

Summary

This Working Paper seeks three specific decisions from the Working Party.

Firstly this paper seeks to confirm the area that the Working Party is tasked with making recommendations on. This paper recommends that the Working Party restricts its recommendations to the area between private property on the true left bank of the river to the private property on the true right bank of the river.

Secondly this paper provides some background information to the members of the Working Party on the issue of *Ad Medium Filum Aquae* (AMF) rights and provides a summary of advice that Council has received from Simpson and Gierson.

The issue of AMF rights is complex and is an aspect of law that is not well settled. This paper recommends that AMF rights are put to one side at this point in time, suggesting that it would be more profitable for the Working Party to focus on finding a consensus solution to the issues in the Waipara River

Thirdly this paper divides the Waipara River into six compartments, listed as follows:

- River Mouth
- River Mouth to State Highway One Bridge
- State Highway One Bridge area
- State Highway One Bridge to Stringers Bridge
- Stringers Bridge to the Waipara Gorge
- Waipara Gorge to Laidmore Road

This paper suggests that the Working Party should seek to develop specific management recommendations for each area. The issues identified in Working Paper One should be resolved for each section of the River.

This paper also recommends that a field trip is held to provide members of the Working Party with a first hand experience of each of the sections of the River prior to looking at management solutions for the areas.

1 Introduction

- 1.1 Property Ownership within the Waipara River is complex. There are a number of property owners, while much of the river bed at first glance appears to be unalienated crown land administered by Land Information New Zealand some of the owners are public bodies such as Hurunui District Council or DoC,. The situation however gets more complex since some land owners have indicated that they believe they have Ad Medium Filum Aquae Rights which provides ownership to the centre of the river.
- 1.2 The paper then discusses one possible way of the Working Party working towards finding a solution to the issues on the Waipara River. This paper breaks the river up into 6 sections, with each section being managed discretely. It is also suggested that a field trip is held so that all members of the Working Party are familiar with all sections of the River.

2 The Terms of Reference of the Working Party

- 2.1 As part of its terms of reference the Working Party has been provided with a defined mission statement, detailed below.

MISSION STATEMENT

- *To ensure that the **Waipara River** is managed in a way that is environmentally sustainable while ensuring public access is maintained to areas of public interest.*

- 2.2 The first step for the working party to agree on is to decide on the exact boundaries to the Waipara River.
- 2.3 The Resource Management Act provides a definition of a River, detailed as follows

***River** means a continually or intermittently flowing body of fresh water and includes a stream and modified water course but does not include any artificial watercourse*

- 2.4 However the mandate of the working party also includes issues that are occurring on the bed of the river, the RMA also defines the bed of River as follows

***Bed** means*

- *In relation to any river*
 - (ii) *...the space of land which the waters of the river cover at its fullest flow without overtopping its banks.*

- 2.5 It is questionable if this purely legalistic definition provides sufficient scope for the Working Party to effectively complete its mission statement. As was discussed in Working Paper ONE the issues that are affecting the Waipara River at times extend further than the Waipara's annual fullest flow. In addition there are areas of public land ('owned' by HDC or DoC) between the privately held land to the south of the river and the privately held land to the north of the river. It seems logical that the Working Party should agree to extend its management recommendations across these land parcels as well.

- 2.6 For these reasons it may be more appropriate to extend the working party's area of concern from *the cadastral property boundary designating private property on the true right bank to the cadastral property boundary designating private property on the true left bank of the Waipara River*.

RECCOMENDATION ONE

- THAT THE WORKING PARTY MANAGEMENT RECCOMENDATIONS EXTEND TO ALL THE LAND BETWEEN THE CADASTRAL PROPERTY BOUNDARY DESIGNATING PRIVATE PROPERTY ON THE TRUE RIGHT BANK TO THE CADASTRAL PROPERTY BOUNDARY DESIGNATING PRIVATE PROPERTY ON THE TRUE LEFT BANK OF THE WAIPARA RIVER.

3 AMF Rights

- 3.1 Some land owners have indicated that they have *Ad Medium Filum Aquae* (AMF) Rights.
- 3.2 AMF is a common law principle that owners of land that is bounded by a (non-tidal) river are presumed to own the bed of that river to the middle of the stream, unless there is evidence or a statutory provision to the contrary. In New Zealand, the position has to a degree been altered so that the rights will only accrue where the stream or river is not navigable, or if the Crown Grant expressly conveyed the bed of the river¹.
- 3.3 The law on AMF rights appears unsettled at this point in time, to definitively establish whether or not AMF rights exist declaration proceedings would need to be pursued in the High Court².
- 3.4 Simpson and Gierson have indicated in legal advice provided to the Council that "the most recent statement of the law requires an assessment as to whether a river is navigable. This requires a factual assessment based on several factors including the continuous navigability, historical use for navigation, and use of the river for navigation since 1903."³
- 3.5 In terms of the Coal Mines Act 1908 navigable river is defined as follows;

***Navigable river** means a river contiguously or periodically of sufficient width and depth to be susceptible of actual or future beneficial use to the residents (actual or future) on its banks, or to the public, for the purpose of navigation by boats, barges, punts, or rafts; but nothing herein shall prejudice or affect the rights of riparian owners in respect of the bed of non-navigable rivers.*

- 3.6 Since the river is used by Kayaks and Jet Boats particularly when in flood and could potentially be used for rafting in the future (although the definition of rafting has changed somewhat since 1908), it is unclear as to whether or not the Waipara River would be classed as navigable. Therefore the presence of AMF rights on the Waipara River from Laidmore Road to the Mouth is unclear.

¹ Simpson and Gierson 2008

² The cost for such proceedings is likely to be significant and may need to be pursued on a title by title basis. This is well outside the mandate and the scope of the Working Party.

³ Simpson and Gierson 2008

3.7 What would the existence of AMF rights mean for the Working Party?

3.8 It is however important for the Working Party to consider what ownership to the centre of the River would mean for the process the Working Party is following. Therefore let us assume (for the purposes of this part paper only) that

- There is land bordering the river that does have AMF rights, and ownership extends to the middle of the river.
- Council has the ability to cost effectively identify this land (which at this point in time it does not).

3.9 If this is the case the river bed is owned by the land owner and the land may be now outside the terms of reference of the Working Party, in terms of Recommendation One above. The Working Party does not have authority to make decisions that will restrict the use of private land and it is unlikely that the HDC will be supportive of enforcing decisions that are not supported by the land owners in question.

3.10 If private individuals do have ownership rights over sections of the river bed (and it should be emphasised that at this point in time this is uncertain) then like all private land issues of trespass are issues that should be enforced by the New Zealand Police.

3.11 Parts of the Waipara River bed are relatively remote. Enforcing any trespass order is likely to be problematic for land owners and for the New Zealand Police. It is likely that there are much more effective ways (at least in the first instance) to modify the behaviour of users rather than a criminal charge. Therefore it is unclear at this point in time what benefit there would be to pursuing a legalistic argument, particularly one significant cost, when there is no certain outcome.

3.12 Summary on AMF Rights

3.13 The solution to the issue of AMF rights is not clear at this point, and a true resolution is probably outside the mandate and scope of the working party, indeed it is probably outside the ability of the HDC to resolve this issue.

3.14 Even if the Working Party could answer the question of whether or not AMF rights exist, it is far from certain what this would achieve given the remoteness of parts of the Waipara River.

3.15 The process that the Working Party should be following is one of 'consensus' not one of making decisions on a polarised voting basis. It appears to be more constructive at this point in time that the Working Party builds decisions based on agreement between all parties. At this point in time it is recommended that the Working Party puts the issue of AMF rights to one side. If a consensus agreement can be found between all parties, then the issue of AMF rights is a non issue. However if the Working Party cannot make a consensus decision that satisfactorily addresses the very real concerns of adjacent land owners then the issue of AMF rights may have to be revisited.

RECOMMENDATION TWO

- THAT THE WORKING PARTY DOES NOT FURTHER CONSIDER THE ISSUE OF AMF RIGHTS UNLESS A CONSENSUS, WHICH MEETS THE NEEDS OF BOTH LAND OWNERS AND OTHER RIVER USERS, CANNOT BE FOUND.

4 Parts of the River

- 4.1 Working Paper ONE focused on the issues present within the Waipara River, however that working paper did not focus on the different areas within the River. This Working Paper provides one way of dividing the river up into smaller more manageable sections. Over the coming meetings the Working Party will be tasked with identifying solutions to each individual section of the River. This paper seeks to find agreement as to the sections of the River that will be considered at subsequent meetings.
- 4.2 This paper also seeks to gain agreement for a field trip to be undertaken where members of the Working Party travel the length of the Waipara River from the Mouth to the Waipara Gorge. It is also suggested that the Working Party takes the time to visit some of the geologically significant areas between Laidmore Road and the upstream side of the gorge.
- 4.3 Shown below is a map of the entire Waipara River, from the Mouth to Laidmore Road.



Figure 1: Map of the Waipara River

4.4 Waipara Mouth Area

- 4.5 The Waipara Mouth is an important and regionally unique estuarine system. It is a popular white-baiting and duck shooting spot. This area is also an important nesting and feeding ground for a number of bird species.

- 4.6 The River Mouth and associated estuary is frequented by four wheel drive vehicles, however the Northern Pegasus Bay Management Plan has sought to prohibit vehicles from the majority of this area.
- 4.7 Included below is a Map showing the Mouth and the estuarine system. Attention should be drawn to the two significant natural areas, which are listed in the Hurunui District Plan.
- 4.8 It is also important that the Working Party is aware that there is a nohanga site, granted under the Ngai Tahu Claims Settlement Act in this area.



Figure 2: Map of the Waipara River Mouth

- 4.9 It is suggested that the Waipara Mouth is one distinct environment that the Working Party should consider.

4.10 Waipara Mouth to the SH1 Bridge

- 4.11 The second suggested area extends from the River Mouth to the SH1 bridge. Although no formal traffic counts are undertaken anecdotal evidence suggests that this area is the most frequently trafficked area. Motor-cross riders utilised this area as part of a round trip that begins at the Leithfield Tavern and concludes at the Waipara Pub.
- 4.12 The map below shows this area pictorially, and although it is not possible to see on this scale the area is criss-crossed with vehicle tracks. This area is also used by small game shooters who hunt rabbits in this area.
- 4.13 There are a number of ways to access the river in this location, at the Mouth at the end of Golf Links Road, at Webs Road, at Double Corner Road, potentially at Stockgrove Road, although the author is not aware of this being a popular access point and of course at the SH1 Bridge.

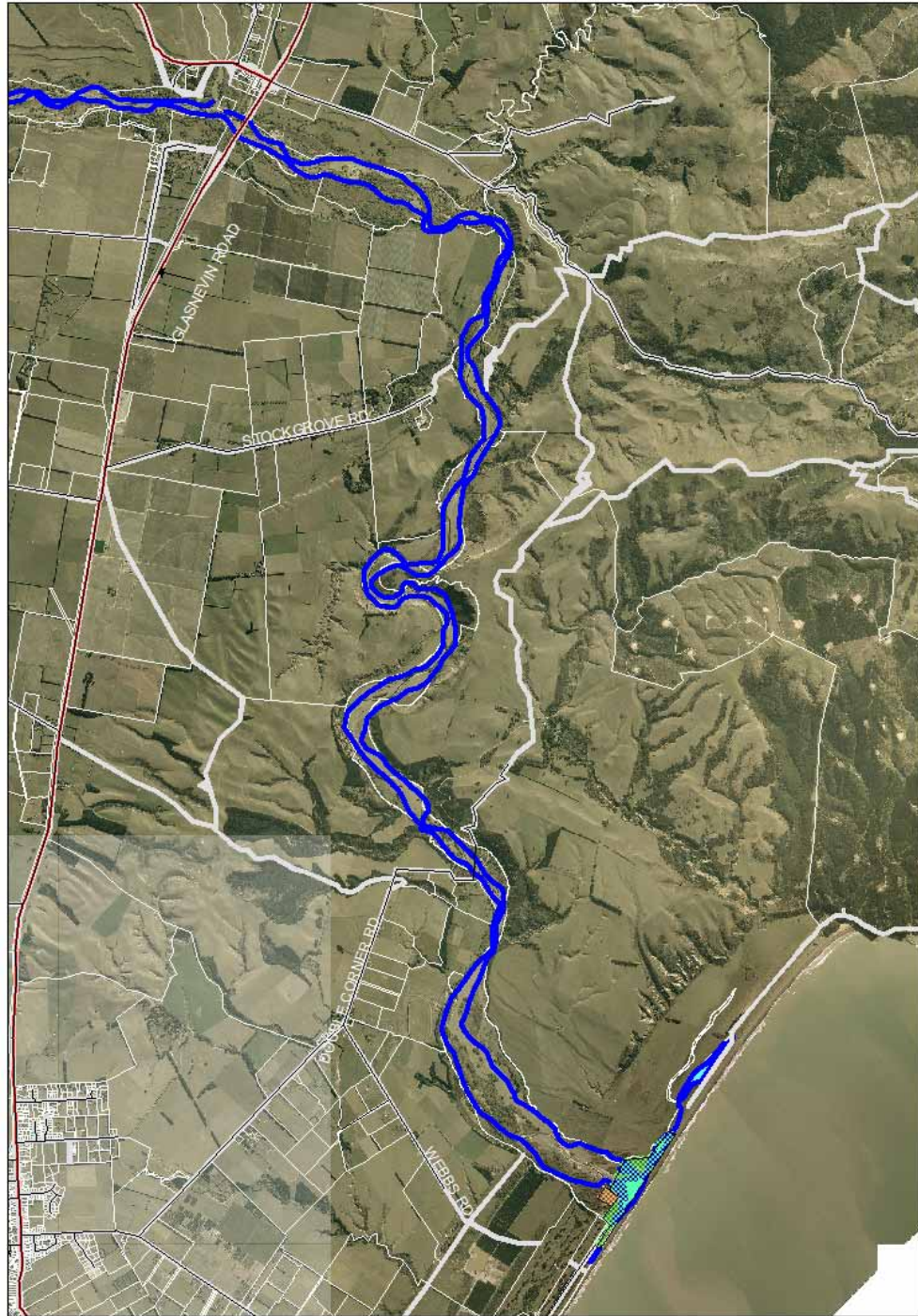


Figure 3: Map Showing the area from the Mouth to SH1 Bridge

4.14 SH1 Bridge

4.15 The SH1 bridge area is one of the most highly used parts of the river. Not only does it provide one of the main ingress and egress points for vehicular and pedestrian access it also a destination in its own right, with activities such as the Boys Brigade camp located here.

- 4.16 Anecdotal evidence suggests that this area is also the most heavily abused area in terms of fly tipping. At any time a range of rubbish can be found in the river bed.
- 4.17 Land ownership within this area is particularly confusing. Much of the land in this location is public land, some is administered by DoC, some by HDC with the remainder being unalienated crown land. However the New Zealand Transport Agency and the New Zealand Railways Corporation (OnTrack) also administer significant infrastructure in this area. A nohanga site is also present located at the end of Barnetts Road

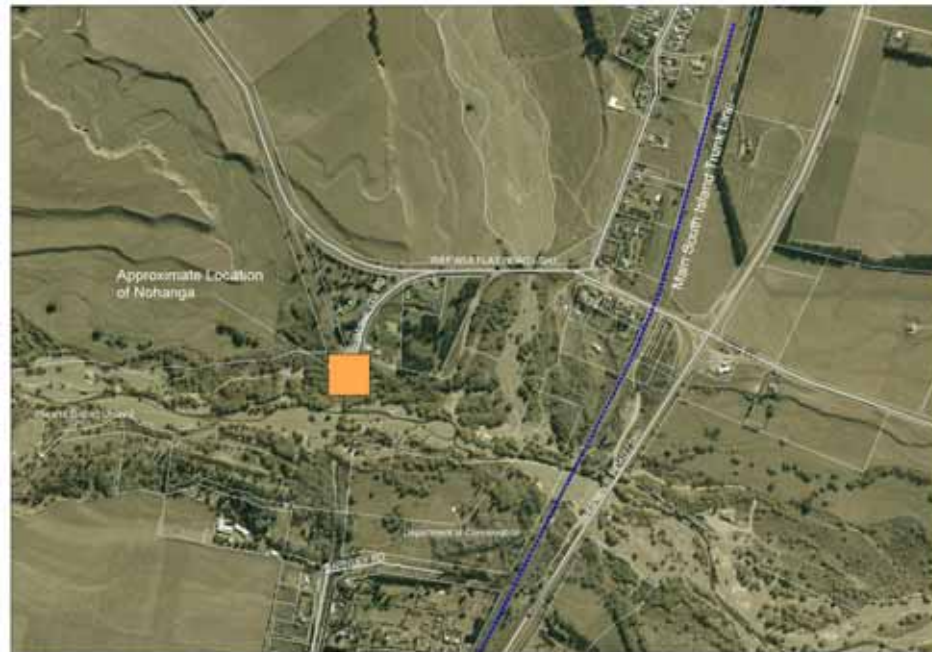


Figure 4: Map Showing the SH1 Bridge

- 4.18 It is suggested that the SH1 bridge is the third area that is considered by the Working Party.
- 4.19 The SH1 to Stringers Bridge**
- 4.20 The fourth area suggested to be considered by the Working Party is the area from the SH1 bridge to Stringers Bridge. This area is less well travelled by vehicles than the area from the Mouth to SH1, however it is still used both by four wheel drives and by motor-cross riders.
- 4.21 The geography of this area is similar to that of the lower Waipara, from SH1 to the mouth, however there are more extensive areas in this part of the river where there is no large vegetation growing. Even pest species such as broom, gorse and willow are sparse in parts of this stretch of the river.



Figure 5: Map Showing SH1 Bridge to Stringers Bridge

4.22 Stringers Bridge to the Gorge

- 4.23 The fifth area suggested to the Working Party is the area from Stringers Bridge to the Waipara Gorge. This area is remote, however there are some particularly scenic features, including the Gorge itself.
- 4.24 A paper road runs along the true left bank of the river. This is shown in Gray on the map below.
- 4.25 Currently the only feasible way of accessing areas like the Gorge is to drive, albeit a purpose built four wheel drive vehicle is required. This is a popular trip for dedicated off roaders.
- 4.26 Walking is currently not a feasible option for access. While it is only around 7.5km from Stringers Bridge to the gorge the terrain is very rough and it would be slow going on foot.
- 4.27 This area has much higher environmental values than the area from SH1 to Stringers Bridge. Particularly as you get closer to the Gorge. The amount of vegetation increases, albeit much of it is willow other pest species.
- 4.28 There are also a number of important geological and paleontological sites present in this area, of particular importance on a national scale is the evidence of the KT boundary, a layer of high iridium content, which has been linked to the extinction of the dinosaurs.
- 4.29 It is also important to note here that several of the land owners on the true right bank of the river have claimed AMF rights. However as has been discussed in Recommendation Two this paper promotes putting the AMF issue aside.

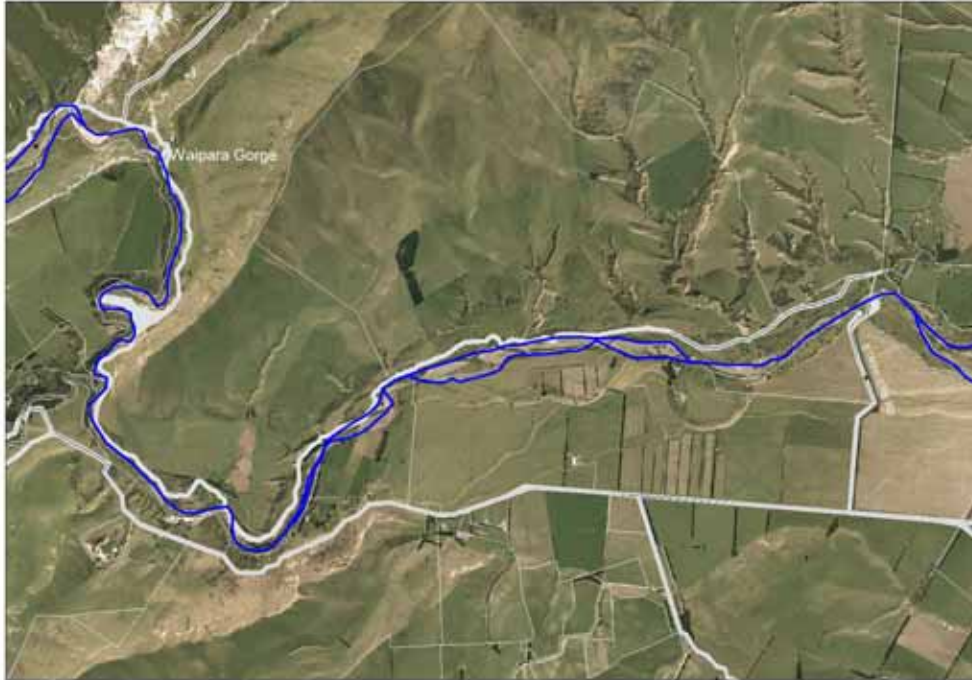


Figure 6: Map Showing Stringers Bridge to the Waipara Gorge

4.30 The Gorge to Laidmore Road

- 4.31 The sixth and final area suggested to be considered by the Working Party is the area extending from the Waipara Gorge to Laidmore Road. As the crow flies there is only a 2km distance between the Gorge and Laidmore Road, however as the river twists and turns a the distance on the ground is extended to more like 3.5km. This is shown on the map below.



Figure 7: Map Showing the Waipara Gorge to Laidmore Road

- 4.32 The river in this location is much less braded and takes on more of a meandering form, with a single river channel, albeit with wide gravel river banks.
- 4.33 This area has some very high geological and environmental values, including Gods marbles - 65 million old limestone spheres, fossilised dinosaur bones and fossilised shells. Some of these areas have been recorded in the District Plan as significant natural areas, these areas are shown on the Map above as red stars.
- 4.34 The land owner on the true right bank of the river has indicated that he has AMF rights, but he is happy to allow walking access over his land. Recommendation Two in this Paper promotes putting AMF rights aside, however the wishes of this land owner should be carefully considered by the Working Party.

4.35 Summary of Areas

- 4.36 This Working Paper promotes breaking the river up into six district areas, with each area being considered at subsequent meetings. Each of the issues identified in Working Paper One will need to be addressed and the Working Party is tasked with developing a specific management approach for each areas.
- 4.37 Before final confirmation of the six areas and considering management responses to them it is recommended that the Working Party undertakes a fieldtrip so that all members of the Working Party have an understanding of the most important issues that exist within in each section. Therefore the recommendation suggests that the Working Party confirms these areas subject to any findings to the contrary identified while on the fieldtrip.

RECOMMENDATION THREE

- THAT THE WORKING PARTY RESOLVES TO UNDERTAKE A FIELD TRIP EXTENDING FROM THE COAST TO LAIDMORE ROAD
- THAT THE SIX SPECIFIC AREAS IDENTIFIED IN THIS WORKING PAPER ARE CONFIRMED AS BEING THE AREAS THAT WILL BE CONSIDERED AT SUBSEQUENT MEETINGS, SUBJECT TO ANY FINDING/AMENDMENTS MADE BY THE WORKING PARTY ON THE FIELDTRIP