BEFORE THE HEARING PANEL

IN THE MATTER	of the Resource Management Act 1991
AND	The Proposed Waitaki District Plan Energy, Infrastructure, Stormwater, Transport, Earthworks, Designations

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Legal Submissions for the
Director-General of Conservation / *Tumuaki Ahurei* – Submitter No: 194
Re Hearing Topic: Energy, Infrastructure, Stormwater, Transport, Earthworks, Designations

Dated 17 September 2026

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May it please the Hearing Panel (Panel)

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

Introduction

1. The DG submitted and further submitted[1] on the proposed District Plan (PDP) first notified by Waitaki District Council (Council) in March 2025. The notified PDP was a full district plan review, the first since the District Plan (ODP) was made fully operative in 2013.[2]

2. The DG's submission on the PDP was comprehensive – consistent with this being a full district plan review. For reasons discussed below, the PDP is now only proceeding in part. Hearing Stream 2 deals with the Energy, Infrastructure, Stormwater, Transport, Earthworks, Designations Chapters. The DG's submission is relevant to these parts of the PDP.

3. While the DG did submit on parts of the PDP included in Hearing Stream 1, no specific submission points for the DG remained following the mandatory partial withdrawal of the PDP. Accordingly, this Hearing Stream 2 is the first opportunity for the DG to appear before the Panel and comment on the constrained PDP process which Council and submitters now face.

4. The DG is calling evidence from Murray Brass – Senior RMA Planner with the Department of Conservation (DOC) – in support of his submissions on this part of the PDP.[3]

Implications of the 'plan stop' and limited PDP exemption

5. After PDP notification, the Resource Management Act 1991 (RMA) was amended from August 2025 with the insertion of subpart 5 into Part 5 of the RMA – the 'plan stop' provisions.[4] The effect of these provisions was to stop planning processes such

[1] Submission for Director-General of Conservation dated 15 May 2025, submission no 194; further submission for Director-General of Conservation dated 18 May 2026.
[2] The District Plan was notified in 1996, with portions of the District Plan becoming operative from various dates from 2004 until fully operative from 2013.
[3] Evidence of Murray Brass for the Director-General of Conservation – Hearing Stream 2 – dated 14 September 2026.
[4] Subpart 5B (ss80O to 80Y) was inserted, as from 21 August 2025, by s26 Resource Management (Consenting and Other System Changes) Amendment Act 2025 (2025 No 41)

as the PDP, unless the Council sought and was granted an exemption for parts of the PDP which 'qualified' under s80W RMA.

6. The Council duly sought and was granted an exemption under s80W for the continuation of qualifying parts of the PDP by the Minister.[5] The summary of the Minister's decision states:

The Proposed Waitaki District Plan will enable more flexible and responsive planning for residential, business, and infrastructure development across a range of zones, including those supporting major employment sectors and unique values that are important for tourism. The exemption would also facilitate updates to designations and infrastructure chapters to better meet current and future needs.

7. The effect of the plan stop in combination with the partial exemption is that now only parts of the PDP are still proceeding, with the balance PDP formally withdrawn by the Council as required by s80Q RMA.

8. This has implications for how submissions, including those of the DG, are dealt with. Submissions which specifically related to the withdrawn parts of the PDP must also now fall away.[6] However, I submit that general submissions, especially those relating to the workability of the PDP, may now assume greater importance being a means by which the Council could better integrate the remnant parts of the PDP with the ODP to make a coherent and workable district plan for Waitaki.

New and amended national direction has contributed to the difficulty

9. In December 2025 the government gazetted new National Policy Statements (NPS) for Infrastructure and Natural Hazards, as well as making amendments to several other national direction instruments. Relevant to this hearing are the:

   a. National Policy for Infrastructure 2025

   b. National Policy Statement for Renewable Electricity Generation, amended December 2025

   c. National Policy Statement for Electricity Networks, amended December 2025

[5] Refer Summary of decisions on plan stop applications | Ministry for the Environment, Waitaki PDP exemption approved in full under ss80W(2)(a), 80W(2)(b) and 80W(2)(h) on 2 December 2025.
[6] Legal submissions of counsel on behalf of Waitaki District Council – Hearing Stream 1 – 11 August 2026, at 9.

10. The relevant timing clauses in these NPSs require the Council to implement them from their respective commencement dates.[7] Council is also required to give effect to these national policy statements in its district plan: s75(3) RMA. There is no flexibility to allow the Council to implement "as soon as practicable" as there might be with other NPS, noting that, because these NPSs require implementation from their commencement dates, s55(2D)(a) RMA does not apply.[8]

11. Still, scope issues do arise. I submit the Council may implement these national policy statements only where there is scope within the notified PDP and submissions, and no further.

12. To summarise this then leaves the Council with:

- what started as a full district plan review,
- now becoming a partial district plan review,
- having to implement as best it can new and amended national direction,
- and find a way to integrate all of this with existing ODP provisions to meet the purpose of a district plan to:
- "*… assist the [Council] to carry out [its] functions in order to achieve the purpose of the Act"* – s72 RMA.

13. Unfortunately, this constrained process will likely result in a combined ODP and PDP which may provide only limited assistance to the Council in carrying out some of its functions in the Waitaki District, including its function to maintain indigenous biological diversity, to achieve the purpose of the RMA.

14. For these reasons, I submit Council must look to opportunities arising from submissions (including submissions such as the DG seeking further or alternative relief to like effect) to ensure the combined ODP and PDP is in accordance with the provisions of Part 2 RMA: s74(1)(b). This includes to recognise and provide for the matters of national importance listed in s6 of the RMA and have particular regard to the other matters in s7 of the RMA; and to promote the sustainable management of natural and physical resources, s5(1) RMA.

[7] NPS-I clause 3.1, NPS-REG clause 3.1, NPS-EN clause 3.1, and following *Southern Cross Healthcare Ltd v Eden Epsom Residential Protection Society Inc* [2023] NZHC 948 at [87] and [88].
[8] See, e.g. clause 4.1(1) of the National Policy Statement for Freshwater Management 2020, as amended December 2025

What remains of the PDP may be insufficient to achieve the purpose of a district plan

15. The s42A reports for Hearing Stream 2 topics rely on parts of the PDP which have now been withdrawn.[9] It is also unclear what parts of the ODP will remain, as a detailed review of what provisions might still be operative and what might be replaced by the PDP has yet to be undertaken. This causes difficulty for both submitters and the Panel.

16. For example, Mr Brass discusses the existing ODP standards for earthworks within Otago skink or grand skink habitat.[10] These standards were implemented in the ODP to recognise and provide for significant habitats of indigenous fauna by protecting these as a matter of national importance: s6(c) RMA.

17. However, the retained Earthworks part of the PDP does not address this, as it relied on the ECO chapter and overlays which have now been withdrawn.

18. Accordingly, as discussed by Mr Brass in his evidence, one option the Council may have to consider is whether the remaining parts of the PDP do give effect to Part 2 RMA and the relevant NPSs (and other national and regional direction) or not. Where the PDP would result in significant conflict with the RMA and higher order documents, it may be better to decline the PDP provisions and retain the relevant ODP provisions.[11]

19. Alternatively, and consistent with *King Salmon*[12], the Council may want to go back up the planning hierarchy to consider the RMA, all relevant national direction, all regional planning direction (including the now fully operative Otago Regional Policy Statement) and consider whether it has scope to make amendments to the combined PDP / ODP.

Giving effect to the relevant NPSs may assist Council to achieve the district plan purpose

20. Mr Brass recommends changes to some policies in the ENG chapter and INF chapter[13] in accordance with the relevant NPSs to include consideration of adverse

[9] Evidence of Mr Brass, supra, at 23-25
[10] Evidence of Murray Brass, supra at 31, while due to significant conservation efforts the populations of these lizard species are increasing, they remain classified as Threatened – Nationally Increasing: refer Conservation status of reptiles in Aotearoa New Zealand, 2025 at section 2.2
[11] Evidence of Murray Brass, supra, at 22
[12] *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 38
[13] Supra at 49, 54 and 71

effects on values and environments provided for in section 6 RMA to be managed in accordance with relevant national direction, regional policy statements and regional plans.

21. The new NPS-Infrastructure states that where infrastructure activities may have adverse effects on environments and values provided for by section 6 RMA, decision makers must read that policy alongside other relevant national and regional direction etc.[14] Similarly, the amended NPS-REG and amended NPS-EN contemplate managing adverse effects for s6 environments and values – noting location constraints may apply to those activities.[15]

22. Ordinarily, the DG would not seek reference to Part 2 or specific RMA provisions in a District Plan, as the plan should be in accordance with Part 2 and go further to implement it having regard to the local issues that arise in that District. However, given the constrained process we now find ourselves in, I submit this may be the best option.

23. I submit the DG's submission reference to Part 2 and the need to recognise and provide for matters of national importance in s6 provides scope (if that is needed) for Council to consider the changes sought.

The Council must apply the law as it currently stands

24. I agree with the submissions of Mr Garbett for the Council that the law must be applied as it currently stands. I acknowledge it is expected the Planning Bill and Natural Environment Bill will be enacted shortly and parts of those Bills will come into force and need to be considered by the Council where they are relevant to the PDP process.

25. The DG anticipates presenting to the Panel in future hearing streams, and I will address the legal issues which arise for the PDP from this <u>further</u> legislative change at that time.



Pene Williams
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[14] NPS-I, policy 9(2).
[15] NPS-REG, policy F(2), NPS-EN, Policy 8(1)(c)