

BEFORE THE HEARING PANEL

IN THE MATTER

of the Resource Management Act 1991

AND

The Proposed Te Tai o Poutini Plan
Ecosystems and Indigenous Biodiversity

**Evidence of Murray Brass on behalf of
the Director-General of Conservation / *Tumuaki Ahurei*
Hearing Topic: Coastal Environment
Submitter ID: S602, Further Submitter ID: FS122
18 September 2024**

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Introduction

1. My full name is Murray John Brass.
2. I have been asked to provide planning evidence on the Coastal Environment topic for the proposed Te Tai o Poutini Plan (TTPP).

Qualifications and experience

3. I am employed by the Department of Conservation (DOC) in Dunedin as a Senior RMA Planner. I have worked for DOC since 2019.
4. Prior to this I have over twenty years' experience in resource management, including senior and management roles in both consenting and plan development. This includes eight years as a Consents Officer and Senior Consents Officer at the Taranaki then Otago Regional Councils, nine years as Planning and Environment Manager at the Clutha District Council, and four years as Resource Planner / Policy Advisor at the University of Otago.
5. My experience relevant to the current process includes:
 - (a) Eight years' experience of processing the full range of permits for regional councils, including as reporting officer for non-notified and notified applications, and as senior officer at hearings.
 - (b) Also during my time in regional councils, providing staff input into the development of those councils' regional policy statements and regional plans.
 - (c) Nine years' experience managing the overall planning function for the Clutha District Council, including consent processing, plan changes, council processes, and monitoring and reporting.
 - (e) Providing input from local and central government perspectives to the Ministry for the Environment in the development of various national direction documents and legislative change.
 - (f) In my role with DOC, providing planning input into policy statement, plan and consent processes around the country, including preparation of submissions, appearance at council and Environment Court hearings, expert witness conferencing and mediation.
 - (g) I hold a Bachelor of Science degree (Geology) and a Diploma for Graduates (Ecology / Environment), both from the University of Otago.

6. I am a Full Member of the New Zealand Planning Institute.

Code of Conduct

7. I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court Practice Note 2023. I have complied with the Practice Note when preparing my written statement of evidence and will do so when I give oral evidence before the hearing.
8. For the avoidance of doubt, in providing this evidence as an expert witness in accordance with the Code, I acknowledge that I have an overriding duty to assist the Panel impartially and independently on matters within my area of expertise. The views expressed are my own expert views, and I do not speak as a representative of the Director-General (DG).
9. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow. This includes, where relevant:
- why other alternative interpretations of data are not supported
 - any qualification if my evidence may be incomplete or inaccurate without such qualification.
 - any knowledge gaps and the potential implication of the knowledge gap.
 - if my opinion is not firm or concluded because of insufficient research or data or for any other reason.
 - an assessment of the level of confidence and the likelihood of any outcomes specified in my conclusion.
10. Unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of evidence

11. The DG's submission covered a range of matters. I have focussed my evidence on matters which remain in contention, or where I have comments on the proposed approach or drafting. This includes:

- amendments to the drafting and better recognition of unmapped biodiversity values within the policies; and
 - amendments to the drafting, better recognition of unmapped historic heritage values, and added matters of discretion for biodiversity in the rules.
12. Where there are elements of the DG's submission that I do not address in my evidence, this reflects that I am generally comfortable with the approach taken in the s42A Report. I remain available for any questions on those matters that the Panel may have.
13. Where I quote proposed plan provisions, I have used the s42A Report recommendations (as consolidated in that report's Appendix 1) as the base version. Where I show my suggestions as tracked changes, they are against that version.

Material considered

14. In preparing my evidence I have read and considered the following documents:
- Proposed Te Tai o Poutini Plan Coastal Environment Chapter;
 - The Te Tai o Poutini s32 Report 5 Natural Environment Values;
 - The DG's submission dated 11 November 2022;
 - The DG's further submission dated 13 July 2023;
 - The s42A Officer's Report Coastal Environment;
 - The Coastal Environment evidence of Bridget Gilbert.

Statutory considerations

15. The s32 Report identifies the overall planning context for this topic, including:
- the Purpose and Principles of the Resource Management Act 1991 (RMA), with section 5 to 8 all being relevant to the coastal environment;
 - the New Zealand Coastal Policy Statement 2010 (NZCPS);
 - Other national direction, including the National Policy Statement for renewable Electricity Generation (NPSREG), the National Policy Statement on Electricity Transmission, and the National Environmental Standards for Plantation Forestry (now the National Environmental Standards for Commercial Forestry);

- The West Coast Regional Policy Statement (WCRPS), and (to the extent relevant) the West Coast Regional Coastal Environment Plan and proposed Regional Coastal Plan;
 - Poutini Ngāi Tahu Iwi Management Plans;
 - Poutini Ngāi Tahu – West Coast Regional Council Mana Whakahono ā Rohe.
16. At the time that the s32 Report was prepared, the National Policy Statement for Indigenous Biodiversity 2023 (NPSIB) was under development. It is now in force, and is addressed in the s42A Report.
17. The only matter I wish to raise regarding these assessments is that neither the s32 Report nor the s42A Report address NZCPS Policy 11 (Indigenous Biological Diversity). Although this Policy is most directly applicable to the TTPP ECO chapter, I consider that it is still relevant to the Coastal Environment provisions.

Coastal Environment and Mapping

18. The DG's submission sought some corrections to the mapping of the coastal environment, to accurately reflect the Coastal Marine Area (CMA) boundary and to include offshore islands. The s42A Report agrees with those changes, and I support that.
19. In terms of other elements of the mapping of the coastal environment and the Natural Character and Natural Landscape Overlays, the Councils have had the mapping reviewed through the s42A process and the evidence of Ms Gilbert. I defer to that evidence, and adopt it as the basis for my consideration of the plan provisions which apply to those mapped areas.

Policies

Policy CE-P2 – Preservation of natural character, natural features and landscapes

20. The DG's submission supported this provision as notified. However, the s42A Report recommends adding the term "from inappropriate subdivision, use and development" to reflect the wording in the NZCPS.
21. I am neutral on the intent of this change – although I do not oppose it, I consider that it is superfluous, as subdivision, use and development are implicit in the activities that the policy can apply to. However, as currently drafted, the placement of the additional text immediately before "that have" would inadvertently mean that the subsequent clauses a-e would apply to the activity, not the area.

22. I therefore recommend that the drafting is amended along the lines:

“Preserve from inappropriate subdivision, use and development the natural character, natural features and landscape qualities and values of areas within the coastal environment ~~from inappropriate subdivision, use and development~~ that have:

a. Significant indigenous biodiversity....”

Policy CE-P3 – Subdivision, use and development within overlays

23. The DG’s submission sought the addition of a new clause:

“adverse effects on areas of significant indigenous biodiversity, areas of outstanding natural character and outstanding natural landscapes and features are avoided;”

24. This is not addressed in the relevant section of the s42A Report, and the change is not adopted. This may reflect an expectation that the matters covered are already addressed in Policy CE-P2.
25. However, I do not consider that Policy CE-P2 fully addresses the issue, as it only applies where the applicable natural character / landscape / feature is already included in Schedules Five to Eight.
26. NZCPS Policies 11, 13 and 15 contain no such restriction – that is, they apply to the values themselves, regardless of whether they have been identified in a plan. I consider that the plan needs to give full effect to those requirements, and consider that the addition sought by the DG should be adopted. Alternatively, clauses a-e of Policy CE-P3 could perhaps be amended along the lines *“[value], including as described in Schedule [X]”*, to achieve the same end, although my preference would be to adopt the DG submission wording for the sake of completeness and clarity.
27. I recognise that such an addition would not change the activity status, where an activity is proposed in an area with one of the applicable values which is not yet described in the plan. However, it would ensure that when such values are identified in the course of a consent process, there is a clear policy in place to give effect to the NZCPS.
28. The DG’s submission point on this policy also sought the addition of references to the Effects Management Hierarchy. The S42A Report has not accepted this, and I do not pursue the point as I am aware there are practical difficulties with applying the Effects Management Hierarchy to natural character, natural features and landscape.

Policy CE-P8 – National Grid

29. The DG's submission sought to apply an Effects Management Hierarchy within this policy. The s42A Report has not accepted this, which I agree with, but has also made significant other changes to the policy.
30. The first of those changes is to provide for upgrade of the National Grid. However, there appears to be a drafting error. In the relevant assessment (paras 203-204) the Report refers to the WCRPS, which provides that minor upgrades shall be enabled, and major upgrades shall follow an avoid / remedy / mitigate approach. Based on that, at para 204 the Report recommends addition of the term 'minor upgrade'.
31. However, the consolidated recommendation at para 208, and in Appendix 1, drops the word 'minor' and would enable any upgrade. I consider that this was likely not intended, and enabling any upgrades regardless of scale would be inconsistent with the WCRPS and the NZCPS. I recommend that this be corrected:

“Enable the maintenance, repair, ~~and~~ operation and minor upgrade of the National Grid.”

32. The second change is to remove the sentence which addresses new development and upgrades, on the basis that the content is already addressed by Policy CE-P3. I consider that retaining that text would add clarity for plan users, but accept that Policy CE-P3 does address the same issue.

Rules

Rule CE-R4 – Buildings and Structures

33. The s42A Report has largely adopted the intent of the DG's submission, including a 25m setback for buildings from the CMA, except that the Report recommends exemptions from the setback for structures which are not buildings, and for network utility buildings within road reserve and parks facilities. I confirm that I am comfortable that those are reasonable exemptions.

Rules CE-R5 to R7 – Permitted activities in the High Natural Character overlay

34. The s42A Report has generally adopted the intent of the DG's submission, or made similar amendments based on other submissions. The proposed building setback from the CMA is 25m rather than the 30m sought by the DG, and I confirm that I am comfortable that is consistent with recommended changes for Rule CE-R4.

Rules CE-R8 to R11 - Permitted activities in the Outstanding Coastal Environment area

35. The s42A Report has generally adopted the intent of the DG's submission, or made similar amendments based on other submissions. While the recommendations do not entirely reflect the changes sought by the DG, I am comfortable with the overall approach proposed.

Rules CE-R12, R17 and R19 – Other rules managing Natural Hazard Mitigation Structures

36. The s42A Report has generally adopted the intent of the DG's submission, or made similar amendments based on other submissions. While the recommendations do not entirely reflect the changes sought by the DG, I am comfortable with the overall approach proposed.

Rules CE-R12, R17 and R19 – Other rules managing Natural Hazard Mitigation Structures

37. The s42A Report on this topic has also generally adopted the intent of the DG's submission, and I am comfortable with the overall approach proposed apart from one point.
38. In response to submissions, including from the DG, a new matter of discretion has been included in Rule CE-R12, being "...or any heritage items identified in Schedule 1". Limiting the consideration of heritage values to *scheduled* items may be appropriate when setting an activity status, where explicit certainty is required, but this is not the case for matters of discretion. It is entirely possible that previously unscheduled heritage items could be identified in the course of a consent process, and s6(f) requires their protection from inappropriate subdivision, use and development.
39. I therefore consider that the matter of discretion should apply to heritage values generally, not just scheduled items. This would allow an appropriate assessment through the consent process, and would be more consistent with how other matters of discretion in this rule have been expressed (and with the recommended approach to historic heritage in matters of discretion for Rules CE-R14, R15, RXX and R18):

"f. Effects on Poutini Ngāi Tahu values, Sites and Areas of Significance to Māori identified in Schedule Three, any archaeological sites, or any historic heritage items identified in Schedule One"

Rules CE-R15, R16, R18 and R21 – Rules in relation to Buildings, Structures and Earthworks

40. The s42A Report on this topic has also largely adopted the intent of the DG's submission. However, there appears to be a gap in the matters of discretion in terms of biodiversity values.
41. Rule CE-R12 for natural hazard mitigation structures includes four matters of discretion relevant to biodiversity and ecological values:
- “a. Effects on indigenous vegetation and habitats of indigenous fauna;*
- b. Effects on the threat status of land environments in category one or two of the Threatened Environments Classification;*
- c. Effects on ecological functioning and the life supporting capacity of air, water, soil and ecosystems;*
- d. Effects on the intrinsic values of ecosystems;”*
42. I consider that all four of these clauses are relevant to biological diversity, which as defined in the RMA extends beyond just vegetation and habitats, and includes variability, ecological complexity, species and ecosystems.
43. However, rules CE-R15 and CE-R18 only include the first two of these matters of discretion. I can see no reason why buildings, structures and earthworks could not affect ecological functioning, life supporting capacity, or intrinsic values of ecosystems. Nor can I see any reason why the potential range of effects of natural hazard mitigation structures would be materially different from the potential effects of other structures and earthworks. The DG's submission sought that these or similar values be added to these rules.
44. I therefore consider that the same suite of biodiversity matters of discretion should apply to all of these rules, i.e. add clauses c and d from Rule CE-R12 to the matters of discretion for rules CE-R15 and CE-R18.
45. This would improve certainty and consistency of the rules, and I consider it is also required to give effect to the Council's function under s31(1)(b)(iii) of the RMA for “*the maintenance of indigenous biological diversity*”, and to give effects to WCRPS Chapter 7 provisions relating to Ecosystems and Indigenous Biological Diversity.

Conclusions

46. I am broadly supportive of the approach taken in the TTPP, with the changes recommended in the s42A Report. The recommended changes have adopted many of the DG's requests, and generally give better effect to the WCRPS and the NZCPS. Where I suggest further changes, they are mostly in order to improve clarity or alignment with higher order documents.
47. The main areas where I consider that changes to the substance of provisions are required are to ensure that biodiversity and historic heritage values are adequately considered and addressed, in order to give effect to the RMA, the NZCPS and the WCRPS.



Murray Brass

DATED this 18th day of September 2024.

Appendix 1 – Summary of changes recommended based on the above evidence

This appendix summarises matters where I recommend changes to the wording of provisions where my opinion differs from what is proposed in the Section 42A Report. The table outlines the DG’s submission points and officer’s recommendations, and includes the text of my suggested changes. The table also provides references for the paragraphs of my evidence which address each point or recommendation.

Note: Where submission points from the DG’s submission are recommended for acceptance in the s 42A Report, and I concur with that recommendation, those submission points have not been included in this table.

Key to proposed changes to provisions

Text	Tracked Changes
Text from S42A Report Appendix 1	Normal text
Amendments proposed in my evidence	Strikethrough for deletions and <u>underline</u> for insertions

Sub Ref	D-G Submission	Recommendation in s42A Report	Provision wording as recommended by M Brass	Evidence para ref
CE-P2 (S602.144)	Retain as notified	Add the term “from inappropriate subdivision, use and development” as per NZCPS	<p>Amend the policy along the lines:</p> <p><i>“Preserve <u>from inappropriate subdivision, use and development</u> the natural character, natural features and landscape qualities and values of areas within the coastal environment from inappropriate subdivision, use and development that have:</i></p>	20-22

Sub Ref	D-G Submission	Recommendation in s42A Report	Provision wording as recommended by M Brass	Evidence para ref
			<i>a. Significant indigenous biodiversity....”</i>	
CE-P3 (S602.145)	Insert additional clause to reflect the requirements of NZCPS Policies 11, 13 and 15.	No change	Insert an additional clause along the lines: <i>“adverse effects on areas of significant indigenous biodiversity, areas of outstanding natural character and outstanding natural landscapes and features are avoided;”</i>	23-27
CE-P8	Amend to refer to the Effects Management Hierarchy	Other changes, which appear to include a drafting error.	Amend the policy as follows: <i>“Enable the maintenance, repair, and operation and <u>minor</u> upgrade of the National Grid.”</i>	29-31
CE-R12	Amend matters of discretion to include, inter alia, effects on historic heritage.	Additional matter of discretion is limited to scheduled heritage items.	Amend the policy as follows: <i>f. Effects on Poutini Ngāi Tahu values, Sites and Areas of Significance to Māori identified in Schedule Three, any archaeological sites, or any <u>historic heritage items identified in Schedule One</u>”</i>	37-39
CE-R15	Add further matters of discretion to cover biodiversity and ecological values.	Only partially adopted	Insert additional clauses consistent with Rule CE-R12: <i>x. Effects on ecological functioning and the life supporting capacity of air, water, soil and ecosystems;</i> <i>xx. Effects on the intrinsic values of ecosystems;”</i>	40-45

Sub Ref	D-G Submission	Recommendation in s42A Report	Provision wording as recommended by M Brass	Evidence para ref
CE-R18	Add further matters of discretion to cover biodiversity and ecological values.	Only partially adopted	<p>Insert additional clauses consistent with Rule CE-R12:</p> <p><i>x. Effects on ecological functioning and the life supporting capacity of air, water, soil and ecosystems;</i></p> <p><i>xx. Effects on the intrinsic values of ecosystems;"</i></p>	40-45