



## Introduction

1. My full name is Murray John Brass.
2. I have been asked by the Director-General of Conservation / *Tumuaki Ahurei* ('the D-G') to provide planning evidence on the proposed Otago Regional Policy Statement 2021 ('pORPS 2021').
3. I have already provided evidence (dated 23 November 2022) on the 'Non-Freshwater parts' of the pORPS 2021, and on the Freshwater Planning Instrument parts (dated 28 June 2023, referred to here as EiC).
4. This evidence specifically addresses the implications of the recent gazettal of the National Policy Statement for Indigenous Biodiversity 2023 (NPSIB).
5. My qualification and experience are as set out in paras 5-9 of my EiC.

## Code of Conduct

6. I confirm that I have read the code of conduct for expert witnesses as contained in the Chief Freshwater Commissioner and Freshwater Hearings Panels Practice and Procedures Note 2020. 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.
7. 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.
8. 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.

## Material Considered

9. In addition to the material considered for the EiC, in preparing this supplementary evidence I have also considered:
  - The National Policy Statement for Indigenous Biodiversity 2023

- The supplementary statement of evidence of Felicity Boyd on FPI – Implications of the NPSIB dated 11 August 2023.
- The Memorandum for the Otago Regional Council on the implications of the National Policy Statement for Indigenous Biodiversity on freshwater issues dated 11 August 2023.

## Overview of evidence

10. This supplementary evidence responds to the supplementary evidence of Ms Boyd. In general I consider that her supplementary evidence provides an accurate assessment of the implications of the NPSIB, and appropriate recommendations. I therefore have only addressed areas where I have something different or additional to bring before the Panel:

- Application of the NPSIB
- Highly mobile fauna
- Natural inland wetlands vs natural wetlands
- Effects management hierarchies

## Application of the NPSIB

11. I agree with the ORC Memorandum that ORC must give effect to the NPSIB in preparation of the pORPS 2021, and that there is scope in this hearing to do so.
12. I also agree with both the ORC Memorandum and Ms Boyd's supplementary evidence that the scope of the NPSIB (mainly terrestrial biodiversity) means that it has limited implications for freshwater.
13. However, I consider that the NPSIB does have further relevance beyond that outlined in the Memorandum and supplementary evidence. In my earlier evidence I have addressed the need for integrated management and a ki uta ki tai approach [see paras 46-52 of my non-FPI evidence, and paras 3 and 20 of my EIC].
14. My view is that the NPSIB should not be viewed in a narrow way which limits its relevance to only where specific individual provisions apply. Rather, I consider that it

should be viewed as part of a suite of national direction to be given effect in an integrated fashion across the pORPS 2021.

15. This is particularly the case for an RPS, which must operate effectively across the terrestrial, freshwater, marine and air domains. For example, as per the National Planning Standards, the ECO chapter applies in all domains, and similarly for many other chapters and provisions of the pORPS 2021. This means that provisions in those chapters (e.g. biodiversity significance criteria, offsetting and compensation principles) need to work as effectively in the freshwater and marine environments, and across domain boundaries, as they do in the terrestrial environment.
16. As another example, the NPSIB sets out an approach to mapping and describing highly mobile fauna areas – as Ms Boyd points out, in freshwater environments this overlaps with the threatened species requirements of the National Policy Statement for Freshwater Management 2020 (NPSFM), but I note that the same approach can also be used for mobile species other than those specified, and in all domains.
17. I would therefore encourage the Panel to take a broad view of implementing the NPSIB. In particular, where there is a specific requirement which applies to terrestrial biodiversity under the NPSIB, but the RPS also has to deal with the same issue across boundaries or in the freshwater and marine environments, I would encourage the Panel to take a consistent and integrated approach across all of the domains.

## Highly mobile fauna

18. I understand Ms Boyd to consider that the provisions of the NPSIB relating to specified highly mobile fauna are relevant to the freshwater elements of the RPS, but not able to be implemented in the current process (and in the case of mapping, may be implemented through the Land and Water Regional Plan (LWRP) rather than RPS).
19. I agree with that assessment, in terms of fully giving effect to these provisions of the NPSIB.
20. I have also reviewed the existing FPI provisions of the pORPS 2021, in terms of their consistency with the requirements for specified highly mobile fauna. Based on that, I am comfortable that the existing provisions in themselves (as per the June 2023 s42A report) are consistent with the NPSIB highly mobile fauna provisions – that is, while additional provisions will be required, I do not consider that any of the existing

provisions require amendment. This reflects the fact that the provisions are drafted to apply to indigenous species generally, so work for highly mobile species just as much as for other species. I note that this equally applies to the changes to the FPI provisions recommended in my EIC.

## **Natural inland wetlands vs natural wetlands**

21. Ms Boyd has highlighted a potential 'gap', whereby some wetlands with important values, or potential for restoration, will be excluded from the definition of 'natural inland wetland' under the latest version of the NPSFM. She includes as an example the Upper Taiari Scroll Plan, where preliminary work in a small area indicated that 50% of previously mapped wetland area would now be excluded.
22. Mr McKinlay's evidence to this hearing addresses ephemeral wetlands, wetland complexes including the Waipōuri / Waihola wetland, Upper Taiari complex and Lake Tuakitoto, and also addresses braided river and lake complexes in the Upper Lakes rohe (McKinlay FPI evidence paras 35-43 and 59-62). His evidence to the non-freshwater pORPS hearing (as provided to this Panel – see paras 52, 63-77 and 88) gave further information on the nature of wetlands in Otago, and their values.
23. I consider that Mr McKinlay's evidence clearly shows both the complex hydrology, and the biodiversity importance, of those wetlands. Significant parts of most or all of those wetlands would not meet the restricted definition of 'natural inland wetland' in the latest version of the NPSFM, where they contain or grade into pasture. I am also aware that the same applies to many coastal wetlands in Otago (e.g. Otago Peninsula inlets).
24. My understanding from Mr McKinlay's evidence is that the biodiversity values of these wetlands do not stop at the point where the proportion of exotic pasture species reaches 50%, as per the NPSFM definition. Rather, his evidence demonstrates that (by the very nature of 'complexes') the values occur across the range, from wet to dry and indigenous to exotic, and that accordingly such wetlands need to be managed consistently across definitional boundaries.
25. I also note Ms Boyd's evidence that although some wetland values would still be captured by the definition due to the presence of threatened species identified under clause 3.8 of the NPSFM, in practice this will not apply until those species have been identified, and in many cases (e.g. cryptic vegetation) this will rely on seasonally

constrained expert assessments. The result being that wetlands which contain both pasture species and threatened species may well remain unprotected under the 'natural inland wetland' definition for some time.

26. I therefore agree with Ms Boyd's assessment of the gap, and her conclusion that there are environmental and cultural benefits in ensuring that wetlands which fall outside the definition of 'natural inland wetland' are protected from activities that would irreversibly damage them.
27. In fact, I consider that it is more than a case of there being benefits to providing protection. I consider that such protection is required, to give effect to Te Mana o te Wai and Policies 5 and 9 of the NPSFM for the elements of wetlands where the NPSFM applies, and to give effect to the NPSIB Objective 2.1(a) ("*to maintain indigenous biodiversity...*") and related provisions for the elements of wetlands where the NPSIB applies.
28. I therefore support Ms Boyd's proposed revision to the definition of 'natural wetland', and related provisions, as set out in para 81 and Appendix 1 of her supplementary evidence. I also confirm that I agree with her assessment (paras 78-79) that the gap should be addressed in the pORPS 2021 rather than being left to the LWRP, given that the RPS sets direction for the LWRP.
29. I have made a brief overall review of relevant FPI provisions, and am comfortable with the amendments to related provisions recommended by Ms Boyd. However, I recognise that this is a complex matter and there has been limited time to undertake review, so I remain open to other changes if appropriate.
30. I have also reviewed the changes to the FPI provisions recommended in my EiC, and do not see any issues that would arise from the proposed changes to wetland provisions.

## **Effects management hierarchies**

31. Ms Boyd has highlighted differences between the effects management hierarchies under the NPSFM and the NPSIB. She recommends that the hierarchy set out in the NPSIB should apply to aquatic indigenous biodiversity, and the NPSFM hierarchy apply to all other effects in freshwater.

32. I have reviewed this, and am comfortable that this is a valid approach – the NPSIB hierarchy is more stringent than the NPSFM hierarchy, so for aquatic indigenous biodiversity the requirements of the NPSFM will still be met by applying the NPSIB hierarchy. For other aquatic values (e.g. river extent, natural character) the NPSFM hierarchy will still apply.
33. In terms of justifying the increased stringency under s32/s32AA, Ms Boyd refers to the evidence of Dr Richardson and Dr Dunn. I confirm that I agree with her assessment – Otago clearly has aquatic indigenous biodiversity values which set it apart, and which warrant an approach to the hierarchy which is as effective as it can be in maintaining and protecting those values. I agree with Ms Boyd that the hierarchy in the NPSIB is more appropriate for this, being both more stringent and more directly addressed at indigenous biodiversity.
34. I note that Ms Boyd suggests in the alternative that the current drafting of the hierarchy in the ECO chapter of the pORPS 2021 could be used, as it is yet uncertain whether separate evidence to be filed on the non-FPI implications of the NPSIB will recommend replacing the ECO chapter drafting with the NPSIB drafting. I agree with her that that would be appropriate if the current ECO chapter drafting is retained, but my preference would be for the NPSIB drafting to be used in the interests of consistency and effectiveness.



Murray Brass

DATED this 18th day of August 2023