

Before the Independent Hearings Panel
at Waimakariri

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions on the proposed
Waimakariri District Plan

and: **Waimakariri Irrigation Limited**
Submitter 210

Legal submissions on behalf of Waimakariri Irrigation Limited

Dated: 14 August 2023

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LEGAL SUBMISSIONS ON BEHALF OF WAIMAKARIRI IRRIGATION LIMITED

Hearing stream 5: Earthworks

INTRODUCTION

- 1 These legal submissions are provided on behalf of Waimakariri Irrigation Limited (*WIL*), who is a submitter on the proposed Waimakariri District Plan (*Proposed Plan*).¹
- 2 The legal submissions provided on behalf of WIL in the context of Hearing Stream 1 provided a high-level overview of WIL and its wider interests in the District Plan review process, which are not repeated here.
- 3 WIL does not intend to appear at Hearing Stream 5 but wishes to record its position in relation to the Section 42A Report recommendations.
- 4 To that end, these submissions address WIL's key submission points and requested relief in relation to the Earthworks provisions. In particular, WIL has made a number of submissions seeking appropriate controls to enable:
 - 4.1 the maintenance and upgrades of race and canal infrastructure; and
 - 4.2 WIL's efforts to improve water quality through Managed Aquifer Recharge (*MAR*) and Targeted Stream Augmentation (*TSA*).
- 5 WIL maintains its other original submissions in their entirety, unless otherwise amended in these submissions.

WIL'S POSITION ON SECTION 42A REPORT RECOMMENDATIONS

- 6 WIL's key focus in engaging with the District Plan review process is to ensure the District Plan enables WIL to continue operating the stockwater and irrigation Schemes, which includes maintenance and upgrading of race and canal infrastructure, without unnecessary additional consenting requirements.

¹ Submitter 210

EW-P6 Adverse effects of earthworks on ground and surface water bodies

- 7 WIL sought that EW-P6 be amended to direct that adverse effects of earthworks on ground and surface water bodies are *managed* rather than *avoided*.²
- 8 The reporting officer recommends this submission be accepted because “*adverse effects cannot be avoided in all cases, and given the complexities of freshwater, there is a range of thresholds of contamination related to different values.*”³
- 9 WIL supports this recommendation and agrees with the reporting officer’s reasoning. As WIL noted in its original submission, with respect to irrigation and stockwater infrastructure, it may not be practically possible to avoid all adverse effects on mahinga kai in all circumstances. This amendment enables the management of these effects, without preventing the safe and efficient operation, maintenance, upgrade and development of regionally significant infrastructure.

New: maintenance and upgrading of irrigation and stockwater infrastructure

- 10 WIL sought a separate permitted activity rule or amendments to existing proposed rules that explicitly apply to the maintenance and upgrade of irrigation and stockwater infrastructure.
- 11 The reporting officer has recommended an amendment to EW-R3 that partially addresses the relief sought by WIL. That is, by recommending EW-R3 be amended to provide for *maintenance* of existing community scale irrigation/stockwater networks as a permitted activity.⁴ WIL supports this recommendation.
- 12 However, the reporting officer does not address the part of WIL’s submissions seeking that the *upgrade* of community scale irrigation/stockwater networks be a permitted activity.
- 13 WIL considers the *upgrade* of community scale irrigation/stockwater networks should also be a permitted activity. The section 42A reporting officer has not addressed this in the report. It is noted that the upgrade of existing community scale irrigation/stockwater networks is a permitted activity in the Energy and Infrastructure

² Submission 210.48.

³ Section 42A report prepared by Peter Wilson on Proposed Waimakariri District Plan: Ketuteku whenua – Earthworks dated 21 July 2023 at paragraph [164].

⁴ Section 42A report prepared by Peter Wilson on Proposed Waimakariri District Plan: Ketuteku whenua – Earthworks dated 21 July 2023 at paragraph [187].

chapter (per EI-R49), provided the upgrading excludes extension or expansion.

- 14 WIL considers consistency between the Earthworks chapter and the Energy and Infrastructure chapter is appropriate. This will avoid unnecessary and/or duplicative consenting requirements.
- 15 To this end, WIL notes that the submissions above are subject to the discussion at paragraphs 23 to 24 below. If the EI chapter is amended to clarify that earthworks rules and standards do not apply to energy and infrastructure activities then amendments may not be required in the earthworks chapter to provide for WIL's earthworks activities associated with irrigation/stockwater networks.

Earthworks associated with TSA and MAR

- 16 WIL sought a new rule to provide for earthworks associated with TSA and MAR as a permitted activity.⁵
- 17 The reporting officer does not appear to have addressed this. Instead, the reporting officer has only addressed the relief sought in relation to existing community scale irrigation/stockwater networks.⁶
- 18 WIL considers a separate rule is required for earthworks associated with TSA and MAR, because these earthworks are unlikely to be considered earthworks for maintenance of public water races or drains under EW-R3 (or community scale irrigation or ancillary community-scale irrigation activities under EI-49/EI-50).
- 19 As explained in WIL's original submission, TSA and MAR are initiatives that WIL intends to actively pursue in the near future, as a feasible way to see immediate improvements in water quality and associated positive environmental outcomes. ECan's recently released decision on proposed Plan Change 7 to the Canterbury Land and Water Regional Plan includes specific provision for these activities in the Waimakariri sub-region.
- 20 TSA and MAR activities are likely to be significant for future water quality and are appropriately managed under the Canterbury Land and Water Plan. It is essential that the proposed Plan enables WIL to continue its efforts to improve water quality through these initiatives.

Earthworks standards

- 21 WIL made submissions on a number of the earthworks standards (specifically, EW-S1, EW-S2, EW-S3, EW-S7). These submissions essentially sought that earthworks for the operation, maintenance and upgrading of regionally significant infrastructure (which includes

⁵ Submission 210.44.

⁶ Section 42A report prepared by Peter Wilson on Proposed Waimakariri District Plan: Ketuteku whenua – Earthworks dated 21 July 2023 at paragraph [187].

community-scale irrigation and stockwater infrastructure) be exempt from the standards.

- 22 The reporting officer has recommended rejecting these submissions, on the basis that the *"EI chapter provisions already exempt the requested types of earthworks from the EI standards, and achieve what the submissions are asking for"*. The reporting officer noted that they *"understand that this will be clarified in the s 42A report on the EI chapter and the memo to the Hearing Panel, both by Mr Andrew Maclennan"*.
- 23 On review of the section 42A report for the EI chapter and the memo to the Panel regarding the integration between the EI chapter and the rest of the Proposed Plan, the reporting officer for the EI chapter has recommended amendments to the EI chapter clarifying that (relevantly):
- 23.1 all provisions in the District-wide chapters, including the earthworks chapter, apply in addition to the provisions in the EI chapter; but
- 23.2 the rules and standards in the District-wide chapters, including the earthworks chapter, do not apply to EI, except in certain circumstances.
- 24 WIL supports this recommendation, such that the earthworks rules and standards do not apply to energy and infrastructure activities. A number of the standards in the earthworks chapter are not practicable for irrigation/stockwater infrastructure.

CONCLUSION

- 25 Accordingly, WIL:
- 25.1 supports the reporting officer's recommendation in relation to EW-P6;
- 25.2 supports the reporting officer's recommendation to exempt energy and infrastructure activities from the rules and standards in the earthworks chapters; and
- 25.3 considers a separate rule is required in the earthworks chapter providing for TSA and MAR as a permitted activity.

Dated: 14 August 2023



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