

IN THE MATTER of the Resource Management Act 1991
AND
IN THE MATTER of the proposed Te Tai o Poutini Plan
AND
IN THE MATTER of a submission by the
WEST COAST FISH & GAME COUNCIL

**Legal Submissions on behalf of
WEST COAST FISH & GAME COUNCIL
Hearing Topic; Public Access
Dated: 2 April 2024**

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INTRODUCTION

1. These legal submissions are filed on behalf of the West Coast Fish and Game Council (**WCF&G**) in relation to the Public Access hearing topic.
2. The statutory functions of fish and game councils include, inter alia, to maintain and improve the sports fish and game resource, by maintaining and improving access. Maintaining and improving public access to the sports fish and game resource on the West Coast is accordingly of significant interest to WCF&G.
3. In Topic 1 we presented introductory submissions and evidence relating to WCF&G, and WCF&G's interest in the pTTPP generally. Those introductory submissions and evidence remain relevant background to WCF&G's submissions in relation to this topic.
4. In relation to this topic, a statement of evidence have been filed by WCF&G from
Dean Kelly, Sports Fish and Game Manager

UNFORMED LEGAL ROADS

5. WCF&G's submission sought an amendment to the text on pg 189 of the pTTPP, to better recognise and reflect that unformed legal roads are not part of the title of adjoining properties, and are not owned by the owners of adjoining land. The amendment sought was a simple replacement of the word 'cross', with the word 'bisect'. In context the amendment sought was as follows (deletion struck out, addition underlined);

Unformed Legal Roads

Unformed legal roads provide a valuable network of public access opportunities to the outdoors with many allowing access to and along the coast, freshwater bodies and other public resources. Many also bisect ~~cross~~ private land or traverse sensitive ecological environments and careful decision making is needed to ensure that any new provision for public access through unformed legal roads is undertaken in a way that the impacts on natural resources and the safety and security of private landowners are well managed to avoid adverse effects on those resources and private landowners.

6. Importantly however, WCF&G also submitted in support of all other provisions of the TTPP, except where inconsistent with the relief sought in its submission.

7. The s 42A report writer has stated that she has rejected WCF&G's submission point.¹ However, in the Appendix 2 table of recommendations the amendment sought by WCF&G is incorrectly set out, without showing the requested deletion or highlighting the requested addition. This raises a question as to whether the s 42A report writer has properly understood the point raised by WCF&G and the relief it sought.
8. Furthermore, at para 595 of the s 42A report, the writer states "*I agree with the further submission of Herenga ā Nuku Aotearoa, Outdoor Access Commission that the parcels for unformed legal roads are located adjacent to or separate to areas of private land ...*". As this was precisely the point that was raised by WCF&G's submission, it is difficult to understand why WCF&G's submission has been rejected.
9. At para 596 of the s 42A report, under the heading "recommendations", the writer then sets out her recommendations for the Public Access overview part of the TTPP. Those recommendations include the notified text and paragraph regarding unformed legal roads, without any amendments or strikeout shown.
10. However, in the Appendix 1 - Recommended Provisions the notified text regarding unformed legal roads is entirely struck out, indicating that the s 42A writer is actually recommending deletion of this text.²
11. WCF&G has proceeded on the basis that the s 42A report writer is recommending the deletion of the entire paragraph regarding unformed legal roads from the PA Overview section.
12. WCF&G opposes the entire deletion of this paragraph. WCF&G is supportive of the second sentence of the paragraph being deleted. However, it seeks that the first sentence be retained so that the text is as follows;

Unformed Legal Roads

Unformed legal roads provide a valuable network of public access opportunities to the outdoors with many allowing access to and along the coast, freshwater bodies and other public resources. ~~Many also cross private land or traverse sensitive ecological~~

¹ Pg 172 of Appendix 2 – Recommendations on Submissions and Further Submissions.

² A recommendation to delete the section regarding unformed legal roads from the PA Overview section is also consistent with comment in para 595 of the s 42A report.

~~environments and careful decision making is needed to ensure that any new provision for public access through unformed legal roads is undertaken in a way that the impacts on natural resources and the safety and security of private landowners are well managed to avoid adverse effects on those resources and private landowners.~~

13. The evidence of Mr Kelly explains the importance of unformed legal roads with regards to the provision of public access, to fresh water bodies in particular, on the West Coast. In turn it is submitted that this provides for people and communities social, economic and cultural wellbeing³. The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers is a matter of national importance which must be recognised and provided for.⁴
14. The NZCPS has requirements to recognise, maintain and enhance walking access to and along the coastal marine area⁵. And the WCRPS includes a policy “to promote the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers where it contributes to the economic, social and cultural wellbeing of people and communities”.⁶
15. The TTPP has broader application than only resource consenting. In this context the district plan is also relevant to road stopping decisions under the Local Government Act 1974. Specifically, objections to a proposed road stopping are determined by the Environment Court, and one of the mandatory relevant matters which the Environment Court must consider in determining a road stopping objection is the district plan.⁷
16. WCF&G submits that retaining the first sentence of the paragraph on unformed legal roads in the PA overview section of the TTPP will provide helpful context to the Environment Court, when hearing and determining objections to proposed road stopping in the districts. The value of non-vehicular access, now and in the future, can otherwise be overlooked in road stopping processes, particularly if it is not expressly recorded in the district plan. Throughout the West Coast, unformed legal roads provide important points

³ Section 5 RMA.

⁴ Section 6(e) RMA.

⁵ NZCPS Policy 19.

⁶ WCRPS Ch 4, Policy 4(b).

⁷ Cl 6, Schedule 10, Local Government Act 1974.

of access to waterbodies, and the coast. It is appropriate that the public access overview section of the TTPP acknowledges and recognises this.

CONCLUSION

17. In conclusion, it is submitted that the amendments recommended by the s 42A report writer should be partially accepted, but partially rejected. The PA overview section of the TTPP should include a description of the public access value of unformed legal roads in the districts as follows;

Unformed Legal Roads

Unformed legal roads provide a valuable network of public access opportunities to the outdoors with many allowing access to and along the coast, freshwater bodies and other public resources. ~~Many also cross private land or traverse sensitive ecological environments and careful decision making is needed to ensure that any new provision for public access through unformed legal roads is undertaken in a way that the impacts on natural resources and the safety and security of private landowners are well managed to avoid adverse effects on those resources and private landowners.~~



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2 April 2024