Before the Hearing Panel
Appointed by the Waitaki District Council

Under	The Resource Management Act 1991 (RMA)
In the matter of	Submissions on the Proposed Waitaki District Plan

Legal submissions of Counsel on behalf of Waitaki District Council relating to earthworks provisions

17 September 2026

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Introduction

1 In her evidence for North Otago Federated Farmers of NZ Inc. Ms Sannazzaro has expressed her view that "Council's approved exemption and associated public notice of withdrawal do not provide clear authority to continue with earthworks provisions other than certain EW standards, yet the Exemptions Version of the PDP indicates that EW-O3, EW-P6, and EW-R1 are exempt."[1]

2 Ms Sannazzaro does acknowledge that "it is necessary to include an EW rule to give effect to the exempted EW standard. It may also be necessary to include an EW objective and EW policy to support an EW rule."[2] Her concern is that the retention of these earthworks provisions is not consistent with the requirement under 80V(4) that the application must clearly identify the parts of the instrument for which exemption is applied.

3 Ms Sannazzaro considers that this matter warrants consideration by the Hearings Panel and recommends that the Panel "satisfy itself that the Council's approach is within the scope of the exemption granted by the Minister, is otherwise consistent with the requirements of s80V, and is otherwise not withdrawn."[3]

4 These submissions respond to these matters raised by Ms Sannazzaro.

Summary

5 As set out in my opening submissions the issue of the Ministerial exemption, and subsequent Council's withdrawal of parts of the Plan is not a matter to be decided on by the Hearing Panel. This is not a Judicial Review of the administrative actions, or exercise of statutory powers by the Waitaki District Council (**WDC**).

6 However the issues Ms Sannazzaro raise are reasonable questions and it is this Counsel's view that the Council Officers should obtain specific legal advice on whether the current "exemptions version" of the plan is correctly displaying the earthworks provisions as they should be. In light of that Officers should report back to the Hearing Panel to keep the Hearing Panel informed.

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[1] Planning Evidence of Kate Sannazzaro on behalf of North Otago Federated Farmers of New Zealand (Incorporated) – Hearing Stream 2, paragraph 89.

[2] Planning Evidence of Kate Sannazzaro on behalf of North Otago Federated Farmers of New Zealand (Incorporated) – Hearing Stream 2, paragraph 91.

[3] Planning Evidence of Kate Sannazzaro on behalf of North Otago Federated Farmers of New Zealand (Incorporated) – Hearing Stream 2, paragraph 94.

7 The situation is that the Minister responsible for RMA reform approved the exemption Council applied for in full.

8 When implementing this exemption and preparing an "Exemptions Version" of the Proposed Waitaki District Plan (**PDP**), Council Officers considered it was necessary and appropriate to retain further earthworks provisions to ensure that the retained exempted standards could operate effectively.

9 This resulted in the retention of EW-O3, EW-P6, EW-P7, part of EW-R1 and EW-R6.

10 The legal issue now is whether retaining these provisions in the PDP is valid, or whether they also need to be removed to properly give effect to the current Ministerial and Council decisions. It is considered that is a decision for Officers (following legal advice) rather than for decision by the Hearing Panel.

Legal Framework for exemptions

11 Subpart 5B – "Planning processes stopped until 31 December 2027" was inserted into the RMA in August 2025.

12 Section 80Q of the RMA provides that local authorities must withdraw a proposed planning instrument within specified timeframes unless certain exceptions apply.

13 Local authorities can apply to the Minister of RMA Reform for an exemption to the requirements under section 80Q.

14 Section 80W sets out the criteria for the Minister's consideration.

Council's exemption application

15 On 6 October 2025, the WDC filed an application seeking exemption for parts of the PDP. WDC's application sought exemption for a number of proposed plan provisions, including the following earthworks standards: EW-S1 (as it relates to the former General Rural Zone); EW-S5; EW-S6; EW-S7; EW-S8; EW-S9; and EW-S10.

16 On 3 December 2025, the Minister Responsible for RMA Reform, confirmed that the exemption application had been approved in full. Exemption was therefore granted in respect of all provisions for which exemption had been sought.

17 Granting of an exemption is permissive in nature. The effect of an exemption is to enable the Council to continue progressing the relevant

provisions through the plan-making process despite the plan-stop provisions. However, the grant of an exemption does not require a council to retain all the exempted provisions in the proposed plan.

18 Following receipt of the Minister's decision, WDC subsequently withdrew the parts of the Plan which were not exempted to continue. The public notice is attached as annexure A and has the earthworks provisions highlighted.

19 In implementing this decision Officers also withdrew:

(a) EW-S7 insofar as it relates to Significant Archaeological Sites and Māori Sites ("SASMs"). These sites were withdrawn meaning this earthworks rule ceased to operate in these areas; and

(b) EW-S8, which related to overlays that no longer exist within the Proposed Plan and therefore this rule no longer serves any operative RMA purpose.

20 The balance of the provisions for which exemption had been sought and granted were retained within the Proposed Plan.

21 In addition to those provisions expressly identified in the exemption application, WDC officers have also currently retained the following provisions:

(a) EW-O3;

(b) EW-P6;

(c) EW-P7;

(d) EW-R1 in part, relating to the General Rural Zone; and

(e) EW-R6.

Council's Explanation for Retention of Additional Provisions

22 WDC's position is that, following preparation of the exemptions version of the Proposed Plan, it became apparent that certain consequential amendments were desirable to ensure that the retained exempted standards could operate effectively. Specifically:

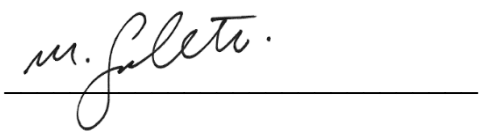
(a) EW-O3, EW-P6 and EW-P7 were retained to provide the policy framework and guidance necessary for the interpretation and implementation of the retained rules and standards.

(b) EW-R6 -"Earthworks and land disturbance within the National Grid Yard" has been retained to operate as part of the Energy chapter and rules relating to the national grid yard. These rules in the Energy Chapter were identified in the exemption application and remain in effect.

(c) EW-R1 establishes the permitted earthworks activity status and links to the retained area threshold in EW-S1. Accordingly part of EW-R1 was retained to provide the relevant activity status and consenting pathway where that threshold is complied with or exceeded.

23 It is my submission that Council Officers should seek legal advice and then report back to the Hearing Panel on whether EW-O3, EW-P6, EW-P7, EW-R1 and EW-R6 can properly remain in the PDP, or whether these provisions should also be withdrawn, or whether a further exemption application may be justified. If they are to be withdrawn, that is considered to be an administrative action for Officers to implement the Council's decision, rather than a merits decision for the Hearing Panel to make.

Dated this 17th day of September 2026



Michael Garbett
Counsel for the Waitaki District Council