

**BEFORE THE HEARING PANEL APPOINTED BY OTAGO REGIONAL
COUNCIL**

Under the **RESOURCE MANAGEMENT ACT 1991**

In the matter of **THE PROPOSED OTAGO REGIONAL POLICY
STATEMENT 2021 (EXCLUDING PROVISIONS
RENOTIFIED AS PART OF A FRESHWATER PLANNING
INSTRUMENT)**

**OPENING LEGAL SUBMISSIONS ON BEHALF OF CONTACT ENERGY
LIMITED IN RESPECT OF THE SRMR, IM AND AIR CHAPTERS**

3 February 2023

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MAY IT PLEASE THE HEARING PANEL

INTRODUCTION

1. These opening legal submissions are filed on behalf of Contact Energy Limited (**Contact**) in respect of the following chapters of the proposed Otago Regional Policy Statement (**proposed RPS**):¹
 - (a) Part 2 (SRMR) – significant resource management issues for the region (**SRMR Chapter**);
 - (b) Part 2 (IM) – integrated management (**IM Chapter**); and
 - (c) Part 3 (AIR) – air (**AIR Chapter**).
2. Contact made a submission and further submission on several other chapters within the proposed RPS.² Contact will provide separate legal submissions in respect of those chapters at the appropriate time. However, as these are the first legal submissions on behalf of Contact to the Panel, these submissions will also explain Contact's interest in the proposed RPS more generally.
3. The structure of these submissions is therefore as follows:
 - (a) Statutory framework;
 - (b) Overview of Contact's position on the proposed RPS;
 - (c) Changes sought to the SRMR Chapter;
 - (d) Changes sought to the IM Chapter; and
 - (e) Changes sought to the AIR Chapter.

STATUTORY FRAMEWORK

4. Counsel broadly agrees with and adopts the statutory framework outlined in opening by Otago Regional Council.³
5. In particular, the following points are agreed:

¹ In these submissions, we refer to the 31 October 2022 version of the proposed RPS unless otherwise noted.

² Contact's original submission is submission 0138 (**Contact's submission**); and further submission is FS00318 (**Contact's further submission**). Contact has made submissions and/or further submissions on the CE (coastal environment); (LF (land and freshwater); ECO (ecosystems and indigenous biodiversity); EIT (energy, infrastructure and transport); HAZ (hazards and risks); HCV (historical and cultural values); NFL (natural features and landscapes) chapters; and UFD (urban form and development).

³ Opening submissions for the Otago Regional Council on the non-freshwater parts of the proposed Regional Policy Statement 2021, 23 January 2023, paragraphs 2 – 20.

- (a) The RPS must "give effect to" national policy statements, and the national planning standards.⁴ Of particular relevance to Contact's submission is the National Policy Statement for Renewable Electricity Generation 2011 (**NPSREG**), which is addressed in more detail below when explaining Contact's overall position.
- (b) The emissions reduction plan and national adaptation plan are relevant considerations for the Panel (again, this is outlined in more detail below).⁵
- (c) The National Policy Statement for Indigenous Biodiversity: Exposure Draft (**NPSIB Exposure Draft**) is not yet government policy and has not been gazetted as a national policy statement. As such, it has no legal weight.⁶ It is accepted that the NPSIB Exposure Draft may be relevant to the Panel's consideration to the extent that relevant experts consider it to represent industry best practice in the assessment and management of effects on indigenous biodiversity. But the panel must consider, in the usual manner, the evidence it receives as to what is best practice and cannot simply rely on the wording of the NPSIB Exposure Draft where there are other expert opinions. This matter will be developed further in future hearings.

Relevance of resource management reform

- 6. Similarly to the NPSIB Exposure Draft, a number of submitters have made reference to the Natural and Built Environment Bill (**NBE Bill**) and Spatial Planning Bill (**SP Bill**), which are currently before the House.
- 7. To state the obvious, these Bills are not yet enacted and have no legal weight. Further, it is impossible at the current time to predict the final form of the legislation.
- 8. Given that context, the Panel must consider the proposed RPS in accordance with the provisions of the RMA; and not attempt to pre-empt the provisions of the new legislation. If the enactment of the NBE Bill requires the RPS to be amended, that will need to be considered through a future

⁴ Opening submissions for the Otago Regional Council on the non-freshwater parts of the proposed Regional Policy Statement 2021, 23 January 2023, paragraph 9.

⁵ Opening submissions for the Otago Regional Council on the non-freshwater parts of the proposed Regional Policy Statement 2021, 23 January 2023, paragraph 4.

⁶ Opening submissions for the Otago Regional Council on the non-freshwater parts of the proposed Regional Policy Statement 2021, 23 January 2023, paragraph 17.

process which will benefit from certainty as to the legislative provisions at that time.

OVERVIEW OF CONTACT'S POSITION ON THE PROPOSED RPS

9. As explained in the corporate evidence of **Ms Nelson**, Contact is the second-largest electricity generator/retailer in Aotearoa New Zealand with a flexible and largely renewable portfolio of electricity generation assets.⁷ Contact owns and operates 11 generating stations across the country, and generally produces 80-85 percent of its electricity from renewable hydro and geothermal resources.
10. Within the Otago region, Contact owns and operates the Clutha Hydro Scheme (**CHS**).⁸ This scheme is nationally significant infrastructure and contributes about 10 percent of Aotearoa New Zealand's REG and 8 percent of New Zealand's hydro-electricity generation storage.⁹
11. Contact is also committed to contributing to the achievement of the country's climate change goals, and in particular, is currently investigating new REG opportunities in the region and New Zealand more broadly.¹⁰ As explained by **Mr Hunt**, in order to meet the 2050 emissions reduction target of net zero, an unprecedented scale of development of new REG facilities is required.¹¹ Contact is committed to assisting the Government to achieve this goal.
12. Consistent with the above, Contact's interest in the proposed RPS is twofold:
 - (a) First, Contact seeks provisions that appropriately recognise, provide for and protect the CHS.
 - (b) Second, Contact seeks provisions that appropriately recognise the significant role that new REG development will play in achieving New Zealand's decarbonisation goals. Practically speaking, this means providing a viable consenting pathway for the development of new REG facilities.
13. To this end, as explained by **Ms Hunter**, Contact and the other REG generators have proposed a new sub chapter for REG activities that would

⁷ Nelson EIC, para 3.1.

⁸ Nelson EIC, para 3.3.

⁹ Hunt EIC, para 8.7.

¹⁰ Nelson EIC, para 3.2.

¹¹ Hunt EIC, para 6.15.

sit within the EIT Chapter of the proposed RPS. The rationale for this sub chapter will be further explained in the hearing on the EIT Chapter, however, at a high-level, the purpose of the proposed sub chapter is to ensure that national direction set out in the NPSREG is appropriately implemented, that due regard is had to the Government's emission reduction targets as set out in the ERP, the crucial role that REG will play in achieving those targets, and that practically speaking existing REG is protected and new REG is enabled. As explained by **Ms Hunter**, Contact does not seek a "carve out", but does seek a clear assessment pathway by which decision makers can properly evaluate the merits of any REG proposal.¹²

14. In addition to the specific Energy Sub-Chapter proposed by **Ms Hunter** and others, Contact seeks amendments to provisions through the RPS to ensure that REG is given appropriate recognition as directed through the NPSREG and the ERP. The specific relief sought will be explained in submissions and evidence for the relevant chapters.

The proposed RPS must give effect to the NPSREG

15. The proposed RPS must give effect to relevant national direction, including the NPSREG.
16. Contact will provide further evidence and submissions on the NPSREG in future hearings, particularly those on the EIT Chapter. However, to set the scene, the key provisions from this national policy statement are briefly summarised below.
17. The NPSREG has a single objective as follows:

To recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities, such that the proportion of New Zealand's electricity generated from renewable energy sources increases to a level that meets or exceeds the New Zealand Government's national target for renewable electricity generation.

18. To implement this objective, the NPSREG sets out a number of policies as follows:

¹² Hunt EIC, para 4.4.

- (a) Policy A is *"recognising the benefits of [REG] activities"* and directs decision-makers to recognise and provide for the national significance of REG activities and their significant benefits, which include:
 - (i) maintaining or increasing electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions; and
 - (ii) maintaining or increasing security of electricity supply by diversifying the type and/or location of electricity generation.

- (b) Policy B is *"acknowledging the practical implications of achieving New Zealand's target for electricity generation from renewable resources"* and directs decision-makers to have particular regard to:
 - (i) maintenance of the generation output of existing REG activities can require protection of their assets, operational capacity and continued availability of the renewable energy resource;
 - (ii) even minor reductions in the generation output of existing REG activities can cumulatively have significant adverse effects on REG output; and
 - (iii) meeting or exceeding the national target for REG will require significant development of REG activities. As explained below, **Mr Hunt** has quantified the extent of REG development that is required to meet the Government's current targets and considers that this will require an *"unprecedented"* scale of development.

- (c) Policy C is *"acknowledging the practical constraints associated with the development, operation, maintenance and upgrading of new and existing [REG] activities"*. There are two policies sitting under this policy as follows:
 - (i) Policy C1 requires decision-makers to have particular regard to a number of matters, including the locational requirements of REG activity (ie REG needs to be where the renewable energy resource is), and the logistical and technical practicalities associated with developing, upgrading, operating or maintaining REG activities.
 - (ii) Policy C2 sets out a specific approach for managing the effects of REG. Decision-makers are specifically directed to have regard to

offsetting measures or environmental compensation when considering any residual effects of REG that cannot be avoided, remedied or mitigated.

- (d) Policy D is *"managing reverse sensitivity effects on [existing and new REG] activities"* and requires such effects to be *"avoided"*.
 - (e) Policy E is *"incorporating provisions for [REG] activities into regional policy statements and regional and district plans"*. This policy provides specific direction for the RPS to include objectives, policies and methods for the development, operation, maintenance and upgrading of new and existing REG from different sources of renewable energy.
 - (f) Policy F provides for small and community-scale REG activities.
 - (g) Policy G is to enable the identification of REG possibilities.
19. The provisions set out above must all be given effect to within the proposed RPS.
20. In respect of Policy B in particular, the scale of development that is required to meet New Zealand's REG goals, is now informed by targets set in the ERP, as explained further below.

The ERP is a matter that the Panel may have regard to and informs how the NPSREG should be given effect to

21. As set out in opening submissions for ORC, from 30 November 2022, regional councils are directed to have regard to the emissions reduction plan and national adaptation plan prepared under the Climate Change Response Act 2002.¹³ However, the proposed RPS was notified before 30 November 2022 and so is not subject to this specific direction.
22. However, the emissions reduction plan and national adaptation plan are a management plan and/or strategy prepared under other legislation, and are therefore relevant to the Panel's consideration under s 62(2)(a)(i) of the RMA. We therefore agree with counsel for ORC in opening submissions that the ERP and the NAP are matters for the panel to have regard to in making its decisions.

¹³ RMA, s 62(2) was amended from 30 November 2022 by the Resource Management Amendment Act 2020.

23. Further, to ensure meaningful and integrated planning guidance, the Panel must also be aware that the regional council will be directed to have regard to the emissions reduction plan and national adaptation plan when preparing the regional plan.
24. Moreover, it is submitted that the ERP, and in particular, the emissions reduction targets set within it, inform how the NPSREG should be given effect to in this RPS. As explained in **Mr Hunt's** evidence, to meet the 2050 emissions reduction target, an unprecedented scale of development of new renewable electricity generation (**REG**) facilities is required.¹⁴ The scale of development is roughly the equivalent of adding a new set of Clyde and Roxburgh hydro stations to the electricity system every 3.5 years until 2050.¹⁵ A central theme of Contact's submission is that the RPS must enable this development in order to give effect to the NPSREG.

How Contact intends to participate in the RPS hearings

25. As noted above, Contact has provided submissions and further submissions in respect of a number of chapters of the proposed RPS.
26. Contact intends to present the majority of its case in the hearings on the EIT Chapter, and in that hearing, intends to call the following witnesses:
 - (a) **Ms Jacqueline Nelson** – corporate overview;
 - (b) **Mr David Hunt** – economic;
 - (c) **Mr Peter Foster** – river morphology and sedimentation;
 - (d) **Dr Vaughan Keesing** – ecology;
 - (e) **Mr Braddyn Coombs** – landscape and natural character; and
 - (f) **Ms Claire Hunter** – planning.
27. Because of Contact's particular interest in the ECO Chapter, Contact also intends to attend the hearing on this chapter and in that hearing to call the following witnesses:
 - (a) **Dr Vaughan Keesing** – ecology; and
 - (b) **Ms Claire Hunter** – planning.

¹⁴ Hunt EIC, para 6.15.

¹⁵ Hunt EIC, paras 6.15 – 6.17.

28. In this particular hearing (SRMR, IM and AIR Chapters), Contact will be calling **Ms Hunter** to provide expert planning evidence.
29. Contact trusts that this proposal will assist the Panel, as it will enable the Panel to understand Contact's overall position and submissions on the proposed RPS in a comprehensive and holistic way.

SRMR CHAPTER

30. In its submission and further submission, Contact sought amendments to the following sections of the SRMR Chapter – Significant resource management issues for the region:
- (a) SRMR-I2 – Climate change will impact our economy and environment; and
 - (b) SRMR-I9 – Central Otago lakes are subject to pressures from tourism and population growth.
31. The rationale for these amendments is set out below.

SRMR-I2 – Climate change will impact our economy and environment

32. In its submission, Contact supported the recognition of climate change as a significant resource management issue within the Otago region, however, it also sought amendments to SRMR-I2 that further acknowledged the critical part that REG has to play in achieving New Zealand's decarbonisation requirements.¹⁶
33. The section 42A report did not adopt Contact's submission on the basis that the Regional Council did not consider it was necessary.¹⁷
34. **Ms Hunter** has outlined amendments to SRMR-I2 to include the following additional text:¹⁸

In 2021 He Pou a Rangī the Climate Change Commission issued a call to all New Zealanders “to take climate action today, not the day after tomorrow”, concluding that New Zealand needs to be proactive and courageous as it tackles the challenges the country will face in the years ahead. All levels of central and local government must come to the table with strong climate plans to get us on the right track, concluding that bold climate action is possible when we work together. The Otago Regional Council is committed to ensuring

¹⁶ Contact's submission, Appendix A, page 1.

¹⁷ Section 42A report, 4 May 2022 (updated 7 October 2022), Chapter 5, para 145.

¹⁸ Hunter EIC, para 7.6.

its communities remain resilient in the face of climate change. Two complementary pathways exist for responding to the risks and challenges related to climate change, these are: mitigation and adaptation. As defined by the IPCC, 'mitigation' of climate change is a human intervention to reduce the source or enhance the sinks of greenhouse gases (GHG) while adaptation to climate change, is the process of adjustment to actual or expected climate and its effects. In human systems, adaptation seeks to moderate or avoid harm or exploit opportunities. In some natural systems, human intervention may facilitate adjustment to expected climate and its effects.

In Otago, there are also a number of existing renewable electricity generation facilities including the nationally significant Clutha Hydro Scheme. Protecting and maximising existing renewable electricity generation activities in the region, as well as providing for the development of new renewable electricity generation activities is essential to climate change mitigation, which in turn is an essential part of protecting the environment as well as providing for the economic and social wellbeing of people and communities.

35. It is hard to see what the Regional Council, and its expert planners, have against making such a statement in the RPS. They already accept that climate change is a significant issue, but appear to not consider that urgent, and comprehensive, action is required to deliver climate change mitigation and adaptation for the region. We only need to look at recent experiences around New Zealand to see that burying your head in the sand is an untenable position.
36. The issue statement sets the scene not only for the RPS but also for the lower order planning documents and decision-makers when applying the plan regime. The amendment proposed to SRMR-I2 provides important context regarding the significance of climate change and the region's response to it, including by appropriately recognising, providing for, and protecting existing REG assets and the development of new assets.
37. This is supported by the evidence of **Mr Hunt** who provides an overview of the New Zealand electricity system, the benefits derived from REG and how the CHS contributes to those benefits. **Mr Hunt** explains that:
 - (a) There are both economic and decarbonisation benefits from allowing existing REG assets to continue to operate to their full capacity and allowing new REG assets to be built.¹⁹

¹⁹ Hunt EIC, para 4.3.

- (b) The CHS generates about 12% of New Zealand's renewable electricity and about 10% of New Zealand's gross electricity demand – roughly the same as the annual electricity consumption of the South Island's nearly 500,000 residential electricity consumers.²⁰ If this electricity generation were replaced by thermal electricity generation, this would cost between \$326 – 625 million per year and would increase New Zealand's emissions by between approximately 1.5 million and 3.6 million tonnes or carbon dioxide equivalent per year.²¹
- (c) In order to meet New Zealand's decarbonisation goals, development of new REG will be required at an "*unprecedented*" pace. **Mr Hunt** estimates that this will require development of around 1,100 GWh of new REG capability on average every year until 2050 (on the assumption that all existing REG stations are retained). This is roughly the equivalent of adding a new set of Clyde and Roxburgh hydro stations to the electricity system every 3.5 years until 2050.²²
38. The issue statement for climate change should appropriately acknowledge New Zealand's decarbonisation goals in response to climate change, and the essential role that existing and new REG assets will play in achieving those goals.
39. As **Ms Hunter** explains, the proposed RPS needs to appropriately recognise, provide for and protect significant REG assets that already exist in the Otago region, and acknowledge that in order to achieve New Zealand's climate change goals, significant development of new REG will be required.²³ This is consistent with the NPSREG which requires RMA decision-makers to "*recognise and provide for*" the national significance of REG activities, including the national, regional and local benefits relevant to REG activities.²⁴ The additional text proposed by **Ms Hunter** appropriately provides for this.

SRMR- I9 – Central Otago lakes are subject to pressures from tourism and population growth

40. Counsel understands this issue statement is to be addressed through the freshwater planning process, however it was not identified in the section

²⁰ Hunt EIC, paras 8.3 – 8.4.

²¹ Hunt EIC, para 9.7 Table 1.

²² Hunt EIC, paras 6.15 – 6.17.

²³ Hunter EIC, para 7.5.

²⁴ NPSREG, Objective and Policy A.

42A report (October version) as being considered under that process.²⁵ As such, we address this issue statement here for completeness.

41. In its submission, Contact supported the recognition in the issue statement that the Otago lakes area provides significant renewable electricity for the Otago region and beyond. However, Contact sought amendments to balance the broad statements of the adverse effects of electricity production more accurately with the positive effects of the resource.²⁶
42. The section 42A report did not adopt Contact's submission on the basis that the Regional Council considered hydroelectric schemes are acknowledged in a more "general sense" by reference to "energy production and such activities resulting in effects on natural features and landscape values of Otago lakes".²⁷
43. **Ms Hunter** has outlined amendments to SRMR-I9 to include the following additional text:²⁸

A number of hydroelectric power schemes are located within the Otago Region. The development of the Clyde Dam resulted in the creation of Lake Dunstan; and the development of the Roxburgh Dam resulted in the creation of Lake Roxburgh. These facilities have directly influenced the surrounding environment in which they operate. These assets are significant to the region in providing renewable electricity generation, contributing to social wellbeing and economic development, and providing recreational and tourism related activities.

44. The reality is that the Clyde and Roxburgh Dams were developed for electricity generation, and it is the construction of these dams that has led to the creation of Te Wairere / Lake Dunstan and Lake Roxburgh respectively. While these lakes have delivered significant additional benefits to the community, including by attracting visitors to the region, they would not have been created without the construction of the two dams. The issue statement should more accurately reflect the background and purpose of the lakes, by including the additional text proposed by **Ms Hunter**.

²⁵ It is not highlighted in blue. However, the responses to submissions in Chapter 5 are shaded in grey.

²⁶ Contact's submission, Appendix A, page 1.

²⁷ Section 42A report, 4 May 2022 (updated 7 October 2022), Chapter 5, para 452.

²⁸ Hunter EIC, para 7.11.

45. Further, Queenstown Lakes district has recently set a target of having its tourism industry carbon zero by 2030.²⁹ Protecting and maintaining the electricity generation and storage capacity of the Clutha Hydro Scheme must be a part of that strategy. It is perverse that the outcomes of the RPS as per the s42 report are at odds with this district council approach. This is discussed further below in relation to the IM Chapter, but in summary providing for and enabling REG is essential for the district councils to achieve their carbon zero tourism objective by 2030. If this objective is to be achieved the RPS needs to be drafted to assist the delivery and growth of REG and not to hinder, or potentially prevent this from occurring.

IM CHAPTER

46. In its submission, Contact sought amendments to a number of provisions within the IM – Integrated management chapter.
47. The evidence of **Ms Hunter** addresses the relief that Contact seeks in respect of the following provisions within the IM chapter:
- (a) IM-O4 – Climate change;
 - (b) IM-P1 – Integrated approach to decision-making and IM-P2 – Decision priorities;
 - (c) IM-P9 – Community response to climate change impacts;
 - (d) IM-P10 – Climate change adaptation and climate change mitigation;
 - (e) IM-P12 – Contravening environmental limits for climate change mitigation; and
 - (f) IM-P14 – Human impact.
48. To summarise, Contact supports the intention behind the IM Chapter, and in particular, the reference to climate change within it. However, Contact considers that this chapter should provide stronger direction about the need to protect existing and enable the development of new REG activities, in order to reduce emissions and assist New Zealand to achieve its decarbonisation goals. Further detail in respect of the various provisions is provided below.

²⁹ [Tourism's carbon zero ambition | Otago Daily Times Online News \(odt.co.nz\)](https://www.odt.co.nz/news/otago/2023/04/06/tourism-carbon-zero-ambition)

IM-O4 – Climate change

49. In its submission, Contact supported the recognition of climate change as a significant issue within the region, however, sought amendments to the objective (or development of new region wide provisions) to recognise that the operation of existing, and development of new, REG will be a critical component in achieving New Zealand's decarbonisation goals.³⁰ As already mentioned, a regional example of this is Queenstown Lakes district recently setting a target of having its tourism industry carbon zero by 2030.
50. The section 42A report agreed with Contact's submission, however, considered that amendments to the EIT-EN Chapter contain specific policy direction for REG that addresses Contact's concerns.³¹ The section 42A report writer also recommended amendments to IM-O4 in response to other submitters, including additional clause (2), which now provides that responses to climate change in the region should *"assist with achieving the national target for emissions reduction..."*
51. Contact's position is that the climate change objective within this IM Chapter needs to provide strong direction about how responses to climate change in the region can provide a meaningful contribution to achieving New Zealand's desired decarbonisation state. Clause (2) currently fails to do this because (a) the language is weak (*"assist with achieving"*); and (b) what this means in practice (ie what the RPS wants to deliver) is not spelt out in detail.
52. As such, the objective fails to provide meaningful assistance to future decision-makers (whether it be for plans or consents); fails to provide to give effect to the NPSREG, and also fails to have proper regard to the emissions reduction targets within the ERP, and the significant uptake of REG that will be required to meet those targets.
53. **Ms Hunter** has outlined amendments to IM-O4(2), which provide stronger and clearer direction to decision-makers:³²

(2) ~~assist with achieving~~ enable the national target for emissions reduction to be achieved including by having a highly renewable, sustainable and efficient energy system which supports a low emissions economy,

³⁰ Contact's submission, Appendix A, page 1.

³¹ Section 42A report, 4 May 2022 (updated 7 October 2022), Chapter 6, para 75.

³² Hunter EIC, paras 8.4 – 8.5.

54. This drafting provides actual direction as to how the region can enable the national target for emissions reduction to be achieved. **Ms Hunter** has also provided a section 32AA evaluation for this proposed amendment and considers that there are not any significant economic costs arising from it.
55. As noted above and in the evidence of **Mr Hunt**, New Zealand has set a target for the country to reduce net emissions of greenhouse gases to zero by 2050.³³ The government also has an aspirational target of transitioning to 100% REG by 2030.³⁴ Further, electricity demand is expected to grow substantially as New Zealand uses more electricity to decarbonise the economy.³⁵ The directive language proffered by **Ms Hunter** is therefore necessary to reflect that the ongoing use and development of new REG facilities is a critical and significant component of climate change mitigation in New Zealand.

IM-P1 – Integrated approach to decision-making and IM-P2 – Decision priorities

56. In its submission on IM-P1, Contact supported an integrated approach, but expressed its concern that the proposed RPS took a very protectionist approach that would have the effect of preventing consideration of new REG development, such that New Zealand would not be able to meet its emission reduction targets.³⁶
57. In respect of IM-P2, Contact's submission expressed reservation about applying the hierarchy of obligations in respect of Te Mana o te Wai under the NPSFM to environmental management more broadly. The submission also noted that the policy should recognise that activities combatting climate change achieve each of the three priorities under the proposed policy. Contact therefore sought to delete this policy or for it to be amended to make specific reference to the importance of REG in achieving the listed priorities.
58. The section 42A report recommends that IM-P1 and IM-P2 be included within one policy (IM-P1) and has made amendments to that policy. The effect of the redrafted policy is that the RPS should be interpreted according to its terms but if its provisions are in conflict, and that conflict cannot be resolved by application of the higher order documents, decision-making

³³ Hunt EIC, para 6.4.

³⁴ Hunt EIC, para 6.7.

³⁵ Hunt EIC, para 6.8.

³⁶ Contact's submission, Appendix A, page 2.

should prioritise first the life-supporting capacity and mauri of the natural environment and the health needs of people; and then social, economic, and cultural well-being.

59. The policy therefore effectively superimposes the hierarchy of obligations in respect of Te Mana o te Wai under the NPSFM to environmental management more broadly.
60. Contact's position is that this approach is inappropriate as it goes beyond what is required to give effect to the NPSFM and fails to give effect to other relevant national direction (especially when applied to matters beyond freshwater management, such that the NPSFM is not applicable). In particular, the approach fails to recognise other important national direction set out in the NPSREG. As set out above, amongst other matters, the NPSREG directs decision-makers to recognise and provide for the national significance of REG,³⁷ and to have particular regard to the fact that meeting the Government's national target for REG will require the significant development of REG activities.³⁸
61. As **Mr Hunt** has explained, the scale of development required to meet the Government's current emission reductions targets, as recorded in the ERP, is "*unprecedented*".³⁹ The RPS needs to respond to this by providing recognition of the significant benefits of REG activities within any decision-making hierarchy that is proposed.
62. **Ms Hunter** agrees that a broader application of the NPSFM prioritisation as proposed under IM-P1 is inappropriate and has recommended that the policy either be deleted, or if it is retained, that it be amended to also give effect to the NPSREG.⁴⁰

IM-P9 – Community response to climate change impacts

63. In its submission on IM-P9, Contact supported the recognition of climate change as a significant issue within the region, however, sought to add new policies to recognise that REG activities are a critical part of achieving New Zealand's decarbonisation goals, and the community response to climate change.⁴¹

³⁷ NPSREG, Policy A.

³⁸ NPSREG, Policy B.

³⁹ Hunt EIC, para 6.15.

⁴⁰ Hunter EIC, para 8.11.

⁴¹ Contact's submission, Appendix A, page 2.

64. The section 42A report recommends that IM-P9 is deleted on the basis that the link between the regional response to climate change and national level policy is sufficiently set out in redrafted IM-O4 (addressed above).
65. Contact's position is that it is appropriate to delete this provision, on the basis that the other policies within the chapter that refer to climate change are strengthened and more directive.
66. **Ms Hunter** also supports the deletion of this policy.⁴² As **Ms Hunter** explains IM-P9 attempts to ensure communities adjust their lifestyles to adapt to the effects of climate change and reduce greenhouse gas emissions to achieve net zero carbon emissions by 2050. However, the reality is that achieving these outcomes relies on communities having the ability to accelerate decarbonisation by transitioning New Zealand's industrial, road transport, electricity, data processing, and agricultural sectors from fossil fuels to a much greater proportion of renewable electricity use.⁴³ This reinforces the need for the RPS to establish a policy framework that supports the development of new REG.

IM-P10 - Climate change adaptation and climate change mitigation

67. In its further submission, Contact supported amendments to IM-P10 proposed by other submitters, including that a new sub-clause is included that recognises and provides for REG activities as part of achieving national climate change obligations.⁴⁴
68. The section 42A report recommends some amendments to IM-P10, however, amendments were not proposed to recognise and provide for REG activities explicitly, as a core component of climate change mitigation. The report writer considered this would be more appropriately addressed through the EIT chapter of the proposed RPS.⁴⁵
69. As explained already, Contact's view is that protecting existing and enabling the development of new REG is a core component of climate change mitigation, and that the RPS should provide strong and meaningful direction in that regard.

⁴² Hunter EIC, at para 8.14.

⁴³ Hunter EIC, para 8.14.

⁴⁴ Contact's further submission, page 11 (submissions by Blackthorn Lodge Glenorchy Limited (00119.002) and Trustpower Limited (00311.010)).

⁴⁵ Section 42A report, 4 May 2022 (updated 7 October 2022), Chapter 6, para 339.

70. **Ms Hunter** agrees that the policy should be more directive and has proposed the following amendment to IM-P10:⁴⁶

Identify and implement climate change adaptation and climate change mitigation methods for Otago that:

...

(2) Protects its existing renewable electricity facilities and enables the development of new renewable electricity generation and infrastructure to support it.

71. This amendment or words to similar effect are necessary to give effect to the NPSREG. The NPSREG requires the panel in making decisions to avoid adverse reserve sensitivity effects on consented and existed REG. Further, the NPSREG requires the panel to recognise and provide for the national significance of REG and to have particular regard to the fact that meeting national targets for REG will require the significant development of REG.⁴⁷ Quite simply, these national targets will not be met if the planning framework does not provide strong and meaningful guidance about how REG is to be provided for.
72. It is appropriate for that guidance to be provided in IM-P10, as well as within the EIT Chapter. IM-P10 sets out how climate change mitigation methods are to be provided for. Contact's view is that REG should be recognised as a core component of climate change mitigation and explicitly provided for within IM-P10.

IM-P12 – Contravening environmental limits for climate change mitigation

73. In its submission, Contact supported the intent of this policy, noting that it appears to acknowledge the reality that REG development and operation is not 'effects-free'. However, Contact considered the notified drafting was too constraining and meant that the underlying intention of the policy would be frustrated. It therefore proposed amendments to the policy to align it with national climate change obligations and to amend or remove constraints.⁴⁸
74. The section 42A report recommends some amendments to IM-P12 in response to Contact and other submitters. Contact generally supports these amendments but considers the policy needs to be further refined to

⁴⁶ Hunter EIC, para 8.15.

⁴⁷ NPSREG, Policies A and B.

⁴⁸ Contact's submission, Appendix A, pages 2 - 3.

provide meaningful support for climate change mitigation (which includes REG) within the policy framework of the RPS.⁴⁹

75. Contact supports the amendments to IM-P12 proposed by **Ms Hunter** in her evidence (as shown below in blue text)⁵⁰ and notes that the section 42A report now recommends replacing "environmental limit" with "limit". Contact supports that approach.

Despite other provisions in this RPS, ~~where~~⁶⁵ a proposed activity provides or will provide enduring regionally or nationally significant climate change mitigation~~mitigation~~⁶⁶ of climate change impacts, with commensurate benefits for the well-being of people and communities and the wider environment, decision makers must ~~may, at their discretion~~, allow non-compliance with an environmental ~~bottom-line limit~~⁶⁷ set in, or resulting from,⁶⁸ any policy or method of this RPS ~~only~~ if they are satisfied that:

- (1) ~~the activity is designed and carried out to have the smallest possible environmental impact consistent with its purpose and functional needs, adverse effects on the environment resulting from the activity are appropriately managed through avoidance, remediation or mitigation methods as far as can be practicably achieved~~ avoided, remedied, or mitigated, so that they are reduced to the smallest amount reasonably practicable,⁶⁹
- (2) the activity is consistent ~~and coordinated~~ with other regional and national climate change mitigation objectives, policies and/or activities,
- (3) adverse effects on the environment that cannot be avoided, remedied, or mitigated are offset, or compensated for, and for adverse effects on indigenous biodiversity: if an offset is not possible, in accordance with any specific criteria for using offsets or compensation, and ensuring that any offset is:
 - (aa) where there are residual adverse effects after avoidance, remediation, and mitigation, residual adverse effects are offset in accordance with APP3, and
 - (ab) if biodiversity offsetting of residual adverse effects is not possible, then those residual adverse effects are compensated for in accordance with APP4,
 - (a) ~~undertaken where it will result in the best ecological outcome,~~
 - (b) ~~close to the location of the activity, and~~
 - (c) ~~within the same ecological district or coastal marine biogeographic region,~~⁷⁰
- (4) ~~the activity will not impede either the achievement of the objectives of this RPS or the objectives of regional policy statements in neighbouring regions,~~⁷¹ and
- (5) the activity will not contravene ~~a bottom-line~~ an environmental limit⁷² set in a national policy statement or national environmental standard.

76. **Ms Hunter's** evidence is that the above amendments will ensure that the provision will be effective as a key policy in achieving New Zealand's

⁴⁹ For avoidance of doubt, Contact records that its support for the reference to APP3 and APP4 within this policy are subject to the relief it seeks in respect of those provisions, which will be further explained in hearings on the EIT and ECO chapters.

⁵⁰ Hunter EIC, para 8.20.

decarbonisation goals.⁵¹ The rationale for these amendments is set out below:

- (a) The words '*may, at their discretion*', weakens the intent of this policy and would undermine consistent decision-making and create unnecessary uncertainty for planning REG projects.⁵² These words should be removed so that the policy provides unequivocal direction for climate change mitigation.
- (b) In clause (1), the words "*smallest amount reasonably practicable*" are vague, subjective, and will be subject to debate. Ms Hunter has recommended deleting these words and replacing with "*as far as can be practicably achieved*", on the basis that this better aligns with clause (3) and with respect to REG is consistent with the NPSREG.⁵³
- (c) In clause (2), Ms Hunter recommends deleting the reference to "*coordinated*" and inserting a reference to "*objectives, policies and/or activities*" on the basis that this more accurately reflects the intent of the policy that an activity is consistent with the broader policy framework for climate change mitigation.⁵⁴
- (d) Clause (4) appears to frustrate the intention of the policy and set up a circular decision-making framework.⁵⁵ This clause should be deleted.

77. In addition to the above, Contact suggests that clause (3)(aa) and (ab) should be amended to refer to "*more than minor residual adverse effects*" on the basis that this is consistent with the approach in the NPSFM and the NPSIB Exposure Draft. **Dr Keesing** also supports this approach and will explain the reasons for this further in the hearings on the EIT and ECO chapters.⁵⁶

IM-P14 – Human impact

78. In its submission, Contact sought that this policy be deleted due to the uncertainty inherent in the drafting, including what is meant by 'limits' and 'degraded' and how these are intended to be implemented.⁵⁷

⁵¹ Hunter EIC, para 8.20.

⁵² Hunter EIC, para 8.21.

⁵³ Hunter EIC, para 8.22.

⁵⁴ Hunter EIC, para 8.23.

⁵⁵ Hunter EIC, para 8.24.

⁵⁶ Keesing EIC, para 10.4.

⁵⁷ Contact's submission, Appendix A, page 3.

79. The section 42A report recommended amendments to IM-P14, including replacing 'limits' with 'environmental limits' and including a definition for that term based on the NBE Bill.⁵⁸ However, through supplementary evidence, the Regional Council recommended the term 'limits' be used throughout the proposed RPS instead.⁵⁹ **Ms Boyd** explains that the term 'limit' in all chapters of the proposed RPS (except in the LF – Land and freshwater chapter) has its 'natural and ordinary meaning'.⁶⁰
80. **Ms Hunter** recommends that the policy be deleted due to a lack of clarity and likely issues with implementation.⁶¹ As explained by **Ms Hunter**, there is no certainty around what is meant by 'limits', the process for setting these limits, and how 'degraded' will be defined.⁶² Further, **Ms Hunter** explains that 'requiring' activities to be undertaken within 'limits' does not take into consideration any proportionality of the loss to gain or that effects can be managed in accordance with section 5 of the RMA.⁶³ **Ms Hunter** also identifies that part of the issue may be that this policy anticipates the new legislative regime under the NBE Bill, which she considers is inappropriate.⁶⁴
81. For all of these reasons, Contact considers that the policy should be deleted.

AIR CHAPTER

82. Contact only has one further submission respect of the AIR Chapter. This was in support of a submission by Meridian Energy Limited that AIR-M5 be amended to make specific reference to REG.
83. Contact continues to support that amendment to the method.

⁵⁸ Section 42A report, 4 May 2022 (updated 7 October 2022), Chapter 6, para 425.

⁵⁹ Boyd (Regional Council) Supplementary Evidence, para 21.

⁶⁰ Boyd (Regional Council) Supplementary Evidence, paras 20 and 21.2.

⁶¹ Hunter EIC, para 8.30.

⁶² Hunter EIC, para 8.28.

⁶³ Hunter EIC, para 8.29.

⁶⁴ Hunter EIC, para 8.29.

CONCLUSION

84. Contact calls **Ms Hunter** as an expert planning witness to provide evidence in support of Contact's submission on these chapters.

DATED this 3rd day of February 2023



David Allen / Frances Wedde

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