

**IN THE ENVIRONMENT COURT  
AT CHRISTCHURCH**

**ENV-2024-CHC-38**

**I TE KŌTI TAIAO O AOTEAROA  
KI ŌTAUTAHI**

**IN THE MATTER**

of an appeal under clause 14(1) of the First  
Schedule of the Resource Management Act  
1991

**BETWEEN**

**New Zealand Transport Agency Waka Kotahi**  
Appellant

**AND**

**Otago Regional Council**  
Respondent

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**NOTICE OF WISH OF DIRECTOR-GENERAL OF CONSERVATION TUMUAKI AHUREI  
TO BE A PARTY TO APPEAL**

**7 June 2024**

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**Director-General of Conservation Tumuaki Ahurei**

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## NOTICE OF WISH TO BE A PARTY TO PROCEEDINGS

**To:**

The Registrar  
Environment Court  
Christchurch

1. The Director-General of Conservation Tumuaki Ahurei (D-G) wishes to be a party to the following proceedings:  
**New Zealand Transport Agency Waka Kotahi v Otago Regional Council  
ENV-2024-CHC-38**
2. The D-G received notice of this appeal on 16 May 2023.
3. The D-G made a submission on the matters included in the proposed Regional Policy Statement (RPS). The D-G has an interest in this proceeding that is greater than that of the general public.
4. The D-G is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991 (RMA).
5. The D-G is interested in all of the appeal.
6. In relation to the general reasons for the appeal, the D-G says the Respondent's decisions on the proposed RPS do appropriately promote sustainable management of natural and physical resources of the Otago region, including providing for the social, economic and cultural well-being of communities as required by Part 2 RMA.
7. The D-G opposes the relief sought in the appeal for the reasons given in the table in Schedule 1.
8. The D-G agrees to participate in mediation or other alternative dispute resolution of the proceedings.



Pene Williams  
Counsel for the Director-General of Conservation Tumuaki Ahurei  
Dated 7 June 2024

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**Schedule 1 – Position and reasons on specific provisions appealed**

| Provision appealed  | Relief sought  | Support/<br>Oppose   | Reasons   |
|---|--|----------------------|---|
| <p><b>CE-P5 – Coastal indigenous biodiversity</b></p>   | <p><u>Amend</u> policy by deleting the criteria relating to SNAs and toaka, and revert back to the notified wording which is consistent with New Zealand Coastal Policy Statement 2010;</p> <p>Protect indigenous <i>biodiversity</i> in the coastal environment by:</p> <p>...</p> <p>(2) identifying and avoiding significant adverse <i>effects</i> and avoiding, remedying or mitigating other adverse <i>effects</i> on the following ecosystems, vegetation types and areas:</p> <p>...</p> <p><del>(h) significant natural areas identified in accordance with APP2 that are not included in (1) above, and</del></p> <p><del>(i) indigenous species and ecosystems identified as taoka in accordance with ECO-M3 that are not included in (1) above.</del></p> | <p><b>Oppose</b></p> | <p>The additional subparagraphs link to APP2 – Criteria for identifying areas that qualify as indigenous natural areas (SNAs) and areas that contain taoka.</p> <p>Deletion of these subparagraphs would mean these significant natural areas and taoka would not have the same level of protection from significant adverse effects as other values listed in clause (1), potentially in breach of Part 2 RMA.</p> |
| <p><b>EIT-INF-P13 – Locating and managing effects of infrastructure, nationally significant infrastructure and regionally significant</b></p> | <p><u>Amend</u> policy EIT-INF-P13 by replacing all references to “wetlands” with “natural inland wetlands” so as to be consistent with NPS-FM;</p>  | <p><b>Oppose</b></p> | <p>The Council’s decision recognises that the definition of “natural inland wetlands” in the National Policy Statement for Freshwater Management does not capture all wetlands that have significant values in the Otago region, e.g. parts of the Taiari scroll plain. These areas should also be protected from inappropriate subdivision, use and development in accordance with Part 2 RMA.</p>                 |

| Provision appealed   | Relief sought   | Support/<br>Oppose | Reasons  |
|--|---|--------------------|--|
| <i>infrastructure outside the coastal environment</i>  |   |                    |  |
| <b>Integrated Management Chapter: IM-O3 – Sustainable impact</b>   | <u>Amend</u> the wording of IM-O3 as follows:<br><i>Otago’s communities <del>provide for their social, economic, and cultural well-being is provided for in ways that support sustainable management of natural and physical resources or restore environmental integrity, form, functioning and resilience,</del> so that the life supporting capacities of air, water, soil, and ecosystems are sustainably managed for future generations.</i> | <b>Oppose</b>      | The purpose of the RPS is to provide specificity for the region rather than to restate the RMA. The wording of the proposed relief would merely repeat Part 2 without providing any direction of what is appropriate for the Otago Region.   |
| <b>Integrated Management Chapter: NEW Objective IM-O5 – Regionally and Nationally Significant Infrastructure</b> | <u>Insert</u> new objective as follows:<br><i>IM-O5 – Regionally and nationally significant infrastructure</i><br><i>The social, economic and cultural well-being of Otago’s communities is enabled through the appropriate protection, use and development of regionally and nationally significant infrastructure.</i>  | <b>Oppose</b>      | The proposed insertion of the new objective in the IM chapter is unnecessary, as this is sufficiently addressed by IM-O3’s provision for the social, economic and cultural needs of Otago’s communities. Infrastructure is appropriately recognised in the Energy Infrastructure and Transport Chapter of the RPS. |
| <b>APP2 – Criteria for identifying areas that qualify as indigenous natural areas (SNAs)</b>                     | <u>Amend</u> APP2 as follows:<br><i>D Ecological context criterion</i><br>...<br><i>Attributes of ecological context</i><br>...<br><i>(3) An area that qualifies as an SNA under this criterion has at least one of the following attributes:</i><br>...<br><i>(e) an area that is important for a population of indigenous fauna during a critical part of their</i>   | <b>Oppose</b>      | The Council’s decision adds paragraph (e) to criteria in the National Policy Statement for Indigenous Biodiversity (NPSIB), Appendix 1. This paragraph is needed to ensure protection of areas of significant habitat of indigenous fauna in accordance with Part 2 RMA.   |

| Provision appealed                                     | Relief sought   | Support/<br>Oppose | Reasons  |
|--|---|--------------------|--|
|  | <del>lifecycle, either seasonally or permanently, e.g. for feeding, resting, nesting, breeding, spawning or refuges from predation.</del>   |                    |  |
| <b>APP3 – Principles for biodiversity offsetting</b>   | <p>Amend APP3 as follows:</p> <p>(2) <b>When biodiversity offsetting is not appropriate:</b> Biodiversity offsets are not appropriate in situations where <i>indigenous biodiversity</i> values cannot be offset to achieve a net gain. Examples of an offset not being appropriate include where:</p> <p>...</p> <p>(d) the loss from an <i>ecological district</i> of any individuals of Threatened taxa, other than kanuka (<i>Kunzea robusta</i> and <i>Kunzea serotina</i>), under the New Zealand Threat Classification System (Townsend et al, 2008); or</p> <p>(e) the likely worsening of the conservation status of any <i>indigenous biodiversity</i> as listed under the New Zealand Threat Classification System (Townsend et al, 2008); or</p> <p>(f) the removal or loss of health and <i>resilience</i> of a naturally uncommon ecosystem type that is associated with <i>indigenous vegetation or habitat</i> of indigenous fauna.</p> | <b>Oppose</b>      | <p>The opening wording of the provision states these are examples where an offset is not appropriate, restating the wording of the relevant provision in NPSIB Appendix 3. The additional paragraphs elaborate on the NPSIB criteria and provide further examples where a biodiversity offset may not be appropriate in the Otago region, in accordance with Part 2 RMA.</p> |
| <b>APP4 – Principles for biodiversity compensation</b> | Amend APP4 by deleting words as follows:  | <b>Oppose</b>      | <p>The opening wording of the provision states these are examples where compensation is not appropriate, restating the wording of the relevant provision in NPSIB Appendix 4.</p>  |

| Provision appealed | Relief sought  | Support/<br>Oppose | Reasons  |
|--------------------|--|--------------------|--|
|                    | <p>(2) When <i>biodiversity compensation</i> is not appropriate: <i>Biodiversity compensation</i> is not appropriate where <i>indigenous biodiversity</i> values are not able to be compensated for. Examples of <i>biodiversity compensation</i> not being appropriate include where:</p> <p>...</p> <p>(d) the loss from an ecological district of Threatened taxa, other than kanuka (<i>Kunzea robusta</i> and <i>Kunzea serotina</i>), under the New Zealand Threat Classification System (Townsend et al, 2008); or,</p> <p>(e) removal or loss of viability of the <i>habitat</i> of a Threatened <i>indigenous species</i> of fauna or flora under the New Zealand Threat Classification System (Townsend et al, 2008),</p> <p>(f) removal or loss of health and <i>resilience</i> of a naturally uncommon ecosystem type that is associated with <i>indigenous vegetation</i> or <i>habitat</i> of indigenous fauna,</p> <p>(g) the likely worsening of the conservation status of any Threatened or At Risk <i>indigenous biodiversity</i> listed under the New Zealand Threat Classification System (Townsend et al, 2008).</p> |                    | <p>The additional paragraphs elaborate on the NPSIB criteria and provide further examples where biodiversity compensation may not be appropriate in the Otago region, in accordance with Part 2 RMA.</p> |