

ORC NOTIFICATION RECOMMENDATION REPORT

ID Ref: A1793473
Application No: RM22.421
Prepared For: Staff Consents Panel
Prepared By: Dwayne Daly, Senior Consents Planner
Date: 10 May 2023

Subject: Notification recommendation for the review of conditions of resource consents held by Contact Energy Limited, being 2001.385V3 and 2001.386V4, and 2001.398.V2, under Section 128 of the Resource Management Act 1991

1. Purpose

To report and make recommendations under sections 95A-G of the Resource Management Act 1991 (the Act) on the notification decision for the above review.

2. Background Information

Consent Holder:	Contact Energy Ltd
Consent Holder's Agent:	Mitchell Daysh Limited
Site address or location:	2001.385.V3 – Approximately 1.5 kilometres upstream of Clyde. 2001.386.V4 – Upstream of Roxburgh Hydro Village 2001.398.V2 – Lower Manuherikia River and Lake Roxburgh
Legal description(s) of the site:	2001.385.V3 – Lot 1 25146 2001.386.V4 – Lot 1 DP 25198 2001.398.V2 – Crown Land Riverbed and Lot 1 DP 25198
Map reference(s)	2001.385.V3 – Centred on NZMS 260 G42:197-523 2001.386.V4 – Centred on NZMS 260 G43:225-194 2001.398.V2 – Centred on NZMS 260 G42:228-330

2.1 Key issues/risks

Key matters in the review of conditions of consent:

- Landscape and amenity effects

At this stage there are no principal issues in contention that need to be raised.

2.2 Summary

I recommend the review is processed on a non-notified basis.

This is because:

- Adverse effects on the environment or any person or persons from the proposed changes to the conditions will be reduced; and
- There are no special circumstances that warrant public or limited notification

3. Description of Proposed Amendment / Variation

3.1 Background to the Review

Contact Energy Limited (Contact) exercises a suite of seventeen Resource Consents granted by the Otago Regional Council (the Consent Authority) associated with the three hydro-electricity generation facilities operated within the Clutha catchment. The three facilities consist of the Roxburgh and Clyde dams on the Clutha River/Matau-Au and the Hawea control structure at the outlet of Lake Hawea.

The resource consents subject to the current review are:

- Resource consent RM2001.385.V3 being a water permit authorising Contact to dam the Clutha River approximately 1.5 kilometres upstream from Clyde with a concrete dam (the Clyde Dam) for the purpose of hydro-electric power generation.
- RM2001.386V4 being a water permit which authorises Contact to dam the Clutha River at Roxburgh for the purpose of hydro-electric power generation.
- Resource consent RM2001.398.V2 being a land use consent which authorises Contact to disturb the bed of Lake Roxburgh by moving or removing deposited sediment and to disturb and alter the bed of the lower Manuherikia River for the purpose of flood mitigation.

The Lake Dunstan Charitable Trust (LDCT) wrote to the Consent Authority on 10 June 2022 and 21 July 2022. LDCT stated that it had long held concerns about the adequacy of the conditions of Contact's consents to ensure that Contact appropriately avoids, remedies or mitigates the effects of its operations.

Specifically, the LDCT's concerns related to the adequacy of Landscape and Visual Amenity Management Plans (LVAMP) required as a condition of the existing consents to mitigate adverse effects associated with the exercise of the consent. LDCT's concerns related to the following matters:

- i. Lake Weed (Lagarosiphon)
- ii. Lake margins have reduced biodiversity
- iii. Sediment
- iv. Access to the lake
- v. Access to the Kawarau
- vi. Flood risk to Alexandra

LDCT requested that the Consent Authority initiate a review of Contact's conditions under Section 128 of the Resource Management Act 1991 (the Act).

In response, the Consent Authority requested Dr Rob Lieffering, an independent commissioner, to assess whether current conditions are appropriate in terms of

avoiding, remedying, or mitigating adverse effects from the exercise of the consents. Dr Lieffering's report assessed the conditions in Table 1 below:

Table 1: Consent conditions reviewed by Dr Lieffering

Consent number	Conditions
RM2001.385.V3	<ul style="list-style-type: none"> • 3 – catchment approach to monitoring • 6 – Flood Management Plan (FMP) • 10 – lakebed monitoring • 11 – Lowburn Inlet • 12 – Bannockburn Inlet • 17 – Landscape and Visual Amenity Management Plan (LVAMP) • 20 – Sediment Management Plan (SMP)
RM2001.386.V4	<ul style="list-style-type: none"> • 10 – lakebed monitoring • 18 – LVAMP • 20 – SMP
RM2001.398.V2	<ul style="list-style-type: none"> • 5 – FMP • 6 – lakebed monitoring • 8 – LVAMP

Dr Lieffering's report dated 16 August 2022 concluded that the following conditions relating to the LVAMP were inadequate:

- i. Condition 17 of RM2001.385.V3 relating to the LVAMP for the Kawarau Arm of Lake Dunstan
- ii. Condition 18 of RM2001.386.V4 relating to the LVAMP for the Manuherekia River
- iii. Condition 8 of RM2001.398.V2 relating to the LVAMP for the Manuherekia River

The consent conditions relating to the LVAMP were considered to be inadequate at managing adverse effects and were considered to provide a lack of clear direction on monitoring of the LVAMP. The adverse effects not being effectively avoided, remedied or mitigated by the current conditions related to the following:

- i. Driftwood accumulation and the particular visual impact it has from the Old Cromwell Precinct, the Jackson Lookout, the Junction Lookout, including the lake margins around Cornish Point;
- ii. Lagarosiphon within Lake Dunstan;
- iii. A change in flow regime and how the presence of less attractive sediments, algae, aquatic weeds and terrestrial weeds will be monitored and managed during periods of low lake levels;
- iv. Driftwood, Lagarosiphon and sediment accumulation and obstruction on the use of the Old Cromwell jetty, the Cromwell boat ramp, and
- v. Future lower Manuherekia River gravel extraction works on visual amenity and the maintenance of the swimming hole immediately downstream of Shaky Bridge.

Regarding the adequacy of reporting on the LVAMP and implementation of the LVAMP, the key matters are:

- i. The LVAMP does not provide any set performance criteria or standards by which to grade compliance and to report on by the Consent Holder.
- ii. There is unclear and uncertain language and direction about consultation.
- iii. It is unclear about what adverse effects this plan should address so it is uncertain what the plan should contain, what should be monitored, and by who.

Consequently, pursuant to Section 128(1)(a) of the RMA, on 23 August 2022 the Consent Authority served notice on Contact of its intent to review the following conditions:

- i. Condition 17 of RM2001.385.V3 relating to the LVAMP for the Kawarau Arm of Lake Dunstan
- ii. Condition 18 of RM2001.386.V4 relating to the LVAMP for the Manuherekia River
- iii. Condition 8 of RM2001.398.V2 relating to the LVAMP for the Manuherekia River

The purpose of the review was to address the ineffectiveness of the listed conditions. In doing so, the review sought to achieve the following outcomes:

- The consent conditions are direct, certain, enforceable and intra vires.
- The adverse effects which are not being effectively avoided, remedied or mitigated by the conditions are addressed.
- Adequate monitoring and reporting is undertaken by the Consent Holder as it relates to the LVAMP.

In accordance with Section 129(1)(d), the Consent Authority invited Contact to propose new consent conditions to address the above matters.

4. Proposed Conditions

Contact provided a revised set of conditions in a memorandum prepared by Mitchell Daysh Ltd (Mitchell Daysh) dated 28 March 2023. The memorandum set out the justification for the revised conditions and was supported with the following documents:

- i. Technical Note on Sedimentation – Lake Dunstan prepared by Stantec Ltd (Stantec) dated 21 February 2023
- ii. Clutha Hydro Scheme Consents Conditions Review – Landscape Report prepared by Isthmus Ltd (Isthmus) dated 20 March 2023

Appendices B and C of the Mitchell Daysh memorandum contained the revised conditions and are duplicated in Appendix A of this report. In summary the conditions require the following:

Proposed conditions for RM2001.385.V3 relating to the LVAMP for the Kawarau Arm of Lake Dunstan

1. Every 5 years the Consent Holder must submit a Landscape and Visual Amenity Management Plan (LVAMP) to the Consent Authority for certification.

2. The consent holder must identify actions to address landscape and visual amenity effects arising from the Consent Holder's activities including, but not limited to driftwood removal, terrestrial weed removal, and planting.
3. The consent holder must identify actions to address landscape and visual amenity effects arising from the Consent Holder's activities involving the excavation of sediment.
4. The consent holder must prepare an LVAMP that includes:
 - i. a summary of existing landscape attributes
 - ii. a summary of river processes/geomorphology
 - iii. changes in landscape and visual amenity
 - iv. a description of the actions that have been undertaken by the consent holder to maintain landscape and visual amenity
 - v. a rationale for the actions
 - vi. a framework to address actions that are to be undertaken by the Consent Holder on an annual basis until the next iteration of the LVAMP
 - vii. a description of the actions that will be undertaken by the Consent Holder following a flood event exceeding 800 cumecs in the Kawarau River
 - viii. a terrestrial weed management programme
 - ix. Maps etc supporting the proposed actions
 - x. Details of the monitoring, timelines and milestones associated with implementing the actions
 - xi. details of the opportunities for the Consent Holder to work with Land Information New Zealand as the owner of the bed of Lake Dunstan
 - xii. consultation with stakeholders
5. The consent holder must submit a draft LVAMP to relevant stakeholders for review and comment. However, the consent holder may finalise the LVAMP if a stakeholder does not provide feedback with a 45-calendar day period.
6. The consent holder must provide with the LVAMP evidence of consultation with the relevant stakeholders and consideration of their feedback on the draft LVAMP
7. The consent holder may undertake any urgent actions to address landscape and visual effects following a flow event exceeding 800 cumecs within the Kawarau River.
8. The consent holder must implement the LVAMP and on an annual basis following the approval of the LVAMP the Consent Holder must prepare a Summary Landscape and Visual Amenity Monitoring Report, which is sent to the Consent Authority and relevant stakeholders.

Proposed conditions for 2001.386.V4 and 2001.398.V2 relating to the LVAMP for the Manuherekia River

1. Every 5 years the Consent Holder must submit a Landscape and Visual Amenity Management Plan (LVAMP) to the Consent Authority for certification.
2. The consent holder must identify actions to address landscape and visual amenity effects arising from the Consent Holder's activities including, but not limited to driftwood removal, terrestrial weed removal, and planting.

3. The consent holder must identify actions to address landscape and visual amenity effects arising from arising from the Consent Holder's activities involving the excavation of sediment.
4. The consent holder must prepare an LVAMP that includes:
 - xiii. a summary of existing landscape attributes
 - xiv. a summary of river processes/geomorphology
 - xv. changes in landscape and visual amenity
 - xvi. a description of the actions that have been undertaken by the consent holder to maintain landscape and visual amenity
 - xvii. a rationale for the actions
 - xviii. a framework to address actions that are to be undertaken by the Consent Holder on an annual basis until the next iteration of the LVAMP
 - xix. a description of the actions that will be undertaken by the Consent Holder following a flood event exceeding 350 cumecs in the Manuherekia River
 - xx. a terrestrial weed management programme
 - xxi. maps etc supporting the proposed actions
 - xxii. details of the monitoring, timelines and milestones associated with implementing the actions
 - xxiii. consultation with stakeholders
5. The consent holder must submit a draft LVAMP to relevant stakeholders for review and comment. However, the consent holder may finalise the LVAMP if a stakeholder does not provide feedback with a 45-calendar day period.
6. The consent holder must provide with the LVAMP evidence of consultation with the relevant stakeholders and consideration of their feedback on the draft LVAMP
7. The consent holder may undertake any urgent actions to address landscape and visual effects following a flow event exceeding 350 cumecs within the Kowarau River.
8. The consent holder must implement the LVAMP and on an annual basis following the approval of the LVAMP the Consent Holder must prepare a Summary Landscape and Visual Amenity Monitoring Report, which is sent to the Consent Authority and relevant stakeholders.

5. Assessment of Environmental Effects

Landscape and Amenity Effects

The memorandum prepared by Mitchell Daysh (the Mitchell Daysh report) dated 28 March 2023 considers the effectiveness of the proposed conditions. The Mitchell Daysh report concludes that the proposed conditions would be effective for the following reasons:

1. The LVAMPs unambiguously apply to specific locations; and
2. Each LVAMP has a clear purpose and seeks to comprehensively address specific landscape and visual amenity issues; and

3. The role of third parties is better defined including feedback into the preparation of the final LVAMP; and
4. The matters that the LVAMP must address are clearly defined; and
5. Ongoing monitoring requirements are clearly defined; and
6. There is a clear annual review process.

While the effective implementation of an LVAMP ultimately depends on the specific details contained within any LVAMP prepared to satisfy the condition, I concur that the conditions have a clear purpose, have specific (and enforceable) requirements and timeframes, and they provide for meaningful consultation with the relevant stakeholders.

A landscape report prepared by Brad Coombs of Isthmus (the Isthmus Report) dated 20 March 2023 has been submitted in support of the revised conditions. In relation to the existing conditions, the Isthmus Report states:

“In reviewing the consent conditions, I confirm that they were less specific and certain than they could have been in relation to the process and the landscape outcomes that were anticipated. In turn this affected the quality and effectiveness of the LVAMP reports that were prepared to fulfil the original consent conditions.”

Regarding the proposed conditions, the Isthmus Report states:

“The review of the consent conditions has led to the development of a more comprehensive and specific set of conditions that relate directly to the matters identified in the ORC’s Review Notice. The consent conditions require a much more active approach from the consent holder in not just responding to driftwood clean-up, but actively managing terrestrial weed species and an indigenous vegetation planting and management program for the areas covered by the LVAMP reports. More active management of sediment is also an outcome of the updated conditions. The conditions are time specific, achievable and respond directly to the concerns raised by ORC.”

And:

“The approach taken in the updated conditions of consent is more proactive and results in the monitoring and management of a wider set of potential effects from the CHS operations. It also specifically focusses on the potential landscape and visual amenity effects of the operations. The updated conditions provide the opportunity for Contact to go ‘above and beyond’ where required, through the identification of new and specific projects for the enhancement of amenity in the area covered by the LVAMP”.

The report concludes that the proposed conditions appropriately address potential landscape and visual amenity effects and that if the proposed conditions are successfully implemented, they would lead to an ongoing improvement in the landscape and visual amenity values of the environments covered by the LVAMP Reports, while noting that ongoing sedimentation will continue to occur. The hydrodynamic factors influencing sedimentation are further discussed in the Technical Note on Sedimentation – Lake Dunstan prepared by Stantec dated 21 February 2023.

Having reviewed the proposed conditions and assessment including the Mitchell Daysh report and Isthmus Report, I concur with the conclusion that the proposed conditions are comprehensive, achievable, and provide for an ongoing improvement in landscape and visual amenity values. On that basis, any adverse landscape and visual amenity effects inadequately addressed by the existing conditions, can be adequately avoided,

remedied or mitigated by the revised conditions and therefore, adverse effects would be reduced.

6. Notification and Written Approvals

6.1 Section 130 Activity Status and Notification

Section 130(3) of the Act states that with respect to a review of conditions:

- (3) Sections 95 to 95G apply, with all necessary modifications, as if—
- (a) the review of consent conditions were an application for a resource consent for a discretionary activity; and
 - (b) the references to a resource consent and to the activity were references only to the review of the conditions and to the effects of the change of conditions respectively.

6.2 Section 95A Public Notification

Step 1: Is public notification mandatory as per questions (a) – (c) below?

- (a) Has the Consent Holder requested that the review be publicly notified? **No**
- (b) Is public notification required by Section 95C? **No**
 - Has further information been requested and not provided within the deadline set by Council? **No**
 - Has the Consent Holder refused to provide further information? **No**
 - Has the Council notified the Consent Holder that it wants to commission a report but the Consent Holder does not respond before the deadline to Council's request? **No**
 - Has the Consent Holder refused to agree to the Council commissioning a report? **No**
- (c) Has the application been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977? **Not Applicable**

Step 2: Is public notification precluded as per questions (a) – (b) below?

- (a) Is public notification precluded by a rule in the plan or a NES? **No**
- (b) Is the application for one or more of the following activities but no other activities:
 - (i) A controlled activity? **Not Applicable**
 - (ii) *Repealed*
 - (iii) A restricted discretionary, discretionary or non-complying activity but only if the activity is a boundary activity? **Not Applicable**
 - (iv) *Repealed*

Step 3: Does the review meet either of the criteria in (a) or (b) below?

- (a) Is the review for one or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification? **No**
- (b) Will the review have or be likely to have adverse effects on the environment that are more than minor in accordance with Section 95D? **No**

As discussed in Section 5 of this report, any adverse landscape and visual amenity effects inadequately addressed by existing conditions, are considered to be adequately avoided, remedied or mitigated by the revised conditions and therefore, adverse effects would be reduced.

Step 4: Do special circumstances exist in relation to the application that warrant the application being publicly notified? No

Section 95A(9) of the Act states that a consent authority must publicly notify an application for resource consent if it considers that 'special circumstances' exist, notwithstanding that the previous steps do not require or preclude public notification.

Special circumstances are not defined in the Act. However, case law has identified special circumstances as those that are unusual or exceptional, but they may be less than extraordinary or unique. A special circumstance would be one which makes notification desirable despite the general provisions excluding the need for notification. The consent authority should be satisfied that public notification may elicit additional information on the aspects of a proposal. However, special circumstances are more than:

- where a council has had an indication that people want to make submissions;
- the fact that some persons have concerns about a proposal.

In this case, concerns raised by the LDCT contributed to the decision by the Consent Authority to undertake a review of the conditions relating to the LVAMPs. As detailed on pages 5 and 6 of the Mitchell Daysh report, the Consent Holder has undertaken consultation with the LDCT and the following additional stakeholders:

- Aukaha
- Central Otago District Council
- The Department of Conservation
- Otago Regional Council
- Fish and Game Otago

In relation to this activity, it is considered that special circumstances do not exist for several reasons.

The parties listed above are considered to be the relevant stakeholders having statutory responsibilities over the area and / or representing the community interest. The Mitchell Daysh report describes the consultation process with them and specifically identifies how stakeholder comments have been incorporated into the revised conditions. The revised conditions would adequately avoid, remedy or mitigate adverse landscape and visual amenity effects inadequately addressed by the existing conditions. Consequently, it is not considered that public notification would elicit additional information on the suitability of the proposed conditions.

There was a degree of media and community interest relating to the inadequacy of the existing LVAMP conditions and concerned with consultation on the new LVAMP conditions. However, the Courts have stated that a degree of public interest in a proposal does not in itself make a proposal unusual or exceptional. Additionally, in this case, the Consent Holder has undertaken consultation with relevant stakeholders who have contributed to the formulation of the proposed conditions.

While the water bodies, including Lake Dunstan, are a public resource and are valued by the community, these circumstances are not unusual or exceptional.

There are no special circumstances that are outside the common run of things which are exceptional, abnormal or unusual, but they may be less than extraordinary or unique that warrant notification of the application to any other persons. Therefore, there are not considered to be any special circumstances that would warrant public notification.

6.3 Section 95B Limited Notification

Step 1

Section 95B(2) Are there any affected groups or persons identified under Section 95B(2):

- (a) Protected customary rights groups? **No**
- (b) Customary marine title groups? **No**

Section 95B(3)(a) Is the activity on or adjacent to, or may it affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11? **Yes**

Section 95B(3)(b) Is a person to whom a statutory acknowledgement is made an affected person under Section 95E? **No**

Step 2

Is Limited Notification precluded under Section 95B(6)?

- (a) Is the application for a resource consent for one or more activities, and each activity is subject to a rule or national environmental standard that preclude limited notification? **Not Applicable**
- (b) Is the proposal a Controlled Activity that requires consent under the District Plan (other than a subdivision of land)? **Not Applicable**

Step 3

Having regard to Section 95E of the Resource Management Act, identify persons who would be adversely affected by effects that are minor or more than minor, but not less than minor and give reasons why affected parties were identified.

The following parties were not considered to be affected parties as any adverse landscape and visual amenity effects inadequately addressed by existing conditions, are considered to be adequately avoided, remedied or mitigated by the revised conditions. Therefore, adverse effects will be reduced.

Party	Why they are not affected
Aukaha on behalf of Mana Whenua	The proposed conditions are comprehensive, achievable, and provide for an ongoing improvement in landscape and visual amenity values. Consequently, any adverse effects on Iwi cultural values related to landscape and visual amenity will be reduced by the revised conditions.
Lakes Dunstan Charitable Trust	The proposed conditions are comprehensive, achievable, and provide for an ongoing improvement in landscape and visual amenity values. Consequently, any adverse effects on community values related to landscape and visual amenity will be reduced by the revised conditions.
The Department of Conservation	The proposed conditions are comprehensive, achievable, and provide for an ongoing improvement in landscape and visual amenity values. Consequently, any adverse effects on conservation or heritage values related to landscape and visual amenity will be reduced by the revised conditions.

Fish and Game Otago	The proposed conditions are comprehensive, achievable, and provide for an ongoing improvement in landscape and visual amenity values. Consequently, any adverse effects on river values related to landscape and visual amenity will be reduced by the revised conditions.
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No written approvals were submitted in support of the proposed conditions.

Have all persons identified as affected under Step 3 provided their written approvals? N/A

Step 4 Further notification in special circumstances

Do special circumstances exist in relation to the proposal that warrant notification to any other persons not already determined to be eligible for limited notification under this section (excluding persons assessed under Section 95E as not being affected persons)? **No**

Section 95B (10) of the Act states that a consent authority must give limited notification if it considers that 'special circumstances' exist, notwithstanding that the previous steps do not require or preclude limited notification.

Special circumstances are not defined in the Act. However, case law has identified special circumstances as those that are unusual or exceptional, but they may be less than extraordinary or unique. A special circumstance would be one which makes notification desirable despite the general provisions excluding the need for notification. The consent authority should be satisfied that notification may elicit additional information on the aspects of the proposal. However, special circumstances are more than:

- where a council has had an indication that people want to make submissions.
- the fact that some persons have concerns about a proposal.

In this case, concerns raised by the LDCT contributed to the decision by the Consent Authority to undertake a review of the conditions relating to the LVAMPs. As detailed on pages 5 and 6 of the Mitchell Daysh report, the Consent Holder has undertaken consultation with the LDCT and the following additional stakeholders:

- Aukaha
- Central Otago District Council
- The Department of Conservation
- Otago Regional Council
- Fish and Game Otago

In relation to this activity, it is considered that special circumstances do not exist for several reasons.

The parties listed above are considered to be the relevant stakeholders having statutory responsibilities over the area and / or representing the community interest. The Mitchell Daysh report describes the consultation process with them and specifically identifies how stakeholder comments have been incorporated into the revised conditions. The

revised conditions would adequately avoid, remedy or mitigate adverse landscape and visual amenity effects inadequately addressed by the existing conditions. Consequently, it is not considered that limited notification to these (or other parties) would elicit additional information on the suitability of the proposed conditions.

There was a degree of media and community interest relating to the inadequacy of the existing LVAMP conditions and concerned with consultation on the new LVAMP conditions. However, the Courts have stated that a degree of public interest in a proposal does not in itself make a proposal unusual or exceptional. Additionally, in this case, the Consent Holder has undertaken consultation with relevant stakeholders who have contributed to the formulation of the proposed conditions.

While the water bodies, including Lake Dunstan, are a public resource and are valued by the community, these circumstances are not unusual or exceptional.

There are no special circumstances that are outside the common run of things which are exceptional, abnormal or unusual, but they may be less than extraordinary or unique that warrant notification of the application to any other persons. Therefore, there are not considered to be any special circumstances that would make limited notification desirable.

If notification or limited notification is required then has the Consent Holder paid the additional notification fee? Not applicable

7. NOTIFICATION RECOMMENDATION:

In accordance with the notification steps set out above, it is recommended that the application proceed on a non-notified basis.



Dwayne Daly
Senior Consents Officer
22 May 2023

DECISION ON NOTIFICATION

Sections 95A to 95G of the Resource Management Act 1991

Date: 24 May 2023

Application No: RM22.421

Subject: *Decision on notification of review of conditions of resource consents under delegated authority*

Decision under Delegated Authority

I have considered the information provided, reasons and recommendations in the above report. I agree with those reasons and adopt them accordingly.

The Otago Regional Council decides that this review is to be processed on a **non-notified** basis in accordance with sections 95A to 95G of the Resource Management Act 1991.

This decision is made under delegated authority by:



Allan Cubitt
Independent Decision Maker for the Otago Regional Council

24 May 2023

ORC SECTION 42A REPORT

1. Summary of Recommendation

I recommend that the new conditions discussed at the end of this report be included in the consents.

Please note that this report contains the recommendations of the Consent Officer and represents the opinion of the writer. It is not a decision.

There are no principal issues in contention with the Consent Holder and no evidence was heard as the review has been processed non-notified without a hearing. The key risks/issues with the application were discussed in section 2 of the Notification Report.

2. Section 104 Evaluation

Section 104 of the Act sets out the matters to be considered when reviewing conditions of consent. These matters are subject to Part 2, the purpose and principles, which are set out in Sections 5 to 8 of the Act.

The consent authority must also consider whether the activity allowed by the consent will be viable after the proposed change of conditions.

The consent authority may have regard to the manner in which the consents have been exercised.

2.1 Section 104(1)

The matters of Section 104 to be considered are:

- (a) the actual and potential effects on the environment of allowing the activity;
- (ab) any measure proposed or agreed to by the Consent Holder for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity;
- (b) any relevant provisions of a national environmental standard, other regulations, a national policy statement, the Regional Policy Statement (RPS), RPW; and
- (c) any other matter the Council considers relevant and reasonably necessary to determine the application.

2.2 S104(1)(a) – Actual and potential effects on the environment of allowing the activity

The actual and potential adverse environmental effects of the proposed activity were considered earlier in the Notification Report.

It is considered that the proposal will have the following positive effects:

- An ongoing improvement in the landscape and visual amenity values of the surface water bodies and their margins affected by the Clyde and Roxburgh dams.

2.3 S104(1)(ab)

The Consent Holder has not proposed or agreed to any measures to offset or compensate for adverse effects that will or may result from allowing the activity.

2.4 S104(1)(b) Relevant Planning Documents

2.4.1 National Policy Statement for Freshwater Management

The NPS-FM 2020 was introduced in September 2020 and amended in December 2022, replacing previous iterations from 2011, 2014 and 2017. The NPS-FM sets out a single objective, that natural and physical resources are managed in a way that prioritises:

- (a) first, the health and well-being of water bodies and freshwater ecosystems;
- (b) second, the health needs of people (such as drinking water); and
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

The scope of the review is limited to amendments to existing conditions proposed by the Consent Holder in order to better address adverse effects on landscape and amenity values on the Kawarau arm of Lake Dunstan and part of the Lower Manuherekia. As visual and amenity values are values held by people rather than intrinsic values of a waterbody, the review provides for conditions that better support the well-being of people. It therefore sits third in the NPS-FM priority list. However, the conditions provide for more than just cosmetic improvements to address people's perception of amenity. Rather, by requiring better management of the water bodies, the conditions will improve the overall wellbeing of the water bodies (and margins), for example by providing for removal of terrestrial weed species, accumulated driftwood and, where appropriate, planting of indigenous riparian vegetation. The conditions would also not have any adverse effects on people's health needs. Consequently, the proposed conditions are considered to be consistent with the objective of the NPS-FM.

Policy 1: Freshwater is managed in a way that gives effect to Te Mana o te Wai.

Policy 2: Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.

Policy 7: The loss of river extent and values is avoided to the extent practicable.

In this case, the proposed conditions would require improved ongoing management of the affected water bodies. Tangata Whenua have been consulted on the proposed conditions and would be consulted on the development of any LVAMP required by the conditions. Improved management through the proposed conditions would avoid to the extent practicable any further loss of amenity and natural character values of the

affected water bodies. Therefore, the proposed conditions are considered to be consistent with the NPS-FM 2020.

2.4.2 National Policy Statement for Renewable Electricity Generation 2011

The NPS-REG was introduced in April 2011. The NPS-REG sets out a single objective and eight policies. The objective is 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. Policies A and C are relevant to the review.

Policy A.

Recognising the benefits of renewable electricity generation activities

POLICY A

Decision-makers shall recognise and provide for the national significance of renewable electricity generation activities, including the national, regional and local benefits relevant to renewable electricity generation activities. These benefits include, but are not limited to:

- a) maintaining or increasing electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions;
- b) maintaining or increasing security of electricity supply at local, regional and national levels by diversifying the type and/or location of electricity generation;
- c) using renewable natural resources rather than finite resources;
- d) the reversibility of the adverse effects on the environment of some renewable electricity generation technologies;
- e) avoiding reliance on imported fuels for the purposes of generating electricity

Policy C.

Acknowledging the practical constraints associated with the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities

POLICY C1

Decision-makers shall have particular regard to the following matters:

- a) the need to locate the renewable electricity generation activity where the renewable energy resource is available;
- b) logistical or technical practicalities associated with developing, upgrading, operating or maintaining the renewable electricity generation activity;
- c) the location of existing structures and infrastructure including, but not limited to, roads, navigation and telecommunication structures and facilities, the distribution network and the national grid in relation to the renewable electricity generation activity, and the need to connect renewable electricity generation activity to the national grid;
- d) designing measures which allow operational requirements to complement and provide for mitigation opportunities; and
- e) adaptive management measures.

The proposed conditions provide for mitigation opportunities by way of adaptive management in the form of the proposed LVAMP, while taking into account the

importance and benefits of renewable electricity generation and practical operational requirements.

2.4.3 Regional Policy Statements

Partially Operative Regional Policy Statement

The Consent Authority notified a proposed Regional Policy Statement on 23 May 2015 which was made partially operative on the 14th of January 2019. Provisions still the subject of court proceedings and not made operative are not applicable to the review. Therefore, full weight and consideration can be given to the PO-RPS.

Objective 1.1 Otago's resources are used sustainably to promote economic, social, and cultural wellbeing for its people and communities

Policy 1.1.1 Economic wellbeing

Provide for the economic wellbeing of Otago's people and communities by enabling the resilient and sustainable use and development of natural and physical resources

Policy 1.1.2 Social and cultural wellbeing and health and safety

Provide for the social and cultural wellbeing and health and safety of Otago's people and communities when undertaking the subdivision, use, development and protection of natural and physical resources by all of the following:

- a) Recognising and providing for Kāi Tahu values;*
- b) Taking into account the values of other cultures;*
- c) Taking into account the diverse needs of Otago's people and communities;*
- d) Avoiding significant adverse effects of activities on human health;*
- e) Promoting community resilience and the need to secure resources for the reasonable needs for human wellbeing;*
- f) Promoting good quality and accessible infrastructure and public services.*

Objective 1.2 Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago

Policy 1.2.1 Integrated resource management

Achieve integrated management of Otago's natural and physical resources, by all of the following:

- a) Coordinating the management of interconnected natural and physical resources;*
- b) Taking into account the impacts of management of one natural or physical resource on the values of another, or on the environment;*

- c) *Recognising that the value and function of a natural or physical resource may extend beyond the immediate, or directly adjacent, area of interest;*
- d) *Ensuring that resource management approaches across administrative boundaries are consistent and complementary;*
- e) *Ensuring that effects of activities on the whole of a natural or physical resource are considered when that resource is managed as subunits.*
- f) *Managing adverse effects of activities to give effect to the objectives and policies of the Regional Policy Statement.*
- g) *Promoting healthy ecosystems and ecosystem services;*
- h) *Promoting methods that reduce or negate the risk of exceeding sustainable resource limits.*

Objective 2.1 The principles of Te Tiriti o Waitangi are taken into account in resource management processes and decisions

Policy 2.1.2 Treaty principles

Ensure that local authorities exercise their functions and powers, by:

- a) *Recognising Kāi Tahu's status as a Treaty partner; and*
- b) *Involving Kāi Tahu in resource management processes implementation;*
- c) *Taking into account Kāi Tahu values in resource management decision-making processes and implementation;*
- d) *Recognising and providing for the relationship of Kāi Tahu's culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taoka;*
- e) *Ensuring Kāi Tahu have the ability to:*
 - i. *Identify their relationship with their ancestral lands, water, sites, wāhi tapu, and other taoka;*
 - ii. *Determine how best to express that relationship;*
- f) *Having particular regard to the exercise of kaitiakitaka;*
- g) *Ensuring that district and regional plans:*
 - i. *Give effect to the Ngāi Tahu Claims Settlement Act 1998;*
 - ii. *Recognise and provide for statutory acknowledgement areas in Schedule 2;*
 - iii. *Provide for other areas in Otago that are recognised as significant to Kāi Tahu;*
- h) *Taking into account iwi management plans.*

Objective 2.2 Kāi Tahu values, interests and customary resources are recognised and provided for

Policy 2.2.1 Kāi Tahu wellbeing

Manage the natural environment to support Kāi Tahu wellbeing by all of the following:

- a) Recognising and providing for their customary uses and cultural values in Schedules 1A and B; and,
- b) Safeguarding the life-supporting capacity of natural resources.

Objective 3.1 The values (including intrinsic values) of ecosystems and natural resources are recognised and maintained, or enhanced where degraded

Policy 3.1.1 Fresh water

Safeguard the life-supporting capacity of fresh water and manage fresh water to:

- a) Maintain good quality water and enhance water quality where it is degraded, including for:
 - i. Important recreation values, including contact recreation; and,
 - ii. Existing drinking and stock water supplies;
- b) Maintain or enhance aquatic:
 - i. Ecosystem health;
 - ii. Indigenous habitats; and,
 - iii. Indigenous species and their migratory patterns.
- c) Avoid aquifer compaction and seawater intrusion;
- d) Maintain or enhance, as far as practicable:
 - i. Natural functioning of rivers, lakes, and wetlands, their riparian margins, and aquifers;
 - ii. Coastal values supported by fresh water;
 - iii. The habitat of trout and salmon unless detrimental to indigenous biological diversity; and
 - iv. Amenity and landscape values of rivers, lakes, and wetlands;
- e) Control the adverse effects of pest species, prevent their introduction and reduce their spread;
- f) Avoid, remedy or mitigate the adverse effects of natural hazards, including flooding and erosion; and,

g) Avoid, remedy or mitigate adverse effects on existing infrastructure that is reliant on fresh water.

Policy 3.1.2 Beds of rivers, lakes, wetlands, and their margins

Manage the beds of rivers, lakes, wetlands, their margins, and riparian vegetation to:

- a) Safeguard the life supporting capacity of fresh water;*
- b) Maintain good quality water, or enhance it where it has been degraded;*
- c) Maintain or enhance bank stability;*
- d) Maintain or enhance ecosystem health and indigenous biological diversity;*
- e) Maintain or enhance, as far as practicable:
 - i. Their natural functioning and character; and*
 - ii. Amenity values;**
- f) Control the adverse effects of pest species, prevent their introduction and reduce their spread; and,*
- g) Avoid, remedy or mitigate the adverse effects of natural hazards, including flooding and erosion*

Policy 3.1.13 Environmental enhancement

Encourage, facilitate and support activities that contribute to the resilience and enhancement of the natural environment, by where applicable:

- a) Improving water quality and quantity;*
- b) Protecting or restoring habitat for indigenous species;*
- c) Regenerating indigenous species;*
- d) Mitigating natural hazards;*
- e) Protecting or restoring wetlands;*
- f) Improving the health and resilience of:
 - i. Ecosystems supporting indigenous biological diversity;*
 - ii. Important ecosystem services, including pollination;**
- g) Improving access to rivers, lakes, wetlands and their margins, and the coast;*
- h) Buffering or linking ecosystems, habitats and areas of significance that contribute to ecological corridors;*
- i) Controlling pest species.*

Objective 3.2 Otago's significant and highly-valued natural resources are identified and protected, or enhanced where degraded

Policy 3.2.4 Managing outstanding natural features, landscapes and seascapes

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

- a) In the coastal environment, avoiding adverse effects on the values (even if those values are not themselves outstanding) that contribute to the natural feature, landscape or seascape being outstanding;*
- b) Beyond the coastal environment, maintaining the values (even if those values are not themselves outstanding) that contribute to the natural feature, landscape or seascape being outstanding;*
- c) Avoiding, remedying or mitigating other adverse effects;*
- d) Encouraging enhancement of those areas and values that contribute to the significance of the natural feature, landscape or seascape.*

Policy 3.2.6 Managing highly valued natural features, landscapes and seascapes

Maintain or enhance highly valued natural features, landscapes and seascapes by all of the following:

- a) Avoiding significant adverse effects on those values that contribute to the high value of the natural feature, landscape or seascape;*
- b) Avoiding, remedying or mitigating other adverse effects;*
- c) Encouraging enhancement of those values that contribute to the high value of the natural feature, landscape or seascape.*

Policy 3.2.14 Managing outstanding freshwater bodies

Protect outstanding freshwater bodies by all of the following:

- a) Maintaining the values that contribute to the water body being outstanding;*
- b) Avoiding, remedying or mitigating other adverse effects on the water body;*
- c) Controlling the adverse effects of pest species, preventing their introduction and reducing their spread;*
- d) Encouraging enhancement of those values that contribute to the water body being outstanding.*

Objective 4.4 Energy resources and supplies are secure, reliable and sustainable

Policy 4.4.3 Protecting existing renewable electricity generation

Protect the generation output of existing nationally or regionally significant renewable electricity generation activities, by all of the following:

- a) *Recognising their functional needs, including resource needs;*
- b) *Avoiding, to the extent reasonably practicable, reverse sensitivity effects on their functional needs;*
- c) *Avoiding, remedying or mitigating adverse effects from other activities on them; except when sub-clause d) applies;*
- d) *Having particular regard to avoiding, remedying or mitigating adverse effects from new water takes on those which do not have a specified water allocation volume.*

Objective 5.4 Adverse effects of using and enjoying Otago's natural and physical resources are minimised

Policy 5.4.2 Adaptive management approach

Apply an adaptive management approach, to avoid, remedy or mitigate actual and potential adverse effects that might arise and that can be remedied before they become irreversible, by both:

- a) *Setting appropriate indicators for effective monitoring of those adverse effects; and*
- b) *Setting thresholds to trigger remedial action before the effects result in irreversible damage.*

The proposed conditions provide for the management of adverse landscape and amenity effects in a manner consistent with the relevant objectives and policies of the PO-RPS. The conditions set appropriate triggers, which would require better ongoing management of the water bodies in a manner that would include Tangata Whenua. The proposed conditions would also enhance natural character, amenity and landscape values of the affected rivers, lakes and their margins, including the portion of the Kawarau River recognised as having outstanding natural and landscape values in Schedule A1 of the Regional Plan that falls within the area that the LVAMP addresses. The proposed conditions also recognise the functional needs of existing significant electricity generation activities. Consequently, the proposed conditions are consistent with the PO-RPS.

Proposed Regional Policy Statement

On 26 June 2021 Council notified the proposed Otago Regional Policy Statement (pRPS). The pRPS gives effect to the NPS-FW 2020 and includes freshwater visions, FMU's and rohe. On 30 September 2022 Council notified the freshwater instrument components of the pRPS that was originally notified in June 2021. As the pRPS has been notified, it has been included and assessed below. However, as the provisions of the pRPS are subject to submissions and, as no decisions have been made on those submissions, little weight can be given to the pRPS.

IM-01 – Long term vision

The management of natural and physical resources in Otago, by and for the people of Otago, including Kāi Tahu, and as expressed in all resource management plans and decision making, achieves healthy, resilient, and safeguarded natural systems, and the ecosystem services they offer, and supports the well-being of present and future generations, mō tātou, ā, mō kā uri ā muri ake nei.

IM–O2 – Ki uta ki tai

Natural and physical resource management and decision making in Otago embraces ki uta ki tai, recognising that the environment is an interconnected system, which depends on its connections to flourish, and must be considered as an interdependent whole.

IM–O3 – Environmentally sustainable impact

Otago’s communities carry out their activities in a way that preserves environmental integrity, form, function, and resilience, so that the life-supporting capacities of air, water, soil, ecosystems, and indigenous biodiversity endure for future generations.

IM–P1 – Integrated approach

The objectives and policies in this RPS form an integrated package, in which: (1) all activities are carried out within the environmental constraints of this RPS, (2) all provisions relevant to an issue or decision must be considered, (3) if multiple provisions are relevant, they must be considered together and applied according to the terms in which they are expressed, and (4) notwithstanding the above, all provisions must be interpreted and applied to achieve the integrated management objectives IM–O1 to IM–O4.

IM–P2 – Decision priorities

Unless expressly stated otherwise, all decision making under this RPS shall:

- (1) firstly, secure the long-term life-supporting capacity and mauri of the natural environment,*
- (2) secondly, promote the health needs of people, and*
- (3) thirdly, safeguard the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

IM–P3 – Providing for mana whenua cultural values in achieving integrated management

Recognise and provide for Kāi Tahu’s relationship with natural resources by:

- (1) enabling mana whenua to exercise rakatirataka and kaitiakitaka,*
- (2) facilitating active participation of mana whenua in resource management decision making,*
- (3) incorporating mātauraka Māori in decision making, and*
- (4) ensuring resource management provides for the connections of Kāi Tahu to wāhi tūpuna, water and water bodies, the coastal environment, mahika kai and habitats of taoka species.*

IM–P13 – Managing cumulative effects

Otago’s environmental integrity, form, function, and resilience, and opportunities for future generations, are protected by recognising and specifically managing the

cumulative effects of activities on natural and physical resources in plans and explicitly accounting for these effects in other resource management decisions.

LF-WAI-O1 – Te Mana o te Wai

The mauri of Otago's water bodies and their health and well-being is protected, and restored where it is degraded, and the management of land and water recognises and reflects that:

(1) water is the foundation and source of all life – na te wai ko te hauora o ngā mea katoa,

(2) there is an integral kinship relationship between water and Kāi Tahu whānui, and this relationship endures through time, connecting past, present and future,

(3) each water body has a unique whakapapa and characteristics,

(4) water and land have a connectedness that supports and perpetuates life, and

(5) Kāi Tahu exercise rakatirataka, manaakitaka and their kaitiakitaka duty of care and attention over wai and all the life it supports.

LF-WAI-P1 – Prioritisation

In all management of fresh water in Otago, prioritise:

(1) first, the health and well-being of water bodies and freshwater ecosystems, te hauora o te wai and te hauora o te taiao, and the exercise of mana whenua to uphold these,

(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) 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 wellbeing, now and in the future.

LF-WAI-P2 – Mana whakahaere

Recognise and give practical effect to Kāi Tahu rakatirataka in respect of fresh water by:

(1) facilitating partnership with, and the active involvement of, mana whenua in freshwater management and decision-making processes,

(2) sustaining the environmental, social, cultural and economic relationships of Kāi Tahu with water bodies,

(3) providing for a range of customary uses, including mahika kai, specific to each water body, and

(4) incorporating mātauraka into decision making, management and monitoring processes.

LF-WAI-P4 – Giving effect to Te Mana o te Wai

All persons exercising functions and powers under this RPS and all persons who use, develop or protect resources to which this RPS applies must recognise that LF-WAI-O1, LF-WAI-P1, LF-WAI-P2 and LF-WAI-P3 are fundamental to upholding Te Mana o te Wai, and must be given effect to when making decisions affecting fresh water, including when interpreting and applying the provisions of the LF chapter.

LF-FW-O10 – Natural character

The natural character of wetlands, lakes and rivers and their margins is preserved and protected from inappropriate subdivision, use and development.

LF-FW-P11 – Identifying outstanding water bodies

Otago’s outstanding water bodies are:

(1) the Kawarau River and tributaries described in the Water Conservation (Kawarau) Order 1997,

(2) Lake Wanaka and the outflow and tributaries described in the Lake Wanaka Preservation Act 1973,

(3) any water bodies identified as being wholly or partly within an outstanding natural feature or landscape in accordance with NFL-P1, and

(4) any other water bodies identified in accordance with APP1.

LF-FW-P12 – Protecting outstanding water bodies

The significant and outstanding values of outstanding water bodies are:

(1) identified in the relevant regional and district plans, and

(2) protected by avoiding adverse effects on those values.

LF-FW-P13 – Preserving natural character

Preserve the natural character of lakes and rivers and their beds and margins by:

(1) avoiding the loss of values or extent of a river, unless:

(a) there is a functional need for the activity in that location, and

(b) the effects of the activity are managed by applying:

(i) for effects on indigenous biodiversity, either ECO-P3 or ECO-P6 (whichever is applicable), and

(ii) for other effects, the effects management hierarchy,

(2) not granting resource consent for activities in (1) unless Otago Regional Council is satisfied that:

(a) the application demonstrates how each step of the effects management hierarchies in (1)(b) will be applied to the loss of values or extent of the river, and

(b) any consent is granted subject to conditions that apply the effects management hierarchies in (1)(b)

(3) establishing environmental flow and level regimes and water quality standards that support the health and well-being of the water body,

(4) wherever possible, sustaining the form and function of a water body that reflects its natural behaviours,

(5) recognising and implementing the restrictions in Water Conservation Orders,

(6) preventing the impounding or control of the level of Lake Wanaka,

(7) preventing modification that would reduce the braided character of a river, and

(8) controlling the use of water and land that would adversely affect the natural character of the water body.

LF-FW-P14 – Restoring natural character

Where the natural character of lakes and rivers and their margins has been reduced or lost, promote actions that:

(1) restore a form and function that reflect the natural behaviours of the water body, (2) improve water quality or quantity where it is degraded,

(3) increase the presence, resilience and abundance of indigenous flora and fauna, including by providing for fish passage within river systems,

(4) improve water body margins by naturalising bank contours and establishing indigenous vegetation and habitat, and

(5) restore water pathways and natural connectivity between water systems

EIT-EN-O1 – Energy and social and economic well-being

Otago’s communities and economy are supported by renewable energy generation within the region that is safe, secure, and resilient.

EIT-EN-O2 – Renewable electricity generation

The generation capacity of renewable electricity generation activities in Otago:

(1) is maintained and, if practicable maximised, within environmental limits, and

(2) contributes to meeting New Zealand’s national target for renewable electricity generation

EIT-EN-P1 – Operation and maintenance

The operation and maintenance of existing renewable electricity generation activities is provided for while minimising its adverse effects.

EIT-EN-P2 – Recognising renewable electricity generation activities in decision making

Decisions on the allocation and use of natural and physical resources, including the use of fresh water and development of land:

(1) recognise the national, regional and local benefits of existing renewable electricity generation activities,

(2) take into account the need to at least maintain current renewable electricity generation capacity, and

(3) recognise that the attainment of increases in renewable electricity generation capacity will require significant development of renewable electricity generation activities.

EIT-EN-P6 – Managing effects

Manage the adverse effects of renewable electricity generation activities by:

(1) applying EIT-INF-P13,

(2) having regard to:

(a) the functional need to locate renewable electricity generation activities where resources are available,

(b) the operational need to locate where it is possible to connect to the National Grid or electricity sub-transmission infrastructure, and

(c) the extent and magnitude of adverse effects on the environment and the degree to which unavoidable adverse effects can be remedied or mitigated, or residual adverse effects are offset or compensated for; and

(3) requiring consideration of alternative sites, methods and designs, and offsetting or compensation measures (in accordance with any specific requirements for their use in this RPS), where adverse effects are potentially significant or irreversible.

EIT-INF-04 – Provision of infrastructure

Effective, efficient and resilient infrastructure enables the people and communities of Otago to provide for their social and cultural well-being, their health and safety, and supports sustainable economic development and growth within the region within environmental limits.

EIT-INF-P10 – Recognising resource requirements

Decision making on the allocation or use of natural and physical resources must take into account the needs of nationally and regionally significant infrastructure.

EIT-INF-P11 – Operation and maintenance

Except as provided for by ECO–P4, allow for the operation and maintenance of existing nationally and regionally significant infrastructure while:

- (1) avoiding, as the first priority, significant adverse effects on the environment, and*
- (2) if avoidance is not practicable, and for other adverse effects, minimising adverse effects.*

NFL–O1 – Outstanding and highly valued natural features and landscapes

The areas and values of Otago’s outstanding and highly valued natural features and landscapes are identified, and the use and development of Otago’s natural and physical resources results in:

- (1) the protection of outstanding natural features and landscapes, and*
- (2) the maintenance or enhancement of highly valued natural features and landscapes.*

NFL–P2 – Protection of outstanding natural features and landscapes

Protect outstanding natural features and landscapes by:

- (1) avoiding adverse effects on the values that contribute to the natural feature or landscape being considered outstanding, even if those values are not themselves outstanding, and*
- (2) avoiding, remedying or mitigating other adverse effects.*

NFL–P3 – Maintenance of highly valued natural features and landscapes

Maintain or enhance highly valued natural features and landscapes by:

- (1) avoiding significant adverse effects on the values of the natural feature or landscape, and*
- (2) avoiding, remedying or mitigating other adverse effects.*

NFL–P4 – Restoration

Promote restoration of the areas and values of outstanding and highly valued natural features and landscapes where those areas or values have been reduced or lost.

The proposed conditions provide for the management of adverse landscape and amenity effects in a manner that sets appropriate triggers and would include Tangata Whenua. The proposed conditions would also enhance natural character, amenity and landscape values of the affected rivers, lakes and their margins, including the portion of the Kawarau River recognised as having outstanding natural and landscape values in Schedule A1 of the Regional Plan that falls within the area that the LVAMP addresses. The proposed conditions also recognise the functional needs of existing significant electricity generation activities. Consequently, the proposed conditions are considered to be consistent with the pRPS.

2.4.4 Regional Plan: Water

5.3.1 To maintain or enhance the natural and human use values, identified in Schedules 1A, 1B and 1C, that are supported by Otago's lakes and rivers.

5.3.2 To maintain or enhance the spiritual and cultural beliefs, values and uses of significance to Kai Tahu, identified in Schedule 1D, as these relate to Otago's lakes and rivers.

5.3.3 To protect the natural character of Otago's lakes and rivers and their margins from inappropriate subdivision, use or development.

5.3.4 To maintain or enhance the amenity values associated with Otago's lakes and rivers and their margins

5.3.6 To provide for the sustainable use and development of Otago's water bodies, and the beds and margins of Otago's lakes and rivers.

5.4.2 In the management of any activity involving surface water, groundwater or the bed or margin of any lake or river, to give priority to avoiding, in preference to remedying or mitigating:

(1) Adverse effects on:

(a) Natural values identified in Schedule 1A;

(b) Water supply values identified in Schedule 1B;

(c) Registered historic places identified in Schedule 1C, or archaeological sites in, on, under or over the bed or margin of a lake or river;

(d) Spiritual and cultural beliefs, values and uses of significance to Kai Tahu identified in Schedule 1D;

(e) The natural character of any lake or river, or its margins;

(f) Amenity values supported by any water body; and

(2) Causing or exacerbating flooding, erosion, land instability, sedimentation or property damage.

5.4.2A The loss of river extent and values is avoided, unless the council is satisfied:

(a) That there is a functional need for the activity in that location; and

(b) The effects of the activity are managed by applying the effects management hierarchy.

5.4.4 To recognise Kai Tahu's interests in Otago's lakes and rivers by promoting opportunities for their involvement in resource consent processing.

5.4.8 To have particular regard to the following features of lakes and rivers, and their margins, when considering adverse effects on their natural character:

- (a) The topography, including the setting and bed form of the lake or river;
- (b) The natural flow characteristics of the river;
- (c) The natural water level of the lake and its fluctuation;
- (d) The natural water colour and clarity in the lake or river;
- (e) The ecology of the lake or river and its margins; and
- (f) The extent of use or development within the catchment, including the extent to which that use and development has influenced matters (a) to (e) above.

5.4.9 To have particular regard to the following qualities or characteristics of lakes and rivers, and their margins, when considering adverse effects on amenity values:

- (a) Aesthetic values associated with the lake or river; and
- (b) Recreational opportunities provided by the lake or river, or its margins.

8.7.1 To promote the creation, retention and enhancement of appropriate riparian vegetation where it will:

- (a) Maintain or enhance water quality, through the interception of nonpoint source contamination from adjacent land;
- (b) Enhance the aquatic ecosystems within a water body, and the habitat for flora and fauna on the margins;
- (c) Maintain or enhance the natural character of lakes and rivers and their margins;
- (d) Maintain or enhance amenity values;
- (e) Avoid, remedy or mitigate the adverse effects arising from flooding or erosion;
- (f) Be unlikely to have a significant adverse effect on desirable species already present, or adjacent to, and downstream from, that riparian vegetation;
- (g) Be unlikely to restrict existing public access along the beds and margins of Otago's lakes and rivers;
- (h) Be unlikely to have a significant adverse effect on the heritage value of any site, building, place or area;
- (i) Be unlikely to impose any significant operational constraints on existing network utilities; or
- (j) Enhance mahika kai values.

The proposed conditions would also enhance natural character, amenity and landscape values of the affected rivers, lake and margins. This includes the portion of the Kawarau River recognised as having outstanding natural and landscape values in Schedule A1 of the Regional Plan that falls within the area that the LVAMP addresses. The conditions also provide for the on-going sustainable use of surface water by an existing hydroelectricity scheme in a manner that considers the interests of Kai Tahu. The proposal is consistent with the objectives and policies of the Regional Plan: Water.

2.4.5 Central Otago District Plan

The Central Otago District Plan is required to be consistent with higher order policy documents such as National Policy Statements and Regional Policy Statements, which have been considered above. Consequently, no further consideration is given to the objectives and policies of the Central Otago District Plan.

2.5 Section 104(1)(c) Any other matters

The Kai Tahu ki Otago Natural Resource Management Plan 2005

The Kai Tahu ki Otago Natural Resource Management Plan 2005 (NRMP) is also a relevant matter for consideration. This is because the NRMP expresses the attitudes and values of the four Papatipu Rūnaka: Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga. The following objectives and policies of are of most relevance to this application:

5.3.3 Wai Māori General Objectives

- i. The spiritual and cultural significance of water to Kāi Tahu ki Otago is recognised in all water management.*
- ii. The waters of the Otago Catchment are healthy and support Kāi Tahu ki Otago customs.*

5.3.4 Wai Māori General Policies

- 2. To promote the cultural importance of water to Kāi Tahu ki Otago in all water management within the Otago Region and Lower Waitaki Catchment.*
- 4. To protect and restore the mauri of all water.*

5.6.3 Cultural Landscapes Objectives

- i. The relationship that Kāi Tahu ki Otago have with land is recognised in all resource management activities and decisions.*
- ii. The protection of significant cultural landscapes from inappropriate use and development.*
- iii. The cultural landscape that reflects the long association of Kāi Tahu ki Otago resource use with in the Otago region is maintained and enhanced.*

5.6.4 Cultural Landscapes General Policies

1. To identify and protect the full range of landscape features of significance to Kāi Tahu ki Otago.
2. To protect important vistas and amenity values of marae.

10.2.3 Wai Māori Policies in the Clutha/Mata-au Catchment - Dams:

4. To require effects associated with dam management (e.g. flow issues, changes to waterways upstream downstream, habitat changes, fish passage, inundation of values habitats, health and safety issues, siltation concerns, erosion) are addressed. Where the scale of effects is such that it cannot be addressed to the satisfaction of Kā Papatipu Rūnaka and depending on the legal status of the dam Kā Papatipu Rūnaka may advocate for either the removal of existing dams or decline consent to dam.

The proposed conditions reduce adverse effects and preserve and restore the mauri of the water bodies in a manner that would maintain the life-giving properties of water, protect and improve landscape values and include Tangata Whenua in ongoing consultation in development of LVAMPs. Consequently, the proposed conditions are considered to be consistent with the NRMP 2005.

The Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 - The Cry of the People, Te Tangi a Tauira

The Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan 2008 - The Cry of the People, Te Tangi a Tauira expresses the attitudes and values of the four Rūnanga Papatipu o Murihiku – Awarua, Hokonui, Ōraka/Aparima and Waihōpai and is relevant for activities south of the Clutha River / Mata-Au. The proposed conditions would affect the management of the southern (true left) bank of the Clutha and this plan is therefore applicable to the review. However, there are no objectives or policies of particular relevance, and no further consideration is therefore required.

There are no other matters of concern that the Council considers relevant to this application.

3. Part 2 of the Act

Under Section 104(1) of the RMA, a consent authority must consider resource consent applications "subject to Part 2" of the RMA, specifically, sections 5, 6, 7 and 8.

The Court of Appeal has stated how to approach "subject to Part 2" in section 104(1). In *R J Davidson* the Court of Appeal found that (in summary):¹

- Decision makers must consider Part 2 when making decisions on resource consent applications. The extent to which Part 2 of the RMA should be relied on to depends on the nature and content of the planning documents being considered.
- Where the relevant planning documents have been prepared having regard to Part 2 of the RMA, and with a coherent set of policies designed to achieve clear environmental outcomes, consideration of Part 2 is not ultimately required. In this situation, the policies of these planning documents should be implemented by the

¹ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

consent authority. The consideration of Part 2 "would not add anything to the evaluative exercise" as "genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome". However, the consideration of Part 2 is not prevented, but Part 2 cannot be used to subvert a clearly relevant restriction or directive policy in a planning document.

- Where it is unclear from the planning documents whether consent should be granted (and on what terms) or refused, and the consent authority has to exercise a judgment, Part 2 should be considered.
- If it appears that the relevant planning documents have not been prepared in a manner that reflects the provisions of Part 2, the consent authority is required to consider Part 2.

Section 5 Purpose

The proposed conditions provide for the on-going use of a resource that provides for the social, economic and cultural well-being while remedying and mitigating adverse effects on natural character and amenity values.

Section 6 Matters of National Importance

The proposed conditions recognise and provide for:

- the preservation of the natural character of lakes and rivers and their margins, and the protection of them from inappropriate use, and development; and
- the protection of outstanding natural features and landscapes from inappropriate use and development.

Section 7 Other Matters

The proposal has appropriate regard to:

- kaitiakitanga:
- the ethic of stewardship:
- the maintenance and enhancement of amenity values:
- maintenance and enhancement of the quality of the environment:
- the benefits to be derived from the use and development of renewable energy.

Section 8 Treaty of Waitangi

Tangata Whenua have been consulted in the development of the proposed conditions and would be required to be consulted in the development of any future LVAMP required by the conditions. Therefore, the principles of the Treaty of Waitangi have been taken into account and the application has been processed according to Council's protocol for consultation with Iwi.

Overall, the proposed conditions are considered to be consistent with Part 2 of the Act.

4. Recommendation

That the Council grants the review of 2001.385V3, 2001.386V4 and 2001.398V2 as shown on the attached amended consent.

4.1 Reasons for the Recommendation

- (a) The proposed conditions are expected to reduce adverse effects

- (b) The proposed conditions are consistent with the relevant statutory requirements.
- (c) The proposed conditions are consistent with the relevant planning documents and Part 2 of the Act.



Dwayne Daly
Senior Consents Officer
18 May 2023

DECISION ON RESOURCE CONSENT APPLICATION

Section 113 of the Resource Management Act 1991

Date: 24 May 2023
Application No: RM22.421
Subject: *Decision on non-notified review under delegated authority*

1. Notification

The review was approved to be processed non-notified and under delegated authority on **24 May 2023**.

2. Decision and Reasons for Decision

I have considered the information provided, reasons and recommendation in the above report.

No principal issues were in contention and no evidence was heard as this was a non-notified consent that did not require a hearing. There are no main findings as it relates to any principal issues in contention.

I agree with the reasons and recommendations provided by Dwayne Daly, Senior Consents Planner in the above report and adopt them as the reasons for decision under Section 113(1) to (3). This decision, report and any accompanying letter are the written decision under Section 113(4).

3. Conditions (section 108)

Pursuant to sections 108 and 108AA of the RMA, this consent is issued subject to the appended conditions.

4. Decision under delegated authority

Under delegated authority, this resource consent application is granted by the Otago Regional Council by:



Allan Cubitt
Independent Decision Maker for the Otago Regional Council

24 May 2023