

**BEFORE INDEPENDENT HEARING COMMISSIONERS
AT RANGIORA / WAIMAKARIRI**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
KI RANGIORA / WAIMAKARIRI**

IN THE MATTER of the Resource Management Act 1991
AND
IN THE MATTER of the hearing of submissions and further
submissions on the **Proposed Waimakariri
District Plan**

HEARING TOPIC: **Streams 2 to 5**

**MEMORANDUM OF COUNSEL FOR KĀINGA ORA –
HOMES AND COMMUNITIES**

16 FEBRUARY 2024

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MEMORANDUM OF COUNSEL FOR KĀINGA ORA –

HOMES AND COMMUNITIES

1. Counsel refer to Minute #16 of the Independent Hearing Panel, and the memorandum provided by Council officers on Strategic Directions dated 8 December 2023.
2. That memorandum sets out a range of responses from reporting officers to the question of whether or not the Strategic Directions chapter (SD and UFD) should be given primacy or not.
3. Strategic objectives or directions, by their very nature, are generally worded. Their intention is often said to be to provide a series of high level objectives for the district, leaving the articulation of activity-specific and location-specific objectives and policies to subsequent chapters.¹ As the Environment Court has said previously in relation to the strategic directions in the Christchurch District Plan, discrete application on a case-by-case basis is often not intended, and rather, the strategic directions are given effect to by the objectives and policies in the balance of the District Plan and are to be interpreted and applied accordingly.²
4. The overarching memorandum dated 8 December 2023 by Council reporting officers identifies five distinct approaches towards the primacy (or not) of strategic direction (“SD”) objectives:
 - a. SD objectives have no “primacy” and sit on the same level as other objectives in the plan;
 - b. SD objectives have “primacy” in one of the following different senses (depending on how the district plan is crafted):
 - i. SD objectives **inform** objectives and policies contained in other chapters;
 - ii. Objectives and policies in other chapters must be expressed and achieved as **being consistent** with the SD objectives;

¹ See eg *Rogers v Christchurch City Council* [2019] NZEnvC 119 at [48].
² Ibid.

- iii. SD objectives are used to **resolve conflict** with objectives and policies in other chapters; and
 - iv. SD objectives **override** all other objectives and policies in the plan.
5. Counsel submit that the appropriate role of strategic direction objectives is captured by (b)(i) to (iii) above – consistent with the scheme of the RMA and planning instruments, which moves from the general to the specific.³
6. Counsel disagree with Mr Wilson’s statement at paragraph 6 of his memorandum that SD objectives and policies in a district plan need to give effect to every higher-order document. If that were the case, then there would be no need for any other objectives and policies below the strategic level.
7. The requirement for a district plan to “give effect to” a higher order document can only be assessed by taking all relevant objectives and policies into account, and making a thorough-going attempt to reconcile any perceived conflicts between them.⁴ Reconciliation between different competing directives should occur, as much as possible, at the lower levels (including district plans), and choices may need to be made between the directives where conflict exists,⁵ depending upon the way in which those directives are expressed. But all of that work does not need to be borne by the SD objectives and policies.
8. Counsel also disagree with the statement by Mr Wilson at paragraph 13 of his memorandum that you cannot look to strategic objectives and policies to resolve conflict because they are not “higher order documents”. Again, that is inconsistent with the scheme of the RMA, and the internal and external hierarchies within and between planning documents. It remains a fundamental point of plan interpretation that provisions are interpreted and applied according to their terms, and where provisions have been drafted to either carry greater weight or reduce scope for flexibility, then it would be an error of law to ignore them.

³ *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [14].

⁴ *King Salmon*, above n 3 at [131].

⁵ *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112,

The Kāinga Ora position

9. Kāinga Ora supports the use of SD objectives and policies to inform and to guide, for other objectives and policies to be consistent with them, and for those objectives and policies to be used to resolve conflict, but not in a way that would allow them to “override” more specific and/or directive policies elsewhere in the district plan.
10. In other words, it supports the conclusions reached in paragraph 3 (b)(i)-(iii) of the overarching memorandum from the Council reporting officers dated 8 December 2023, but not paragraph 3 (a) or (b)(iv).

Dated 16 February 2024

A handwritten signature in blue ink, appearing to read 'B J Matheson | A M Cameron', with a long horizontal flourish extending to the right.

B J Matheson | A M Cameron

Counsel for Kāinga Ora – Homes and Communities