

**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 6: Rural and Open Space Zones

**MEMORANDUM OF COUNSEL ON BEHALF OF THE CANTERBURY
REGIONAL COUNCIL**

13 October 2023

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MAY IT PLEASE THE PANEL

Introduction

- 1 The Canterbury Regional Council (**Council**) appeared before the Panel on Monday, 9 October 2023. A number of questions were asked of the Council's expert planner and legal counsel, two of which required further consideration.
- 2 Those questions are as follows:
 - (a) Is there anything in the National Policy Statement for Highly Productive Land (**NPS-HPL**) that precludes the Canterbury Regional Policy Statement (**CRPS**) from protecting soils beyond those considered to be highly productive under the NPS-HPL?
 - (b) Is there any commentary that the Council can provide with respect to wilding pine species and the Resource Management (National Environmental Standards for Commercial Forestry) Amendment Regulations 2023 (**NES-CF**)?
- 3 To the extent that there are legal components to the questions, those are set out in this Memorandum of Counsel. A Supplementary Statement of Evidence has been prepared by Ms Orr, setting out the planning response to each question.

National Policy Statement for Highly Productive Land

- 4 As observed by the Supreme Court in *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd*, the Resource Management Act 1991 (**RMA**) envisages the formulation and promulgation of a cascade of planning documents intended to give effect to the RMA's purpose of sustainable management and to Part 2 of the RMA more generally.¹ Further, "these documents form an integral part of the legislative framework of the RMA and give substance to its purpose by identifying objectives, policies, methods and rules with increasing particularity both as to substantive content and locality".²

¹ *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [30].

² *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [30].

- 5 National policy statements provide guidance for subsequent decision-making under the RMA at the national, regional and district level. The purpose of national policy statements is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of the RMA.³
- 6 The CRPS is required to “give effect”⁴ to national policy statements and in turn, the proposed Waimakariri District Plan must give effect to both national policy statements and the CRPS.
- 7 The purpose of the CRPS is to achieve the purpose of the RMA by providing an overview of the resource management issues of the Canterbury region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.⁵ Often, the CRPS will contain a greater level of specificity relevant to the Canterbury region than a national policy statement would, given that one is an instrument specific to the Canterbury region whereas the other applies nation-wide.
- 8 The NPS-HPL requires the Council to map as highly productive land any land in its region that:⁶
- (a) Is in a general rural zone or rural production zone; and
 - (b) Is predominantly LUC 1, 2, or 3 land; and
 - (c) Forms a large and geographically cohesive area.
- 9 Further, the Council may map land that is in a general rural zone or a rural production zone, but is not LUC 1, 2, or 3 land, as highly productive land if the land is, or has the potential to be (based on current uses of similar land in the region), highly productive for land-based primary production in the region, having regard to the soil type, physical characteristics of the land and soil, and climate of the area.⁷

³ RMA, s 45(1).

⁴ RMA, s 62(3). “Give effect to” simply means “implement”. On the face of it, it is a strong directive, creating a firm obligation on the part of those subject to it. See *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [77].

⁵ RMA, s 59.

⁶ NPS-HPL, cl 3.4(1).

⁷ NPS-HPL, cl 3.4(3).

- 10 Beyond the mapping obligations in the NPS-HPL however, the Council still has other functions with respect to soil conservation under the RMA. Specifically, section 30(1)(c)(i) of the RMA provides that the Council has the function of the control of the use of land for the purpose of soil conservation. "Soil conservation" is defined in the RMA as meaning "avoiding, remedying, or mitigating soil erosion and maintaining the physical, chemical, and biological qualities of soil".⁸
- 11 In my submission, the NPS-HPL does not fetter the Council's functions under section 30 of the RMA and the Council is entitled, indeed required, to control the use of land for the purpose of soil conservation, which goes beyond simply carrying out the mandatory requirements of the NPS-HPL with respect to highly productive land.
- 12 Nor is there anything in the NPS-HPL that precludes the Council from controlling the use of land for the purpose of soil conservation more broadly.⁹

National Environmental Standards for Commercial Forestry and wilding pine species

- 13 Ms Orr has addressed the specific details of the NES-CF in her Supplementary Statement of Evidence.
- 14 However, from a legal perspective, I note that the NES-CF regulations come into force on 3 November 2023. Regulations 13(2) and 44(3) (to the extent that it inserts new regulation 79(5)(b)) come into force on 3 April 2024. The rest of regulation 44 comes into force on 3 January 2024.
- 15 Further, the RMA requires that councils amend their plans without using the Schedule 1 RMA process, to remove any conflict or duplication with national environmental standards.¹⁰ Conflict is defined in the RMA as including circumstances where:¹¹

- (a) both of the following apply:

⁸ RMA, s 2.

⁹ Supplementary Statement of Evidence of Serena Orr dated 13 October 2023 at [8].

¹⁰ RMA, s 44A.

¹¹ RMA, s 44A(2).

- (i) the rule is more stringent than the provision in that it prohibits or restricts an activity that the provision permits or authorises; and
 - (ii) the standard does not expressly say that a rule may be more stringent than it; or
- (b) the rule in the plan is more lenient than a provision in the standard and the standard does not expressly specify that a rule may be more lenient than the provision in the standard.

16 This obligation on local authorities with respect to national environmental standards is distinct from the relationship between national policy statements and lower-order planning documents where there is no such requirement to remove duplication or conflict from plans.

17 Finally, I also note that with respect to the Canterbury Regional Pest Management Plan, the Waimakariri District Council, when preparing the pWDP, must have regard to this document in accordance with section 74(2)(b)(i) of the RMA.

Dated this 13th day of October 2023



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