

**BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE
TIMARU DISTRICT COUNCIL**

IN THE MATTER OF

The Resource Management Act 1991 (**RMA** or
the Act)

AND

IN THE MATTER OF

Hearing of Submissions and Further
Submissions on the Proposed Timaru District
Plan (**PTDP** or **the Proposed Plan**)

AND

IN THE MATTER OF

Submissions and Further Submissions on the
Proposed Timaru District Plan by **Waipopo
Huts Trust**

**LEGAL SUBMISSIONS FOR WAIPOPO HUTS TRUST REGARDING HEARING F –
NATURAL HAZARDS**

Dated: 16 April 2025

Presented for filing by:
Shona Walter
Saunders & Co
PO Box 18, Christchurch
Telephone: 022 400 6676
Email: shona.walter@saunders.co.nz

INTRODUCTION

- 1 These legal submissions are filed on behalf of Waipopo Huts Trust (**Waipopo Trust**) regarding their submission (the **Submission**) on the Proposed Timaru District Plan (**Proposed Plan**) in relation to Hearing Stream F – Natural Hazards.
- 2 The settlements at Waipopo (**Waipopo** or **Waipopo Land**) are located close to the Opihi River. Whanau members of Waipopo Trust have occupied the Waipopo Land since 1300. Evidence from Elizabeth Stevenson shows there has been continuous occupation of the Waipopo Land for 55 years and occupation of all lots within the Waipopo Land for 40 years.
- 3 Under the Operative District Plan (**ODP**), the Waipopo Land is zoned Recreation 1. Within this zone, the modification of a household unit is a discretionary activity and new household units are a prohibited activity under rule 5.3.1.5.
- 4 Under the Proposed Plan, the majority of the Waipopo Land lies underneath the High Hazard Overlay. Rule NH-R4(2) in the Proposed Plan makes it a non-complying activity to building homes over 30m² under the High Hazard Overlay.
- 5 Waipopo Trust lodged a submission on the Proposed Plan seeking amendment of provisions in the Natural Hazards Chapter to enable the use, development and renewal of dwellings on the Waipopo Land and to provide for mana whenua needs and activities on their land. The submission also sought to insert a permitted activity rule to allow reconstruction of dwellings that previously occupied the Waipopo Land.
- 6 The Waipopo Trust supports the Section 42A Report's (**s42A Report**) proposed amendments to NH-R4 and NH-S1 to enable new homes to be built in the Māori Purpose Zone (**MPZ**) that are also in high hazard areas (**s42A Report approach**). The Waipopo Trust supports the s42A Report approach because:
 - (a) it recognises the continuous occupation of the Waipopo Land;
 - (b) it recognises that residential use of Waipopo Land predates the establishment of the regional council stopbanks and flood hazard rules in planning instruments; and
 - (c) it provides a consenting pathway which enables Waipopo Trust to carry out their purpose and vision for the Waipopo Land.

- 7 A key feature of this case is the history of the Waipopo Land and that the Proposed Plan currently does not recognise and provide for the relationship of Kāti Huirapa with their ancestral lands, as required by section 6(e) Resource Management Act (**RMA**).
- 8 Another key feature of this case is that the Waipopo Land is at risk of flooding from the Opihi River. The case for the Waipopo Trust in the context of this hearing is that considering the long history of continuous occupation of the Waipopo Land and its anticipated rezoning to MPZ, it is appropriate to allow the building of homes on the Waipopo Land, subject to appropriate flood mitigation.
- 9 Evidence in support of the s42A Report approach has been filed by Elizabeth Stevenson, Trustee of the Waipopo Trust and Robert Kerr, flood hazard expert.

KEY ISSUES

- 10 The key issues arising are as follows:
- (a) Whether the s42A Report approach is more appropriate than the notified Proposed Plan?, and
 - (b) Whether the matters of discretion in NH-R4(1) are appropriate?

THE SUBMISSIONS AND RELIEF SOUGHT BY WAIPOPO HUTS TRUST

- 11 The changes sought by Waipopo Trust in their submission on the Proposed Plan are addressed by the Reporting Officer in the s42A Report at paragraphs 7.2.2, 7.2.3 and 7.2.4.
- 12 At paragraph 7.2.10 the Reporting Officer recommends:
- Applying an urban area approach to the MPZ, I recommend the new hazard sensitive activities are provided for as permitted activities in the MPZ where subject to flooding, including in high hazard areas, if the required floor levels are met. If they are not met, the development would become RDIS (as opposed to NC in the notified PDP).*
- 13 Waipopo Trust supports this approach. Ms Stevenson, at paragraph 10 of her evidence, states the following:

I fully support the changes proposed by the s42A Report because it recognises the Waipopo Land as a historical Māori reserve and the

amendments to the rules provide a consenting pathway which enables us to carry out our purpose and vision for the Waipopo Land.

STATUTORY FRAMEWORK FOR PROPOSED PLAN CHANGE DECISIONS

14 The approach to be taken in making decisions on proposed plan changes was summarised in the recent Environment Court decision of *Middle Hill Ltd v Auckland Council*¹, (following the decision of *Colonial Vineyard Ltd v Marlborough District Council*²), as follows:

[29] In summary, therefore, the relevant statutory requirements for the plan change provisions include:

- (e) whether they are designed to accord with and assist the Council to carry out its functions for the purpose of giving effect to the RMA;*³
- (f) whether they accord with Part 2 of the RMA;*⁴
- (g) whether they give effect to the regional policy statement;*⁵
- (h) whether they give effect to a national policy statement;*⁶
- (i) whether they have regard to [relevant strategies prepared under another Act];*⁷ and
- (j) whether the rules have regard to the actual or potential effects on the environment including, in particular, any adverse effects.*⁸

[30] Under s 32 of the Act we must also consider whether the provisions are the most appropriate way to achieve the purpose of the plan change and the objectives of the Auckland Unitary Plan by:

- (a) identifying other reasonably practicable options for achieving the objectives;*⁹ and

¹ [2022] NZEnvC 162 at [29].

² [2014] NZEnvC 55 at [17].

³ RMA, ss 31 and 74(1)(a).

⁴ RMA, s 74(1)(b).

⁵ RMA, s 75(3)(c).

⁶ RMA, s 75(3).

⁷ RMA, s 74(2)(b).

⁸ RMA, s 76(3).

⁹ RMA, s 32(1)(b)(i).

(b) *assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:*¹⁰

i. *identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:*

- *economic growth that are anticipated to be provided or reduced;*¹¹ and
- *employment that are anticipated to be provided or reduced;*¹² and

ii. *if practicable, quantifying the benefits and costs;*¹³ and

iii. *assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*¹⁴

15 In *Colonial Vineyard Ltd* the Court adopted an approach of identifying and evaluating the potential positive consequences and potential negative consequences of the two different options that were being assessed by the Court as a means to evaluate the risks of acting or not acting in respect of each option.¹⁵

16 I have generally adopted that approach in these submissions. These submissions focus on positive and negative consequences of the s42A Report amendments and whether s42A amendments better accords with Part 2 of the RMA, gives effect to the regional policy statement as opposed to the Proposed Plan. I note this approach has also been adopted by the s42A Report.¹⁶

¹⁰ RMA, s 32(1)(b)(ii).

¹¹ RMA, s 32(2)(a)(i).

¹² RMA, s 32(2)(a)(ii).

¹³ RMA, s 32(2)(b).

¹⁴ RMA, s 32(2)(c).

¹⁵ *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [68] – [71].

¹⁶ Section 42A Report: Natural Hazards, Coastal Environment and Drinking Water Protection, at [7.2.19].

WHAT ARE THE POTENTIAL POSITIVE CONSEQUENCES OF THE S42A REPORT APPROACH COMPARED TO THE NOTIFIED PROPOSED PLAN

Environmental

- 17 The s42A Report approach will enable the Waipopo Trust to exercise kaitiakitanga and enables housing and papakāinga, and ancillary activities, which allows the Kāti Huirapa to maintain a connection to their land and provide suitable housing for members of the hapu.

Economic

- 18 The s42A Report approach will be a significant step in simplifying the approval of the rebuilding of homes on Waipopo Land and result in fewer resource consent applications or a less arduous consenting procedure.
- 19 The ability to rebuild derelict homes or rebuild on empty sites will contribute to revitalising the village that once occupied the Waipopo Land. It will also help to make Waipopo Trust more financially viable and to provide for the economic wellbeing of Kāti Huirapa.

Cultural

- 20 The s42A Report approach will provide for the needs and wellbeing of Kāti Huirapa and allow them to maintain a connection with their ancestral land, to exercise their turangawaewae and to gather māhika kai for cultural purposes. This will have flow on benefits to the wider community, by reinforcing multiculturalism in the Timaru District.

WHAT ARE THE POTENTIAL NEGATIVE CONSEQUENCES OF THE S42A REPORT APPROACH COMPARED TO THE NOTIFIED PROPOSED PLAN

Environment

- 21 There are unlikely to be adverse environmental effects because the s42A Report approach is largely retrospective in that it recognises the continuous occupation on the Waipopo Land since at least 1970, as discussed by Ms Stevenson in her evidence at paragraphs 17 to 30.

Economic

- 22 There will be some economic cost in introducing new rules which require monitoring and implementation by Council and working with iwi to achieve the required outcome.

Flood hazard

- 23 The Waipopo Land is currently located within a high hazard area, as defined in the Canterbury Regional Policy Statement (**CRPS**). However, the s42A Report notes at paragraph 7.2.8 that *"the hazard varies at different locations within the Waipopo Land and different flood mitigation measures may be more or less appropriate depending on the dwelling location."*
- 24 Mr Kerr's evidence at paragraphs 8 considers that the s42A Report approach is *"... both pragmatic and appropriate given the balance between the flood hazard on the Waipopo Land and the ability to mitigate that hazard with the underlying purpose of the MPZ and the matters raised by the history of [the Waipopo Land]."*
- 25 Ms Stevenson, at paragraph 16 of her evidence, explains from the perspective of the Trust:

While we are aware of the floods of the past, as far as the Trust is concerned, none of these events have impacted on the Waipopo Land. Apart from surface flooding there has never been any threat to the dwellings or the people at Waipopo.

Summary of positive and negative consequences

- 26 In summary to this point, the s42A Report approach will generate significant positive consequences that cannot be realised under the Proposed Plan and the negative consequences can be mitigated.

DOES THE S42A REPORT APPROACH ACCORD BETTER WITH PART 2 RMA THAN THE NOTIFIED PROPOSED PLAN?

- 27 All district plans must accord with the provisions of Part 2. Section 8 specifically requires decision-makers, in achieving the purposes of the Act, to take into account the principles of the Treaty of Waitangi (the **Treaty**). Section 6(e) requires decision-makers under the RMA to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands

as a matter of national importance. Section 7(a) requires decision-makers to have particular regard to kaitiakitanga when exercising functions and powers that management the use, development and protection of resources.

28 Ms Stevenson's evidence at paragraphs 11 to 12 explains the purpose and vision of the Waipopo Land, which in summary is to maintain the existing dwellings for safe residential use.

29 Ms Stevenson's evidence at paragraphs 17 to 30 describes the use of the Waipopo Land over time. In summary, her evidence shows:

there has been at least 55 years (1970 – 2025) of continuous occupation of the Waipopo Land apart from four lots that were vacant until 1985. In relation to those four vacant lots, the aerial images show these lots were continuously occupied for 40 years (1985 – 2025). In more recent years, some houses became a health hazard and were cleared by the Trust, with the intention to rebuild on these sites.

30 At paragraph 7.2.9, the s42A Report recognises that the Waipopo Land was set aside for a specific Māori purpose decades before the RMA and previous planning instruments were developed. In addition, the s42A Report states in the same paragraph that the Waipopo Land was intended to be zoned MPZ, but was inadvertently left off the map, and that given these reasons, special care is required in developing and applying the natural hazard provisions to the Waipopo Land.

31 The s42A Report approach accords better with Part 2 of the RMA than the Proposed Plan, because it recognises the purpose and vision of the Waipopo Land and provides for Kāti Huirapa connection with their ancestral land.

DOES THE S42A REPORT APPROACH GIVE BETTER EFFECT TO THE CRPS THAN THE NOTIFIED PROPOSED PLAN?

32 The CRPS is the only operative regional policy statement for the area. Section 75(3) RMA requires that a district plan give effect to a regional policy statement.

33 Policy 5.3.4 of the CRPS is pertinent and states:

To recognise that the following activities, when undertaken by tāngata whenua with mana whenua, are appropriate when they occur on their ancestral land in a manner that enhances their on-going relationship and culture and traditions with that land:

1. *papakāinga housing;*

2. *marae; and*
 3. *ancillary activities associated with the above;*
- And provide for these activities if:*
4. *adverse effects on the health and safety of people are avoided or mitigated; and...*

34 Policy 5.3.4 makes it clear that papakāika is to be provided for on ancestral land if adverse effects on the safety of people can be avoided or mitigated. The policy provides that mitigating the risk is acceptable and the risk does not have to be avoided altogether.

35 Policy 11.3.1 is also relevant and states:

*Avoidance of inappropriate development in high hazard areas
To avoid new subdivision, use and development (except as provided for in Policy 11.3.4) of land in high hazard areas, unless the subdivision, use or development:*

1. *is not likely to result in loss of life or serious injuries in the event of a natural hazard occurrence; and*
2. *is not likely to suffer significant damage or loss in the event of a natural hazard occurrence; and*
3. *is not likely to require new or upgraded hazard mitigation works to mitigate or avoid the natural hazard; and*
4. *is not likely to exacerbate the effects of the natural hazard; or*
5. *Outside of greater Christchurch, is proposed to be located in an area zoned or identified in a district plan for urban residential, industrial or commercial use, at the date of notification of the CRPS, in which case the effects of the natural hazard must be mitigated; or ...*

36 In relation to Policy 11.3.1, the s42A Report officer at paragraph 7.2.10 makes the following comments:

I note that CRPS Policy 11.3.1 requires an avoidance or mitigation approach to apply to existing urban areas that are also a "high hazard area". However, in non-urban or rural areas, building in a "high hazard area" is to be avoided. Applying an urban area approach to the MPZ, I recommend that new hazard sensitive activities are provided for as permitted activities in the MPZ where subject to flooding, including in high hazard areas, if the required floor levels are met. If they are not met, the development would become RDIS (as opposed to NC in the notified PDP).

37 The s42A Report approach gives better effect to the CRPS than the Proposed Plan as notified, because it gives effect to Policy 5.3.4 and achieves consistency with Policy 11.3.1.

- 38 The evidence of Deidre Francis, planning witness for Environment Canterbury (**ECan**), states at paragraph 4 that the focus of her evidence is on recommendations to the s42A Report to ensure the Proposed Plan gives effect to the CRPS. Ms Francis, at paragraph 27, states that in relation to Natural Hazards, she “generally supports Mr Willis’ recommendations in the s42A Report.” Beyond this general statement of support, Ms Francis’ evidence does not discuss Policy 5.3.4 and Policy 11.3.1 of the CRPS and its application to urban development in the MPZ.

DOES THE S42A REPORT APPROACH SUPPORT BETTER INTERNAL CONSISTENCY OF THE PROPOSED PLAN THAN THE NOTIFIED PROPOSED PLAN?

- 39 The s42A Report approach supports better internal consistency of the Proposed Plan than the notified Proposed Plan. The s42A Report approach will better achieve the objectives MPZ-O1¹⁷, MPZ-O2¹⁸ and SD-O5 (v)¹⁹.
- 40 Furthermore, the s42A Report, at paragraph 7.2.19, states the s42A Report approach “supports achieving rakatirataka within the MPZ and therefore supports internal PDP consistency.”

MATTERS OF DISCRETION TO S42 REPORT APPROACH

- 41 The s42A Report suggest at paragraph 7.2.16 to ‘*amend NH-R4 to enable development within a High Hazard area to be RDIS if located within an urban zoned area.*’ The matters of discretion referred to are set out below:

Matters of discretion are restricted to:

1. *any potential adverse effects of diverting or blocking overland flow path(s), including upstream and downstream flood risks; and*
2. *any increased flood risk for people, property, or public spaces; and*
3. *the effectiveness and potential adverse effects of any proposed mitigation measures; and*
4. *any operational need or functional need for the activity to be established in this location; and*
5. *the extent to which it will require new or upgraded public natural hazard mitigation works; and*

17 MPZ-O1 Enabling use and development of Māori land. The occupation of ancestral land by mana whenua is recognised and provided for within the Māori Purpose Zone.

18 MPZ-O2 Purpose of the Zone. The Māori Purpose Zone specifically provides for mana whenua needs and activities, including papakāiaka, to achieves a thriving, sustainable and self-sufficient Māori community.

19 SD-O5 Mana Whenua v. Māori reserve lands are able to be used by Kāti Huirapa for their intended purposes.

6. *the extent of any additional reliance on emergency services; and*
7. *any positive effects of the proposal; and*
8. *for development within the Māori Purpose Zone, the extent to which meeting the requirements of the rule compromises the purpose for which the MPZ was created and the anticipated activities within the zone, and the views of mana whenua, if provided.*

42 Mr Kerr, at paragraph 17, provides comments on the matters of discretion to NH-R4(1). Overall, Mr Kerr agrees the matters of discretion are appropriate and provide a basis for considering alternative approaches that balance the purpose of the MPZ with the prudent management of risk.

43 Though the current wording of matter of discretion 8 is a useful start, further amendments are needed to simplify its wording and to better express the purpose of this matter of discretion. The purpose of matter of discretion 8 is to ensure the purpose of the MPZ, the intended use of the land and the views of mana whenua are taken into account when considering the best way to mitigate the flood hazard risk for that site.

44 The following amendments (underlined) are proposed to matter of discretion 8 as follows:

8. *for development within the Māori Purpose Zone, whether the proposed activity provides an opportunity to recognise Kāti Huirapa culture, history and identity associated with the site/area, and any potential to:*
 - a. affirm the connection between mana whenua and place; or
 - b. enhance the cultural values of the site/area; or
 - c. provide for the relationship of Kāti Huirapa with their taoka; commensurate with the scale and nature of the proposal; and
 - d. the views of mana whenua, if provided.

45 The above amendments to matter of discretion 8 will better accord with s 6(e) of the RMA by providing for the relationship of Kāti Huirapa with their ancestral land and achieve internal consistency within the Proposed Plan, in particular SD-O5 (vii).²⁰

20 SD-O5 The mana whenua status of Kāti Huirapa is recognised and their historic and contemporary relationship with the District's land, water bodies and wetlands, coastal environment, and indigenous species is recognised and provided for by ensuring:

vii: Kāti Huirapa are actively involved in decision making that affects their values and interests in these matters and are able to exercise their kaitiakitaka responsibilities.

CONCLUSION

- 46 The s42A Report approach is overall considered more appropriate than the notified Proposed Plan, as the amendments recognise the special status of the Waipopo Land as a historical Māori reserve, while also mitigating the flood hazard risk to the building of new dwellings on the Waipopo Land. The s42A Report approach also better fulfils the obligations on local authorities that arise from the RMA and the Treaty in relation to the Waipopo Land.
- 47 The s42A Report approach will generate significant positive consequences that cannot be realised under the notified Proposed Plan and the negative consequences can be mitigated.
- 48 Finally, the s42A Report approach accords better with Part 2 RMA, gives better effect to the CRPS and supports better internal consistency in the Proposed Plan than the notified version.

DATED this 16th of April 2025



Shona Walter
Counsel for Waipopo Huts Trust