

BEFORE THE OTAGO REGIONAL COUNCIL

**AT DUNEDIN
KI ŌTEPOTI**

IN THE MATTER of the Resource Management Act 1991
AND
IN THE MATTER of the proposed Otago Regional Policy Statement
2021 (excluding those parts determined to be a
Freshwater Planning Instrument)

**Opening Legal Submissions on the Non-Freshwater Parts of the
Proposed Otago Regional Policy Statement on behalf of
the Director-General of Conservation / *Tumuaki Ahurei*
dated 25 January 2023**

Department of Conservation Te Papa Atawhai
RMA Shared Services
Private Bag 4715
Christchurch 8140
Solicitor Rōia: Pene Williams
Phone Waea: 027 408 3324
Email Īmēra: pwilliams@doc.govt.nz

MAY IT PLEASE THE PANEL

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

Introduction – Acknowledgement of Kāi Tahu Whānui as tangata whenua

1. The Director-General is a submitter¹ and further submitter² on the proposed Otago Regional Policy Statement (pORPS or proposed RPS).
2. The Director-General acknowledges Kāi Tahu (including Waitaha and Ngāti Mamoe)³ as tangata whenua of the Otago Region and that the Otago Regional Council (Council) prepared the pORPS in partnership with Kāi Tahu.

Relevance of the Otago CMS – the Department has significant interests in Otago

3. The Department of Conservation Te Papa Atawhai (the Department) administers many areas of lands and waters in the Otago region. To support its administration and management of the areas the Department has the Otago Conservation Management Strategy 2016 (Otago CMS) prepared under the Conservation Act 1987.⁴
4. I consider the Otago CMS 2016 is a strategy which the Council shall have regard to in preparing and, to the extent the Otago CMS content has a bearing on the resource management issues of the region: section 61(2)(a)(i) of the Resource Management Act 1991 (RMA).
5. The Otago CMS has ten places which are identified for the purposes of integrated conservation management as requiring specific management direction. This includes the Marine/ Te Tai o Arai te Uru Place and the Freshwater/ Wai Māori Place which provide an overview for their management. I draw to the Hearing Panel's attention the Department

¹ Submission 137 dated 3 September 2021

² Further Submission 1373 dated 12 November 2021

³ Collectively being Te Rūnanga o Ngāi Tahu, Te Rūnanga o Moeraki, Kāti Huirapa ki Puketeraki, Te Rūnanga o Ōtākou, Hokonui Rūnaka and also Waihōpai Rūnaka, Te Rūnanga Ōraka Aparima and Te Rūnanga o Awarua

⁴ The Otago CMS may be viewed at: [Otago Conservation Management Strategy \(doc.govt.nz\)](https://doc.govt.nz). The Mount Aspiring National Park Management Plan is more specific to the Park and has less relevance to the resource management issues of the region.

administers many offshore islands and stacks in the Marine/ Te Tai o Arai te Uru Place which have high biodiversity values.⁵ This is in addition to any outcome of the South East Marine Protection process discussed below.

The Director-General has a particular interest in freshwater fisheries

6. The Department has functions which include:
 - Preserving as far as practicable all indigenous freshwater fisheries and to protect recreational freshwater fisheries and freshwater fish habitats,
 - Advocating for the conservation of natural and historic resources generally.⁶
7. The Director-General's powers include that she shall advocate the conservation of aquatic life and freshwater fisheries generally.⁷
8. One way for the Director-General to demonstrate she is meeting this direction is for her to submit on the pORPS and appear before the Hearing Panel and call evidence. The Director-General also has other related roles, including to maintain fish passage under the Freshwater Fisheries Regulations 1983.⁸

Effect of the High Court's Declaration excluding non-freshwater aspects

9. In accordance with the High Court's declaration⁹, the freshwater planning instrument (FPI) parts of the notified pORPS are not being considered in this hearing. This means the specific parts of the Director-General's submission and further submission relating to the FPI parts are not before the Panel for its consideration.
10. I adopt the opening submissions for the Council¹⁰ at paragraphs [21] – [33], including acknowledging that having dual processes are not ideal and this puts the intended integrated management of natural resources for the region at risk, at [30].

⁵ Supra Otago CMS Part 2, sections 2.9 and 2.10

⁶ Conservation Act 1987, Section 6 paragraphs (ab) and (b).

⁷ Conservation Act 1987, Section 53(3)(d)

⁸ Now deemed to have been made under sections 48A and 48AA of the Conservation Act 1987.

⁹ *Otago Regional Council v Royal Forest and Bird Society of New Zealand* [2022] NZHC 1777, Nation J

¹⁰ Opening Submissions for the Otago Regional Council on the Non-Freshwater parts of the Proposed Regional Policy Statement 2021, dated 23 January 2023.

11. The Director-General submits there will be connections and overlaps between the two processes and they should “speak” to each other. I agree one way to ensure this occurs is the Council’s suggestion that this process be adjourned until the Freshwater Panel completes its process and makes its recommendations to the Council [33].
12. The Freshwater Panel is not limited to making recommendations only within the scope of submissions made on the freshwater parts of the pORPS.¹¹ The Freshwater Panel will have limited ability to make recommendations beyond the parts of the pORPS before it, and I consider this is only in relation to matters which intersect with freshwater.
13. I do note the Freshwater Panel will have the advantage of these hearings already being underway and evidence presented to this Hearing Panel, even if no recommendations have been made by this Panel.
14. In common with others, there are aspects of the Director-General’s submissions relating more broadly to freshwater in the Otago Region which are relevant to this part of the process. The Director-General is calling Dr Marine Richarson to give expert freshwater evidence in support of her submissions later in this hearing.¹²

The Director-General supports the general intent of the pORPS

15. The Director-General supports the general intent of the proposed RPS and the wish to integrate management of natural resources in the Otago Region. While this process may have been prompted by deficiencies in freshwater management, the proposed RPS looks to all resources and how best they can be managed holistically.
16. The Director-General considers the Integrated Management section is of fundamental importance to the proposed RPS. A primary concern for the Director-General is the lack of integration for biodiversity in the pORPS with these aspects addressed across in several chapters.

¹¹ Resource Management Act 1991, Schedule 1, clause 49(2)(a).

¹² Expert evidence of Dr Marine Richarson for Director-General of Conservation dated 23 November 2022

17. Another issue is the language of the proposed RPS with inconsistencies across the document. As an example of one, in her submission the Director-General looked to integrate management of biodiversity across the terrestrial (land), freshwater and coastal marine ecology realms, including by having significance criteria which relate to each other. The expert evidence for the Director-General looks to address this concern. I will speak to this further at the relevant hearing.

Coastal environment – the South East Marine Protection process

18. It has been suggested there is a lack of information about the coastal marine ecology realm.
19. The Director-General disagrees with this, and points to the work underlying the South East Marine Protection (SEMP)¹³ process, which began in 2014. The SEMP process is ongoing and, following a further round of public consultation in 2020, the Minister of Conservation and the Minister of Oceans and Fisheries are to make final decisions in relation to proposed marine protected areas.¹⁴
20. It is anticipated the SEMP process will be concluded this year with the creation of a new suite of protected marine areas in the Coastal Otago marine area, and beyond.¹⁵ This is another potential matter which this Hearing Panel will need to be aware of.

The relevance of the exposure draft of the National Policy Statement for Indigenous Biodiversity.

21. I refer to the Council's opening legal submissions on the proposed National Policy Statement for Indigenous Biodiversity (draft NPSIB)¹⁶. I agree that until the draft NPSIB is gazetted, the Council is not required to act in accordance with it. However, I disagree it is of no relevance and the Panel would be

¹³ This covers the south-eastern coast of the South Island from Timaru to Waipapa Point in Southland and includes all of Otago's coastal marine environment.

¹⁴ The publicly consulted recommendations propose 6 new marine reserves, 5 new type 2 marine protected areas and a Kelp protected area.

¹⁵ [Consultation on south-eastern South Island marine protected areas: 2020 consultations \(doc.govt.nz\)](#)

¹⁶ Supra note 10, Opening Submissions at [17] – 18]

wrong to recommend amendments to the proposed RPS based on the draft NPSIB.

22. I note the purpose of releasing the exposure draft NPSIB was:

... to test the workability of the NPSIB provisions with key groups. It incorporate[s] feedback from the public consultation and hui [on the previous draft NPSIB] held in 2019 and 2020.¹⁷

23. I submit this advice indicates the process for the draft NPSIB is well underway and its policy direction is settled, clear, and is consistent with the NPSFM. I consider the Panel would be mistaken to not consider the exposure draft NPSIB.

24. I note in the draft NPSIB Timing provisions there is an expectation local authorities will give effect to the draft NPSIB as soon as reasonably practicable.¹⁸ The draft NPSIB also provides that where a proposed RPS may already give effect to it, changes to wording and terminology merely for consistency will not be required, although the Council must consider the proposed RPS does give effect to the draft NPSIB.¹⁹

25. I submit there is value in the Hearing Panel considering the draft NPSIB and, within the scope of submissions including that of the Director-General, considering whether it could adopt and recommend wording which would potentially give effect to this document.

Final comments

26. These submissions are made in opening and intended to draw general matters to the attention of the Hearing Panel at the start of the proposed RPS hearing. Counsel will present further legal submissions for the Director-General on specific topics as evidence is called and as appropriate.

¹⁷ See MfE website at: <https://environment.govt.nz/acts-and-regulations/national-policy-statements/proposed-nps-indigenous-biodiversity/> - Update and next steps section

¹⁸ Draft NPSIB clause 4.1(1) - [NPSIB-exposure-draft.pdf \(environment.govt.nz\)](#)

¹⁹ Supra at clause 4.4

27. Today the Director-General's planning witness, Mr Murray Brass is present and able to answer any questions the Hearing Panel may have in respect of his evidence on the Introduction and General Themes of the proposed RPS.



Pene Williams

Counsel Rōia for the Director-General