

BEFORE THE HEARING PANEL

IN THE MATTER OF the Resource Management Act 1991

AND of the proposed Timaru District Plan

Legal Submissions

For the Director-General of Conservation *Tumuaki Ahurei*

Hearing E: Infrastructure, Subdivision and Cultural Values

Submitter No. 166 Further Submitter No.166

Dated: 30 January 2025

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MAY IT PLEASE THE HEARING PANEL

Introduction

1. The Director-General of Conservation (the **Director-General**) is the administrative head of the Department of Conservation and has all the powers necessary and expedient to enable the Department to perform its functions, as set out in s 6 of the Conservation Act 1987.¹ The Director-General has the specific statutory function of advocating for the conservation of natural and historic resources.²
2. Accordingly, the Director-General has a legal interest in ensuring that the proposed Timaru District Plan (**PTDP**) promotes sustainable management by protecting and maintaining ecosystems and indigenous biodiversity in the Timaru District.
3. These legal submissions relate to the Energy and Infrastructure chapter (considered as part of Hearing E), as relevant to the Director-General's submission and further submission. The topics are:
 - (a) Recap of statutory framework relating to indigenous biodiversity;
 - (b) The inclusion of an effects management hierarchy for regionally significant infrastructure (and other infrastructure); and
 - (c) The recommendation of the s42A report writer to include a standalone policy for the National Grid.

Evidence to be called by the Director-General

4. The Director-General calls Ms Elizabeth Williams, an RMA planner, who has prepared evidence on planning matters relating to the topics considered in this hearing. Her evidence focuses on issues relating to the Energy and Infrastructure chapter.

Statutory framework relating to indigenous biodiversity

5. The Director-General prepared legal submissions in relation to Hearing D.³ Those submissions described the statutory framework under the Resource Management Act 1991 (RMA) and its subordinate instruments governing the maintenance, management and protection of indigenous biodiversity, including the now operative National Policy Statement for Indigenous Biodiversity (NPS-IB). Those submissions are not repeated in

¹ Conservation Act 1987, ss 52, 53.

² Conservation Act 1987, s 6(b).

³ Legal Submissions for the Director-General of Conservation *Tumuaki Ahurei*, Hearing D: Open Space, Hazards and Risk & Natural Environment, 4 November 2024.

full here, but key points as relevant to the Director-General's submission points in relation to the Energy and Infrastructure chapter are:

Requirements of district councils and district plans under the RMA

- Councils are required recognise and provide for the protection of significant indigenous vegetation and significant habitats of indigenous fauna as a matter of national importance (s 6(c) RMA);
- District councils are required to prepare and change their district plans in accordance with their functions under section 31, noting the council's functions include the maintenance of indigenous biological diversity (s 31(1)(b)(iii) RMA);
- District plans are required to give effect to national policy statements and regional policy statements (s 75(3) RMA). "Give effect to" means "implement".⁴

National Policy Statement for Indigenous Biodiversity (NPS-IB)

- The objective of the NPS-IB is no overall loss of indigenous biodiversity. To achieve that objective, the NPS-IB provides direction to councils to protect, maintain and restore indigenous biodiversity;⁵
- In terms of implementation, Clause 4.1 of the NPSIB requires that local authorities must: *give effect to this National Policy Statement **as soon as reasonably practicable***. What this obligation requires will be context specific;
- While the PTDP was prepared before the NPS-IB became operative, a number of submissions (including the Director-General's submission) referred to the draft version. Accordingly, where changes have been sought to the PTDP through submissions which relate to the direction in the NPS-IB, there is an opportunity to align the PTDP with the NPS-IB.
- In accordance with the definition of SNA or significant natural area in the NPS-IB,⁶ the SNAs identified in the PTDP are "SNAs" for the purpose of the NPS-IB. The Resource Management (Freshwater and Other Matters) Amendment Act 2024 does not change this status of these areas or the obligations that apply to the council in relation to the NPS-IB in the context of the PTDP;

⁴ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, at 77.

⁵ NPSIB, Clause 2.1.

⁶ NPSIB, Clause 1.6.

- Adverse effects on NPS-IB SNAs (which, as explained above, includes SNAs identified in the PTDP) are to be managed in accordance with clause 3.10 NPS-IB. The requirement is to avoid the adverse effects listed in clause 3.10(2) and manage other adverse effects. The effects management hierarchy applies.⁷ The NPS-IB also directs how adverse effects on areas *outside* mapped SNAs should be managed, again by reference to the effects management hierarchy.⁸

6. Also relevant to these legal submissions:

- Clause 3.11 of the NPS-IB sets out exceptions to the avoidance requirements of Clause 3.10(2). Where those exceptions apply, adverse effects must be managed by applying the effects management hierarchy.⁹ The exceptions include construction or upgrade of specified infrastructure that provides significant national or regional public benefit¹⁰ where there is a functional or operational need for the development to be in that particular location¹¹ and there are no practicable alternative locations.¹²
- Clause 1.3 describes the application of the NPS-IB. Clause 1.3(3) states that the NPS-IB does not apply to the development, operation, maintenance or upgrade of renewable energy generation or assets and activities, and electricity transmission network (i.e. the National Grid) assets and activities.

The inclusion of an effects management hierarchy for regionally significant infrastructure (and other infrastructure)

7. The Director-General's submission sought amendments to EI-02 (Adverse effects of Regionally Significant *Infrastructure*) and EI-P2 (*Managing adverse effects of Regionally Significant Infrastructure and other infrastructure*) to include reference to the effects management hierarchy to align with the (then draft) NPS-IB. These submission points have been accepted in part by the s42A report writer. The recommendation is to include reference to an effects management hierarchy in EI-02 and to set out the effects management hierarchy in EI-P2 which will apply in defined circumstances. The effects management hierarchy proposed is modelled on that set out in the National Policy

⁷ NPS-IB, Clause 3.10(3).

⁸ NPS-IB, Clause 3.16.

⁹ NPS-IB, Clause 3.10(3).

¹⁰ NPS-IB, Clause 3.11(1)(a)(i).

¹¹ NPS-IB, Clause 3.11(1)(b).

¹² NPS-IB, Clause 3.11(1)(c).

Statement for Freshwater Management (NPS-FM)¹³ which for practical purposes is the same as that provided for in the NPS-IB.¹⁴

8. Ms Williams' evidence sets out her support for the recommended approach. Of note for these submissions, Ms Williams' opinion is that for infrastructure that is *not* exempt from the NPS-IB,¹⁵ the proposed amendments are consistent with Clauses 3.10(3) and 3.11 NPS-IB.¹⁶
9. The Director-General's position is that this is therefore an example of where there is scope within the submissions to take the 'opportunity' of aligning the PTDP with the NPS-IB as part of the requirement for the plan to 'give effect to the NPS-IB'.¹⁷ Noting:
 - a. the specificity of the application of the proposed effects management hierarchy;¹⁸
 - b. the 'additional guidance' and closer alignment with s6 RMA that this will provide as identified by the s42A author;¹⁹ and
 - c. the general advantages of consistency referred to in Ms Williams' evidence,²⁰it is 'reasonably practicable'²¹ and therefore appropriate to adopt this approach now within the PTDP (i.e. rather than leaving this to a latter specific plan change to give effect to the NPS-IB).²² The evidence presented by Ms Diedre Francis on behalf of the Canterbury Regional Council is also generally supportive of this position.²³
9. The Director-General notes that the proposed effects management hierarchy approach proposed by the s42A report writer in EI-P2 would apply to renewable energy generation (REG). As recorded in Ms Williams' evidence, and set out above, the NPS-IB does not apply to REG. Ms Williams has set out in her evidence why she thinks the proposed

¹³ Section 42A Report: Energy and Infrastructure, Stormwater and Transport, Andrew Willis, paragraph 6.21.10.

¹⁴ The only difference being that the NPS-FM uses the terminology of 'aquatic offsetting' and 'aquatic compensation' (Clause 3.21) whereas the NPS-IB uses 'biodiversity offsetting' and 'biodiversity compensation' (Clause 1.6). The s42A report writer's recommendation is for the terminology in E1-P2.3 to be simply 'offsetting' and 'compensation' respectively.

¹⁵ As noted above at paragraph 6, bullet point 2 and in Ms Williams' evidence (paragraph 21), Clause 1.3 NPS-IB states that the NPS-IB does not apply ".....to the development, operation, maintenance or upgrade of renewable energy generation assets and activities and electricity transmission network assets and activities".

¹⁶ Evidence of Elizabeth Williams, paragraph 22.

¹⁷ Section 75(3), above paragraph 5, bullet point 3.

¹⁸ As proposed by the s42A report writer, the effects management hierarchy in EI-P2.3 would apply to managing adverse effects of Regionally Significant and other infrastructure within the identified sensitive environments where there is a functional or operational need for the activity to be located within the sensitive environment and there are no practical alternative locations.

¹⁹ Section 42A Report: Energy and Infrastructure, Stormwater and Transport, Andrew Willis, paragraph 6.21.10.

²⁰ Evidence of Elizabeth Williams, paragraph 19.

²¹ Clause 4.1 NPS-IB. See above, paragraph 5, bullet point 5.

²² Noting that this was the approach preferred by the section 42A report writer for Hearing D to address the Director-General's submission points that sought more general inclusion of the avoidance requirements in Clause 3.10 NPS-IB within the ECO chapter. See Section 42A report: Ecosystems and Indigenous Biodiversity; Natural Character; and Natural Features and Landscapes, Liz White, paragraphs 7.8.18 and 7.13.26.

²³ Statement of evidence of Diedre Francis on behalf of the Canterbury Regional Council, 23 January 2024, paragraph 67.

approach is available in light of the relevant provisions in the applicable higher order documents.²⁴

Recommendation of the s42A report writer to include a standalone policy for the National Grid (Policy EI-P2)

10. The s42A report writer has recommended a new standalone policy (EI-P2) which will apply to the National Grid.
11. The Director-General agrees that the PTDP must give effect to the National Policy Statement for Electricity Transmission (NPS-ET)²⁵ and that the NPS-IB does not apply.²⁶ Ms Williams has addressed this recommendation in her evidence and agrees with the proposed approach.²⁷
12. In the planning evidence filed on behalf of Transpower, Ms Ainsley McCleod has considered the s42A report writer's recommendations, and has identified additional amendments to EI-02 that she considers are necessary to give effect to the NPS-ET. Ms Williams can address the Panel on these points and the proposed drafting at the hearing.

Other matters

13. Ms Williams has set out the other submission points made by the Director-General in relation to the Hearing E topics in Appendix 1 of her evidence. As can be seen, the Director-General is generally supportive of the PTDP provisions as relevant to these submission points. Ms Williams' has indicated her support for any changes recommended by the s42A report writers.
14. The Director-General has not identified any matters that require legal submissions in relation to these additional submission points, but further legal submissions can be provided should any further legal issues arise.



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30 January 2025

²⁴ Evidence Elizabeth Williams, paragraphs 23 – 27.

²⁵ Section 75(3) RMA, above paragraph 5, bullet point 3.

²⁶ See above, footnote 15.

²⁷ Evidence Elizabeth Williams, paragraphs 28 -32.