

BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER OF the Resource Management Act 1991

AND of the proposed Timaru District Plan

Memorandum of Counsel
on behalf of the Director-General of Conservation *Tumuaki Ahurei*
Hearing F: Hazards and Risks (Natural Hazards only) – Other District-wide
Matters
Submitter No. 166 Further Submitter No.166
Dated: 16 April 2025

Department of Conservation | *Te Papa Atawhai*

Solicitors rōia: Alice McCubbin-Howell

Phone waea: 0272013551

Email Imera: amccubbinhowell@doc.govt.nz

MAY IT PLEASE THE HEARING PANEL

1. The Director-General of Conservation (the **Director-General**) is scheduled to present its case in relation to Hearing F on Thursday 1 May 2025.
2. The Director-General has filed expert evidence from the following three witnesses who will give evidence to support the Director-General's submission and further submission in relation to this hearing:
 - a. **Mr Simon Waugh** – Effects of artificial lighting on bats (Light chapter);
 - b. **Dr Clement Lagrue** – Effects of motorised craft/jet boats on braided river birds (Activities on Surface Water chapter); and
 - c. **Ms Elizabeth Williams** – Planning evidence (various topics).
3. In terms of the applicable legal framework, the Director-General's legal submissions presented for Hearing A submitted that the Panel's decisions in relation to the Director-General's interests in the PTDP should be underpinned by eleven core legal premises. See Appendix A for an extract from the Director-General's earlier legal submissions. This framework remains relevant to the matters covered in Hearing F.
4. At this stage, there are no specific legal matters that require legal submissions on behalf of the Director-General for Hearing F. The Director-General will be represented by legal Counsel at the hearing. Counsel will be available to address any legal matters if they arise, either at the hearing or subsequently.



Alice McCubbin-Howell
Counsel / Rōia for the Director-General

16 April 2025

Appendix A: Paragraph 4, legal submissions on behalf of the Director-General of Conservation, Hearing A, dated 30 April 2024

Legal framework

4. The Director-General submits that the Panel's decisions should be underpinned by eleven core legal premises:
- (i) The Resource Management Act 1991 ('RMA') requires that decision-makers 'shall recognise and provide' for 'the **protection** of areas of significant indigenous vegetation and significant habitats of indigenous fauna' in order to achieve sustainable management (s 6(c) RMA).
 - (ii) The protection of indigenous species from adverse effects is a s 5(2) RMA matter.¹
 - (iii) The legal framework protects ecosystems and indigenous biodiversity for their *intrinsic* value, i.e., not (solely) for any practical utility to humans.²
 - (iv) The District Council has the function of establishing, implementing, and reviewing objectives, policies, and methods to:
 - a. achieve integrated management of the effects of the use, development, or **protection of land and associated natural and physical resources** of the district (and natural resources includes all forms of plants and animals);³
 - b. the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of— ... the **maintenance of indigenous biological diversity**.⁴
 - (v) Within the current legal framework, District Plans are a critical tool for protecting threatened indigenous species and ecosystems.⁵
 - (vi) The PTDP must give effect to national policy statements,⁶ and the Director-General highlights the importance of the following:
 - a. the *New Zealand Coastal Policy Statement 2010* ('NZCPS') – and the 'avoid' policies, in particular (i.e. policies 11, 13 and 15) and

¹ Section 2 RMA, indigenous species are part of 'natural and physical resources'; see e.g., *Pierau v Auckland Council* [2017] NZEnvC 90, [251] and *R J Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81, [163].

² RMA s 7(d); *Te Mana o Te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020* (Department of Conservation, August 2020) p 43, core principles include '**Intrinsic value** – Species and ecosystems are valuable in their own right and have their own right to exist and be healthy and thriving now and in the future, regardless of human use and appreciation'.

³ RMA, ss 2 and 31(1)(a).

⁴ RMA, s 31(1)(b).

⁵ *Te Mana o Te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020* (Department of Conservation, August 2020), pp 67, 69.

⁶ RMA, s 75(3).

- b. the *National Policy for Indigenous Biodiversity 2023* ('NPSIB') - and the objective to 'maintain indigenous biodiversity' so that 'there is a least no overall loss' by (amongst other things) 'protecting and restoring indigenous biodiversity'. 'Maintaining Indigenous Biodiversity' is defined in extensive terms in the NPSIB.⁷
- (vii) The PTDP must also give effect to the Canterbury Regional Policy,⁸ that contains a comprehensive cascade of policies (9.2.3, 9.3.1, 9.3.2), including the foundational policy 9.2.1 –

Halting the decline of Canterbury's ecosystems and indigenous biodiversity
The decline in the quality and quantity of Canterbury's ecosystems and indigenous biodiversity is halted and their life-supporting capacity and mauri safeguarded. [Note that halt means 'bring or come to an abrupt stop' (dictionary definition)].
- (viii) The Panel may also have regard to *Te Mana o Te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020*, a national strategy with Ministerial approval, created to fulfil New Zealand's international law obligations under Article 6 of the Convention of Biological Diversity.⁹ The Director-General submits that this Strategy is both relevant and persuasive.¹⁰
- (ix) Accordingly, the legislative and policy framework requires the District Council to *maintain* indigenous biodiversity in general across Timaru, so that there is at least no overall loss, and to *protect* indigenous biodiversity where it has a level of significance warranting protection that marks it apart from the general indigenous biodiversity. Obvious examples of the later, will be where a species or ecosystem is endangered.¹¹
- (x) Plans can provide for greater protection of indigenous biodiversity than the NPSIB requires (cl 3.1(1), (2)) but plans cannot provide less than required by the NPSIB.
- (xi) District Plan objectives are intended to be aspirational. As the Environment Court has stated, 'an objective in a planning document sets out an end state of affairs to which the drafters of the document aspire'.¹²

⁷ NPSIB, cl 1.7

⁸ RMA, s 75(3).

⁹ 1992 Convention on Biological Diversity 1760 UNTS 79, 31 ILM 818 (1992).

¹⁰ RMA, s 41 and Commission of Inquiry Act 1908, s 4B(1): 'the Commission may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the inquiry, whether or not it would be admissible in a Court of law'; see also *West Coast Regional Council v Friends of Shearer Swamp Inc* [2012] NZRMA 45, at [49].

¹¹ The core difference between 'maintain' and 'protection' is that protection requires ex ante protective action whereas maintenance can be obtained using a range of actions, including ex post facto actions. More detailed submissions will be made in the hearing for the ECO chapter.

¹² *Ngati Kahungunu Iwi Inc v Hawke's Bay RC* [2015] NZEnvC 50 at [42].