

**Before the Hearing Panel**

**IN THE MATTER OF**      the Resource Management Act 1991

**AND**

**IN THE MATTER OF**      the proposed Waitomo District Plan

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**Legal Submissions  
For the Director-General of Conservation**

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## LEGAL SUBMISSIONS BEFORE THE COMMISSIONERS

### Introduction

- 1 The Director-General commends the Waitomo District Council (“the Council”) for the comprehensive mapping of significant natural areas undertaken to date.
- 2 These legal submissions address the most pertinent part of the statutory framework from the Director-General’s perspective relating to indigenous biodiversity, specifically:
  - i) The Resource Management Act 1991 (the RMA);
  - ii) The New Zealand Coastal Policy Statement (NZCPS);
  - iii) The National Policy Statement for Indigenous Biodiversity (the NPSIB); and
  - iv) The Resource Management (Freshwater and Other matters) Amendment Act 2024 (the Amendment Act).
- 3 The Director-General acknowledges that the Council and s 42 A report writer’s recommendations grapple with the need to give effect to the NPSIB as soon as practicable within the current context. The Director-General is largely supportive of the proposed provisions in the Proposed Waitomo District Plan (PWDP) as modified by the reporting officer’s recommendations and the joint witness statement from 12 November 2024.<sup>1</sup>
- 4 As such, counsel and witnesses are here today to assist with any questions the Commissioners may have.

### Evidence filed by the Director-General

- 19 The Director General filed expert evidence from two witnesses:
  - a Mr Andrew Townsend; an Ecologist, who has prepared evidence on the indigenous vegetation and the ecosystems in the Waitomo District; and
  - b Mr Jesse Gooding, an RMA planner, who has prepared evidence on planning matters relating to the natural environment provisions in the proposed plan.

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<sup>1</sup> [waitomo-district-council-proposed-district-plan-review-jws-ecosystems-ib-plg-12-nov-2024.pdf](#)

## **Statutory Framework Relating to Indigenous Biodiversity**

20 There are statutory imperatives in the RMA and its subordinate instruments, governing the maintenance, management and protection of indigenous vegetation.

### *The RMA*

21 Under the RMA:

- i) Section 6(c) requires councils to recognise and provide for the protection of significant indigenous flora and significant habitats of indigenous fauna as a matter of national importance.
- ii) District councils are required to prepare and change their district plans in accordance with their functions under section 31. Under section 31(1)(b)(iii), the council's function is the maintenance of indigenous biological diversity.

22 The PWDP is required to give effect to national policy statements and the regional policy statement, pursuant to section 75(3) of the RMA. "Give effect to" means "implement".<sup>2</sup>

### *New Zealand Coastal Policy Statement*

23 The New Zealand Coastal Policy Statement (NZCPS) seeks to protect representative or significant natural ecosystems and sites of biological importance and maintain the diversity of New Zealand's indigenous coastal flora and fauna.<sup>3</sup> Policy 11 implements that objective for indigenous biodiversity in the coastal environment by requiring adverse effects on specified values be avoided, and significant adverse effects on other values to be avoided.<sup>4</sup> The changes proposed in Mr Gooding's evidence relating to

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<sup>2</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, at 77

<sup>3</sup> NZCPS Objective 1.

<sup>4</sup> NZCPS Policy 11.

ECO-P11<sup>5</sup> and as agreed in the JWS<sup>6</sup> implement these requirements (noting Mr Gooding's evidence is that a consequential change is needed to CE-P3).<sup>7</sup>

*National Policy Statement for Indigenous Biodiversity (NPSIB)*

- 24 The objective of the NPSIB is to maintain indigenous biodiversity so that there is at least no overall loss of indigenous biodiversity.<sup>8</sup> To achieve that objective, the NPSIB provides direction to Councils to protect, maintain and restore indigenous biodiversity.
- 25 In terms of implementation, Clause 4.1 of the NPSIB requires that local authorities must: *give effect to this National Policy Statement as soon as reasonably practicable*. What this obligation requires will be context specific.
- 26 The PWDP was prepared before the NPSIB took effect.<sup>9</sup> However, the NPSIB was anticipated with proposals and an exposure draft being available at the time of submissions.
- 27 It is not contested that the PWDP does not give full effect to NPSIB, nor is it required to at this stage. Mr Gooding gives evidence that there are implementation gaps, such as in relation to NPSIB clause 3.10(2) which requires 5 types of adverse effects to be avoided.<sup>10</sup>
- 28 Council, the s 42A report writer and then experts through conferencing have carefully considered what is reasonably practicable to implement through the current process. The Director-General supports this approach, albeit acknowledging the outcome in the JWS represents a degree of compromise from the Director-General's submissions.

*Resource Management (Freshwater and Other Matters Amendment Act 2024) Amendment Act 2024*

- 29 The Resource Management (Freshwater and Other Matters) Bill was introduced to Parliament earlier this year. This Bill proposed changes to the National Policy Statement

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<sup>5</sup> [Gooding Evidence](#) paras 87 – 94.

<sup>6</sup> JWS para 3.8.

<sup>7</sup> [Gooding Evidence](#) para 94.

<sup>8</sup> NPSIB, Clause 2.1.

<sup>9</sup> The PWDP was notified on 20 October 2022. The NPSIB was gazetted on 4 August 2023

<sup>10</sup> [Gooding Evidence](#) paras 30, 33, 65.

for Indigenous Biodiversity 2023 (NPSIB), particularly in relation in relation to the identification of Significant Natural Areas (SNAs).

- 30 The Bill was enacted on 24 October 2024 and is the Resource Management (Freshwater and Other Matters) Amendment Act 2024 (Amendment Act).
- 31 Section 78 of the Amendment Act suspends the timing requirements to identify SNAs under the NPSIB<sup>11</sup>.
- 32 The timing changes do not affect any function or requirement under other provisions of the RMA relating to areas of significant vegetation or indigenous biological diversity (e.g. the obligations in section 6 of the RMA), or any obligations of local authorities and other decision-makers to give effect to provisions in policy statements and plans relating to indigenous biological diversity.<sup>12</sup>
- 33 Because the Amendment Act took effect after the PWDP was notified, it does not impact the PWDP, including Council's obligations to implement the NPSIB.<sup>13</sup>

### **Conclusion**

- 34 The Director-General is seeking the amendments set out in the JWS and as generally supported in the evidence of Mr Gooding.
- 35 Counsel and witnesses are happy to take any questions from the panel on these matters.

Katherine Anton and Dannielle O'Connor

**Counsel for the Director-General of Conservation**

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<sup>11</sup> RMA, s 78(2).

<sup>12</sup> RMA, s 78(4).

<sup>13</sup> RMA s 78(6).