
Form 5: Submission on notified proposal for policy statement or plan, change or variation

Pursuant to clause 6 of the First Schedule of the Resource Management Act 1991

To: Buller, Grey and Westland District Councils (**the Council**)

Name of submitter: Director-General of Conservation (the **Director-General**)

1. This is a submission on Variation 2 to Te Tai Poutini Plan for the Buller, Grey and Westland Districts.
2. This submission relates to the Variation in its entirety.
3. I could not gain an advantage in trade competition through this submission.
4. The specific provisions of the proposal that my submission relates to, and the detailed decisions sought, are set out in **Attachment 1** to this submission.
5. I **seek** the following decision from the Council:
 - a. That the particular provisions of Te Tai Poutini Plan Variation 2 that I support, as identified in Attachments 1 and 2, are retained;
 - b. That the particular provisions of Te Tai Poutini Plan Variation 2 that I support with amendments, as identified in Attachments 1 and 2, are amended;
 - c. That the particular provisions of Te Tai Poutini Plan Variation 2 that I oppose, as identified in Attachments 1 and 2, are amended or deleted;
 - d. That the additions to Te Tai Poutini Plan Variation 2 sought in Attachments 1 and 2 are made; and
 - e. Further or alternative relief to like effect to that sought in 5.a-d. above.
6. The decisions sought in this submission are required to ensure that the Te Tai Poutini Plan:
 - a. Promotes the sustainable management of natural and physical resources as required by Part 2 of the Resource Management Act (Act);

- b. Recognises and provides for the matters of national importance in section 6 of the Act and has particular regard to the other matters in section 7 of the Act;
 - c. Gives effect to the New Zealand Coastal Policy Statement (NZCPS);
 - d. Gives effect to the Regional Policy Statement for the West Coast; and
 - e. The changes sought are necessary, appropriate and sound resource management practice.
7. I lodged a submission on the proposed Te Tai o Poutini Plan (submitter ID S602) which also addressed the provisions now covered by the Variation. I lodged expert evidence and was represented at the hearing on those provisions. That submission and evidence remain relevant to the Variation.
8. The submission points in Attachment 1 reflect my original submission points on the relevant provisions from the proposed Plan.
9. The expert evidence in Attachment 2 is potentially relevant where it modifies the relief sought in my original submission, and so is included for completeness. However, the evidence responded to changes to the provisions as recommended in the Natural Hazards topic s42A Report, which have not been carried through into the Variation. In the absence of a s42A Report and amended provisions, my original submission points stand.
10. I wish to be heard in support of my submission, and if others make a similar submission, I will consider presenting a joint case with them at the hearing.

OA Kilgour

Owen Kilgour
Director Operations
Western South Island Region
Te Papa Atawhai - Department of Conservation

Acting pursuant to delegated authority on behalf of the Director-General of Conservation

Date: 17/12/2024

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011

Address for service:

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ATTACHMENT 1:

**VARIATION 2 TO THE PROPOSED TE TAI POUTINI PLAN
SUBMISSION BY THE DIRECTOR-GENERAL OF CONSERVATION**

The proposed provisions that my submission relates to are set out in the table below. My submissions are set out immediately following these headings, together with the reason and the decision I seek from the Council.

The decision that has been requested may suggest new or revised wording for identified sections of the proposed plan. This wording is intended to be helpful but alternative wording of like effect may be equally acceptable. Text quoted from the Te Tai o Poutini Plan is shown in *Italics*. The wording of relief sought shows new text as underlined and deleted text as ~~strikethrough~~.

Unless specified in each-submission point, my reasons for supporting are that the provisions are consistent with the purposes of the Act.

PLAN PROVISION	POSITION	REASON	RELIEF SOUGHT
Natural Hazards - Ngā Mōreareatanga Aotūroa			
All NH provisions	Oppose all provisions which no not appropriately consider alternatives	Amend the policies, and matters of discretion to include the consideration of alternatives, and to require the consideration of alternatives for hard protection structures, so that alternatives to minimise or avoid coastal hazard effects are appropriately considered through the consent process in accordance with the Act and NZCPS.	Amend the policies, and matters of discretion to include the consideration of alternatives, and to require the consideration of alternatives for hard protection structures.
NH Objectives	Support with amendments	Support the natural hazard policies and introduce an additional policy which requires	Add new objective:

		that subdivision, use and development does not create or exacerbate natural hazards so that these provisions give effect to the NZCPS and sections 31(b) and 106 of the Act.	<u>NH-07 Subdivision, use and development does not create or exacerbate adverse natural hazard effects on other people, property, infrastructure and the environment.</u>
NH-P4	Support with amendments	Amend Policy NH-P4 to ensure that the effects of changes to severe weather events are considered when assessing the effects of climate change.	Amend Policy NH-P4: <i>Natural hazard assessment, managed retreat locations and resource consent applications will consider the impacts of climate change.</i> <i>In particular the following matters will be considered:</i> <ul style="list-style-type: none"> a. <i>Change in sea level;</i> b. <i>Altering of coastal processes;</i> c. <i>Increased inundation of low lying areas;</i> d. <i>Changes in local temperatures;</i> e. <i>Changes in rainfall patterns; and</i> f. <i>Increase in cyclonic storms; <u>and</u></i> g. <u><i>Changes to the magnitude, frequency and duration of severe weather events.</i></u>
NH-P10	Support with amendments	Strengthen Policy NH-P10 to ensure that development of sensitive activities in these hazard overlays avoids significant natural hazard risk.	Amend Policy NH-P10: <i>Avoid development of sensitive activities within the Coastal Severe Hazard and Flood Severe Hazard overlays unless it can be demonstrated that:</i> <ul style="list-style-type: none"> a. <i>The activity has an operational and functional need to locate within the hazard area; and</i> b. <u><i>There is no significant risks from natural hazards; and</i></u>

			<p>c. <i>That the activity incorporates mitigation of risk to life, property and the environment, and there is significant public or environmental benefit in doing so.</i></p>
NH - P11	Support with amendments	Strengthen Policy NH-P11 to ensure that development in these hazard overlays avoids significant natural hazard risk to adjoining property and people.	<p>Amend Policy NH-P11:</p> <p><i>Allow development in the Land Instability Alert, Coastal Alert and Flood Susceptibility overlays where:</i></p> <p>a. <i>Mitigation measures avoid risk to life and minimise risk to property and the environment; and</i></p> <p>b. <i>The risk to adjacent properties, activities and people <u>is not significant, and is not increased as a result of the activity proceeding.</u></i></p>
NH - P12	Support with amendments	Strengthen Policy NH-P12 to discourage hard protection in accordance with the NZCPS and to protect building and structures from the adverse effects of natural hazards.	<p>Amend Policy NH-P12:</p> <p><i>When assessing the effects of activities in natural hazard overlays consider:</i></p> <p>a. <i>The effects of natural hazards on people, property and the environment;</i></p> <p>b. <i>technological and engineering mitigation measures and other non-engineered options;</i></p> <p>c. <i><u>Discouraging hard protection structures and avoiding hard protection structures in the Coastal Environment;</u></i></p> <p>d. <i>The location and design of proposed sites, buildings, vehicle access, earthworks and infrastructure in relation to natural hazard risk;</i></p> <p>e. <i>The clearance or retention of vegetation or other natural features to mitigate natural hazard risk;</i></p> <p>f. <i>The timing, location, scale and nature of any earthworks in relation to natural hazard risk;</i></p> <p>g. <i>The potential for the proposal to exacerbate natural hazard risk, including transferring risk to any other site;</i></p> <p>h. <i>The functional or operational need to locate in these areas; and</i></p>

			<p>i. Any significant adverse effects on the environment of any proposed mitigation measures.</p>
NH - R2 Repairs, Maintenance and Operation of any Existing Natural Hazard Mitigation Structure		Amend Rule NH- R2 so that the earthworks rule is less ambiguous and is measurable.	<p>Amend Rule NH- R2:</p> <p><i>Activity Status Permitted</i></p> <p><i>Where:</i></p> <p><i>The structure has been lawfully established;</i> <i>Earthworks and land disturbance is the minimum required to undertake the activity <u>contained wholly within the footprint of the mitigation structure;</u></i> <i>There is no change to the design, texture, or form of the structure;</i> <i>The materials used are the same as the original, or most significant material, or the closest equivalent provided that only cleanfill is used where fill materials are part of the structure; and</i> <i>There is no reduction in public access....</i></p>
NH- R3 Upgrades to Existing Natural Hazard Mitigation Structures	Support with amendments	Amend Rule NH- R3 so that the earthworks rule is less ambiguous and is measurable, and enables an appropriate level of earthworks to be undertaken as a permitted activity, given this will relate to areas subject to natural hazards where the release of silt and sediment is a higher risk during natural hazard events.	<p>Amend Rule NH- R3:</p> <p><i>Activity Status Permitted</i></p> <p><i>Where:</i></p> <ol style="list-style-type: none"> <i>1. The structure has been lawfully established;</i> <i>2. Earthworks and land disturbance is the minimum required to undertake the activity <u>wholly contained within the footprint of the structure, or is otherwise no more than 100m³ and 200m² in area in any 12 month period;</u></i> <i>3. There is no reduction in public access;</i> <i>4. There is no change to more than 10% to the overall dimensions, orientation or outline of structure from that originally consented structure; and</i>

			<p>5. <i>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....</i></p>
NEW Rule	Support with amendments	Introduce a new rule to enable the demolition and removal of buildings and structures as a permitted activity	<p>Insert new Rule:</p> <p><u><i>NH – RX Demolition and Removal of a Natural Hazard Mitigation Structure within all zones and Overlay Areas</i></u></p> <p><u><i>Activity Status Permitted</i></u></p> <p><u><i>Advice Note: Where structures are identified as Historic Heritage Items in Schedule One, then the Historic Heritage Rules apply</i></u></p> <p><u><i>Activity status where compliance not achieved: N/A</i></u></p>
NH - R4 New Natural Hazard Mitigation Structure	Oppose	Oppose the permitted activity status for new Natural Hazard Mitigation Structures as these structures can have adverse environmental effects that should be assessed through a resource consent.	<p>Amend Rule NH- R4:</p> <p><i>Activity Status Permitted Restricted Discretionary</i></p> <p><i>Where:</i></p> <ol style="list-style-type: none"> <i>1. The structure is located outside of any Overlay Chapter area identified in Schedules 1-8;</i> <i>2. Earthworks and land disturbance is the minimum required to undertake the activity;</i> <i>3. There is no reduction in public access;</i> <i>4. It is accompanied by an assessment undertaken by a Chartered Professional Engineer confirming that the natural hazard mitigation</i>

			<p>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...</p> <p><u>Discretion is restricted to:</u></p> <ol style="list-style-type: none"> 1. <u>The effects of natural hazards on people and property;</u> 2. <u>Considering whether the proposed earthworks and land disturbance is the minimum required to undertake the activity;</u> 3. <u>Technological and engineering mitigation measures and other non-engineered options;</u> 4. <u>Discouraging hard protection structures;</u> 5. <u>The location and design of the natural hazard mitigation structure;</u> 6. <u>Any freeboard requirements to be included;</u> 7. <u>The management of vegetation or other natural features to mitigate natural hazard risk;</u> 8. <u>The timing, location, scale and nature of any earthworks in relation to the natural hazard structure;</u> 9. <u>Adverse effects on ecosystems and indigenous biodiversity;</u> 10. <u>Any other adverse effects on the environment of the proposed natural hazard mitigation structure; and</u> 11. <u>Alternative methods to avoid or mitigate the identified hazard risks....</u>
<p>NH - R5 Repairs, Maintenance, Operation, Upgrade of Existing Natural Hazard Mitigation Structures and</p>	<p>Support with amendments</p>	<p>Support Rule NH-R5, but amend the rule title as a consequential amendment to the changes proposed to Rule NH-R4.</p>	<p>Amend Rule NH-R5:</p> <p><i>NH - R5 Repairs, Maintenance, Operation, Upgrade of Existing Natural Hazard Mitigation Structures and New Natural Hazard Mitigation Structures not meeting Permitted or Restricted Discretionary Activity Standards</i></p>

New Natural Hazard Mitigation Structures not meeting Permitted Activity Standards			
Rules for the Coastal Severe and Coastal Alert Overlays			
NH - R38 Repairs and Maintenance to Existing Buildings in the Coastal Severe and Coastal Alert Overlays Activity Status Permitted	Oppose	Delete 2. so that Rule NH-R38 applies to repairs and maintenance only, and add additional rules so that reconstruction is a restricted discretionary or non-complying activity. This enables adverse effects of reconstruction to be appropriately assessed to give effect to the NZCPS.	<p>Amend Rule NHR38:</p> <p><i>Where:</i></p> <ol style="list-style-type: none"> 1. <i>For repairs and maintenance there is no increase in the area of the building;</i> 2. For reconstruction of a building lawfully established at the time of notification of the Plan where: <ol style="list-style-type: none"> a. The building has been destroyed or substantially damaged due to fire, natural disaster or Act of God; b. The destroyed/damaged building is reconstructed within 5 years in the Coastal Alert overlay and 2 years in the Coastal Severe overlay; c. The reconstructed building is similar in character, intensity and scale to the building it replaces. <p>Activity status where compliance not achieved: NA</p> <p>Add new Restricted Discretionary Rule and Non-Complying Rules:</p> <p><u>NH-RXX Reconstruction of a lawfully established building</u></p> <p><u>For reconstruction of a building lawfully established at the time of notification of the Plan where:</u></p> <ol style="list-style-type: none"> 1. <u>The building has been destroyed or substantially damaged due to fire, natural disaster or Act of God;</u>

			<p>2. <u>The destroyed/damaged building is reconstructed within 5 years in the Coastal Alert overlay and 2 years in the Coastal Severe overlay;</u></p> <p>3. <u>The reconstructed building is similar in character, intensity and scale to the building it replaces.</u></p> <p><u>Discretion is restricted to:</u></p> <p>a. <u>The effects of natural hazards on people and property;</u></p> <p>b. <u>The location and design of proposed buildings, vehicle access, earthworks and infrastructure in relation to natural hazard risk;</u></p> <p>c. <u>Any freeboard requirements to be included;</u></p> <p>d. <u>The management of vegetation or other natural features to mitigate natural hazard risk;</u></p> <p>e. <u>The timing, location, scale and nature of any earthworks in relation to natural hazard risk;</u></p> <p>f. <u>The potential for the proposal to exacerbate natural hazard risk, including transferring risk to any other site and adjacent properties;</u></p> <p>g. <u>Any adverse effects on the environment of any proposed natural hazard mitigation measures; and</u></p> <p>h. <u>Alternative methods to avoid or mitigate the identified hazard risks.</u></p> <p><u>Activity status where compliance not achieved: Discretionary</u></p> <p><u>NH-RXX Reconstruction of a lawfully established building not meeting Restricted Activity Standards</u></p> <p><u>Activity Status Discretionary</u></p> <p><u>Activity status where compliance not achieved: N/A</u></p>
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Hokitika Coastal Overlay

Mapping of the Hokitika Flood and Coastal Erosion Protection Scheme	Support	Seek that the Hokitika Coastal Overlay is mapped so it is clear where Rule NH-R38 applies.	Map the Hokitika Flood and Coastal Erosion Protection Scheme
NH - R50 New Buildings in the Hokitika Coastal Overlay	Oppose	Delete 2. in Rule NH-R50 so that areas that are not protected by the scheme require a resource consent so that adverse effects can be appropriately assessed, and add new restricted discretionary or non-complying activity rules. This enables adverse	<p>Amend Rule NH - R50:</p> <p><i>Activity Status Permitted</i></p> <p><i>Where:</i></p> <ol style="list-style-type: none"> <i>1. All new buildings are protected by the Hokitika Flood and Coastal Erosion Protection Scheme from a 100-year Annual Recurrence Interval (ARI) plus 1m sea level rise coastal event, as certified by the West Coast Regional Council.</i> <i>2. Where new buildings are not protected by the Hokitika Flood and Coastal Erosion Protection Scheme from a 100-year Annual Recurrence Interval (ARI) plus 1m sea level rise coastal event:</i> <ol style="list-style-type: none"> <i>a. Buildings for sensitive activities have a finished floor level of 500mm above the 100-year ARI plus 1m sea level rise coastal event;</i> <i>b. Commercial and industrial buildings have a finished floor level of 300mm above the 100-year ARI plus 1m sea level rise coastal event.</i> <p><i>Activity status where compliance not achieved: Discretionary</i></p> <p>Add new Restricted Discretionary Rule and Non-Complying Rules:</p> <p><u><i>NH-RXX New Buildings in the Hokitika Coastal Overlay</i></u></p>

			<p>3. <u>Where new buildings are not protected by the Hokitika Flood and Coastal Erosion Protection Scheme from a 100-year Annual Recurrence Interval (ARI) plus 1m sea level rise coastal event:</u></p> <ol style="list-style-type: none"> a. <u>Buildings for sensitive activities have a finished floor level of 500mm above the 100-year ARI plus 1m sea level rise coastal event;</u> b. <u>Commercial and industrial buildings have a finished floor level of 300mm above the 100-year ARI plus 1m sea level rise coastal event.</u> <p><u>Discretion is restricted to:</u></p> <ol style="list-style-type: none"> 4. <u>An assessment and consideration of coastal erosion risk;</u> 5. <u>The effects of natural hazards on people and property;</u> 6. <u>The location and design of proposed buildings, vehicle access, earthworks and infrastructure in relation to natural hazard risk;</u> 7. <u>The management of vegetation or other natural features to mitigate natural hazard risk;</u> 8. <u>The timing, location, scale and nature of any earthworks in relation to natural hazard risk;</u> 9. <u>The potential for the proposal to exacerbate natural hazard risk, including transferring risk to any other site and adjacent properties;</u> 10. <u>Adverse effects on ecosystems and indigenous biodiversity;</u> 11. <u>Any other adverse effects on the environment of any proposed natural hazard mitigation measures; and</u> 12. <u>Alternative methods to avoid or mitigate the identified hazard risks.</u> <p><u>Activity status where compliance not achieved: Discretionary</u></p>
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			<p><u>NH-RXX New Buildings in the Hokitika Coastal Overlay not meeting Restricted Activity Standards</u></p> <p><u>Activity Status Discretionary</u></p> <p><u>Activity status where compliance not achieved: N/A</u></p>
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ATTACHMENT 2: PREVIOUS HEARING EVIDENCE

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: Natural Hazards
Submitter ID: S602, Further Submitter ID: FS122
19 September 2024**

Department of Conservation / *Te Papa Atawhai*
Senior Solicitor *Rōia Matua*: M Pemberton
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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	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
NH-O2 (S602.038)	Add new objective to ensure that subdivision, use and development do not create or exacerbate risk.	No change	<p>Amend Objective NH-O2 along the lines:</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>Amend this rule along the lines:</p> <p>“...3. The works are being undertaken by a Statutory Agency or their nominated contractor; or</p> <p>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</p> <p>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.”</p>	28-35
NH-R3	Amend to a restricted discretionary activity	Retain, subject to works being undertaken by, or for, a Statutory Agency.	<p>Amend to a restricted discretionary activity along the lines:</p> <p>“Activity Status Permitted Restricted Discretionary</p> <p>Where:</p> <p>1. The structure is located outside of any Overlay Chapter area identified in Schedules 1-8;</p> <p>2. Earthworks and land disturbance is the minimum required to undertake the activity;</p>	36-41

Sub Ref	D-G Submission	Recommendation in s42A Report	Provision wording as recommended by M Brass	Evidence para ref
			<p>2.3. There is no reduction in public access;</p> <p>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.</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>	