

**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

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**Evidence of Murray Brass on behalf of  
the Director-General of Conservation / *Tumuaki Ahurei***

**Hearing Topic: Natural Hazards**

**Submitter ID: S602, Further Submitter ID: FS122**

**19 September 2024**

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**Department of Conservation / *Te Papa Atawhai***  
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## **Introduction**

1. My full name is Murray John Brass.
2. I have been asked to provide planning evidence on the Natural Hazards 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:

- Assessment of alternatives, especially when hard protection structures are being considered;
  - Standards, activity status, and matters of discretion for natural hazard mitigation structures
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 3) 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 3 Hazards and Risks – Natural Hazards including Coastal Hazards;
  - The DG's submission dated 11 November 2022;
  - The DG's further submission dated 13 July 2023;
  - The s42A Officer's Report Natural Hazards;
  - The Natural Hazards evidence of Sharon Hornblow;
  - Variation 2 – Coastal Natural Hazards Mapping.

### **Statutory considerations**

15. The s32 Report identifies the overall planning context for this topic, including:
- the Resource Management Act 1991 (RMA), including the section 6(h) matter of national importance "the management of significant risks from natural hazards";

- the New Zealand Coastal Policy Statement 2010 (NZCPS), including Policy 3 (precautionary approach) and Policies 24-27 which specifically relate to natural hazards;
- Other national direction, including the National Environmental Standards for Plantation Forestry (now the National Environmental Standards for Commercial Forestry), and Water Conservation Orders for the Buller and Grey Rivers;
- The West Coast Regional Policy Statement (WCRPS), the proposed West Coast Regional Coastal Plan and the West Coast Regional Land and Water Plan;
- Poutini Ngāi Tahu Iwi Management Plans.

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, but was not addressed in the s42A Report. I consider that it is a relevant matter for this hearing as natural hazards, and responses to natural hazards, can significantly affect indigenous biodiversity.

### **Hazard Mapping**

17. The natural hazard provisions largely have their effect through overlays in the plan maps, which identify areas with particular natural hazards, and trigger applicable rules, policies and objectives. There are changes proposed to the coastal hazard overlay, through Variation 2 to the TTPP.
18. My evidence does not address the delineation of those overlays, as that is outside my expertise. I have worked on the basis that the overlays will ultimately reflect the scientific facts of the situation, and my evidence has focussed on what the planning response to those facts should be.

### **Alternatives to hard structures**

19. The DG's submission sought that policies and matters of discretion be amended to include consideration of alternatives generally, and specifically to require consideration of alternatives where hard protection structures are proposed.
20. The s42A Report has not recommended any changes, on the basis that the issue has been addressed in the general approach of the plan provisions.

21. I agree that consideration of alternatives is a general requirement of the RMA and should be part of any consent application under the recommended provisions. However, this does not mean that it should not be an explicit requirement where appropriate. I recommend below that assessment of alternatives is included as a matter of discretion for an amended Rule NH-R3, as the need to consider alternatives will be particularly relevant when assessing new hazard mitigation structures.

### Objectives

22. The DG's submission sought addition of a new Objective NH-O7:
- “Subdivision, use and development does not create or exacerbate adverse natural hazard effects on other people, property, infrastructure and the environment.”*
23. The s42A Report has rejected that, on the basis that the amended versions of NH-O1 and NH-O2 achieve the same outcome.
24. However, I consider that those objectives do not entirely cover what was sought. In particular, outside of the Severe Natural Hazard Overlays, under NH-O2 the requirement would only be to “minimise” risk (changed from the notified wording of “reduce”). My reading is that this could allow development that increases risk provided that, within the scope of what is available to the applicant, the increased risk is minimised.
25. This would fail to give effect to NZCPS Policy 25, in particular clauses (a) and (b) which explicitly require avoiding increasing risk in areas potentially affected by coastal natural hazards over at least the next 100 years. More generally, if as is stated in the s42A Report, objectives NH-O1 and NH-O2 are intended to achieve the outcome sought in the submission, then I consider that this intent should be made clearer.
26. The additional objective as proposed in the DG's submission would address that issue. Alternatively, given the changes already proposed to objectives NH-O1 and NH-O2, I suggest it would be possible to address this issue with an addition to NH-O2:
- Subdivision, use and development within all other Natural Hazard Overlays minimises and avoids increasing, the risk from natural hazards to people, buildings, and regionally significant infrastructure.*

27. This change would also provide better alignment from the objectives through to Policy NH-P3.b “*avoid increasing risk to people and buildings*”.

## Rules

### Rule NH-R2: Permitted activity for existing natural hazard mitigation structures

28. The DG’s submission sought changes to permitted activity standards in the notified versions of NH-R2 (repairs and maintenance) and NH-R3 (upgrade) to set absolute limits to the extent of works.
29. The s42A Report recommends combining those two rules into one rule (NH-R2) which provides for repairs, maintenance and upgrade.
30. Although I support the concept of combining these rules, the recommended version goes much further than simply combining their overall effect. It also extends the scope of the permitted activity beyond either of the original rules, by allowing dimension increases of more than 10%, where the works are undertaken by a Statutory Agency and they have provided an engineer’s report confirming that natural hazard risk to other properties or other hazard mitigation structures will not increase.
31. I am concerned that reliance on an engineer’s report is not sufficiently certain for a permitted activity which has no limits to its scale. Assessments of hazards and risks are technically complex, and in my experience different engineers can come to significantly different conclusions. They are not in the nature of a certification against an objective standard. They also do not consider effects on non-engineering matters, such as indigenous biodiversity or cultural values.
32. It also places the decision on permitted activity status in the hands of a third party outside the Council, with no ability for that decision to be tested or confirmed as would happen in a consent process.
33. I therefore consider that this provision is too uncertain to be appropriate as a permitted activity, and risks giving rise to significant adverse effects in conflict with the requirements of the NZCPS and WCRPS and the Council’s obligations under the RMA.
34. I therefore consider that this provision should be removed:

*“...3. The works are being undertaken by a Statutory Agency or their nominated contractor; or*

~~3.4. There is no change of more than 10% to the overall dimensions, orientation, height or length of the structure from the originally lawfully established structure; and~~

~~5. Where the change is greater than 10% an assessment undertaken by a suitably qualified Chartered Professional Engineer, confirming that the natural hazard mitigation structure does not increase the natural hazard risk to other properties or any other lawfully established natural hazard mitigation structure, is provided to the relevant District Council 10 working days prior to works commencing.”~~

35. In response to submissions which requested that these permitted activities be made less restrictive, I note that the above change is still less restrictive than the notified version, which required an engineer’s report when the dimension change was less than 10%.

Rule NH-R3: Permitted activity for new natural hazard mitigation structures (NH-R4 in the notified version)

36. The DG-s submission sought that this permitted activity become a restricted discretionary activity, reflecting the need to assess and manage effects through a consent process.
37. The s42A Report rejects this submission point, and has instead recommended a new requirement that works are undertaken by a Statutory Agency or their nominated contractor “to help ensure that any earthworks are appropriate to the scale of the works and the effects which will be managed” (para 5219). The s42A Report also justified this approach on the basis that Statutory Agencies “will be cognisant of the wider issues and the planning, design and construction phases will take into consideration the potential adverse effects on adjoining properties and the environment wider community” (para 520).
38. I have significant concerns with this proposed approach. If an agency or their nominated contractor is able to construct new works as a permitted activity, there is no automatic obligation on them to consider wider issues and not just their own direct responsibilities. Even where they do consider the wider effects of the works, there can be no certainty about what weighting they would give to impacts on the environment or other properties, which can be subject to organisational priorities and funding constraints. The rule would place no limits on the scale or effects of the works, so is highly permissive rather than precautionary.



39. I also note that there does not appear to be a definition of Statutory Agency in the plan, nor in the RMA itself. I presume that it is intended to cover the Councils, NZTA and perhaps DOC. But would it also cover, for example, Ministries of Health or Education who have their own property interests, or State-Owned Enterprises such as Transpower?
40. Overall, I conclude that this proposed rule is far too uncertain to be appropriate as a permitted activity. It would be highly likely to give rise to significant adverse effects on other properties and the wider environment, and would be in direct conflict with the requirements of the NZCPS and WCRPS and the Council's obligations under the RMA.
41. I agree with the DG's submission that this rule should appropriately be a restricted discretionary activity. I adopt the drafting proposed in the DG's submission in my Appendix 1, except that I have removed the requirement for a prior engineer's report as that would be a matter to be addressed in the substance of the application. However, given that this is a significant change from the notified and s42A versions, I remain open to refinement of that drafting.

### **Conclusions**

42. 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.
43. The main area where I consider that changes to the substance of provisions are required are that the rules relating to natural hazard mitigation structures need to be revised to allow effects to be adequately assessed and managed, and to give effect to the RMA, the NZCPS and the WCRPS.



Murray Brass

DATED this 19 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	<del>Strikethrough</del> 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
NH-O2 (S602.038)	Add new objective to ensure that subdivision, use and development do not create or exacerbate risk.	No change	<p><b>Amend Objective NH-O2 along the lines:</b></p> <p><i>“Subdivision, use and development within all other Natural Hazard Overlays minimises, <u>and avoids increasing</u>, the risk from natural hazards to people, buildings, and regionally significant infrastructure.</i></p> <p>:</p>	22-27

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>	
NH-R2	Apply limits to the footprint of works for both NH-R2 and NH-R3 as notified.	Combine NH-R2 and NH-R3 and remove limits.	<p><b>Amend this rule along the lines:</b></p> <p><del>“...3. The works are being undertaken by a Statutory Agency or their nominated contractor; or</del></p> <p><del>3.4. There is no change of more than 10% to the overall dimensions, orientation, height or length of the structure from the originally lawfully established structure; and</del></p> <p><del>5. Where the change is greater than 10% an assessment undertaken by a suitably qualified Chartered Professional Engineer, confirming that the natural hazard mitigation structure does not increase the natural hazard risk to other properties or any other lawfully established natural hazard mitigation structure, is provided to the relevant District Council 10 working days prior to works commencing.”</del></p>	28-35
NH-R3	Amend to a restricted discretionary activity	Retain, subject to works being undertaken by, or for, a Statutory Agency.	<p><b>Amend to a restricted discretionary activity along the lines:</b></p> <p><del>“Activity Status <i>Permitted Restricted Discretionary</i></del></p> <p><del>Where:</del></p> <p><del>1. The structure is located outside of any Overlay Chapter area identified in Schedules 1-8;</del></p> <p><del>2. Earthworks and land disturbance is the minimum required to undertake the activity;</del></p>	36-41

Sub Ref	D-G Submission	Recommendation in s42A Report	Provision wording as recommended by M Brass	Evidence para ref
			<p><del>2.3. There is no reduction in public access;</del></p> <p><del>4. It is accompanied by an assessment undertaken by a Chartered Professional Engineer confirming that the natural hazard mitigation structure does not increase the natural hazard risk to other properties or any other lawfully established natural hazard mitigation structure, and this assessment is provided to the relevant District Council 10 working days prior to works commencing.</del></p> <p><u>Discretion is restricted to:</u></p> <p><u>1. The effects of natural hazards on people and property;</u></p> <p><u>2. Considering whether the proposed earthworks and land disturbance is the minimum required to undertake the activity;</u></p> <p><u>3. Technological and engineering mitigation measures and other non-engineered options;</u></p> <p><u>4. Discouraging hard protection structures;</u></p> <p><u>5. The location and design of the natural hazard mitigation structure;</u></p> <p><u>6. Any freeboard requirements to be included;</u></p> <p><u>7. The management of vegetation or other natural features to mitigate natural hazard risk;</u></p> <p><u>8. The timing, location, scale and nature of any earthworks in relation to the natural hazard structure;</u></p> <p><u>9. Adverse effects on ecosystems and indigenous biodiversity;</u></p>	

Sub Ref	D-G Submission	Recommendation in s42A Report	Provision wording as recommended by M Brass	Evidence para ref
			<p><u>10. Any other adverse effects on the environment of the proposed natural hazard mitigation structure; and</u></p> <p><u>11. Alternative methods to avoid or mitigate the identified hazard risks.”</u></p>	