

Before an Independent Hearings Panel
appointed by the Waimakariri District Council

under: the Resource Management Act 1991

in the matter of: Submissions and further submissions in relation to the
proposed Waimakariri District Plan, Variation 1 and
Variation 2

and: Hearing Stream 5: Noise, Notable Trees, Historic
Heritage, Signs, Light, Energy and Infrastructure,
Transport, Earthworks

and: **New Zealand Pork Industry Board**
Submitter 169

Legal submissions on behalf of the New Zealand Pork Industry
Board

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LEGAL SUBMISSIONS ON BEHALF OF THE NEW ZEALAND PORK INDUSTRY BOARD

INTRODUCTION

- 1 These legal submissions are provided on behalf of the New Zealand Pork Industry Board (*NZ Pork*).
- 2 NZ Pork is a submitter (#169) and further submitter (#49) on the proposed Waimakariri District Plan (*proposed Plan*).
- 3 Evidence has been filed for:
 - 3.1 Mr Brent Kleiss, the Chief Executive of NZ Pork, who has significant experience and expertise in New Zealand's biosecurity systems; and
 - 3.2 Mr Vance Hodgson, consultant planner, for NZ Pork and Horticulture New Zealand.
- 4 NZ Pork also relies on the evidence filed for Hearing Stream 1.
- 5 These submissions are brief, and are limited to an explanation of the relationship between the Biosecurity Act 1993 (*Biosecurity Act*) and the Resource Management Act 1991 (*RMA*). This is relevant to NZ Pork's requested relief for the proposed Plan to include a definition and rule framework for *ancillary rural earthworks*.
- 6 NZ Pork's submission points and proposed relief are discussed in full in the evidence of Mr Hodgson. It is Mr Hodgson's opinion that it is appropriate to include earthwork provisions in the proposed Plan that enable the burying of biosecurity material that may be required under the Biosecurity Act, as ancillary rural earthworks in a primary production setting.

Biosecurity Act 1993¹

- 7 The purpose of the Biosecurity Act is to provide for the "*exclusion, eradication, and effective management of pests and unwanted organisms*".² The Biosecurity Act is administered by the Ministry for Primary Industries (*MPI*) and provides the legal framework for:
 - 7.1 keeping harmful organisms out of New Zealand; and

¹ It was announced in 2019 that the Biosecurity Act would be overhauled, including reviewing the overarching purpose and principles, filling gaps in the legislation and setting clear and consistent roles.

² Biosecurity Act 1993, Title. The Act consolidates the provisions of earlier legislation that dealt with specific plant or animal pests and diseases.

- 7.2 responding to and managing harmful organisms that do reach New Zealand.
- 8 The Biosecurity Act covers the following:
- 8.1 pre-border risk management and standard setting;
 - 8.2 border management;
 - 8.3 readiness and response; and
 - 8.4 long term pest management.
- 9 Most relevant to this proceeding are the parts of the Biosecurity Act that relate to readiness and response. Other relevant legislation for biosecurity includes:
- 9.1 the National Animal Identification and Tracing Act 2012, administered by MPI and run by NAIT Limited;
 - 9.2 the Hazardous Substances and New Organisms Act 1996, administered by the Ministry for the Environment; and
 - 9.3 the Health Act 1956 administered by the Ministry of Health.
- 10 New Zealand's biosecurity system is complex with roles spread across multiple agencies and Ministries. Relevant to councils, the Biosecurity Act specifies that regional councils are to provide leadership in activities relating to biosecurity in its region,³ whereas the role for territorial authorities is more limited.⁴
- Readiness and response under the Biosecurity Act***
- 11 The Biosecurity Act gives agencies, including MPI, a wide range of powers to deal with harmful organisms. Those powers may allow MPI to:⁵
- 11.1 enter property;
 - 11.2 impose movement controls;
 - 11.3 destroy infected property; and

³ Biosecurity Act, ss 12B, 13.

⁴ Biosecurity Act, s 13.

⁵ See Part 6 of the Biosecurity Act.

- 11.4 give directions (for example, to destroy risk goods) (referred to as a *notice of direction*).⁶
- 12 These powers, described as the '*administrative provisions*' are set out in Part 6 of the Biosecurity Act, which provides officials with significant powers. Two key provisions outlined in the evidence of Mr Kleiss are ss 121 and 122.
- 13 Section 121 enables inspectors or other authorised persons to '*examine organisms*' for a range of purposes, including diagnosing diseases and ascertaining the presence of any pest or unwanted organism. As Mr Kleiss explains,⁷ the powers under s 121 are broad, and includes the ability to destroy any organisms.
- 14 Section 122 provides an inspector or other authorised person the power to give directions (notices of direction) whenever that person considers it to be necessary. Those directions can be to:
- 14.1 treat any goods, water, place, equipment, fitting, or other thing that may be contaminated with pests or unwanted organisms; or
- 14.2 destroy any pest or unwanted organism or any organism or organic material or thing that there are reasonable grounds to believe harbours a pest or unwanted organism; or
- 14.3 take steps to prevent the spread of any pest or unwanted organism.
- 15 As Mr Kleiss explains, these directions may, relevantly, require stock to be destroyed, and could also direct that no organisms, organic material or risks can be moved off-site.⁸ This is just one example of a scenario where a biosecurity response may require *ancillary rural earthworks* in order to comply with the requirements of the Biosecurity Act and wider biosecurity regime.

Provisions of the Biosecurity Act that affect the operation of the RMA

- 16 Section 7A of the Biosecurity Act outlines the relationship with the RMA. It specifies that, for any action taken under the administration powers of the Biosecurity Act (which includes ss 121 and 122) in an attempt to eradicate an organism that would be in breach of Part 3 of the RMA, the Minister may exempt the actions taken from the

⁶ Evidence of Mr Kleiss for NZ Pork at [4].

⁷ Evidence of Brent Kleiss for NZ Pork at [39].

⁸ Evidence of Brent Kleiss for NZ Pork at [4]. Ss 131 relating to restricted place notices and 132 relating to controlled area notices are also relevant.

resource management provisions for a limited time period,⁹ if satisfied that:¹⁰

16.1 the action would be in breach of Part 3 of the RMA

16.2 the responsible Minister is likely to be satisfied that:¹¹

- (a) the organism is not established in New Zealand, the organism is not known to be established in New Zealand, or the organism is established in New Zealand but is restricted to certain parts of New Zealand; and
- (b) the organism has the potential to cause ... significant economic loss, significant adverse effects on human health, or significant environmental loss if it becomes established in New Zealand, or if it becomes established throughout New Zealand; and
- (c) it is in the public interest that action be taken immediately in an attempt to eradicate the organism.

17 The Biosecurity Act will therefore only override the provisions of the RMA in very specific circumstances – the RMA will prevail unless the requirements of s 7A are met.¹²

18 Section 7A does not account for all circumstances a person may have duties or obligations under the Act. For example, a notice of direction issued under s 122 of the Biosecurity Act will not necessarily meet the requirements of s 7A (for example, where it relates to an organism that is established in New Zealand).

Resource Management Act 1991

19 The RMA, focused on sustainable management of natural and physical resources, does not concern itself with biosecurity, mentioning the word only in relation to the offshore discharge of

⁹ Biosecurity Act, s 7A(2) provides that the exemption may last for up to 20 working days.

¹⁰ Biosecurity Act, s 7A(1).

¹¹ Biosecurity Act, s 7A(3). Before making a decision to exempt an action, the Minister is required to consult the relevant authority (to the extent possible in the circumstances) and may consult with other persons as the Ministers considers are representative of the persons likely to be affected by the eradication attempt.

¹² For s 7A to apply, the organism must not be established in New Zealand (or restricted to certain parts of New Zealand), must have the potential to cause significant economic loss, adverse effects on human health, or environmental health and finally, it must be in the public interest that action be taken.

harmful substances,¹³ and the requirements for esplanade and access strips.¹⁴

- 20 The Act does anticipate that, in certain circumstances, certain emergency works need to be exempted from ss 9 and 12-15 of the RMA, including by rural landowners and occupiers.¹⁵ These provisions are linked to the Civil Defence Emergency Management Act 2002, and are strongly focused on severe weather events, rather than a broader range of emergencies.
- 21 As Mr Hodgson outlines in his evidence, it is therefore important to recognise that not all biosecurity incursions, or events leading to notices of direction under the Biosecurity Act, would meet the threshold of the s 7A Biosecurity Act exemptions to the RMA, and are unlikely to trigger the emergency provisions in the RMA.¹⁶
- 22 Mr Hodgson goes on to consider the nature of the effects of the proposed *ancillary rural earthworks* relevant to the matters controlled by district councils.¹⁷ Sections 31 and 74 set out the functions and matters to be considered by territorial authorities under the RMA, which could be summarised as follows:
- 22.1 establishment, implementation and review of objectives, policies and methods to:
- (a) achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources of the district;
- (b) ensure that there is sufficient housing and business development capacity to meet expected demands;
- 22.2 control of the effects of the use, development or the protection of land, including natural hazards, subdivision or use of contaminated land and indigenous biological diversity; and
- 22.3 other specific matters such as the control noise and the effects of activities on the surface of rivers and lakes.
- 23 This can be contrasted with corresponding provisions for regional councils and plans in sections 30 and 66. Mr Hodgson explains in his evidence that the responsibility for controlling land uses that

¹³ RMA, s 15B.

¹⁴ RMA, Schedule 10.

¹⁵ RMA, ss 329A-331F.

¹⁶ Evidence of Vance Hodgson for NZ Pork and Hort NZ at [51].

¹⁷ Evidence of Vance Hodgson for NZ Pork and Hort NZ at [56].

affect water quality or soil erosion, and discharges of contaminants are the responsibility of the regional council.

- 24 Appendix A to Mr Hodgson's evidence sets out the relevant provisions of the Canterbury Land and Water Regional Plan that relates to some of the activities that might be a consequence of a notice of direction under the Biosecurity Act, including offal pits and the burying of dead animals. Mr Hodgson considers that it is unnecessary to duplicate a volume control in the proposed Plan for the effects of an activity that is the responsibility of, and managed by, the regional council.¹⁸
- 25 In our submission, *ancillary rural earthworks* would not create effects that are within the Waimakariri District Council's responsibilities, and this is not a matter that requires duplication of across the regional and district regimes.¹⁹

Conclusion

- 26 In light of the important social and economic outcomes provided by the pork industry, it is critical that its safe and efficient operations are enabled in the proposed Plan.

14 August 2023

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¹⁸ Evidence of Vance Hodgson for NZ Pork and Hort NZ at [61].

¹⁹ See *Canterbury Regional Council v Banks Peninsula District Council* [1995] 3 NZLR 189, where the Court of Appeal found that neither a regional council nor a territorial authority has power to make rules for purposes falling within the functions of the other, except to the extent that they fall within its own functions and for the purpose of carrying out its own functions.