

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2020-CHC-127

Under the Resource Management Act 1991

In the matter of a notice of motion under section 149T(2) to decide proposed
Plan Change 7 to the Regional Plan: Water for Otago

Otago Regional Council

Applicant

**Legal submissions for the Otago Fish and Game Council and the Central South
Island Fish and Game Council on the proposed Otago Regional Policy Statement
2021**

28 July 2021

Section 274 party's solicitors:

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**anderson
lloyd.**

May it please the Court

Weight to be given to the proposed Otago Regional Policy Statement 2021 (pORPS)

- 1 Fish and Game agrees with ORC's submissions on the principles for determining the weight to be given to a proposed regional policy statement in respect of section 66(2) of the RMA.
- 2 We emphasise that while the pORPS is at an early stage of development it represents a significant policy shift from the status quo. Incorporation of the concept of Te Mana of te Wai for freshwater and the prioritisation of the health and wellbeing of water bodies and freshwater ecosystems is a significant shift from the direction of the partially operative RPS. This policy shift comes directly from the NPSFM 2020, which gives some confidence that it is unlikely to change significantly as that aspect of the pORPS progresses through the Schedule 1 process.
- 3 We agree with ORC that the partially operative RPS is not fit for purpose as it does not give effect to Part 2 RMA and the NPSFM 2020. This is why the pORPS and future Land and Water Regional Plan (**LWRP**) are being developed, and why PC7 is necessary as an interim measure to manage consenting of water permits until the LWRP is notified.

Reconciling tensions between the NPSFM, NPSUD and NPSREG

- 4 Fish and Game agrees with the experts for ORC, the Minister for the Environment (**MFE**), the Director-General of Conservation (**DOC**) and the Territorial Authorities (**TA**) that the pORPS effectively reconciles the relevant NPSs. The pORPS sets the regional direction to reconcile the relevant NPSs, which is then achieved at the plan development and consenting stage.
- 5 We add that any tension between the NPSs is further reconciled because the implementation of the pORPS objectives and policies for freshwater¹, renewable electricity generation² and infrastructure³ must occur "within environmental limits", to be determined under the LWRP. For example, objective EIT-EN-O2 is that the generation capacity of renewable electricity generation activities is maintained, and if practical maximised, *within environmental limits*. The environmental limits must be put first to achieve

¹ Policy LF-FW-P7(6).

² Objective EIT-EN-O2(1) and Method EIT-EN-M1(4).

³ Objective EIT-INF-O4.

the first priority of the Te Mana o te Wai hierarchy of obligations. Only within these limits can the second and third order obligations be prioritised.

Timeframes and consistency between PC7 and the pORPS

- 6 The experts agree that PC7 does not give full effect to the pORPS, and it is not intended to. In Mr de Pelsemaeker's words the key purpose of PC7 is to "facilitate an efficient and effective transition towards the new integrated planning framework, that will be promulgated in the new RPS and LWRP"⁴.
- 7 PC7 gives effect to the pORPS to the extent that it limits the duration of consents to 6 years, thereby ensuring consents will be required to be renewed early on in the life of the LWRP and pORPS (once operative), so that current water takes are brought in line as soon as possible with the environmental limits to be established under the LWRP.
- 8 As stated by Mr Ensor for MFE, PC7 provides the timeframe and opportunity to undertake the work required to understand what the health and wellbeing of the waterbodies and freshwater ecosystems in Otago is, and then minimises the risk of "locking in" water allocation and use practices which compromise the ability to achieve the objectives and policies of the pORPS.⁵
- 9 Fish and Game considers that providing for longer term consents will directly undermine the pORPS by enabling water takes which are not in accordance with the direction of the NPSFM and pORPS to continue well beyond the lifetime of the pORPS (once operative). Long term consents inconsistent with the environmental limits set under the LWRP will compromise the region's ability to achieve the visions for each Freshwater Management Unit and rohe in a timely and efficient way.
- 10 If consents are granted for the long term, their expiry may fall within some of the proposed long term vision timeframes. However, this does not guarantee there will still be time for those outcomes in those visions to be achieved. Consents issued are best considered as one step of many towards achieving the outcomes in the long term visions.

⁴ Statement of supplementary evidence of Tom de Pelsemaeker for the Otago Regional Council, 14 July 2021, at [15].

⁵ Supplementary statement of evidence of Timothy Ensor for the Minister for the Environment, 20 July 2021, at [16].

- 11 Fish and Game agrees with Mr Brass for DOC that from a costs-benefits perspective short term consents will be most effective in achieving implementation of the NPSFM, because it ensures sooner replacement of consents to bring them into line with the directions of the pORPS.⁶

How does the pORPS provide for hydro electricity generation, and is PC7 consistent with this direction

- 12 Fish and Game disagrees with Ms Styles' that PC7 is inconsistent with the pORPS direction for hydro electricity generation (**HEG**) and renewable electricity generation (**REG**)⁷.
- 13 Ms Styles' evidence downplays the fact that the direction in objective EIT-EN-O2(1) that the generational capacity of renewable electricity generation must be maintained, and where practicable maximised, must be caveated by "within environmental limits". Her analysis of how enabling the pORPS is of REG and HEG activities also ignores the fact that REG and HEG activities are not the first priority in the Te Mana o te Wai hierarchy of obligations. The health and wellbeing of waterbodies and freshwater ecosystems are to be prioritised above the health of people and their social, economic and cultural wellbeing, and this is directly translated into the objectives for REG through the caveat of "within environmental limits".
- 14 These environmental limits have not yet been determined. This work must be done first before it can be understood how objective EIT-EN-O2 is to be applied, in light of the caveat and the Te Mana o te Wai hierarchy of priorities.
- 15 To allow for longer term consents for REG and HEG activities directly undermines the ability to achieve the objectives and policies of the pORPS once the LWRP is in force, and undermines how objective EIT-EN-O2 is intended to be implemented. It directly undermines the concept of Te Mana o te Wai if REG is provided for long term without understanding environmental constraints first.
- 16 Fish and Game disagrees that PC7 does not provide for the needs of nationally and regionally significant infrastructure for REG and HEG activities. PC7 provides for short term consents with no limit on water take compared to historical levels. This enables generational capacity to be

⁶ Third supplementary brief of evidence of Murray Brass for the Director-General of Conservation Tumuaki Ahurei, 20 July 2021, at [10]-[12].

⁷ Statement of supplementary evidence of Stephanie Styles on behalf of Trustpower Limited, 21 July 2021, at [3.3] – [3.9].

maintained (in the short term), which is consistent with the pORPS objective. In the medium to long term, once future consents are applied for under the LWRP, the direction to maintain generation capacity will be determined within the environmental limits set under the LWRP. This is appropriate given the direction of the NPSFM. We note that Trustpower's ability to maintain generational capacity in the long term is not synonymous with retaining its existing water allocations – it may be that technological improvements enable increased generational capacity with reduced water use.

Dated this 28th day of July 2021

A handwritten signature in black ink that reads "Maree Baker-Galloway". The signature is written in a cursive style and is positioned above a horizontal line.

Maree Baker-Galloway/Roisin Giles
Counsel for the Section 274 party