

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

**UNDER** of the Resource Management Act 1991 (RMA)

**IN THE MATTER  
AND** of the Proposed Waimakariri District Plan

**IN THE MATTER** of Hearing Streams 7A/7B: Residential, Large Lot Residential, Ecosystems and Indigenous Biodiversity, Variation 2 – Financial Contributions, and Variation 1 – Housing Intensification

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

**HEARING STREAMS 7A/7B**

**6 September 2024**

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Canterbury Regional Council's Solicitor  
PO Box 4341 CHRISTCHURCH 8140  
DX WX11179  
Tel +64 3 379 7622  
Fax +64 379 2467

**WYNN WILLIAMS**

Solicitor: L F de Latour / K T Dickson  
(lucy.delatour@wynnwilliams.co.nz /  
kate.dickson@wynnwilliams.co.nz)

## MAY IT PLEASE THE PANEL

- 1 The Canterbury Regional Council (**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 submission on the provisions subject to Hearing Streams 7A and 7B is summarised further in the evidence of Ms Watt and Dr Grove, along with Ms Watt's recommended amendments to the pWDP.
- 3 These submissions briefly address the Regional Council's position with respect to the National Policy Statement for Indigenous Biodiversity 2023 (**NPS-IB**) and should be read alongside Ms Watt's evidence in terms of the remaining relief sought by the Regional Council on the Ecosystems and Indigenous Biodiversity chapter of the pWDP.

## NPS-IB

- 4 As is acknowledged in both the Section 42A Report and the evidence of Ms Watt, the NPS-IB was published after the pWDP had already been notified.
- 5 The Section 42A Report addresses in detail the position of the pWDP in respect of the NPS-IB, including:
  - (a) The CRPS has not yet been reviewed to give effect to the NPS-IB, but is currently under review and due to be publicly notified in December 2024; and
  - (b) The CRPS and NPS-IB both seek to prevent loss of indigenous biodiversity.
- 6 Ms Milosavljevic has included within the Section 42A Report a comparison of the CRPS provisions and NPS-IB provisions. Ms Watt's evidence indicates several further parts of the CRPS that are relevant in considering whether the CRPS already gives effect to the NPS-IB, but as she notes these do not materially alter the assessment as to whether the CRPS already gives effect to the NPS-IB, or what the pWDP is

required to give effect to.<sup>1</sup> There is no dispute that provisions of the CRPS will have to be amended to some degree in order to fully give effect to the NPS-IB, in due course.<sup>2</sup>

- 7 The key point that the Section 42A report acknowledges is that the NPS-IB should be given effect to, to the extent possible within the scope of submissions.
- 8 The Regional Council agrees with this approach, and notes that it is consistent with case law on this topic.<sup>3</sup>
- 9 In making its recommendations on submissions, the Regional Council acknowledges that the Panel will also need to bear in mind that many of the implementation clauses of the NPS-IB will not be able to be given effect to at this point in time, as they require detailed further steps to occur.
- 10 These implementation clauses will need to be given effect to through future planning processes further down the line, so in many cases the pWDP will not be able to fully give effect to the NPS-IB, regardless of the scope of submissions. The fact that it might not be practicable to fully implement the NPS-IB at this time is recognised in the clauses requiring implementation of the NPS-IB to occur “as soon as reasonably practicable”, but noting that changes to give effect to the NPS-IB are required to be publicly notified within eight years after the NPS-IB commencing.<sup>4</sup>
- 11 The most appropriate approach for the Panel to take in this case in determining whether the relief sought gives effect to the NPS-IB, is

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<sup>1</sup> Evidence of Victoria Watt on behalf of Canterbury Regional Council, dated 30 August 2024, at [33].

<sup>2</sup> Noting that the NPS-IB provides that every local authority must give effect to it as soon as reasonably practicable, but must notify changes to plans that are necessary to give effect to it within eight years after commencement (17 October 2030) - NPS-IB, cl 4.1. Clause 4.2 of the NPS-IB provides that local authorities must publicly notify any plan or change necessary to give effect to subpart 2 of Part 3 (significant natural areas) and clause 3.24 (information requirements) within five years after the commencement date which is 17 October 2027, although this date is proposed to be extended to 31 December 2030 by the recently introduced Resource Management (Freshwater and Other Matters) Amendment Bill.

<sup>3</sup> *Hawke's Bay and Eastern Fish and Game Council v Hawke's Bay Regional Council* [2014] NZHC 3191, 18 ELRNZ 348 at [183] and [184]; *Drinnan v Sewlynn District Council* [2023] NZEnvC 180; *Wakatipu Equities Ltd v Queenstown Lakes District Council* [2023] NZEnvC 188.

<sup>4</sup> NPS-IB, cl 4.1.

whether the relief gives effect to the objectives and policies of the NPS-IB, rather than the specific implementation clauses.

- 12 This is consistent with recent findings of the High Court in *Southern Cross Healthcare Ltd v Eden Epsom Residential Protection Society Inc* that the obligation to complete other implementation steps does not limit the obligation to give effect to the objectives and policies of the NPS itself.<sup>5</sup>

### **Potential future changes to the NPS-IB**

- 13 This approach is also consistent with the potential future changes to the NPS-IB through the Resource Management (Freshwater and Other Matters) Amendment Bill (**Bill**). The Bill was introduced to Parliament in May 2024, and has been referred to Select Committee.
- 14 The Bill is not due to be reported back from the Select Committee until 30 September 2024.<sup>6</sup> As acknowledged by the section 42A officer, the Bill does not change any legal obligations on the Panel unless and until the Bill is passed.
- 15 The Bill proposes to make some amendments to the NPS-IB, including:<sup>7</sup>
- (a) Delaying the application of some provisions, including Policy 6, clauses 3.8(1), (6), (8) and clauses 3.9(1) and (3), for three years; and
  - (b) Ensuring that the requirement to give effect to the NPS-IB as soon as reasonably practicable does not apply during the three year period to the clauses set out in (a), but continues to apply in relation to the other provisions of the NPS-IB.
- 16 The proposed section to be inserted into the RMA makes clear that this section does not affect any SNAs that were included in a proposed plan before commencement.<sup>8</sup>

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<sup>5</sup> *Southern Cross Healthcare Ltd v Eden Epsom Residential Protection Society Inc* [2023] NZHC 948, at [86].

<sup>6</sup> New Zealand Parliament, "Resource Management (Freshwater and Other Matters) Amendment Bill", <https://bills.parliament.nz/v/6/25161950-a4fc-47b4-ada3-08dc7ab031fe?Tab=history>

<sup>7</sup> Resource Management (Freshwater and Other Matters) Amendment Bill, clause 21.

<sup>8</sup> Resource Management (Freshwater and Other Matters) Amendment Bill, clause 21.

- 17 Given that the Bill only proposes to delay implementation of some of the SNA provisions of the NPS-IB (and would not apply in any event to SNAs identified before the Bill becomes law), this further demonstrates that the Panel's focus should be on giving effect to the objectives and policies of the NPS-IB.
- 18 The Panel's (and WDC's) obligation to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna in accordance with section 6(c) of the RMA remains in place, despite any proposed amendments as part of the Bill.

### **Relief sought by the Regional Council**

- 19 In light of the above context, it is necessary to consider the relief sought by the Regional Council in relation to the ECO chapter of the pWDP. Ms Watt's evidence sets out suggested amendments to ECO-P2 and ECO-R4 in order to control other activities (namely cultivation and stock grazing) occurring in close proximity to an SNA, which could cause adverse effects.<sup>9</sup>
- 20 The relief sought by the Regional Council seeks to impose further restrictions on activities which the ecological evidence suggests will contribute to further and ongoing reduction in the ecological values for many of Waimakariri District's remaining SNAs.<sup>10</sup> Despite the section 42A officer (and supporting ecological evidence) agreeing that these activities could cause edge effects on nearby SNAs, the section 42A officer has declined to impose further controls on these activities on the basis that the amendment would be an unreasonable restriction for landowners.<sup>11</sup>
- 21 As Ms Watt notes, it is appropriate to require a resource consent for activities that may cause edge effects on SNAs, in order to give effect to Policy 9.3.1(3) of the CRPS and Policy 6 of the NPS-IB. To do so would be consistent with the firm obligation under the RMA to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna, in section 6(c). As noted above, despite any potential changes to

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<sup>9</sup> Evidence of Victoria Watt dated 30 August 2024, at [40] – [50].

<sup>10</sup> Evidence of Victoria Watt dated 30 August 2024, at [43]; Evidence of Philip Grove dated 30 August 2024, at [21].

<sup>11</sup> Section 42A Report, Ecosystems and Indigenous Biodiversity, dated 16 August 2024, at [677] and [759].

the NPS-IB's direction on this matter, the obligation in section 6(c) remains.

- 22 Case law has confirmed that “protection” in this context means to keep safe from harm, injury or damage.<sup>12</sup> This means that each activity could be assessed on a case-by-case basis, to determine whether it is consistent with this obligation. Section 6(c) imposes a duty on councils to protect SNAs, and forms part of the “protective element” of sustainable management.<sup>13</sup>
- 23 For these reasons, the Regional Council considers that the relief sought is most appropriate in the circumstances. Ms Watt has undertaken an analysis of the costs and benefits of amending ECO-P2 and ECO-R4 to this effect,<sup>14</sup> concluding that the benefits of imposing the control (from an environmental, economic and cultural standpoint) outweigh the costs. Ms Watt has set out her recommended amendments in Appendix 1 of her evidence. The other changes sought by the Regional Council are set out in Ms Watt's evidence.

### **Conclusion**

- 24 For the reasons set out above, the Regional Council agrees with the approach taken by the Section 42A officer in seeking to give effect to the NPS-IB as far as possible within the scope of submissions.
- 25 The approach of the Panel should be on seeking to give effect to the objectives and policies of the NPS-IB, rather than the specific implementation clauses – as many of these clauses will require specific steps to be taken which cannot be achieved through the scope of submissions on this planning document.
- 26 The changes sought by the Regional Council (particularly in relation to preventing edge effects on SNAs) are consistent with the obligation to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna in section 6(c) of the RMA.

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<sup>12</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council* [2015] NZEnvC 219, at [63]; *Oceana Gold (New Zealand) Ltd v Otago Regional Council* [2019] NZEnvC 41, at [71].

<sup>13</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council* [2015] NZEnvC 219, at [64].

<sup>14</sup> Evidence of Victoria Watt dated 30 August 2024, at [45] and Table 1.

Dated this 6<sup>th</sup> day of September 2024



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K T Dickson  
Solicitor for Canterbury Regional Council