approach is intended to provide a more obvious protective shield over the mauri of the water in every plan development and plan implementation decision-making process.</i>	44(c)
			<i>[...] realistically I think the Korowai Objectives probably must have some form of primacy. Simply put if the mauri of the water is to be put first (in order for water to provide for hauora) then it follows the protection of the mauri of water (as an outcome) should have primacy over other outcomes of the plan.</i>	47
			<i>I consider that there is a risk that the clear national direction for a water-centric approach to freshwater planning that puts the river first will not be achieved if the korowai objectives are not prioritised.</i>	50
			<i>The Korowai objectives should have primacy over all other objectives. If the Korowai objectives do not have primacy then it is difficult to see how the mauri of waterbodies will be actively protected. The benefits of making objectives 1</i>	66



Witness	Korowai objectives wording	Para	Korowai objectives discussion / reasoning	Para
			<i>and 3 Korowai Objectives have been identified by Ms Cain and Ms Davidson. However, costs have yet to be identified or examined.</i>	
			<i>Whether or not the Korowai objectives have primacy, the plan should include specific guidance to clarify their intended purpose. [...] I consider this should be fleshed out to provide the meaning of Korowai; and whether or not Objectives 1 and 2 have primacy and how they are to be implemented in determining the most appropriate provisions in plan development processes (including the Topic B hearing), and resource consent decision-making.</i>	67
Dunning for Gore DC, Southland DC and Invercargill CC	<i>Objectives 1 and 2 are a korowai, meaning they provide a cloak or overarching statement on the management of water resources. 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 alongside, and in the context of this korowai.</i>	20	<i>I support the reordering of Objectives 1 and 3 to be Objectives 1 and 2, and their role as strategic or 'korowai' objectives being explicitly noted immediately prior to the Objectives. Doing so will help to emphasise the importance of Te Mana o te Wai and ki uta ki tai in the fabric of the Plan and how the Plan gives effect to the NPS-FM.</i>	17
			<i>However I do not support Objectives 1 and 3 holding priority over all other Plan objectives as suggested by Ms Davidson. [...] Prioritising Objectives 1 and 3 would, in my view risk diminishing the importance of the matters addressed by the other objectives in the Plan.</i>	18
			<i>All Plan provisions would be considered and interpreted in the context of the korowai objectives (i.e. viewed through the lens of Te Mana o te Wai) but would not be subservient to them or given less weight in decision-making processes.</i>	21
Davidson for Ngā Rūnanga and Te Rūnanga o Ngāi Tahu	<i>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 this Plan.</i>	36, full wording in Appendix A	<i>I agree with the Court that Ki uta ki tai and Te Mana o Te Wai should be seen as the korowai that sits across the Plan, and that Objectives 1 and 3 should be elevated above the other Objectives to ensure there is no doubt that this is how the Plan should be interpreted and applied through policies and rules.</i>	11
			<i>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.</i>	14
			<i>[...] I now consider there is considerable merit in having Objectives 1 and 3 identified as strategic or Korowai Objectives. This would ensure that Objectives 1 and 3 will drive the step changes in the philosophy and management approach for fresh water [...] 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.</i>	36

Witness	Korowai objectives wording	Para	Korowai objectives discussion / reasoning	Para
			<i>If Objectives 1 and 3 are not elevated to the role of strategic or Korowai Objectives, then in my opinion, significant redrafting of the Objectives would be necessary to ensure each of them individually gave effect to Te Mana o te Wai and applied the concept of Ki uta ki tai.</i>	37
			<i>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 all need to “put the needs of the waterbody first”.</i>	69
Cain for Ngā Rūnanga and Te Rūnanga o Ngāi Tahu	No wording provided.		<i>I consider that the suggestion of the Court to provide clarity about the role of Objectives 1 and 3, by making them Korowai Objectives, would provide the certainty and status intended by TAMI and Ngāi Tahu ki Murihiku.</i>	45
McCallum-Clark for SRC	<i>Objectives 1 and 2 are a korowai, meaning they provide a cloak or overarching statement on the management of water resources. With support to add the following wording for clarity: 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.</i>	31, 33		
Feierabend for Meridian does not provide Korowai Objective wording, nor any discussion on the wording, in addition to Whyte’s evidence.				

## Attachment 2 – The use of strategic objectives in plan frameworks

### Ministry for the Environment National Planning Standards, published 2019<sup>1</sup>

The Planning Standards seek to improve the efficiency and effectiveness of the planning system, by providing a level of national consistency. The Planning Standards makes several references to strategic direction:

- At a regional plan level, *‘Objectives [and policies] addressing the integrated management of resources or providing strategic direction on resource management, must be located in the Integrated objectives chapter.’*<sup>2</sup> The Integrated Management chapter within which these objectives and policies sit is the first in Part 2, and sits above all domain, topic and area-specific chapters.
- At a district plan level, *‘If the following matters are addressed, they must be located under the Strategic direction heading:*
  - a. *[...];*
  - b. *issues, if any, and objectives that address key strategic or significant matters for the district and guide decision making at a strategic level;*
  - c. *policies that address these matters, unless those policies are better located in other more specific chapters; [...].’*<sup>3</sup>

The Strategic Direction chapter within which these objectives (and in some cases policies) sit is the first in Part 2 and sits above all other ‘district-wide’ chapters.

Objectives and policies providing strategic direction are not mandatory in either case, with no explicit detail provided on the specific content, need, use or elevation of strategic objectives and policies.

Several proposed and operative regional and district plans contain strategic objectives and/or policies, with four examples provided below.

### Queenstown Lakes District Council Proposed District Plan, decisions version adopted 3 May 2018<sup>4</sup>

Part Two, Chapter 3: Strategic Direction of the QLDC Plan sets out *‘the over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District’s special qualities [...].’*<sup>5</sup>

The strategic objectives and policies in Chapter 3 are further elaborated on in Chapters 4-6, with the role of Chapters 3-6 collectively *‘to provide direction for the more detailed provisions related to zones and specific topics [...]. In addition, they also provide guidance on what those more detailed provisions are seeking to achieve and are accordingly relevant to decisions made in the implementation of the Plan.’*<sup>5</sup>

The QLDC Plan does not identify whether any of the strategic objectives and policies are elevated in status within the strategic chapter, or take primacy over the other chapters of the plan.

An Interim Decision on appeals to the QLDC Plan inserts an additional Interpretation and Application section into Chapter 3, which states that *‘the strategic objectives and strategic policies [...] may provide guidance on what the related objectives and policies in other chapters of the plan are seeking to achieve in relation to the Strategic Issues [and] the relevant objectives and policies of the plan (including Strategic Objectives and Strategic Policies [...]) are to be considered together and no fixed hierarchy exists between them.’*<sup>6</sup>

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<sup>1</sup> Hereafter referred to as the Planning Standards.

<sup>2</sup> Part 3 Regional Plan Structure Standard para [6] and [7].

<sup>3</sup> Part 7 District-wide Matters Standard para [1].

<sup>4</sup> Hereafter referred to as the QLDC Plan.

<sup>5</sup> 3.1 Purpose, Page 3-2.

<sup>6</sup> Decision 2.2 Annexure 1: 3.1B.2(a-b), Decision No. [2019] NZEnvC 205.

## **Christchurch City Council District Plan, made operative on 19 December 2017<sup>7</sup>**

Chapter 3: Strategic Directions of the CCC Plan sets out the *'overarching direction for the District Plan, including for developing the other chapters within the Plan, and for its subsequent implementation and interpretation'*<sup>8</sup>. The strategic directions chapter *'sets the statutory planning context for the other chapters of the plan'*<sup>9</sup>.

Chapter 3 includes strategic objectives, with no policies. *'[...] Objectives 3.3.1 and 3.3.2 have primacy, meaning that the remaining objectives must be expressed and achieved in a manner consistent with Objectives 3.3.1 and 3.3.2'*, while *'the other objectives in this Chapter are to be read as a whole and no statutory hierarchy applies'*.<sup>10</sup>

The strategic directions chapter *'has primacy over the objectives and policies in the other chapters of the Plan, which must be consistent with the objectives in this Chapter'*<sup>11</sup>, with *'the objectives and policies in all other Chapters of the District Plan are to be expressed and achieved in a manner consistent with the objectives in this Chapter.'*<sup>12</sup>

## **Dunedin City Council Proposed Second Generation Dunedin City District Plan, decisions version notified 7 November 2018<sup>13</sup>**

Chapter 2: Strategic Directions of the DCC Plan sets out the *'key issues for the city and established the overall management approach for the Plan, including zoning and other methods under in the Plan.'*<sup>14</sup>

The introductory section is clear in stating that the strategic directions, objectives and policies *'are not ordered in any particular way.'*<sup>14</sup>

The DCC Plan does not provide detail on how the strategic objectives and policies are reflected through the rest of the plan, but does advise that they *'will be most relevant to the assessment of resource consent applications for non-complying activities, but they may also be relevant for other resource consent applications, particularly in considering cumulative effects.'*<sup>14</sup>

## **Hamilton City Council District Plan, made operative on 18 October 2017<sup>15</sup>**

Chapter 2: Strategic Framework of the HCC Plan seeks to *'provide clear and strong links between the District Plan and the City's Strategies'*<sup>16</sup>.

Chapter 1 of the HDC Plan, when discussing the Plan Structure confirms that the Strategic Framework chapter provides *'a hierarchy of district-wide strategic considerations [objectives and policies] that sit over the Objectives and Policies of specific zones, sites and features.'*<sup>17</sup>

Chapter 2 states that *'other chapters contain objectives, policies and rules that implement and support this strategic policy framework.'*<sup>16</sup> In addition, the framework specifies that *'any discretionary or non-complying resource consent must consider where relevant the objectives and policies below.'*<sup>18</sup>

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7 Hereafter referred to as the CCC Plan.  
8 3.1 Introduction (a)(i).  
9 3.1 Introduction (b).  
10 3.1 Introduction (e).  
11 3.1 Introduction (a)(ii).  
12 3.3 Interpretation (a)(ii).  
13 Hereafter referred to as the DCC Plan.  
14 2.1 Introduction.  
15 Hereafter referred to as the HCC Plan.  
16 2.1 Purpose (a).  
17 1.1.3 Plan Structure (b).  
18 2.2 Objectives and Policies: Strategic Framework.

## Canterbury Regional Council Canterbury Land and Water Regional Plan, operative as at 16 September 2019<sup>19</sup>

The CRC Plan does not contain any strategic objectives, with all objectives to *'be read in their entirety and considered together. In any particular case some Objectives may be more relevant than others, but in general no single Objective has more importance than any other.'*<sup>20</sup>

Section 4 of the CRC Plan contains several Strategic Policies, that sit at the start of the section. The introduction to Section 4 states that *'The Policies of this Plan implement the Objectives in [Section 3](#) and must be read in their entirety and considered together.'*<sup>21</sup> The introduction goes on to say that *'Where the Plan contains Policies in Section 4 and in the relevant sub-region Section on the same subject matter, the more specific sub-region Policy will take precedence, except in relation to Policies [4.2](#) to [4.9](#). Policy [4.1](#) will also take precedence unless catchment specific outcomes are specified in the sub-region Section.'*<sup>21</sup>

Policies 4.1 to 4.8B are the strategic policies, while Policy 4.9 specifies that *'Reviews of sub-region sections will [...] not make any changes to the Objectives or Policies 4.1-4.9 of the Plan, but may provide for policies, outcomes and limits that are specific to the catchments in the sub-regions.'*<sup>22</sup>

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<sup>19</sup> Hereafter referred to as the CRC Plan.

<sup>20</sup> Section 3 Objectives

<sup>21</sup> Section 4 Policies

<sup>22</sup> Policy 4.9(e)

## Chapter 3: Tangata Whenua

### Introduction

Ngāi Tahu are tangata whenua of the entire Southland region. Ngāi Tahu have occupied the area and used its natural resources for centuries and have a special relationship with the land, air, water and natural resources. The Treaty of Waitangi/Te Tiriti o Waitangi was signed locally by Ngāi Tahu in 1840 at Ruapuke Island in Foveaux Strait, as well as other places in Te Wai Pounamu (the South Island) and guarantees rangatiratanga, the right of tangata whenua to manage their lands and natural resources in accordance with cultural traditions.

The purpose of this chapter is to:

1. identify who the relevant organisations representing tangata whenua are in the Southland region, and any relevant background information;
2. set out the resource management issues of significance to Ngāi Tahu;
3. set out the objectives, policies and methods to resolve those issues, and achieve outcomes consistent with those desired by Ngāi Tahu as tangata whenua of the Southland region.

This chapter should not be read in isolation from other chapters of the RPS). The approach taken has been to integrate tangata whenua themes throughout the entire document and all other chapters, to reinforce the Ngāi Tahu philosophy of “ki uta ki tai” (from the mountains to the sea) holistic resource management planning. For example, the identification and management of natural features and landscapes which have cultural significance to tangata whenua is provided for in Chapter 10: Natural Features and Landscapes.

### Tangata Whenua in the Southland region

#### *Papatipu Rūnanga and Te Rūnanga o Ngāi Tahu*

Ngāi Tahu are the people who, by whakapapa (genealogical descent), derive their status as mana whenua from their ancestors who held the customary title and aboriginal rights to the land at the time of signing the Treaty of Waitangi/Te Tiriti o Waitangi at Ruapuke Island and other places in the South Island/Te Wai Pounamu. This acknowledges Ngāi Tahu as a Treaty of Waitangi/Te Tiriti o Waitangi partner. The Crown has formally acknowledged the Ngāi Tahu tangata whenua status in the Ngāi Tahu Claims Settlement Act 1998.

Ngāi Tahu have a tribal council, Te Rūnanga o Ngāi Tahu, which is made up of 18 papatipu rūnanga who hold the rights and responsibilities to defined areas of land and waters within the takiwā (area) of Ngāi Tahu. The Te Rūnanga o Ngāi Tahu Act 1996 establishes Te Rūnanga o Ngāi Tahu as the iwi authority for the purposes of the Act.

There are four Murihiku papatipu rūnanga. They are:

- Waihōpai Rūnaka
- Te Rūnanga o Ōraka-Aparima
- Hokonui Rūnaka
- Te Rūnanga o Awarua

These rūnanga are the principal mana whenua and kaitiaki for the Southland region.

The Murihiku Papatipu Rūnanga also share an interest with Te Rūnanga o Makaawhio, based on Tai Poutini (the West Coast), in the area between Whakatipu-Waitai (Lake McKerrrow) and Piopiotahi (Milford Sound) inland to the Main Divide (refer to Figure 3).



**Figure 3: Murihiku and the Papatipu Rūnanga**  
 Source: Te Tangi a Taurira Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008.

**Ngāi Tahu Claims Settlement Act 1998**

The Ngāi Tahu Claims Settlement Act 1998 was enacted to achieve settlement of historical claims against the Crown. The Ngāi Tahu Claims Settlement Act 1998, amongst other things, identifies taonga species, and establishes tōpuni, statutory acknowledgements, dual place names and nohoanga sites (refer to Figure 4). These instruments recognise the special association of Ngāi Tahu with these areas and resources and assist with Ngāi Tahu participation in processes under the the Act and the Local Government Act 2002 (LGA).

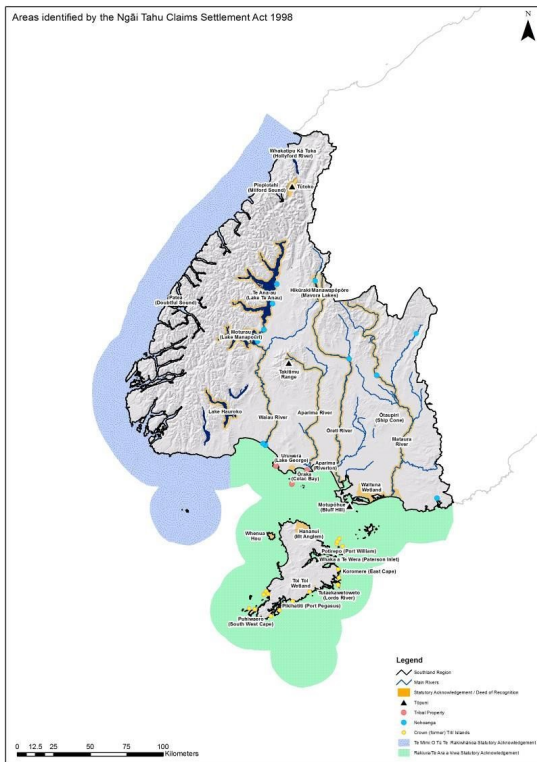


Figure 4: Areas identified by the Ngāi Tahu Claims Settlement Act 1998

**Ngāi Tahu and the management of natural resources**

For Ngāi Tahu as tangata whenua, the natural environment (including lands, coasts, water, air and biodiversity) and how they engage with it is a critical component of their identity as a people and in maintaining their culture. The concept of kaitiakitanga (guardianship) is central to Ngāi Tahu and is key to their role as mana whenua. Kaitiakitanga is the means by which the mauri (life force) of taonga (treasures) is restored, maintained and enhanced for present and future generations. Tikanga, or customary practices, are followed in order to protect mauri.

**The relationship between Ngāi Tahu and local government in Southland**

Local government authorities in Southland have a number of statutory functions and responsibilities under both the Resource Management Act 1991 and the Local Government Act 2002. Local government in Southland have recognised the importance in establishing, and the need to maintain, a close working relationship with Ngāi Tahu to ensure that their views are heard and carefully considered in decision-making.

Consultation under the Act during the early stages of any proposed undertaking, which may affect Ngāi Tahu interests, and full consideration of their views, is seen as essential. In Southland, local government and Ngāi Tahu have established a number of forums and mechanisms to build the relationship between the organisations and to assist consultation. Te Rōpū Taiao is a political forum



made up of representatives of Ngāi Tahu and elected representatives of local government that meets regularly to discuss resource management issues.

The four Murihiku papatipu rūnanga also created an entity, Te Ao Mārama Incorporated, which is mandated to provide input into the processes required by the Act and the LGA, and other relevant legislation, and to represent them with day-to-day resource management processes.

**Table 1: Overview of Tangata Whenua provisions**

<b>Issues</b>	<b>Objectives</b>	<b>Policies</b>	<b>Methods</b>
<b>Issue TW.1</b>	<b>Objective TW.1</b> Decision-making and partnerships with tangata whenua	<b>Policy TW.1</b> Treaty of Waitangi	<b>Methods TW.1 – 10</b>
		<b>Policy TW.2</b> Partnerships and relationship agreements	<b>Methods TW.3, 4, 6, 7, 9, 10</b>
		<b>Policy TW.4</b> Decision making	<b>Methods TW.1, 2, 4, 5, 7, 9, 10</b>
<b>Issue TW.2</b>	<b>Objective TW.2</b> Provision for iwi management plans	<b>Policy TW.3</b> Iwi management plans	<b>Methods TW.2, 3, 7, 9, 10</b>
<b>Issue TW.3</b>	<b>Objective TW.3</b> Tangata whenua spiritual values and customary resources	<b>Policy TW.4</b> Decision making	<b>Methods TW.1, 2, 4, 5, 7, 9, 10</b>
	<b>Objective TW.4</b> Sites of cultural significance		
<b>Issue TW.4</b>	<b>Objective TW.3</b> Tangata whenua spiritual values and customary resources	<b>Policy TW.4</b> Decision making	<b>Methods TW.1, 2, 4, 5, 7, 9, 10</b>
<b>Issue TW.5</b>	<b>Objective TW.5</b> Provision for Māori land and resources	<b>Policy TW.5</b> Māori land and resources	<b>Methods TW.1, 5, 10</b>

### 3.1 ISSUES

#### Resource management issues of significance to Ngāi Tahu

The following significant resource management issues have been identified by tangata whenua of the Southland region, and included in the RPS in accordance with Section 62(1)(b) of the Act.

The resource management issues identified below are those of particular significance for Ngāi Tahu across the Southland region. The issues identified are not intended as an exhaustive list, and furthermore, all the resource management issues in this Regional Policy Statement are of significance to tangata whenua in the region. Accordingly, and as noted above, tangata whenua themes and associated provisions are integrated throughout the Regional Policy Statement document and other chapters in a holistic manner to reinforce the Ngāi Tahu philosophy of “ki uta ki tai” (from the mountains to the sea) and ensure that outcomes are consistent with those desired by Ngāi Tahu.

#### Issue TW.1

Limited understanding by decision-makers of tangata whenua environmental and cultural values, and lack of capacity and resources to enable tangata whenua to effectively engage in resource management processes and decisions.

#### Issue TW.2

Insufficient recognition of iwi management plans in resource management processes and decisions.

#### Issue TW.3

Destruction, damage and modification of wāhi tapu, wāhi taonga and sites of significance to tangata whenua.

#### Issue TW.4

Degradation of mauri and wairua of natural resources used for customary purposes, and loss of quality and access to mahinga kai.

#### Issue TW.5

Difficulties in developing and using Māori land and resources.

### 3.2 OBJECTIVES

#### Objective TW.1 – Decision-making and partnerships with tangata whenua

**The principles of the Treaty of Waitangi/Te Tiriti o Waitangi are taken into account in a** systematic way through effective partnerships between tangata whenua and local authorities, which provide the capacity for tangata whenua to be fully involved in council decision-making processes.

#### *Explanation/Principal Reasons*

Objective TW.1 meets Part 2 of the Act by seeking that sustainable management of the region’s environment involves both tangata whenua and the local authorities working together in decision-making, under Treaty of Waitangi/Te Tiriti o Waitangi principles.

#### Objective TW.2 – Provision for iwi management plans

All local authority resource management processes and decisions take into account iwi management plans.

#### ***Explanation/Principal Reasons***

Iwi management plans are an important tool to identify issues of resource management significance to tangata whenua in local authority decision-making processes.

#### **Objective TW.3 – Tangata whenua spiritual values and customary resources**

Mauri and wairua are sustained or improved where degraded, and mahinga kai and customary resources are healthy, abundant and accessible to tangata whenua.

#### ***Explanation/Principal Reasons***

For Ngāi Tahu as tangata whenua, the natural environment (lands, coasts, water, air and biodiversity) and how they engage with it, is a critical component of their identity as a people and in maintaining their culture. The ongoing ability to keep alive traditional and customary practices passed down and gifted by tūpuna (ancestors) in places or on ancestral lands provides spirituality, a sense of belonging and of continuity.

#### **Objective TW.4 – Sites of cultural significance**

Wāhi tapu, wāhi taonga and sites of significance are appropriately managed and protected.

#### ***Explanation/Principal Reasons***

Section 6 of the Act recognises that the protection of historic heritage (including sites of significance to Māori, including wāhi tapu) and the relationship of Māori and their culture and traditions with their ancestral lands from inappropriate subdivision, use and development, are matters of national importance. The management and protection of such values recognises their importance to the regional sense of identity and is essential to providing for the social and cultural wellbeing of the community.

#### **Objective TW.5 – Provision for Māori land and resources**

Māori are able to develop and use their land and resources and provide for their social, economic and cultural wellbeing, in a manner that is sustainable.

#### ***Explanation/Principal Reasons***

The use and development of Māori land and resources, including Māori land administered under the Te Ture Whenua Māori Act 1993, papakāinga and marae, offers significant social, economic and cultural benefits. Such activities should not adversely affect the health and safety of people and should recognise and respond to Part 2 of the Act.

### **3.3 POLICIES**

#### **Policy TW.1 – Treaty of Waitangi**

Consult with, and enhance tangata whenua involvement in local authority resource management decision-making processes, in a manner that is consistent with the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.

#### ***Explanation/Principal Reasons***

The Treaty of Waitangi/Te Tiriti o Waitangi is a founding document of New Zealand, which established a special relationship between Māori people and the Crown. The Treaty of Waitangi/Te Tiriti o Waitangi provided for the exchange of kawanatanga (governance) for the protection of tino rangatiratanga (including tribal self-management). The Crown, exercising governance, has established a system of delegated authority with the functions delegated to regional councils and territorial authorities set out in Sections 30 and 31 of the Act.

The Treaty of Waitangi/Te Tiriti o Waitangi requirements in Section 8 of the Act encompass guiding principles for the engagement of local authorities with Māori in resource management decision-making processes. The Murihiku Ngāi Tahu Treaty principles include representation, partnership, building capacity, shared decision-making, active protection and shared initiatives.

Local authorities should ensure that their functions and powers under the Act are exercised in a manner that:

- (a) is consistent with the principles of the Treaty of Waitangi/Te Tiriti o Waitangi;
- (b) recognises that tangata whenua, as indigenous people, have rights protected by the Treaty of Waitangi/Te Tiriti o Waitangi and that consequently the Act accords iwi authorities a status distinct from that of interest groups and members of the public;
- (c) promotes awareness and understanding of local authority obligations under the Act regarding the principles of the Treaty of Waitangi/Te Tiriti o Waitangi, tikanga Māori and Māori kaupapa among Council decision-makers, staff and the community;
- (d) provides for the ongoing implementation of the Ngāi Tahu Claims Settlement Act 1998 (e.g. appending statutory acknowledgements to regional and district planning documents, regulations and relevant “cultural redress” provisions).

#### **Policy TW.2 – Partnerships and relationship agreements**

Actively foster partnerships and relationship agreements between local authorities and tangata whenua.

##### ***Explanation/Principal Reasons***

Partnerships and relationship agreements among local authorities and tangata whenua are essential if the sustainable management of the region’s natural resources is to be achieved. A number of partnerships have been established in Southland. Examples include Te Rōpū Taiao Tangata Whenua/Council Advisory Committee and iwi representation on Council committees/hearing panels. A Charter of Understanding relationship agreement has also been entered into between local authorities and tangata whenua, which covers consultation, shared decision-making, joint management agreements, capacity building and resourcing for iwi to contribute to decision-making. A number of protocols/guidelines have also been developed, to assist with tangata whenua consultation under the Act.

#### **Policy TW.3 – Iwi management plans**

Take iwi management plans into account within local authority resource management decision making processes.

##### ***Explanation/Principal Reasons***

An iwi management plan is a general term given to any planning document recognised by Te Rūnanga o Ngāi Tahu (as iwi authority) and lodged with a local authority. While iwi management plans are not statutory, since 2003 local authorities have had an obligation under the Act to take them “into account” when preparing their own regional and district planning documents.

Te Tangi a Taurira is an iwi management plan recognised by Ngāi Tahu which encompasses the Southland region.

Local authorities should take iwi management plans into account by:

- (a) recognising and using Te Tangi a Tauria as a basis for tangata whenua input into planning processes;
- (b) assisting and encouraging tangata whenua to use, monitor and review their iwi management plans, and to achieve their implementation projects.

**Policy TW.4 – Decision making**

When making resource management decisions, ensure that local authority functions and powers are exercised in a manner that:

- (a) recognises and provides for:
  - (i) traditional Māori uses and practices relating to natural resources (e.g. mātaihai, kaitiakitanga, manaakitanga, matauranga, rāhui, wāhi tapu, taonga raranga);
  - (ii) the ahi kā (manawhenua) relationship of tangata whenua with and their role as kaitiaki of natural resources;
  - (iii) mahinga kai and access to areas of natural resources used for customary purposes;
  - (iv) mauri and wairua of natural resources;
  - (v) places, sites and areas with significant spiritual or cultural historic heritage value to tangata whenua;
  - (vi) Māori environmental health and cultural wellbeing.
- (b) recognises that only tangata whenua can identify their relationship and that of their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.

***Explanation/Principal Reasons***

Growth and development pressures have led to widespread destruction and degradation of places, sites and values of cultural, spiritual or historic significance to tangata whenua. Tangata whenua are increasingly seeking greater involvement in local government decision-making processes (e.g. resource consent proposals, plan/policy making and designations), to fulfil their role as kaitiaki and address adverse effects on Māori environmental health, cultural wellbeing and traditions.

**Policy TW.5 – Māori land and resources**

Assist and enable the use and development of Māori land and resources, in a manner that is sustainable.

***Explanation/Principal Reasons***

Substantial areas of Māori land administered under Te Ture Whenua Māori Act 1993 are situated within Southland including Māori freehold land and Māori customary land. Māori land is often more difficult to develop than land in general title, due to multiple ownership and succession, fragmentation, its location and other reasons.

The Māori Land Court has jurisdiction over all Māori land in accordance with the Te Ture Whenua Maori Act 1993, with the Court's role to facilitate owner aspirations in terms of retention and utilisation of Māori land. Additionally, the requirements of the Act also apply to the use and development of Māori land.

Where owners determine that Māori land resources are to be utilised and developed in accordance with the purpose for which the land was originally allocated, local authority planning documents should assist and enable owners, trusts and tangata whenua to plan for the use and development of their land in accordance with the provisions of the Act.

The Southland Regional Council also has the view that where it is demonstrated that Māori lands that support areas with significant indigenous vegetation should be left untouched in the national interest, it is up to the Crown to compensate the owners for the loss of their private property rights.

Iwi may also have aspirations to use, develop and protect resources such as:

- marae, papakainga and associated community facilities or housing;
- other resources held in iwi ownership, such as pounamu/greenstone pursuant to the Ngāi Tahu (Pounamu Vesting) Act 1997 and “tribal properties” pursuant to the Ngāi Tahu Claims Settlement Act 1998;
- coastal resources, for example aquaculture activities. Additionally the Crown has obligations under the Maori Commercial Aquaculture Claims Settlement Act 2004;
- particular fresh or coastal water bodies of special significance to tangata whenua, including the aspirations of iwi to develop, use and protect water.

The continuation and expansion of such activities is also appropriate, in accordance with the provisions of the Act.

### 3.4 METHODS

#### **The Southland Regional Council will:**

##### **Method TW.1 – Regional plans**

Establish and maintain provisions in regional plans that safeguard identified environmental and cultural values and resources of tangata whenua from inappropriate use or development.

##### **Method TW.2 – Consultation**

Consult with tangata whenua and take into account Te Tangi a Tauira and other relevant iwi planning documents for guidance in plan development to identify:

- (a) resource management issues relevant to tangata whenua;
- (b) environmental, cultural and spiritual values and customary resources, including mahinga kai;
- (c) effects on statutory acknowledgement sites/values, and sites of cultural significance.

##### **Method TW.3 – Information and assistance**

Actively encourage and support tangata whenua in developing and implementing registered iwi management plans by providing technical advice, information or administrative support.

##### **Method TW.4 - Sharing and transfer of responsibilities**

Provide for tangata whenua involvement in resource management, decisions and monitoring through:

- (a) working parties or advisory groups in collaboration with other stakeholders;
- (b) where appropriate, joint management agreements, and full or partial transfer of the Southland Regional Council’s functions, duties or powers to tangata whenua through the recognised iwi authority, in accordance with Section 33 of the Act.

## Resource Management Act Part 2 Analysis

This chapter looks specifically at the proposed amendments to the Freshwater NPS and how they contribute to achieving the purpose and principles of the RMA. Existing provisions of the Freshwater NPS that are not proposed to be amended are not reassessed here. An evaluation of the proposed amendments had been undertaken in accordance with section 32 of the RMA which also provides an evaluation of how the proposed amendments achieve the purpose of the RMA. The earlier chapters of this report provide additional details on how the proposed amendments contribute to achieving Part 2 of the RMA. A further evaluation under section 32AA will also be undertaken once final decisions have been made.

In providing an analysis of whether the proposed amendments achieve Part 2 of the RMA, the focus is on the intent of the Freshwater NPS objectives. The Freshwater NPS policies are not specifically singled out as their purpose is to implement the objective and therefore support it in its intent. The proposed amendments are intended to form a cohesive process for how to set freshwater objectives and limits as is already required of regional councils under the Freshwater NPS.

The proposed Freshwater NPS objectives assessed here can be summarised as those applying to Te Mana o te Wai (new Objective AAA1); water quality (amendments to Objective A1, A2 and new Objective A3); amendments to water quantity Objective B1; and changes to monitoring requirements (Objective CB1).

The monitoring requirement of the Freshwater NPS does not in itself achieve the purpose of the RMA as monitoring is not directly driven from Part 2 (although it is closely associated with achieving Part 2, the requirements to monitor are elsewhere in the RMA) and monitoring is already required through the Freshwater NPS. However, it does provide an approach for how to monitor progress toward and achievement of the Freshwater NPS objectives that contribute to achieving sustainable management.

The table below outlines how the proposed amendments contribute to promoting the purpose of the RMA – the sustainable management of natural and physical resources – in this case freshwater resources.

Purpose of the RMA (s 5(1)) to promote the sustainable management of natural and physical resources	
<i>Section 5(2) sustainable management means managing the use, development and protection of natural and physical resources in a way or at a rate which...</i>	Regional councils are already required to set freshwater objectives and limits in regional plans to manage fresh water in their regions. The amendments to the Freshwater NPS clarify the planning framework to help councils set effective freshwater objectives and limits to better achieve sustainable management of fresh water resources.
<i>Enables people and communities to provide for their social, economic and cultural wellbeing,</i>	The proposed changes to recognise economic wellbeing, including productive economic opportunities, are intended to direct council planning to consideration of s5(2); as is the inclusion of the productive (extractive) uses in the values description. These additional values are ones that councils must consider when deciding which values an FMU will specifically provide for.
<i>Sustaining the potential of natural and physical resources to meet needs of future generations (s5(2)(a))</i>	The increased direction on how to set limits for nutrients provides for this. Limit setting is fundamental to sustaining the potential of natural and physical resources to meet the needs of future generations.



Purpose of the RMA (s 5(1)) to promote the sustainable management of natural and physical resources	
	The proposed changes to the narratives of the values in Appendix 1 includes national values that relate to sustaining the potential of natural and physical resources (ecosystem health, natural form and character) as well as providing for productive uses.
<i>Safeguarding the life-supporting capacity of air, water, soil and ecosystems (s5(2)(b))</i>	The increased direction on what and how to monitor is intended to provide better information on the state and trends of freshwater resources over time so use and management of these resources can adapt as needed in a timely way.
<i>Avoid, remedy or mitigate adverse effects of activities on the environment (s5(2)(c))</i>	The amendments provide increased direction on avoiding, remedying or mitigating adverse effects – including cumulative effects (Policy C1) by recognising the interactions between ecosystems and managing water accordingly.

## Matters of national importance

In achieving the purpose of the RMA, the matters of national importance in section 6 must be recognised and provided for. The proposed amendments include several elements that directly relate to matters in section 6, including:

### Section 6 matters

- s6(a) The preservation of the natural character of the coastal environment, wetlands, and lakes and rivers
- s6(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna
- s6(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

The Freshwater NPS relates to water bodies as defined in the RMA<sup>5</sup> and as such does not directly include objectives and policies for the coastal environment. However, the proposed amendments strengthen the existing requirement in Part C to improve integrated management of freshwater – including the interactions with the coastal environment. This is achieved with the addition of requirements to set limits for nutrients (DIN and DRP) to manage for Periphyton freshwater objectives *but at the same time* also being mindful of the interactions and effects on receiving environments (lakes, wetland and estuaries) and setting limits for these nutrients accordingly. In this way the Freshwater NPS provides for s6(a) and s6(c). Note that the significant values of wetlands must already be protected under the Freshwater NPS.

The Freshwater NPS contains tables of national values and uses, including one for ‘natural form and character’ which must be considered when setting freshwater objectives. We have expanded the narrative that underpins the additional value of natural form and character and in so doing we consider this better supports the requirement of s6(a) and s6(c).

The proposed amendments support the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. The proposed amendments to the Freshwater NPS provide a new objective (Objective AAA1) that requires

<sup>5</sup> In the RMA water body is defined as “freshwater or geothermal water in a river, lake, stream pond, wetland or aquifer, or any part thereof, that is not located within the coastal marine area”.

regional councils to consider and recognise Te Mana o te Wai and incorporate tāngata whenua values in the national values in Appendix 1 and so provide for s6(e). The Freshwater NPS requires councils to consider these values when setting objectives and limits for fresh water. Additional freshwater objectives may also be set to provide for specific values of importance to tāngata whenua.

### **Other matters**

In achieving the purpose of the RMA, particular regard must be given to the matters listed in section 7. The amendments to swimming targets and inclusion of Te Mana o te Wai addresses or provides for several of these matters, including:

Other matters

- s7(a) kaitiakitanga
- s7(c) the maintenance and enhancement of amenity values
- s7(d) intrinsic values of ecosystems
- s7(f) maintenance and enhancement of the quality of the environment
- s7(h) the protection of the habitat of trout and salmon
- s7(j) the benefits to be derived from the use and development of renewable energy.

The National Objectives Framework contains a table of values or uses that must be considered when setting freshwater objectives (Appendix 1 of the Freshwater NPS). Additional values that councils and communities must consider when setting freshwater objectives include: recreation (c); natural form and character (c)(d); fishing (h)(c); hydro-electric power generation (j); and tāngata whenua values such as mahinga kai and wai tapu (a).

Targets and policies to improve water bodies for swimming address (c), (d) and (f) above.

The proposed objective and policy in Part AAA provide for the health of the environment, the water body and the people and ensures tāngata whenua values are identified and reflected in the management of, and decision-making for, fresh water (contributing to (a) above).

## **Treaty of Waitangi**

Section 8 of the RMA requires all persons exercising functions and powers under it to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). The Treaty of Waitangi is the underlying foundation of the Crown–iwi/hapū relationship.

The proposals presented here were developed in conjunction with the Freshwater Iwi Leaders Group and as such fulfil the Treaty of Waitangi principle of ‘partnership’.

The proposed objective and policy for Te Mana o te Wai addresses the Treaty principle of ‘active protection’ by putting the river first.

Addressing tāngata whenua values and interests across all of the wellbeings, and including the involvement of iwi and hapū in the overall management of fresh water, are key to meeting obligations under the Treaty of Waitangi.

No amendments are recommended to Part D of the Freshwater NPS, which supports and clarifies the Treaty obligations of regional councils under the RMA.

## Conclusion

The Freshwater NPS is subject to the RMA, including Part 2. The Freshwater NPS needs to be consistent with the purpose of the RMA. The proposed amendments promote the purpose of the RMA by providing further direction on how to give effect to it through policy statements and plans. We are satisfied that the proposed objectives and policies of the Freshwater NPS promote the purpose of the RMA and will help councils in giving effect to its provisions.