

Before the Independent Hearings Panel  
at Waimakariri

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*under:* the Resource Management Act 1991

*in the matter of:* proposed Plan Change 7 to the Canterbury Land and  
Water Regional Plan

*and:* **Waimakariri Irrigation Limited**  
*Submitter 210*

Legal submissions on behalf of Waimakariri Irrigation Limited

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Dated: 10 May 2023

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

### **Hearing stream 2: Sites and Areas of Significance to Māori**

#### **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 WIL is generally supportive of the Proposed Plan, but is concerned to ensure that the Plan enables the maintenance and upgrades of race and canal infrastructure, as well as WIL's efforts to improve water quality through Managed Aquifer Recharge (*MAR*) and Targeted Stream Augmentation (*TSA*).
- 3 In regard to the Sites and Areas of Significance to Māori (*SASM*) provisions, WIL sought an amendment to *SASM-R4* so that it would provide for race maintenance and upgrading as a permitted activity.<sup>2</sup>
- 4 The Section 42A Report for the *SASM* chapter recommends an amendment to the notified wording be made that would generally align with WIL's sought relief.<sup>3</sup>
- 5 In addition, WIL sought that:
  - 5.1 the matters of discretion be amended so that in respect of infrastructure, the proposed infrastructure considers whether alternative locations or layout/methodology would be "practicable" rather than "suitable";<sup>4</sup> and
  - 5.2 the *SASM-11* overlay be removed from the canal area at Warren Road;<sup>5</sup> and
  - 5.3 the Ngā Wai overlay be removed from the Brown Rock intake point.<sup>6</sup>

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<sup>1</sup> Submitter 210

<sup>2</sup> Submission reference 210.14

<sup>3</sup> Section 42 report prepared by Alan Matheson on Proposed Waimakariri District Plan: Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori dated 13 April 2023 at [98]

<sup>4</sup> Submission references 210.15, 210.16, 210.17

<sup>5</sup> Submission reference 210.12

<sup>6</sup> Submission reference 210.13

- 6 The Section 42A Report writer has recommended rejecting each of these submission points.
- 7 These submissions provide a general overview and introduction to WIL and its interests in the Waimakariri District. This is largely intended to assist in avoiding duplication with regard to a need to otherwise present similar background material in later hearing stages. The submissions then record WIL's position in relation to the Section 42A Report recommendations.

### **Overview of Waimakariri Irrigation Limited**

- 8 WIL is registered as a New Zealand Co-operative Company – it was incorporated in 1998 and began operation in 1999. WIL holds resource consents to take water from the Waimakariri River, which it supplies to its farmer shareholders through open race channels.
- 9 WIL currently has 177 shareholders, irrigating up to 30,000 hectares with an overall command area of 78,000 hectares (*the irrigation Scheme*).
- 10 WIL carries out its operations under the general objective of:
- “Providing reliable, economic and sustainable supply”*
- 11 The water is delivered to shareholders through a series of races and head canals, which largely follows along the alignment of the Waimakariri District Council (*Council*) stockwater scheme (*the stockwater Scheme*) that was constructed in the 1890s. WIL also manages the Council's stockwater Scheme.
- 12 As set out in its submission, WIL's primary reason for engaging with the Proposed Plan review is to ensure that the Plan enables WIL to continue in its role operating the stockwater and irrigation Schemes and wider community initiatives undertaken in the Waimakariri District. Specifically, WIL seeks that:
- 12.1 maintenance and upgrading of race and canal infrastructure is enabled. This is necessary to ensure WIL can deliver irrigation and stockwater to a large number of properties and prevent disruption to communities that live and work around WIL's infrastructure and the Council's stockwater races without unnecessary consenting burden/delay;
- 12.2 it can continue with biodiversity initiatives that it began in 2018. This includes the clearance of vegetation (primarily exotic) where necessary for the safe and efficient operation of WIL's infrastructure, and recognising the efforts WIL makes in increasing native biodiversity in the District;
- 12.3 the Plan continues to enable WIL's efforts to improve water quality through MAR and TSA initiatives, that are extensively regulated by the regional planning framework; and

12.4 that the proposed provisions relating to three overlays (Ngā Wai, Scheduled Natural Character Freshwater Bodies and Natural Features and Landscapes) are workable, appropriate and provide for the smooth operation of the WIL system.

13 We now turn to discuss the relief sought by WIL in relation to the SASM chapter.

#### **WIL'S POSITION ON SECTION 42A REPORT RECOMMENDATIONS**

14 As above, 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.

#### **SASM-R4**

15 WIL sought that SASM-R4 be amended to provide for the essential earthworks that WIL must carry out for the operation, maintenance and upgrading of its race network, for example through the following amendment:<sup>7</sup>

#### **"Activity status: PER**

Where:

1. the earthworks and land disturbance is limited to:

[...]

e. drain, race and track maintenance and upgrading;

16 The reporting officer has recorded that SASM-R4(1)(f) was included to provide for any "other activities" as a permitted activity where the land had already been disturbed, including the operation, maintenance and upgrading of various infrastructure. To clarify that the rule applies to infrastructure as well as cultivation, stopbanks and roadworks, the reporting officer has recommended (f) be amended as follows:<sup>8</sup>

f. cultivation, stopbanks, roadworks and any other activities (including existing infrastructure) within land previously disturbed by previous earthworks to the depth already disturbed;

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<sup>7</sup> Section reference 210.14

<sup>8</sup> Section 42 report prepared by Alan Matheson on Proposed Waimakariri District Plan: Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori dated 13 April 2023 at [98]

17 The reporting officer considers that the operation, maintenance and upgrading does not need to be included as these are able to be undertaken within the land disturbance standard.<sup>9</sup>

18 WIL continues to prefer the amendment sought in its submission, as there may be instances where land is disturbed to a slightly deeper level through maintenance or upgrading work.

**SASM-MD1, SASM-MD2, SASM-MD3**

19 There are three matters of discretion that apply to rules in the SASM chapter. WIL sought that the wording of each matter of discretion be amended so that in respect of infrastructure, there is consideration of whether alternative locations, layout or methodology would be “practicable” rather than “suitable”.<sup>10</sup>

20 The Section 42A report writer has recommended these amendments be rejected. Their reasoning is that:<sup>11</sup>

The word ‘suitable’ was chosen for the matter of discretion with respect to the provision of infrastructure within a SASM, as the word encapsulates the concept of being right for/acceptable/good for/sits well within a particular situation. Accordingly, the intent was that an assessment be undertaken of alternative locations or layout/methodology to provide the infrastructure within an SASM, taking into account the functional or operational need of the infrastructure. The functional or operational need of the infrastructure already includes it being practicable (ie realistic/feasible/reasonable). By changing the term to ‘practicable’ would essentially mean “double counting”.

21 WIL does not agree that changing “suitable” to “practicable” would be double counting. The consideration of the infrastructure having a functional or operational need for its location is specific to the site at which the infrastructure is. The consideration of alternative locations is, to state the obvious, at a different site. It is appropriate to consider the practicability of the infrastructure going there.

22 By way of example, the ‘alternative location’ might appear ostensibly to be suitable (‘right for/acceptable/good for/sites well’, to use the reporting officers’ words) but there may be practical reasons that make the site unrealistic, unfeasible or unreasonable.

23 Respectfully, the reporting officers’ explanation of what is meant by the term “suitable” demonstrates the uncertainty of the phrase in the planning context. In contrast, “practicable” is a term commonly used in planning documents and is well understood.

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<sup>9</sup> Section 42 report prepared by Alan Matheson on Proposed Waimakariri District Plan: Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori dated 13 April 2023 at [99]

<sup>10</sup> Submission reference 210.15, 210.16, 210.17

<sup>11</sup> Section 42 report prepared by Alan Matheson on Proposed Waimakariri District Plan: Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori dated 13 April 2023 at [109]

- 24 WIL considers that “practicable” provides additional clarity which will assist with the interpretation of the matters of discretion.

**SASM-11 overlay**

- 25 Area SASM-11 is an overlay that covers the canal area at Warren Road (as shown in Figure 1 below).



**Figure 1: Warren Road Canal Area, SASM-11**

- 26 WIL sought in its submission that the SASM-11 overlay be removed or amended at Warren Road.<sup>12</sup> This was on the basis that it captures the majority of a canal used by WIL as part of its irrigation and stockwater infrastructure.
- 27 The Section 42A Report writer has recommended this submission be rejected, because Te Ngāi Tūāhuriri Rūnanga identified the SASMs and in the absence of evidence that the SASMs do not hold cultural values to Te Ngāi Tūāhuriri Rūnanga the feature cannot be altered.<sup>13</sup>
- 28 WIL is very supportive of the interests of Te Ngāi Tūāhuriri Rūnanga and acknowledges that recognition of cultural values in the Proposed Plan is appropriate (particularly in circumstances where there is a risk of those values being undermined by existing or future land uses).
- 29 WIL understands that the basis of the identification of SASM it that it is (or was) a Ngā Reporepo (wetland area). WIL remains unclear as to the basis for SASM-11 as it is highly modified and does not

<sup>12</sup> Submission reference 210.12

<sup>13</sup> Section 42 report prepared by Alan Matheson on Proposed Waimakariri District Plan: Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori dated 13 April 2023 at [121]

appear to have any features that resemble a Ngā Reporepo / wetland. This section of the race was originally part of the stockwater network, and WIL understands that the original concrete syphon (which still exists) was built circa 1920s.

- 30 Nevertheless, provided WIL is able to operate, maintain and upgrade the canal (if/when necessary) as a permitted activity under an amended SASM-4 then WIL's concerns will have been addressed.

**Ngā Wai overlay**

- 31 WIL also sought that a Ngā Wai overlay be removed from the Brown Rock intake point.<sup>14</sup> Again, the Section 42A report writer has said that in the absence of information that the area does not hold cultural values, the extent of the overlay should not change.<sup>15</sup>
- 32 WIL understands the position of the report writer and simply notes that provided the amended SASM-R4 would not require WIL to obtain consent to do works in/around the Brown Rock intake point its concerns will have been addressed.

**CONCLUSION**

- 33 Accordingly, WIL:
- 33.1 seek the amendment to SASM-R4 as set out in submission point 210.14;
  - 33.2 seek the amendments to SASM-MD1 to SASM-MD2 as set out in submission points 210.15, 210.16, and 210.17; and
  - 33.3 while recognising the importance of cultural values in the Proposed Plan, considers the basis of SASM-11 may need to be explored further.

Dated: 10 May 2023



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<sup>14</sup> Submission reference 210.13

<sup>15</sup> Section 42 report prepared by Alan Matheson on Proposed Waimakariri District Plan: Ngā whenua tapu o ngā iwi – Sites and Areas of Significance to Māori dated 13 April 2023 at [75]