

Further submission on the Freshwater Planning Instrument Parts of the Proposed Otago Regional Policy Statement 2021

To: Otago Regional Council

Name of submitter: Contact Energy Limited

1. This is a further submission on the Freshwater Planning Instrument Parts of the Proposed Otago Regional Policy Statement 2021 (**Freshwater pORPS**).
2. Contact Energy Limited (**Contact**) is a person who has an interest in the proposal that is greater than the public generally. Contact owns and operates the Clutha Hydro Scheme on the Clutha / Mata-au.
3. Contact made a submission on the Freshwater pORPS and is submitter number FPI027.
4. Contact's further submission is set out in full in **Attachment A**, which identifies the submissions that Contact supports or opposes, explains the reasons for that support or opposition, and sets out the relief sought.
5. Contact seeks that the Otago Regional Council amend the Freshwater pORPS to incorporate the relief sought by Contact in **Attachment A** and such other further or consequential amendments as may be necessary to respond to Contact's further submission.
6. Contact wishes to be heard in support of its further submission, and if others make a similar submission, Contact will consider presenting a joint case with them at a hearing.
7. We confirm that we are authorised to provide this further submission on behalf of Contact.



David Allen

On behalf of Contact Energy Limited

Date: 3 February 2023

Address for service:

Email	David.allen@buddlefindlay.com/ frances.wedde@buddlefindlay.com
Telephone:	+64 4 462 0423 / +64 4 462 0818
Postal address	Buddle Findlay PO Box 2694 Wellington 6140
Contact person	David Allen, Partner, Buddle Findlay Frances Wedde, Special Counsel, Buddle Findlay

ATTACHMENT A

Submitter number	Submitter name	Submission Point Number	Chapter / Provision	Summary of decision requested ¹	Contact position on submission	Reasons	Allow/disallow
Various	Various	Various	Various	A number of parties have made submissions on provisions on which Contact has also made a submission.	Contact reserves its position.	For the avoidance of doubt, Contact continues to seek the relief for these provisions as set out in its original submission. Contact reserves its position in respect of other parties' submissions on these provisions and looks forward to discussing these provisions and any amendments with the parties in pre-hearing meetings and/or mediations.	Contact reserves its position.
Various	Various	Various	Various	A number of parties have made submissions in this process on provisions that have not been re-notified as part of the freshwater planning instrument.	Contact understands these submissions to be outside scope and therefore has not provided a further submission on them within this process.	For the avoidance of doubt, and in case these submissions form part of the hearing panel's considerations on the freshwater planning instrument, Contact reserves its position in respect of these submissions.	Contact reserves its position.
Various	Various	Various	GEN – General submission	A number of parties make general submissions where the specific relief sought is unclear.	Contact reserves its position.	For the avoidance of doubt, Contact reserves its position in respect of these general submissions and may seek to provide evidence and/or legal submissions in respect of these general submissions as the relief sought by the parties becomes clearer.	Contact reserves its position.
FPI001	Dunedin City Council (DCC)	FPI001.043	GEN – General submission	The DCC considers that the ORC should exercise caution when using the terms avoid and enable terms in light of the Supreme Court's decision in the King Salmon case. It is better practice to include the weighting or balancing within the policy such as has been done in CE-P12 with the use of 'avoid ... unless' language	Neutral	Contact reserves its position in respect of how this submission may be worked through in respect of the specific provisions within the RPS.	Contact reserves its position.
FPI037	Otago and Central South Island Fish & Game Councils (Fish & Game)	FPI037.002 – 005	DEF – New definitions	Fish & Game and a number of other submitters (eg NZSki Ltd) seek that new definitions are inserted for: <ul style="list-style-type: none"> Natural environment 	Oppose on the basis that the implications of the amendment being sought are not clear.	Contact is not in principle opposed to these terms being defined where this will assist the interpretation of the RPS. However, Contact considers the implications of the proposed	Contact reserves its position.

¹ The summary of the decision requested is copied from the summary of decisions requested document prepared by Otago Regional Council unless otherwise stated.

Submitter number	Submitter name	Submission Point Number	Chapter / Provision	Summary of decision requested ¹	Contact position on submission	Reasons	Allow/disallow
				<ul style="list-style-type: none"> • Minimise • Precautionary approach • Restore 		definitions would need to be considered on a case by case basis in relevant provisions (both within this freshwater and the related non-freshwater process). Contact reserves its position and if these new definitions are to be included may seek amendments consistent with the relief set out in Contact's original submission(s).	
FPI038	NZSki Ltd	FPI038.017	SRMR – General submission	Insert new section to identify and discuss, in a positive frame, the benefits to people and the environment from subdivision, use and development of natural and physical resources. This section should also identify and discuss the wellbeing benefits (and need) of ensuring people can access and use the rural and natural environment	Neutral	Contact is not opposed to a new issue statement that focuses on the positive effects of the use and development of natural and physical resources. If this submission is accepted, Contact would seek that reference to the positive effects of renewable electricity generation in reducing greenhouse gas emissions are reflected in this statement.	Allow with amendments.
FPI001	Dunedin City Council (DCC)	FPI001.003	SRMR – General submission	Amend to identify damming of the Clutha River/Mata-Au as a regionally significant issue and legacy effect. Amend to include relevant objectives and policies to address this issue.	Oppose	Contact seeks clarity from DCC regarding the specific wording / provisions it seeks in relation to this issue. While Contact acknowledges the issue described by DCC, the RPS provisions also need to protect and enable the continued operation and maintenance of the Clutha Hydro Scheme as nationally significant infrastructure, consistent with national direction in the NPSREG and ERP; and to secure ongoing renewable electricity generation to assist New Zealand in meeting its emissions reduction targets.	Disallow (the specific wording and potential effects on the Clutha Hydro Scheme are not understood).
FPI037	Otago and Central South Island Fish & Game Councils (Fish & Game)	FPI037.006	SRMR – General submission	Add an additional issue as follows: SRMR-I12 – Social, cultural and economic wellbeing of Otago's communities depends on use and	Neutral	Contact is not opposed to a new issue statement that focuses on the positive effects of the use and development of natural and physical resources. If this submission is accepted, Contact would seek that reference to the positive	Allow with amendments.

Submitter number	Submitter name	Submission Point Number	Chapter / Provision	Summary of decision requested ¹	Contact position on submission	Reasons	Allow/disallow
				<p>development of natural and physical resources.</p> <p>Statement</p> <p>The social, cultural and economic health and wellbeing of Otago's people and communities relies on the ability of people being able to access, use and develop the region's natural and physical resources.</p> <p>Context</p> <p>The social, cultural and economic wellbeing of Otago's communities depends on use and development of natural and physical resources. Loss or degradation of resources can diminish their intrinsic values and constrains opportunities for use and development now and into the future. Some of Otago's resources are nationally or regionally important for their natural values and economic potential and so warrant careful management.</p> <p>Sustainable management under the RMA includes enabling social, economic and cultural wellbeing for present and future generations. Resource management decisions need to recognise that individual and community wellbeing depends on use, development and protection of natural and physical resources.</p> <p>Impact snapshot</p> <p>Environmental</p> <p>Subdivision, use and development of natural resources can result in appropriate environmental effects including net environmental benefits, particularly where that subdivision, use or development results in</p>		<p>effects of renewable electricity generation in reducing greenhouse gas emissions are reflected in this statement.</p>	

Submitter number	Submitter name	Submission Point Number	Chapter / Provision	Summary of decision requested ¹	Contact position on submission	Reasons	Allow/disallow
				<p>enhancement and restoration of degraded parts of the natural environment.</p> <p>Human use (associative) benefits of from human use of accessing and using natural resources contributes to the significant values of highly valued natural features and natural landscapes, and outstanding waterbodies.</p> <p>Enabling people to access and use natural resources results in significantly positive human health and well-being benefits.</p> <p>Social and economic</p> <p>Enabling people to access and use natural resources is required to support a prosperous regional economy. Limiting people's ability to access and use resources use can limit productive economic opportunities and adversely impact the health and well-being of Otago's people and communities.</p> <p>Alternatively, insert a narrower section related only to the benefits of human health and well-being benefits associated with accessing (i.e. transport to and within) and recreating in (i.e. using) natural resources/natural environment.</p>			
FPI044	Director-General of Conservation (DOC)	FPI044.006	LF-WAI-P1	<p>Retain as notified, except that if IM-P1 does not reflect the same three-level prioritisation then insert a new clause as follows or words to like effect:</p> <p>“(4) if there is a conflict between this policy and other provisions in this RPS that cannot be resolved by the application of higher order documents,</p>	Oppose	Contact agrees that the relationship between IM-P1 and LF-WAI-P1 needs to be made clearer. However, how that should be done depends on the final wording of those provisions. Contact therefore reserves its position on this submission.	Contact reserves its position.

Submitter number	Submitter name	Submission Point Number	Chapter / Provision	Summary of decision requested ¹	Contact position on submission	Reasons	Allow/disallow
				then this policy takes precedence over Policy IM-P1.”			
FPI045	Royal Forest and Bird Protection Society of New Zealand (Forest & Bird)	FPI045.006	LF-WAI-P1	Amend as follows: 2) second, the health and well-being needs of people, te hauora o te tangata; interacting with water through ingestion (such as drinking water and consuming harvested resources <u>harvested from the waterbody</u>) and immersive activities (such as harvesting resources and bathing), and 3) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future, <u>including hydroelectricity generation.</u>	Oppose	Contact has sought amendments to this provision in its original submission. Contact opposes the identification of hydroelectricity generation as a third-level priority for the reasons set out in its original submission.	Disallow
FPI032	Te Rūnanga o Ngāi Tahu	FPI032.018	LF-VM – General submission	In partnership with mana whenua, prepare a new overarching region-wide vision and consequential amendments to the visions to only highlight differences from that region-wide vision. Amend visions to require practices to change within 10 years and visions to be achieved within 20 years.	Neutral	Contact is not opposed to the proposal to amend all visions to provide a consistent and clear structure. However, Contact has sought amendments to the vision statement for the Clutha River / Mata-au (LF-VM-O2) in its original submission and seeks that these amendments are carried over to any restructured or new vision statement that is made as a result of this submission.	Contact seeks that any new or restructured vision statement for the Clutha River / Mata-au provides for the relief sought for LF-VM-O2 in Contact's original submission.
FPI030	Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively Kāi Tahu ki Otago)	FPI030.019	LF-VM – General submission	Restructure the LF-VM and LF-FW objectives to set out an overarching vision for freshwater in Otago incorporating the outcomes below, with specific visions for each FMU where this is needed to set priority outcomes for the FMU or recognise unique characteristics OR Amend the objectives to remove unnecessary inconsistencies and to	Neutral	As above.	As above.

Submitter number	Submitter name	Submission Point Number	Chapter / Provision	Summary of decision requested ¹	Contact position on submission	Reasons	Allow/disallow
				<p>ensure that the vision for each FMU addresses the outcomes below:</p> <ul style="list-style-type: none"> · Kāi Tahu relationship with wāhi tūpuna · Kāi Tahu ability to access and use water bodies to maintain their connection with the wai · The health and abundance of mahika kai · The health of ecosystems and indigenous species · The health of wetlands, estuaries and lagoons, and downstream coastal waters · The ability for indigenous species to migrate easily · Sustaining the natural form and function of the water bodies · Sustainable land and water management practices · Ceasing direct discharges of wastewater to water bodies. 			
FPI044	Director-General of Conservation (DOC)	FPI044.007	LF-VM – General submission	<p>Amend all freshwater visions to:</p> <ul style="list-style-type: none"> - provide a consistent and clear structure across and between each FMU / rohe (which could include an over-arching vision or visions), - appropriately recognise the relevant values and issues in every FMU / rohe, - provide appropriate timeframes and staged targets, and in addition, incorporate further specific relief as set out below. 	Neutral	As above.	As above.
FPI037	Otago and Central South Island Fish & Game Councils (Fish & Game)	FPI037.014	LF-VM – New provision	Amend such that the visions holistic picture of how all rivers will be managed in future to provide for their	Neutral	As above.	As above.

Submitter number	Submitter name	Submission Point Number	Chapter / Provision	Summary of decision requested ¹	Contact position on submission	Reasons	Allow/disallow
				health, well-being and resilience. For example...			
FPI045	Royal Forest and Bird Protection Society of New Zealand (Forest & Bird)	FPI045.008	LF-VM – New provision	<p>Add a new overarching vision to apply to all FMUs in Otago as follows:</p> <p>LF-VM-O1 – All of Otago catchment vision</p> <p>By no later than 2040, in all Otago catchments:</p> <p>(1) water bodies are protected at, or restored to a state of good health, well-being and resilience,</p> <p>(2) activities relating to water support the health, well-being and resilience of affected water bodies</p> <p>(3) the natural form and function of water bodies, including with respect to water quality, sedimentation and flows, mimics that of their natural behaviour,</p> <p>(4) ecosystem connections between freshwater, wetlands and the coastal environment are protected and restored,</p> <p>(5) wetland, estuary and lagoon extent has been restored as much as practical where it has been lost, and their quality is protected and restored,</p> <p>(6) the habitat of indigenous species is protected and restored, and indigenous species are able to migrate easily within and between catchments,</p> <p>(7) kai/food is available to be harvested from water bodies in abundance and is safe to consume,</p> <p>(8) people have abundant, quality opportunities to connect with and recreate within or close to a wide range of water bodies,</p>	Oppose	As above.	As above.

Submitter number	Submitter name	Submission Point Number	Chapter / Provision	Summary of decision requested ¹	Contact position on submission	Reasons	Allow/disallow
				<p>(9) there are no direct discharges of untreated wastewater to water bodies, and</p> <p>(10) freshwater is managed in accordance with the LF-WAI objectives and policies.</p> <p>Make the required consequential amendments to specific FMU visions in LF-VM-O2 to LF-VM-O6 to ensure the overarching vision above applies to all of them while retaining FMU specific provisions and timeframes where these are more stringent than what is provided for in LF-VM-O1</p>			
FPI001	Dunedin City Council (DCC)	FPI001.008	LF-VM-O2	Amend to include material about mitigation of sediment processes currently being obstructed by large dams.	Oppose	As set out above in respect of DCC's submission on SRMR – general, Contact seeks clarity from DCC regarding the specific wording / provisions it seeks in relation to this issue. The RPS provisions need to protect and enable the continued operation and maintenance of the Clutha Hydro Scheme as nationally significant infrastructure, consistent with national direction in the NPSREG and ERP; and in order to secure ongoing renewable electricity generation to assist New Zealand in meeting its emissions reduction targets.	Disallow (the specific wording and potential effects on the Clutha Hydro Scheme are not understood).