

Before the Independent Hearings Panel  
at Waimakariri

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*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

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Dated: 06 July 2023

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## **LEGAL SUBMISSIONS ON BEHALF OF WAIMAKARIRI IRRIGATION LIMITED**

### **Hearing stream 4: Natural Features and Landscapes and Natural Character of Freshwater Bodies**

#### **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*).<sup>1</sup>
- 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 4 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 Natural Character of Freshwater Bodies (*NATC*) and Natural Features and Landscapes (*NFL*) 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 its role operating the stockwater and irrigation Schemes, which includes maintenance and upgrading of race and canal infrastructure without extensive additional consenting requirements.

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<sup>1</sup> Submitter 210

## **Natural character provisions**

7 In regard to the NATC provisions:

### **NATC-P3**

7.1 WIL sought that NATC-P3 be amended so that the methods available to manage land use effects are not limited to their size, appearance and location, as follows:

*Recognise the cultural significance of wetlands, lakes and rivers and their margins, to mana whenua, and manage the effects of land use ~~activities through limiting the size, visual appearance, and location,~~ to ensure they do not adversely affect taonga species, mahinga kai or customary harvesting, access, and other cultural values.*

7.2 The reporting officer has recommended rejecting this submission "as the matters of discretion, which are often specific to size, visual appearance, and location require a link through to the policy in order to function effectively."

7.3 WIL understands the utility of a link between the policy and matters of discretion. However, it may not always be appropriate (or practicable) to limit the size, visual appearance and location of land use activities. It is submitted the following amendment would be appropriate, as it retains a link between the matters of discretion and the policy but does not limit the methods available to manage land use effects:

*Recognise the cultural significance of wetlands, lakes and rivers and their margins, to mana whenua, and manage the effects of land use activities, ~~including by through~~ limiting the size, visual appearance, and location, to ensure they do not adversely affect taonga species, mahinga kai or customary harvesting, access, and other cultural values.*

### **NATC-S1**

7.4 WIL sought that NATC-S1 be amended to exclude community scale irrigation and stockwater infrastructure from the setback distance specified in Table NATC-1.

7.5 The reporting officer recommends rejecting the submission on the basis that:

- (a) infrastructure, including irrigation infrastructure, is enabled within setbacks where there is a functional or operational need for it to be there; and
- (b) EI-49 and EI-50 provide for maintenance and some upgrading of irrigation infrastructure as a permitted activity, and policies NATC-P5 and NATC-P6 provide support at consenting time for irrigation infrastructure

with tests and standards that achieve the NATC objectives.

- 7.6 WIL accepts the position of the reporting officer on the basis that no setback applies for new structures in and over water (NATC-R8) or water intake structures, siphons and ancillary structures (NATC-R4).

### **Natural Features and Landscapes provisions**

- 8 With regard to the NFL provisions:

#### ***NFL-O1, NFL-O2, NFL-P1***

- 8.1 WIL sought amendments to NFL-O1, NFL-O2 and NFL-P1 to add a "practicability" qualifier – to recognise that irrigation and stockwater infrastructure may have an operational and functional need to be located within the natural features and landscapes overlays (i.e. river beds).
- 8.2 The reporting officer has recommended rejecting WIL's submission points.
- 8.3 However, the reporting officer has recommended accepting submissions from Transpower New Zealand Limited seeking to insert "inappropriate" in reference to land use/activities and development to align with s 6(b) of the RMA. On the basis this recommendation is accepted, WIL considers its concern is addressed as the amendment provides for infrastructure that has a functional or operational need to locate within an ONF/ONL.
- 8.4 WIL agrees with the reporting officer that adding "inappropriate" provides a pathway for consideration through the resource consent process of the adverse effects and appropriateness of activities to occur within ONF/ONL.

#### ***NFL-R5***

- 8.5 WIL sought that NFL-R5 be amended so that the default activity status is restricted discretionary rather than non-complying.
- 8.6 The reporting officer recommends an amendment to the NFL chapter to clarify that:
- (a) the rules within the NFL chapter do not apply to energy and infrastructure activities (apart from NFL-R8 and NFL-R9); but
  - (b) objectives, policies, standards, matters of discretion, appendix, and planning map overlay relating to the NFL chapter to apply to energy and infrastructure activities within ONL, ONFs, or SAL.

8.7 WIL supports the reporting officer's recommendation to exempt infrastructure activities from NFL rules. Subject to this recommendation being accepted by the Hearings Panel, WIL's considers that changes to NFL-R5 may not be necessary.

**ONF boundary**

9 WIL supports the adjustment of the ONF boundary to exclude irrigation intake infrastructure at Brown Rock.<sup>2</sup>

**CONCLUSION**

10 Accordingly, WIL:

10.1 supports retention of, and amendments to, the policy framework that enable activities that have an operational or functional need to locate within national environmental value overlays;

10.2 considers the rule framework to be generally practicable and, in particular, supports:

- (a) water intake structures and ancillary equipment being a permitted activity;
- (b) there being no setback for new structures in/over waterbodies; and
- (c) the s 42A reporting officer's recommendation to exempt energy and infrastructure activities from the rules in the NFL chapter, as this includes irrigation and stockwater infrastructure.

Dated: 06 July 2023



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B Williams / K Jacomb  
Counsel for Waimakariri Irrigation Limited

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<sup>2</sup> Section 42A report prepared by Shelley Milosavljevic on Proposed Waimakariri District Plan: Āhuatanga o te whenua – Natural Features and Landscapes dated 15 June 2023, at page 2 of Appendix D, Waimakariri Overlay Reassessment Memo and Maps dated 2 May 2023.