

BEFORE THE WAIMAKARIRI DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND of the proposed Waimakariri District Plan

**Legal Submissions on behalf of
the Director-General of Conservation / *Tumuaki Ahurei*
Hearing Stream 4: Public Access, Natural Features and Landscapes, Coastal
Environment, Natural Character of Freshwater Bodies
Submitter ID: 419, Further Submitter ID: 77
dated 17 July 2023**

Department of Conservation / *Te Papa Atawhai*
RMA Shared Services
Operations Group
Private Bag 4715
Christchurch 8140
Solicitor roia: Pene Williams
Email Imera: pwilliams@doc.govt.nz

MAY IT PLEASE the proposed District Plan Hearing Panel (the Panel)

The following submissions are made on behalf of the Director-General of Conservation Tumuaki Ahurei (Director-General).

Introduction

1. The Director-General submitted¹ and further submitted² on the proposed Waimakariri District Plan (proposed DP). The Director-General did not submit on Variation 1 or Variation 2 to the proposed DP.
2. The Department of Conservation Te Papa Atawhai (the Department) administers areas within the Waimakariri District including the Puketeraki Forest Conservation Area, Mount Thomas Forest Conservation Area, and Oxford Forest Conservation Area. In addition the Department administers a number of smaller reserves and conservation areas within the District.
3. These legal submissions relate to Hearing Stream 4: Natural Features and Landscapes, Public Access, Coastal Environment, Natural Character of Freshwater Bodies. As set out in the evidence by Ms Young filed for the Director-General³, the Director-General generally accepts the recommendations in the section 42A Reports prepared for Hearing Stream 4.
4. However, there is one recommendation which Ms Young opposes in the Public Access Chapter in respect of Policy PA-P3. These legal submissions only deal with this matter.

Public Access – Policy PA-P3

5. Maintenance and enhancement of public access to and along the Coastal Marine Area (CMA) and lakes and rivers is a matter of national importance under section 6(d) of the Resource Management Act 1991 (RMA).
6. Policy PA-P3 applies to the CMA and water bodies with high values and would restrict public access to and along these areas where this is necessary to protect certain other values. The Director-General supported PA-P3 as notified, as she considered the proposed restrictions on public access were appropriate.

¹ Submission by Director-General of Conservation Tumuaki Ahurei dated 26 November 2021, Submitter ID: 441

² Further Submission by Director-General of Conservation Tumuaki Ahurei dated 21 November 2022, Submitter ID: FS77

³ Evidence of Amy Louise Young for Director-General of Conservation Tumuaki Ahurei, Hearing Stream 4, dated 4 July 2023.

7. Waimakariri District has unformed legal roads adjoining the CMA and most larger water bodies. Unformed roads come under the administration of the District Council, which may impose temporary restrictions on public access in accordance with the Local Government Act 1974.
8. Many braided riverbeds in Waimakariri District are held as local purpose reserves vested in the Canterbury Regional Council. As local purpose reserves, the Regional Council may by public notice restrict and prohibit public access from time to time and to all or any part of a reserve, with public entry only by permit issued by the Regional Council: section 23(3) Reserves Act 1977. This would allow for public access to be temporarily restricted to such reserve areas.
9. The s42A Report recommends⁴ an additional paragraph be added to Policy PA-P3 to protect land-based primary production as follows:

6. land-based primary production from potential reverse sensitivity effects where it cannot otherwise be mitigated.
10. The s42A Report relies on the submission from Horticulture NZ and the National Policy Statement for Highly Productive Lands September 2023 (NPSHPL) to support this amendment.⁵
11. With respect, I submit this recommended amendment to PA-P3 is inappropriate and misconceived. As noted above, public access along to and along the CMA and lakes and rivers is a matter of national importance which should not be easily restricted, even on a temporary basis.
12. As the s42A Report writer acknowledges, PA-P3(4) already addresses the situation where it is appropriate to restrict public access to protect public health and safety, and PA-P3(5) addresses protection of private property owners' rights where these may be significantly compromised. The Director-General supported these restrictions as appropriate.
13. The s42A Report relies on Clause 3.9(3)(b) of the NPSHPL to support the recommended amendment to PA-P3. This relevantly states:

(3) Territorial authorities must take measures to ensure that any use or development on highly productive land:

⁴ Officer's Report on Proposed Waimakariri District Plan: Tomonga mārea - Public Access, dated 15 May 2023 – Sections 3.5 and 3.6, at paragraphs 83 and 102.

⁵ Supra at paragraphs 81-82, 84.

- (b) avoids, if possible, or otherwise mitigates, any actual or potential reverse sensitivity effects on land-based primary production activities from the use or development.
14. In mu submission this clause applies to any use or development on highly productive land only. The proposed addition would apply to all lands within the District.
15. One of the first steps to be taken under the NPSHPL is the identification of highly productive land by mapping it, and then including maps of such identified lands in a regional policy statement and following that in district plans.⁶
16. I submit that until this identification and mapping exercise has taken place, it is inappropriate to rely on Clause 3.9(3)(b) of the NPSHPL – in particular as the notified provision addresses public safety and private property rights as potential reasons to restrict public access in Policy PA-P3.
17. For these reasons the Director-General opposes the proposed addition to Policy PA-P3 as it is not appropriate and the reliance on clause 3.9 of the NPSHPL is misconceived before highly productive land in the District is identified and mapped.



Pene Williams

Counsel Rōia for the Director-General

⁶ Refer clauses 3.4 and 3.5 NPSHPL, noting that for district plans inclusion of maps may be don under s55(2) of the RMA and without a full Schedule 1 plan amendment process.