IN THE ENVIRONMENT COURT ENV-2016-CHC-**AT CHRISTCHURCH** IN THE MATTER of the Resource Management Act 1991 (the Act) AND IN THE MATTER of an appeal pursuant to clause 14 of the First Schedule to the Act **TRUSTPOWER LIMITED** BETWEEN Appellant AND **OTAGO REGIONAL COUNCIL** Respondent

NOTICE OF APPEAL

- TO: The Registrar Environment Court CHRISTCHURCH
- TRUSTPOWER LIMITED (Appellant) appeals against decisions of the Otago Regional Council (Respondent) on the Proposed Regional Policy Statement for Otago (Proposed RPS).
- The Appellant made submissions and further submissions on the Proposed RPS.
- 3. The Appellant is not a trade competitor for the purposes of section 308D of the Act.
- 4. The Appellant received notice of the decisions on 1 October 2016.
- 5. The decisions were made by the Respondent.
- 6. The decisions appealed, reasons for appeal and relief sought are generally grouped together by topic and are set out below generally in the order in which the relevant provisions appear in the Proposed RPS.

Chapter 1: Resource management in Otago is integrated

7. Integrated Resource Management *Policy 1.1.2*

- 7.1 The decision appealed relates to the Appellant's submission to delete Objective 2.3 and rework it so that it seeks to achieve the integrated management of natural and physical resources of the region, including the need to consider human use and economic benefits.
- 7.2 The reason for the appeal is that while the Appellant generally supports the deletion of Objective 2.3 and the introduction of a new chapter on integrated resource management (including a new objective and policies which, amongst other things, combines Policy Suite 2.3 into a new Policy 1.1.)), new Policy 1.1.2 is not supported to the extent it features an inappropriate proviso.
- 7.3 The Appellant seeks that Policy 1.1.2 Economic wellbeing be amended to read:

Provide for the economic wellbeing of Otago's people and communities by enabling the use and development of natural and physical resources only if the adverse effects of those activities on the environment can be managed to give effect to the objectives and policies of the Regional Policy Statement.

Chapter 3: Otago has high quality natural resources and ecosystems

8. Management and Protection of Natural Resources Objective 3.1 and new policies

- 8.1 The decision appealed relates to the Appellant's submission to retain Objective 3.1 (formerly 2.1) as notified and include additional policies that recognise, maintain and enhance physical resources, and the decision to instead amend Objective 2.1 to apply to natural resources only and make no changes to the policies to recognise and provide for the values of physical resources.
- 8.2 The reason for the appeal is that the Appellant disagrees with the Respondent that physical resources are adequately managed by provisions in other chapters of the Proposed RPS, particularly given that other chapters are

not specific freshwater management. It is appropriate and necessary that the values of physical resources which rely on freshwater use, such as the Appellant's hydroelectric power schemes, are recognised along with other values in this chapter of the Proposed RPS.

- 8.3 The Appellant seeks the following relief:
 - (a) Reinstate the notified version of Objective 3.1 to read:

The values of Otago's natural <u>and physical</u> resources are recognised, maintained and enhanced

(b) Include additional policies that recognise, maintain and enhance physical resources.

9. Fresh Water

Policies 3.1.1 and 3.1.2

- 9.1 The decisions appealed relate to the Appellant's submissions to amend Policies 3.1.1 (formerly 2.1.1) and 3.1.2 (formerly 2.1.2) to, amongst other things, suitably recognise and provide for infrastructure.
- 9.2 The reasons for the appeal are that:
 - It is not appropriate (or realistic) to require that all of the listed matters in Policies 3.1.1 and 3.1.2 be achieved all of the time, in every case. This is because the values of each water body will be different, and how such values are to be managed will also differ from catchment to catchment.
 - (b) The Appellant is not satisfied that the amendments to Policies 3.1.1 and 3.1.2 adequately recognise and provide for existing infrastructure (including upgrades or expansions) or, more generally, the importance of fresh water resources to the social and economic wellbeing of the region.
- 9.3 The Appellant seeks the following relief:

(a) Amend Policy 3.1.1 Fresh water to read:

Manage fresh water to achieve all of the following:

n) Recognise and provide for the social and economic benefits of water use, including for infrastructure

(b) Amend Policy 3.1.2 Beds of rivers, lakes, wetlands, and their margins to read:

Manage the beds of rivers, lakes, wetlands, their margins, and riparian vegetation to achieve all of the following: a) Maintain or enhance their natural functioning;

i) Recognise and provide for the social and economic benefits of water use, including for infrastructure

10. Ecosystems and Biological Diversity Policy 3.1.9

Objective 3.2 and Policy 3.2.2

- 10.1 The decision appealed relates to the Appellant's submission to delete Policy3.1.9 (formerly 2.1.6) and to amend Objective 3.2 (formerly 2.2) and Policy3.2.2 (formerly 2.2.2).
- 10.2 The reasons for the appeal are that:
 - (a) Policy 3.1.9 continues to apply to all ecosystems and indigenous biodiversity regardless of significance. The Appellant remains concerned about the implications of this policy and does not support the requirement to enhance which goes beyond the requirements of the statutory framework and is not justified.
 - (b) The Appellant remains concerned that Objective 3.2 is overly restrictive as it appears to prohibit all effects on significant and highlyvalued natural resources. The Appellant considers that the focus of the objective should be to identify such resources and to protect them from inappropriate subdivision, use and development.
 - (c) Policy 3.2.2 has not been amended in the way sought by the Appellant in its submissions. The Appellant accepts this outcome on the basis it

is clarified that the management regime under Policy 4.3.3 (as sought to be amended by this appeal) is applicable to its infrastructure.

- 10.3 The Appellant seeks the following relief:
 - (a) Amend Policy 3.1.9 Ecosystems and indigenous biological diversity to read:

Manage ecosystems and indigenous biological diversity in terrestrial, freshwater and marine environments to achieve all of the following: a) Maintain or enhance ecosystem health and indigenous biological diversity:

b) Maintain or enhance biological diversity where the presence of exotic flora and fauna

supports indigenous biological diversity;

c) Maintain or enhance areas of predominantly indigenous vegetation;

f) Maintain or enhance habitats of indigenous species and the habitat of trout and salmon that are important for recreational, commercial, cultural or customary purposes;

(b) Amend Objective 3.2 to read:

. . .

Otago's significant and highly-valued natural resources are identified, and protected or enhanced from inappropriate subdivision, use and <u>development</u>

(c) Amend Policy 3.2.2 Managing significant vegetation and habitats to read:

Protect and enhance areas of significant indigenous vegetation and significant habitats of indigenous fauna, by all of the following:

g) In the case of nationally and regionally significant infrastructure, managing their adverse effects in accordance with Policy 4.3.3

11. Natural Features, Landscapes and Seascapes Policies 3.2.4 and 3.2.6

11.1 The decisions appealed relate to the Appellant's submissions to delete Policy 3.2.4 (formerly 2.2.4) or amend it to require that only significant adverse effects be avoided and to delete Policy 3.2.6 (formerly 2.2.6) or amend it to focus on the maintenance of amenity landscapes.

- 11.2 The reasons for the appeal are:
 - (a) The Appellant considers it appropriate and necessary to recognise and provide for existing infrastructure in outstanding and highly valued areas given that such status was achieved with that infrastructure in place.
 - (b) For consistency with other appeal points, in respect of Policy 3.2.4, the Appellant seeks clarification that the management regime under Policy 4.3.3 (as sought to be amended by this appeal) is applicable to its infrastructure.
 - (c) The Appellant continues to oppose Policy 3.2.6 as it seeks to protect landscapes and features that are not outstanding. The change in terminology to replace the term 'special amenity landscapes' may not have achieved the clarity intended and, in any event, the requirement to avoid significant adverse effects sets a higher level of protection than is required under the Act. The policy potentially prevents development in these areas, regardless of any benefits to community well-being or health and safety that might be associated with the development.
- 11.3 The Appellant seeks the following relief:
 - (a) Amend Policy 3.2.4 Managing outstanding natural features, landscapes and seascapes to read:

Protect, enhance and restore outstanding natural features, landscapes and seascapes, by all of the following:

<u>d) Recognising and providing for existing infrastructure within the outstanding natural features, landscapes and seascapes</u>

g) In the case of nationally and regionally significant infrastructure, managing their adverse effects in accordance with Policy 4.3.3

(b) Amend Policy 3.2.6 Managing highly valued natural features, landscapes and seascapes to read:

Protect or <u>Maintain and, where appropriate,</u> enhance highly valued natural features, landscapes and seascapes by all of the following: a) Avoiding significant adverse effects on those values which contribute to the high value of the natural feature, landscape or seascape; ba) Avoiding, remedying or mitigating other adverse effects;

<u>c) Recognising and providing for existing infrastructure within the highly valued natural features, landscapes and seascapes</u>

Chapter 4: Communities in Otago are resilient, safe and healthy

12. Infrastructure Policy 4.3.3

- 12.1 The decision appealed relates to the Appellant's submission to amend Policy 4.3.3 (formerly 3.5.2).
- 12.2 The reasons for the appeal are that:
 - (a) While Policy 4.3.3 has not been amended in the way sought by the Appellant in its submissions, and subject to the changes sought in this appeal, the Appellant supports there being a stand-alone management regime for infrastructure that has national or regional significance which applies to its assets and interests in the region.
 - (b) For consistency with other appeal points, in respect of Policies 3.2.9 and 5.3.2., the Appellant seeks clarification that the management regime under Policy 4.3.3 (as sought to be amended by this appeal) is applicable to its infrastructure.
- 12.3 The Appellant seeks the following relief:
 - (a) Amend Policy 4.3.3 Adverse effects of nationally and regionally significant infrastructure to read:

Minimise Manage adverse effects from infrastructure that has national or regional significance, by all of the following:
a) Giving preference to <u>aA</u>voiding, where practicable, their location in all of the following:
i. Areas of significant indigenous vegetation and significant habitats of indigenous fauna;

- ii. Outstanding natural features, landscapes and seascapes;
- iii. Areas of outstanding natural character;
- iv. Outstanding water bodies or wetlands;

v. <u>Historic heritage</u> <u>Pplaces</u> or areas of <u>containing</u> <u>regional and</u> <u>national</u> significant<u>ce</u> <u>historic heritage</u>;

b) Where it is not possible practicable to avoid locating in the areas listed in a) above, avoiding significant adverse effects on those values that contribute to the significant or outstanding nature of those areas;
c) Avoiding, remedying or mitigating other adverse effects;
d) Considering offsetting, or other compensatory measures, for

significant residual adverse effects on indigenous biological diversity.

(b) Amend Policies 3.2.9 Managing the outstanding natural character of the coastal environment and 5.3.2 Managing historic heritage to include:

x) In the case of nationally and regionally significant infrastructure, managing their adverse effects in accordance with Policy 4.3.3

13. Energy

Objective 4.4 and Policies 4.4.1 and 4.4.3 New objectives and policies

- 13.1 The decision appealed relates to the Appellant's submissions on Objective 4.4 (formerly 3.6) to include an additional objective, to amend Policies 4.4.1 (formerly 3.6.1) and 4.4.3 (formerly 3.6.3), and to include new objectives and policies to give effect to the National Policy Statement for Renewable Electricity Generation 2011 (NPS REG).
- 13.2 The reasons for the appeal are that:
 - (a) The Appellant remains concerned that the existing objective and policies do not far enough in giving effect to the NPS REG.
 - (b) Objective 4.4 is inappropriately focussed on the energy needs of Otago and fails to recognise that electricity generation is nationally significant and that the region's renewable resources are currently used, and are likely to continue to be used in the future, for the benefit of both Otago and the rest of New Zealand.

- (c) Clause (b) of Policy 4.4.3 is not sufficiently strongly worded. In accordance with the NPS REG, reverse sensitivity effects should be required to be avoided.
- 13.3 The Appellant seeks the following relief:
 - (a) Add a new Objective to 4.4 to read:

Enable the ongoing operation, use, maintenance and development of renewable energy generation facilities within the Otago Region.

(b) Amend Policy 4.4.1 Renewable electricity generation to read:

Recognise and provide for the development, operation, maintenance, and upgrading of renewable electricity generation activities, by both: <u>a) Recognising the use of natural resources to enable these activities;</u> <u>ab</u>) Encouraging the efficient use of existing structures or facilities; and <u>be</u>) Providing for activities associated with the investigation and identification <u>and development</u> of potential renewable electricity generation sites and sources.

(c) Amend Policy 4.4.3 Protecting renewable electricity generation to read:

Protect the generating capacity of nationally or regionally significant renewable electricity generation activities, by all of the following: a) Recognising the functional needs of renewable electricity generation activities, including physical resource supply needs; b) Restricting Avoiding the establishment of those activities that may will result in reverse sensitivity effects; c) Avoiding, remedying or mitigating adverse effects from other activities on the functional needs of that infrastructure.

14. Further Reasons for the Appeal

- 14.1 In addition to the matters set out in paragraphs 7 and 13 above, the further reasons for the appeal are that the Respondent's decision:
 - (a) Will not promote the sustainable management of natural and physical resources and is contrary to Part 2 and other provisions of the Act;
 - (b) Is not necessary to avoid, remedy or mitigate adverse effects on the environment; and

(c) Does not represent the most appropriate means of exercising the Respondent's functions, having regard to the efficiency and effectiveness of other available means and therefore is inappropriate in terms of section 32 and other provisions of the Act.

15. Further relief sought

- 15.1 In addition to the matters set out in paragraphs 7 to 13 above, the Appellant seeks the following relief:
 - (a) Similar and / or consequential amendments to the Proposed RPS (such as to methods, explanatory text and to ensure a consistent approach where appropriate) that would satisfactorily address the matters raised in this appeal; and
 - (b) The Appellant's submission and further submission relief in the event that its primary relief in this appeal is not granted; and
 - (c) Such other relief as the Court considers appropriate.

16. Attachments

- 16.1 Copies of the following documents are attached to this appeal:
 - (a) The relevant parts of the Appellant's submission and the relevant parts of its further submission (Annexure A);
 - (b) The relevant parts of the Respondent's decision (**Annexure B**); and
 - (c) A list of the names and addresses of the persons to be served with a copy of this notice of appeal (Annexure C).

Signature:

TRUSTPOWER LIMITED by its duly authorised agent:

Lara Burkhardt Counsel for the Appellant

Date:

5 December 2016

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

*How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington or Christchurch.

Annexure A

A copy of the relevant parts of the Appellant's submissions and further submissions

Annexure B

A copy of the relevant parts of the Respondent's decision

Annexure C

Names and addresses of the persons to be served with a copy of this appeal

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Surfbreak Protection Society Attention: Michael Gunson PO Box 58846 Botany Auckland 2163 info@surfbreak.org.nz Ian Percy and Fiona Aitken, Ian Percy and Fiona Aitken Family Trust and Aitken's Folly Vineyard C/- Gallaway Cook Allan Attention: Jan Caunter PO Box 450 Wanaka 9343 jan.caunter@gallawaycookallan.co.nz

Queenstown Airport Corporation C/- Mitchell Partnerships Attention: Kirsty O'Sullivan PO Box 489 Dunedin <u>kirsty.osullivan@mitchellpartnerships.co.</u> <u>nz</u>

Tautuku Block X Section 3C Trust Attention: Mr E J Palmer 47 Skibo Street Kew Dunedin 9012 <u>t.b_palmer@xtra.co.nz</u>

Z Energy Limited, BP Oil NZ Limited and Mobil Oil NZ Limited C/- Burton Planning Consultants Limited Attention: Mark Laurenson PO Box 33-817 Takapuna Auckland 740 mlaurenson@burtonconsultants.co.nz

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Landscape Connections Trust Attention: Jinty MacTavish PO Box 1320 Dunedin <u>landscapeconnectionstrust@gmail.com</u>

Clutha Agricultural Development Board Attention: Dave Inder PO Box 149 Balclutha info@agboardnz.co.nz

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Real Journeys C/- Anderson Lloyd Lawyers Attention: Warwick Goldsmith and Maree Baker-Galloway PO Box 201 Queenstown 9348 <u>warwick.goldsmith@al.nz;</u> <u>maree.baker-galloway@andersonlloyd.co.nz</u>

Ballance Agri-Nutrients Limited Attention: Warwick Catto Private Bag 12503 Tauranga Mail Centre Tauranga 3143 Warwick.Catto@ballance.co.nz Pioneer Generation Limited Attention: Peter Mulvihill PO Box 275 Alexandra peter.mulvihill@pgl.co.nz

Silver Fern Farms Attention: Martina Armstrong PO Box 941 Dunedin 9054 martina.armstrong@silverfernfarms.co.nz

Little Valley Station Ltd Attention: Lindon and Jennifer Sanders 1173 Little Valley Road RD 2 Alexandra 9392 sanders.lvs@farmside.co.nz

Straterra Attention: Chris Baker PO Box 10668 Wellington 6143 bernie@straterra.co.nz

Te Runanga o Moeraki, Kati Huirapa Runaka ki Puketeraki, Te Runanga o Otakou and Hokonui Runanga C/- KTKO Ltd Attention: Tim Vial PO Box 446 Dunedin 9054 <u>tim@ktkoltd.co.nz</u>

Dairy NZ Attention: Shirley Hayward PO Box 85066 Lincoln University 7647 shirley.hayward@dairynz.co.nz Ravensdown Works Limited C/- Anderson Lloyd Lawyers Attention: Stephen Christensen and Rachel Brooking Private Bag 1959 Dunedin 9054 <u>stephen.christensen@andersonlloyd.co.n</u> <u>z; rachel.brooking@andersonlloyd.co.nz</u>

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Remarkables Park Limited, Queenstown Park Limited and Shotover Park Ltd Attention: Jenny Carter PO Box 1075 Queenstown j.carter@remarkablespark.com

Landpro Limited Attention: Martell Letica PO Box 302 Cromwell 9342 martell@landpro.co.nz

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