

**BEFORE THE HEARINGS PANEL  
FOR THE PROPOSED WAIMAKARIRI DISTRICT PLAN**

**UNDER** the Resource Management Act 1991 (RMA)  
**IN THE MATTER** of the Proposed Waimakariri District Plan  
**AND**  
**IN THE MATTER** of Hearing Stream 1: General Matters, Definitions,  
Strategic Directions and Urban Form and Development

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**LEGAL SUBMISSIONS ON BEHALF OF THE CANTERBURY REGIONAL  
COUNCIL**

**8 MAY 2023**

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## MAY IT PLEASE THE PANEL

### Introduction

- 1 Canterbury Regional Council (**CRC** or **Regional Council**) made a submission (and further submission) on Waimakariri District Council's (**WDC**) proposed Waimakariri District Plan (**pWDP**) primarily in order to ensure that the pWDP gives effect to the Canterbury Regional Policy Statement (**CRPS**).
- 2 The Regional Council's position in relation to the provisions subject to Hearing Streams 1 and 2 is that to assist plan users, further integration between the pWDP and the CRPS and other relevant instruments can be achieved, consistent with the RMA.
- 3 The Regional Council's submission on these provisions (summarised further in Ms Mitten's evidence) generally:
  - (a) Supported the strategic direction provisions that it considered give effect to the CRPS and other relevant higher-order documents;
  - (b) Sought further safeguarding of highly productive land from development; and
  - (c) Opposed the Urban Form and Development provisions that appear to enable development outside of the areas identified on Map A in Chapter 6 of the CRPS.
- 4 The Regional Council has filed evidence from Joanne Mitten, Principal Planner at CRC.
- 5 Ms Mitten will be present at the hearing to answer any questions that the Hearings Panel may have.
- 6 These legal submissions cover:
  - (a) The Regional Council's interest in Hearing Streams 1 and 2 of the pWDP;
  - (b) Scope of the legal submissions (identifying matters to be addressed in later streams);
  - (c) Statutory framework;
  - (d) Overarching and Part 1 Matters;
  - (e) Rautaki ahunga – Strategic Directions;

- (f) Āhuatanga auaha ā tāone - Urban Form and Development;
- (g) Hearing Stream 2; and
- (h) Ms Mitten's suggested amendments to the provisions.

### **The Regional Council's interest in Hearing Streams 1 and 2 of the pWDP**

- 7 The CRC has a number of functions relating to the integrated management of natural resources,<sup>1</sup> and is required to prepare and administer the CRPS,<sup>2</sup> to which a district plan (including the pWDP) is required to give effect.<sup>3</sup>
- 8 The purpose of CRC's participation in the pWDP process is to assist WDC in achieving alignment between the relevant planning instruments, where possible.
- 9 The intention behind CRC's submission is to assist WDC in giving effect to the CRPS, but also to assist with minor amendments that the CRC considers could enhance the provisions of the pWDP to be as user-friendly as possible.

### **Scope of legal submissions**

- 10 As noted in Ms Mitten's evidence, indications have been provided through the section 42A reports that a number of the provisions that the Regional Council has an interest in (and that would generally fall within the scope of Hearing Stream 1) will be dealt with as part of other topics.<sup>4</sup>
- 11 This includes various definitions, matters relating to the proposed certification process for the release of further land for development, and the protection of highly productive land.
- 12 As the Council has signalled that these matters will be addressed in later hearing streams, they have not been addressed in detail in evidence or legal submissions on this Stream.
- 13 However, given the interrelated nature of the provisions of a district plan, some of the provisions in these Hearing Streams are closely linked to those that will be considered in later streams. As the strategic directions

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<sup>1</sup> RMA, s 30(1)(a).

<sup>2</sup> RMA, s 60(1).

<sup>3</sup> RMA, s 75(3).

<sup>4</sup> See for example statement of Evidence of Joanne Mitten, dated 1 May 2023, at [77].

section of the pWDP, it is important that these directions line up with the provisions assessed in more detail at a later stage.

- 14 The provisions which (in the CRC's opinion) may be affected by these later hearing streams have been identified in the evidence of Ms Mitten. Ms Mitten's evidence provides a brief summary of the Regional Council's relevant concerns in order to assist the Panel (particularly to understand where consequential changes may later be necessary, depending on the Panel's findings on those later hearing streams).
- 15 This includes, for example, UFD-P6. As currently worded, this provision provides for the release of further land for development (including the "new development area" in Kaiapoi) through a certification mechanism. The Regional Council indicated concerns in its submission in relation to this mechanism, particularly its application in Kaiapoi. As these issues will be dealt with later in the Hearing Streams, it is possible that consequential changes will then be sought to UFD-P6 as a result of the Regional Council's submission in respect of other submissions.<sup>5</sup>

#### **Statutory framework**

- 16 The statutory framework in which the pWDP is being decided under has been set out in detail in Ms Mitten's evidence.<sup>6</sup> In summary:
- (a) The National Policy Statement for Urban Development (**NPS-UD**) is relevant to the decisions on the pWDP. The focus on achieving well-functioning urban environments is central to the NPS-UD, along with the requirement to provide "at least" sufficient development capacity.
  - (b) The NPS-UD introduced a "responsive planning framework" through Policy 8, which enables development out-of-sequence with existing areas identified for development, where certain criteria are met.
  - (c) The National Policy Statement for Highly Productive Land (**NPS-HPL**) has recently been released. This requires the mapping (by regional councils) of highly productive land, which is to be protected for use in land-based primary production.

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<sup>5</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at [119].

<sup>6</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at [28].

- (d) Given the directive nature of the policies in the NPS-HPL, there are limited circumstances in which highly productive land can be rezoned to enable further development.<sup>7</sup> For example, where the rezoning is required to provide sufficient development capacity to meet the NPS-UD obligations (and if other criteria are met).<sup>8</sup>
- (e) The existing strategic growth planning exercise that has been carried out by the Greater Christchurch Partnership has been conducted recently, and given effect to through Change 1 to Chapter 6 of the CRPS (in July 2021).
- (f) The Greater Christchurch Partnership has also completed its Housing Capacity Assessment in accordance with the requirements of the NPS-UD, in July 2021. This capacity assessment identified that with the inclusion of the FDAs identified in Our Space (and subsequently reflected in Map A of the CRPS) there is sufficient development capacity within Waimakariri to meet expected housing demand over the medium term.<sup>9</sup>
- (g) The relevant CRPS provisions to the matters at issue in this case are largely contained within Chapters 5 and 6. Map A in Chapter 6 of the CRPS identifies the location and extent of urban development that will support recovery, rebuilding and planning for future growth and infrastructure delivery in Greater Christchurch. Urban development outside of these areas is to be avoided, unless expressly provided for in the CRPS.<sup>10</sup>

### **Overarching and Part 1 Matters**

- 17 The Regional Council's submission generally supported the Overarching and Part 1 matters, apart from some specific requested amendments.<sup>11</sup>
- 18 The matters of interest to the Regional Council on this particular topic have not been addressed in the section 42A report, as they are proposed to be dealt with specifically in other hearing streams.

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<sup>7</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at [54].

<sup>8</sup> NPS-HPL, cl 3.6.

<sup>9</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at [63].

<sup>10</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at [76].

<sup>11</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at [72].

- 19 For these reasons, Ms Mitten has not addressed these provisions or the relief sought in detail in her evidence.
- 20 It is necessary to note here that the integrated nature of the pWDP (and the inherent difficulty with a whole plan review separated into topics) means that there may be consequential changes required to the Overarching and Part 1 matters in light of decisions made by the Panel on other hearing topics.
- 21 In this sense, the Regional Council considers that any decision that is released on the provisions subject to Hearing Stream 1 should include clear provisos where wording may be subject to change, subject to decisions on later hearing streams.

### **Rautaki ahunga – Strategic Directions**

- 22 In general, the Regional Council's submission supported the intent of the strategic direction objectives, largely seeking that the intent is retained as notified.
- 23 In line with this position, Ms Mitten has recommended some minor amendments to the provisions in order to improve the drafting clarity and ensure that this intention continues to be captured, in light of the recommendations made by the section 42A officer.
- 24 Ms Mitten takes a different view from the section 42A officer in respect SD-O2. In her opinion, omitting "existing character" from the provision would be inconsistent with Policy 5.3.3 of the CRPS.
- 25 Given that there was no reasoning provided within the section 42A report for the deletion of this wording, it is submitted that the original intent of the objective can better be achieved by adding these words back into the objective, which will also ensure that the pWDP gives effect to the CRPS in this respect.
- 26 The Regional Council has also sought more specific recognition of enabling papakāinga housing and marae, similar to its submission points on Hearing Stream 2 topics. The method associated with Policy 5.3.4 of the CRPS is directive in including objectives, policies and methods in district plans to implement the policy, including providing for papakāinga housing and marae to be established on ancestral land.

- 27 Including specific reference to this type of development removes any doubt as to whether the pWDP gives effect to this provision of the CRPS. This would also provide a link to the provisions included within the Special Purpose Kāinga Nohoanga zones, ensuring that the strategic directions provisions adequately reflect the outcomes sought throughout the pWDP and promote the integrated nature of the provisions.

### **Āhuatanga auaha ā tāone - Urban Form and Development**

- 28 It is in the Urban Form and Development provisions that the Regional Council's most significant interest lies in relation to this hearing stream. It considers several amendments are required in order to ensure that the provisions give effect to the CRPS.

#### *Recommendations agreed with by the Regional Council*

- 29 The amendments proposed to Objective UFD-O1 by the section 42A officer are supported by the Regional Council. The Regional Council considers that the updated Housing Bottom Lines are consistent with those added into the CRPS last year in accordance with the NPS-UD, and therefore the amendment gives effect to the CRPS.
- 30 The amendments proposed in the section 42A report in relation to UFD-P1 are also acceptable to the Regional Council. While this policy is headed as being in relation to the density of residential development (being why the Regional Council's submission initially sought reference to the minimum net densities), the text of the policy itself appears more to relate to the location of increased density rather than the density itself.

#### *UFD-P2 – key issue*

- 31 The main issue with the UFD provisions from the Regional Council's perspective stems from UFD-P2. This provision, as recommended by the section 42A officer, refers to a yet-to-be-made Future Development Strategy (**FDS**) as demonstrating the appropriate location of future urban development.
- 32 As noted above, Map A of the CRPS (as amended in 2021) identifies Greenfield Priority Areas for further development, and the CRPS contains directive policies seeking to avoid urban development outside of those areas.

- 33 While an FDS is required to be prepared by all Tier 1 local authorities under the NPS-UD,<sup>12</sup> and Ms Mitten’s evidence indicates that this is in progress for the councils part of the Greater Christchurch Partnership,<sup>13</sup> an FDS does not have the same statutory status as the CRPS.
- 34 The Regional Council considers there are three key issues with relying on the FDS instead of Map A of the CRPS:
- (a) A local authority is only required to have regard to an FDS when preparing or changing RMA planning documents;<sup>14</sup>
  - (b) An FDS is prepared through a Local Government Act 2002 process, rather than an RMA Schedule 1 process;<sup>15</sup> and
  - (c) The definition of FDS in the pWDP is broad and could capture documents other than the FDS required by the NPS-UD.

“Have regard to”

- 35 The NPS-UD provides that every tier 1 and 2 local authority must have regard to the relevant FDS when preparing or changing RMA planning documents.<sup>16</sup>
- 36 However, the direction in the RMA is for a district plan to “give effect” to the CRPS. To “give effect to” a document means to implement it – it is a strong directive, creating a firm obligation on the part of those subject to it.<sup>17</sup>
- 37 On the contrary, to have regard to a document is a lesser standard, requiring only a decision-maker to “give genuine attention and thought to the matter”.<sup>18</sup> Having regard to a document may ultimately result in it being rejected, or only accepted in part. For this reason, to “have regard to” the FDS is not as onerous a requirement as to “give effect” to the CRPS.

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<sup>12</sup> NPS-UD, cl 3.12.

<sup>13</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at [65].

<sup>14</sup> NPS-UD, cl 3.17.

<sup>15</sup> NPS-UD, cl 3.15.

<sup>16</sup> NPS-UD, cl 3.17.

<sup>17</sup> *Environmental Defence Society Inc v New Zealand King Salmon Company* [2014] 1 NZLR 593 (SC) at [77].

<sup>18</sup> *Unison Networks Ltd v Hastings District Council* [2011] NZRMA 394 (HC) at [70].



- 38 To the extent that the future FDS does not align entirely with the CRPS, referring to the FDS in provisions of the pWDP may then leave the pWDP in a situation where it does not give effect to the CRPS, contrary to statutory direction. Placing more weight on the FDS than the CRPS would be inconsistent with the requirement to give effect to the CRPS and have regard to the FDS.

#### Local Government Act process

- 39 The FDS is also prepared through a Local Government Act process rather than an RMA Schedule 1 process. While the NPS-UD requires the use of the special consultative procedure under the LGA,<sup>19</sup> the special consultative procedure does not prescribe a particular hearing process, and as such does not guarantee the same rights of public participation as that which is required to occur under an RMA Schedule 1 process.
- 40 This also leaves open the possibility in the future that the FDS can be amended outside of the RMA process. This means that while the FDS and CRPS may align when initially first prepared, this does not prevent the FDS being changed at a later date. If this occurred, then under the current wording of the provisions, this would also leave the pWDP in a situation where it does not give effect to the CRPS.<sup>20</sup>

#### Broad definition of FDS

- 41 The definition of FDS under the pWDP is very broad. While the definition does refer to an FDS being required by the NPS-UD, it does not make it clear that the FDS is that which is required to be prepared by the NPS-UD. This leaves it open for interpretation as to whether a particular document meets the definition even if it is not the FDS prepared in accordance with the NPS-UD – as Ms Mitten’s evidence highlights, any number of various WDC strategies or policies may meet the requirements of the definition.<sup>21</sup>
- 42 This is a further example of how reference to the FDS within the provisions of the pWDP could lead to the pWDP not giving effect to the CRPS. If a document that is not the FDS required under the NPS-UD is

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<sup>19</sup> NPS-UD, cl 3.15 (referring to section 83 of the Local Government Act 2002).

<sup>20</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at [101].

<sup>21</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at [102].

consistent with the definition of FDS under the pWDP, that document may then be preferred ahead of the CRPS direction.

*How to ensure the CRPS is given effect to – UFD-P2*

- 43 The Regional Council considers that reference to Map A in the CRPS within UFD-P2, instead of the FDS, is critical in ensuring that the pWDP gives effect to the CRPS. An amendment to this effect has been suggested in the evidence of Ms Mitten.<sup>22</sup>
- 44 Consideration of amendments is also required in relation to UFD-P2(2). As Ms Mitten has identified, as currently worded, this subclause appears to enable residential development within Greater Christchurch, outside of the areas identified in Map A.<sup>23</sup> It is unclear whether that is the intention of the section 42A officer. This is also the interpretation taken by Mr Thomson in his evidence (in supporting the retention of the notified UFD-P2(2)).<sup>24</sup>
- 45 To the extent that this is the effect of UFD-P2(2), this would create an inconsistency with Policy 6.3.1(4) of the CRPS (which seeks to ensure that new urban activities only occur within existing urban areas or identified greenfield priority areas on Map A of the CRPS).
- 46 Ms Mitten has identified a possible amendment to UFD-P2 that would clarify this application (and ensure that the pWDP does give effect to the CRPS).<sup>25</sup> This amendment involves clarifying that residential development within Greater Christchurch, outside of the areas identified on Map A of the CRPS, is avoided, and that what was UFD-P2(2) applies only outside of Greater Christchurch.
- 47 While it is acknowledged that Policy 8 of the NPS-UD does require consideration and responsiveness to proposals for out-of-sequence or unanticipated development, this is in limited circumstances and subject to specific criteria set out in the NPS-UD (which do not completely align with the provisions of UFD-P2(2)).

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<sup>22</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at Attachment 1.

<sup>23</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at [103].

<sup>24</sup> Statement of Evidence of Ivan Thomson on behalf of Richard and Geoff Spark, dated 28 April 2023, at [6].

<sup>25</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at Attachment 1.

*Remainder of UFD policies*

- 48 In relation to UFD-P3, the Regional Council considers a further amendment to capture the intention expressed by the section 42A officer in his report that this provision apply only to provide rural residential development outside of Greater Christchurch. Ms Mitten has recommended a specific amendment to demonstrate that the policy only applies outside of Greater Christchurch, for the same reasons as the concerns expressed in relation to UFD-P2.<sup>26</sup>
- 49 The Regional Council also holds similar concerns in respect of UFD-P5 as have been expressed in relation to UFD-P2. This provision refers to compliance with the Waimakariri District Development Strategy, which was published prior to the most recent amendment to the CRPS in 2021.<sup>27</sup> Similar amendments to address this concern have been proposed by Ms Mitten as those proposed in relation to UFD-P2.
- 50 Ms Mitten has also proposed amendments to policies UFD-P7, P8 and P10, in line with her comments (and the Regional Council's view) on UFD-P2, seeking to include more specific reference to Map A and the CRPS. These amendments would leave no doubt that the pWDP gives effect to the CRPS, as it is required to do under the RMA.
- 51 Ms Mitten has also expressed the view that further clarity is required regarding the reference to "new development areas" in UFD-P10, and whether this is consistent with the areas identified in Map A of the CRPS.<sup>28</sup>
- 52 In relation to policies UFD-P6 and part of UFD-P10, these both address matters that the section 42A officer has indicated will be dealt with in later hearing streams. Ms Mitten has provided comment on these provisions, to indicate where consequential changes may be required depending on decisions made on the later hearing streams.

**Hearing Stream 2**

- 53 The Regional Council's interest in Hearing Stream 2 is limited. A letter from Ms Mitten has been tabled in lieu of evidence.

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<sup>26</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at [111].

<sup>27</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at [113].

<sup>28</sup> Statement of Evidence of Joanne Mitten, dated 1 May 2023, at [128] – [129].

54 Ms Mitten agrees with the recommendations of the section 42A officer in relation to this Hearing Stream. The Regional Council supports the provisions (in line with its submission) and agrees that Te Ngāi Tūāhuriri Rūnanga should exercise kaitiakitanga in relation to their ancestral land.

**Ms Mitten’s suggested amendments to the provisions**

55 Ms Mitten’s evidence provided (as Attachment 1 to her evidence) her recommendations for amendments to the provisions in order to achieve the CRC’s intended outcome.

56 These amendments have been referred to throughout Ms Mitten’s evidence, and in line with the Regional Council’s position are intended to provide further clarity to the reader of the pWDP, or in some cases assist the pWDP to better give effect to the higher order documents, including the CRPS.

**Conclusion**

57 CRC reiterates that the amendments it proposes are to fulfil its intent of ensuring clarity and consistency between the relevant planning and regulatory documents in the region.

58 The provisions of the pWDP are required to give effect to the CRPS. While on the whole this is achieved throughout the relevant provisions of the proposed plan, there are further suggested amendments that could be made to achieve greater alignment, particularly in relation to the Urban Form and Development provisions.

Dated this 8<sup>th</sup> day of May 2023



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