

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

UNDER THE	Resource Management Act 1991 (the Act)
IN THE MATTER	the Proposed Otago Regional Policy Statement 2021 (Non-freshwater parts)

**LEGAL SUBMISSIONS ON BEHALF OF MANAWA ENERGY IN RELATION TO THE
NON-FRESHWATER PARTS OF THE PROPOSED OTAGO REGIONAL POLICY STATEMENT
2021**

The SRMR, IM, and EIT Chapters

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MAY IT PLEASE THE PANEL

INTRODUCTION AND OVERVIEW

1. Manawa Energy (**Manawa**) is one of Aotearoa New Zealand's largest renewable electricity generators. Its goal is to develop renewable generation to support the country's ambitions for a thriving, low-emissions and climate-resilient future.
2. The location and scale of Manawa's schemes, along with a commitment to local supply (to ensure that electricity is consumed as close as possible to where it is generated) is a key and somewhat unique feature of Manawa's generation philosophy and portfolio.¹
3. In the Otago region, Manawa owns and operates two hydro-electric power schemes (**HEPS**): the Waipori HEPS which includes the smaller Deep Stream HEPS; and the Paerau/Patearoa HEPS. These HEPS produce approximately 268 GWh, which is enough to supply approximately 35,000 households (or approximately 40% of the households in the region).² In addition to its 26 HEPS nationwide, Manawa is also exploring opportunities and partnerships for the development of new renewable generation, including wind and solar.
4. Manawa lodged submissions on the Proposed Otago Regional Policy Statement (**pRPS**) seeking better and clearer recognition for both existing and future renewable electricity generation in the region.³ In doing so, Manawa has taken a collaborative approach with the country's other large renewable electricity generators, Contact and Meridian.
5. While a genuine attempt has been made to recognise the importance of renewable electricity generation, the way the pRPS has been structured and its approach to priorities results in it falling short of enabling these activities (within reasonable limits) in this region. The position of Manawa, shared by the other generators, is that the pRPS as notified does not give effect to the RMA and national policy directions relating to renewable electricity generation, and

¹ Statement of Evidence of Nicola Foran dated 23 November 2022 at paragraph 10.

² Statement of Evidence of Nicola Foran dated 23 November 2022 at paragraph 30.

³ The submission was lodged under Trustpower Ltd and was numbered 0311.

presents a missed opportunity to ensure that the Otago region meaningfully responds to the climate crisis.

Scope of submissions

6. In these submissions I will:
 - (a) Explain how Manawa is presenting its case at these hearings;
 - (b) Introduce the witnesses for Manawa;
 - (c) Comment on the statutory framework;
 - (d) Explain how the pRPS impacts Manawa; and
 - (e) Address Manawa's key issues.

Presentation of case

7. Manawa lodged submissions on a number of provisions across chapters of the pRPS, including what are now "freshwater" and "non-freshwater" provisions.
8. This Panel has been appointed to hear and decide those aspects of the pRPS that are considered "non-freshwater" provisions and Manawa is, accordingly, focussing in these hearings only on those provisions. It has noted in its evidence, and I reiterate here, that the focus placed on freshwater as an overall priority for the region somewhat skews the pRPS. It goes without saying that the separation of the provisions and processes presents a challenge for integrated decision-making across the pRPS, and that there needs to be a process that ensures the package is considered as one before the final decisions are issued.
9. Given the length of time the Panel is sitting and the number of submitters providing evidence, the Panel has helpfully provided some flexibility in the presentation of cases. Manawa's presentation is as follows:
 - (a) Company, planning and ecological evidence was filed on 23 November 2022;

- (b) Company and planning evidence on Interpretation / Definitions, the Significant resource management issues for the region (**SRMR**), and the Integrated Management (**IM**) and Energy Infrastructure and Transport (**EIT**) Chapters will be presented at the hearing of submissions on the EIT Chapter in the week of 13 March, at which these legal submissions will also be tabled;
- (c) These legal submissions will be presented, along with planning and ecological evidence on the Ecosystems and indigenous biodiversity (**ECO**) chapter in April. Further legal submissions will be presented specifically on matters arising in respect of the ECO Chapter and submission points.

Witnesses

- 10. Two witnesses will be appearing on behalf of Manawa on 14 March:
 - (a) **Ms Nicola Foran** is employed by Manawa as the Environmental Policy Manager and has been employed by the company since 2013. Ms Foran will provide evidence regarding Manawa, broader central government context for the submission, Manawa's assets in the Otago region, and implications of the pRPS for its activities. Ms Foran also explains the difference between the terms "renewable energy" and "electricity" and how they are used, which is a point raised in the Manawa submission.
 - (b) **Ms Stephanie Styles** is a Senior Planner at Boffa Miskell and addresses the policy context for renewable electricity generation, the appropriateness of the pRPS framework and the extent to which it complies with the relevant higher order statutory and national policy directions.
- 11. Dr Vaughan Keesing will provide expert evidence relating to the ECO provisions on behalf of Manawa and Contact at the April hearing.

Impact on Manawa

12. As Ms Foran explains in her evidence, a key concern for Manawa is the ongoing derogation of resource consents and the need to protect existing generation capacity. Operational flexibility and generation output is increasingly lost as a result of increasing restrictions put on HEPS. Loss of output from existing assets results in a need to make up more of the shortfall from either non-renewable sources, like fossil fuels, or development of new schemes in new areas.⁴
13. Manawa has only recently renewed the four key deemed permits for the Waipori HEPS and all four have only been given a six year consent term. This means that further re consenting processes will be required for those processes in around five years' time. There are also a multitude of other resource consents that relate to various parts of the Waipori HEPS as well as others for the Deep Stream HEPS and Paerau / Patearoa HEPS that will be affected by the pRPS. This is both directly as being a matter to which regard is had in consent application processes, and due to the influence it will have on the new land and water plan that will set the regulatory framework in which Manawa's renewal consents will be considered. This will also influence any new consents required for repairs and upgrades and may, via the regional plan, result in the triggering of reviews of existing consents to ensure limits are able to be met (or the guiding of those reviews were they to be required).
14. Manawa therefore has a keen interest in ensuring that the policy framework in which these processes occur is as supportive and enabling as it can be.
15. Given its wide spread of assets throughout the country, it also has an interest in ensuring that the national directions relating to renewable electricity generation are consistently responded to and reflected throughout regional planning documents.

LEGAL FRAMEWORK

16. Counsel for the Otago Regional Council (**ORC**) provided a comprehensive summary of the general statutory framework applying to the pRPS in his

⁴ Statement of Evidence of Nicola Foran dated 23 November 2022 at paragraph 37.

opening submissions, and that summary is broadly agreed and adopted. Given that the framework is largely well settled and uncontested, I will focus on key issues for Manawa.

17. The pRPS must achieve the purpose of the Act, that is sustainable management as defined in s5, by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of its natural and physical resources.⁵
18. Renewable electricity generation is a key aspect of the sustainable management purpose of the Act (s5) – electricity enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety. The Environment Court has said that “[e]lectricity is a vital resource for New Zealand. There can be no sustainable management of natural and physical resources without energy, of which electricity is a major component”.⁶
19. In addition, s7(j) explicitly requires all persons exercising functions and powers under the RMA to have particular regard to:

(j) The benefits to be derived from the use and development of renewable energy.
20. Section 7(b) relating to the efficient use and development of natural and physical resources and 7(i) relating to the effects of climate change, are also key.

National Policy Statements

21. The RPS must "give effect to" national policy statements, including the National Policy Statement for Renewable Electricity Generation (**NPS REG**), as well as those on Electricity Transmission (**NPS ET**), on Urban Development (**NPS UD**), and for Freshwater Management (**NPS FM**).
22. To the extent that there is room for differences to be found between the various national policy statements, the planning documents sitting under them

⁵ Section 59 of the Act.

⁶ *Genesis Power Limited v Franklin District Council* [2005] NZRMA 541 at [64].

should reconcile and give effect to them, and in my submission the RPS, as the overarching regional direction, should strive to do this as much as possible so as to ensure consistency across the region.

NPS REG

23. The NPS REG is addressed in detail by Ms Styles.⁷ The matters of national significance to which the NPS REG applies are:⁸

- (a) the need to develop, operate, maintain and upgrade renewable electricity generation activities throughout New Zealand; and
- (b) the benefits of renewable electricity generation.

24. The single objective of the NPS REG is:⁹

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.

25. In order to implement this overarching objective, the NPS REG includes a suite of policies to be given effect to:

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

⁷ Statement of Evidence of Stephanie Styles dated 23 November 2022 at paragraphs 5.4-5.6 and at Appendix One.

⁸ NPS REG page 4.

⁹ NPS REG page 3.

- (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 generation 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 generation activities can cumulatively have significant adverse effects on renewable electricity generation output; and
 - (iii) meeting or exceeding the national target for renewable electricity generation will require significant development of renewable electricity generation activities.
- (c) Policy C is "*acknowledging the practical constraints associated with the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities*". Two sub-policies sit under this policy:
- (i) Policy C1 requires decision-makers to have particular regard to a number of matters, including the locational requirements of renewable electricity generation activity (ie it needs to be where the renewable energy resource is), and the logistical and technical practicalities associated with developing, upgrading, operating or maintaining these activities.
 - (ii) Policy C2 sets out a specific approach for managing the effects of renewable electricity generation activities. Decision-makers are specifically directed to have regard to offsetting measures or environmental compensation when considering any residual effects of renewable electricity generation that cannot be avoided, remedied or mitigated.

- (d) Policy D is "*managing reverse sensitivity effects on [existing and new renewable electricity generation] activities*" and requires such effects to be "*avoided*".
 - (e) Policy E is "*incorporating provisions for renewable electricity generation activities into regional policy statements and regional and district plans*". This policy provides specific direction for the pRPS 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 renewable activities.
 - (g) Policy G is to enable the identification of renewable electricity generation possibilities.
26. The pRPS needs to give effect to all those provisions of the NPS REG.

Emissions Reduction and National Adaptation Plans

27. As the pRPS was notified prior to the RMA climate change amendments commencing, it is to be determined as if they had not yet been enacted.¹⁰ This means that what are now the s61(2)(d) and (e) obligations to have regard to any emissions reduction plan (**ERP**) or national adaptation plan (**NAP**) made in accordance with the Climate Change Response Act 2002 does not apply to the pRPS.
28. However, as the ERP and NAP are a management plan and/or strategy prepared under other legislation, they are still relevant to the Panel's consideration under s62(2)(a)(i) of the RMA. Given the scale of the crisis and its impacts (as evidenced by recent events across Aotearoa), these documents are, in my submission, essential considerations. Meaningful action must be taken to respond to them via planning documents guiding and controlling future activities across all regions in NZ.

¹⁰ Clause 26, Part 3 of the Resource Management Amendment Act 2020.

29. The purpose of the ERP is for Aotearoa to contribute to the global effort to limit global warming to 1.5°C.¹¹ It focusses on how we will reduce emissions, whereas the NAP addresses how we will adapt to the climate change impacts that are already locked in.
30. The ERP contains a suite of actions to reduce emissions in key sectors of the economy, including “*phasing out fossil fuels and massively ramping up renewables in transport, electricity generation and industry*”.¹² The range of benefits associated with decarbonising the energy sector are acknowledged, and a key action included to “*reduc[e] barriers to developing and efficiently using electricity infrastructure, including transmission and distribution networks*”.¹³
31. The Government intends to set a strategy and targets to guide NZ to 2050. That will set a target of 50% of total final energy consumption to come from renewable sources by 2035 and address strategic challenges in the energy sector.
32. The ERP explains that the:

“Government’s 2050 vision for energy and industry is for Aotearoa New Zealand to have a highly renewable, sustainable and efficient energy system supporting a low-emissions economy.

- (a) Energy will be accessible and affordable and will support the wellbeing of all New Zealanders.*
- (b) Energy supply will be secure, reliable and resilient, including in the face of global shocks.*
- (c) Energy systems will support economic development and an equitable transition to a low-emissions economy.*

*To achieve this future, Aotearoa needs to move away from fossil fuels and shift towards increased renewable electricity generation, and the development and use of other low-emissions fuels.*¹⁴

33. “[A]ccelerating the rollout of renewable electricity generation” is required.¹⁵

¹¹ ERP at page 13.

¹² ERP at page 21.

¹³ ERP at page 201.

¹⁴ ERP at page 203.

¹⁵ ERP at page 207.

34. These very recent and clear statements from the Government form important context for regional policy statements and planning documents that directly influence the uptake of renewable electricity generation in their areas. While not elevating the NPS REG above other NPS (as they are all important national directions), the ERP, in my submission, certainly provide additional support for **clear actions** being taken to protect existing renewable output and to provide a pathway for new development. A more subtle, indirect way of implementing the NPS REG directions, which might appear in older RPSs, will no longer cut it.

KEY ISSUES FOR MANAWA

35. Manawa's submission and evidence have identified two key issues with the pRPS:
- (a) The structure of the pRPS and the way the various objectives and policies cross-reference and interact leads to a number of overlapping requirements and a lack of clarity for those interpreting and applying the pRPS. The effect of this, and the interaction between the energy and broader infrastructure policies in particular, is to dilute what would otherwise be a relatively strong policy framework for renewable electricity generation.
 - (b) The provisions do not go far enough to provide for renewable electricity generation in a manner that would give full effect to the NPS REG, even when reconciled with other national planning direction. Clear acknowledgement of the role renewable electricity generation plays in responding to the climate crisis, and a clear pathway to protect and enable it, is lacking.
36. While some changes have been made, including to the structure of the EIT chapter, these remain key concerns and will be the focus of these legal submissions. Ms Styles and Ms Foran deal comprehensively with the specific amendments sought in all relevant chapters in their evidence and I do not propose to address specific relief in detail.
37. These concerns are shared with the other renewable generators, and they have collaborated to propose changes to address these concerns.

Stand-alone provisions for EN

38. Counsel for ORC says in his opening submissions that *“The proposed RPS has not singled out, as a general rule, and made distinct provisions for particular activities, except where required by a National Policy Statement.”*¹⁶
39. The NPS REG is cited as being one of those NPS that require the singling out of certain activities. This has been done in provisions in the Energy Infrastructure and Transport (EIT). The adoption of this as a starting point is supported.
40. However, while there are in theory distinct provisions “singling out” renewables, the extent to which they are in fact specifically provided for in that chapter is significantly undermined by the application of more general provisions.
41. As Ms Styles clarifies, it is not necessarily the application of the environmental policies, to which it is generally accepted activities should be subject, but the application of contradictory general infrastructure policies that remains a key outstanding issue. (That being said, it remains Manawa’s case, and is Ms Styles opinion, that a more careful and nuanced approach to reconciling direction is required across the entire pRPS).
42. As well as citing others, Ms Styles provides a detailed example at paragraph 10.12 of her evidence of the inconsistency between an EN policy and an INF policy that effectively takes away any benefit of the more enabling provision for renewables due to both applying. Operation and maintenance of renewable electricity generation is to be “provided for”, but then as infrastructure simply “allowed for” (with the former being more active), and this is to be done while minimising the adverse effects for EN, whereas there is a clear direction for INF to, as a first priority, avoid significant adverse effects and only if that is not practicable, to minimise the effects. This begs the question – why have both applying? It leads to confusion and undermining of EN directions.

¹⁶ Opening submissions on behalf of ORC at paragraph 65.

43. Mr Langman in his supplementary evidence responds to the request for standalone provisions on the basis that what is being sought is a “carve out” providing a different approach to management of effects. As above, that is not the basis for the request. While it is certainly the case that renewable electricity generation is infrastructure of both national and regional importance, unlike other forms of infrastructure,¹⁷ it is specifically provided for in an NPS and this should be properly carried through in a way that clearly gives effect to that national direction, rather than being subject to general INF policies.
44. An EIT Chapter is required under the National Planning Standards but those Standards do not dictate how the provisions within the chapters are to interact. It is open to the Panel to include EN provisions that are not also subject to the general INF ones. The expert planners for the renewable generators have worked together to develop a sub-chapter for renewable electricity generation, the framework for which is set out in Appendix Three to Ms Styles’ evidence. In my submission this is a more appropriate approach to the implementing of the NPS REG direction and will provide a clearer line of sight to the protective and enabling objectives and policies that it contains.
45. Simply put, as currently framed the pRPS introduces more conflicting requirements than it needs to. There are always going to be tensions between environmental and development objectives, but the pRPS does not need to unnecessarily add to this complexity by making the EN provisions subject to a layer of similar but slightly inconsistent INF directions.

Role of REG and a clear pathway

46. Some of the relief sought by Manawa is to provide greater recognition of the role that renewable electricity generation plays in the response to climate change, eg to the SRMR and IM chapters. In my submission it would be entirely consistent with the ERP to explicitly link renewable electricity generation to the response to climate change, and to do this in an active way that focuses not only on problems but also solutions.

¹⁷ Noting that electricity transmission is also subject to an NPS but now is proposed to be included within EN, which Manawa supports.

47. The clearer pathway issue relates primarily to the interaction between the renewable electricity generation provisions and the environmental directions, largely in the ECO chapter. I intend to address that issue in detail in separate submissions for the ECO chapter, and to expand on it further in relation to the interaction between the NPS FM and NPS REG at a future hearing on the freshwater provisions.
48. At this stage I note that the ORC website says that the pRPS *“explains how national direction on resource management will be applied in Otago and provides direction on how to balance potentially conflicting requirements”*. Manawa’s position is that it does not effectively do this, instead leaving it to the regional and district plans to attempt, and in doing so significantly reduces the utility of the RPS as the key guiding instrument for the region. Further changes are sought to ensure that a clear pathway is provided for renewable electricity generation that balances the competing considerations in the various NPSs, in a more careful and nuanced manner than which it has been done in the pRPS.

Conclusion

49. Maintaining existing output of renewable electricity generation and providing opportunities for development of new generation infrastructure in Otago is a key action that this region can take towards addressing the climate crisis and ensuring security of supply.
50. The pRPS must implement the directions in the NPS REG along with other national policy direction. While renewable generation must take place within environmental constraints, there should be a clearer pathway and line of sight for this type of infrastructure. This should not be undermined by confusing cross-referencing, overlaps and duplicated but not quite consistent directions. Manawa’s expert evidence recommends changes to ensure that the pRPS more evidently and appropriately implements national direction, and the changes are consistent with those being sought by other renewable electricity generators.

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