

BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER OF the Resource Management Act 1991

AND of the proposed Timaru District Plan

Legal Submissions

on behalf of the Director-General of Conservation *Tumuaki Ahurei*

Hearing A: Overarching Matters, Part 1 and Strategic Directions

Submitter No. 166 Further Submitter No.166

Dated: 30th April 2024

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MAY IT PLEASE THE HEARING PANEL

The following matters are submitted on behalf of the Director-General of Conservation, Tumuaki Ahurei:

Introduction

1. The Director-General of Conservation ('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 restoring ecosystems and indigenous biodiversity in the Timaru District.
3. The Director-General proposes to appear via Counsel throughout the sequence of hearings on the PTDP and call expert technical evidence in support of her submissions.

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.³

¹ Conservation Act 1987, ss 52, 53.

² Conservation Act 1987, s 6(b).

³ 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].

- iii. The legal framework protects ecosystems and indigenous biodiversity for their *intrinsic* value, i.e., not (solely) for any practical utility to humans.⁴
- 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);⁵
 - 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**.⁶
- v. Within the current legal framework, District Plans are a critical tool for protecting threatened indigenous species and ecosystems.⁷
- vi. The PTDP must give effect to national policy statements,⁸ 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);
 - 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.⁹

⁴ 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'.

⁵ RMA, ss 2 and 31(1)(a).

⁶ RMA, s 31(1)(b)

⁷ *Te Mana o Te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020* (Department of Conservation, August 2020), pp 67, 69.

⁸ RMA, s 75(3).

⁹ NPSIB, cl 1.7

- vii. The PTDP must also give effect to the Canterbury Regional Policy,¹⁰ 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.¹¹ The Director-General submits that this Strategy is both relevant and persuasive.¹²
- 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.¹³
- 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'.¹⁴

¹⁰ RMA, s 75(3).

¹¹ 1992 Convention on Biological Diversity 1760 UNTS 79, 31 ILM 818 (1992).

¹² 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]

¹³ 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.

¹⁴ *Ngati Kahungunu Iwi Inc v Hawke's Bay RC* [2015] NZEnvC 50 at [42].

Strategic Direction Chapter SD-O2

5. The Director-General supports the recommendation in the s 42A report for an amended SD-O2, i.e.,

[...]

v. indigenous biodiversity is maintained, enhanced and restored where necessary so that there is at least no overall loss;

vi. significant indigenous vegetation and significant habitats of indigenous fauna are identified, and their values recognised, protected, ~~and where appropriate,~~ enhanced, and where ecological integrity is degraded, restored; ...

6. The amended SD-O2 provides a clear direction in the PTDP and a foundation for policies and rules facilitating the identification, protection, and restoration of ecosystems and indigenous biodiversity – particularly threatened species – and the integration of those outcomes throughout the PTDP. Without such clarity, endangered ecosystems and threatened indigenous species in Timaru may receive inadequate regulatory protection and risk continued depletion or even extinction. Accordingly, the approach and wording proposed in the s 42A report is consistent with the applicable legal framework and, in the Director-General's submission, promotes the sustainable management of natural and physical resources.

Evidence for the Director-General

7. The following witnesses will appear and give evidence to support the submissions of the Director-General in relation to Hearing A:
 - i. Richard Clayton - terrestrial ecology, and
 - ii. Elizabeth Williams – planning.



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