

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

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

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

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MAY IT PLEASE THE PANEL**INTRODUCTION AND OVERVIEW**

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

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

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

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

⁴ Evidence is also being presented on behalf of Manawa in relation to these parts of the pRPS:

7. To state the obvious, hydro-electricity generation relies on water and has a functional need to locate in river systems.
8. The National Policy Statement for Freshwater Management (**NPSFM**) recognises the need to provide for activities with functional needs and provides a pathway for them.
9. The National Policy Statement for Renewable Electricity Generation (**NPSREG**), is an additional layer to this, recognising the national importance of renewable electricity. This has taken on increasing significance as the scale of the climate crisis becomes clearer.
10. The government when announcing its plan to accelerate the switch to clean energy said:
- It is vital we support this type of renewable energy development to help meet our national and international emissions reduction goals, decarbonise our economy, reduce costs to household and businesses and improve our national energy resilience.⁵
11. As explained by Ms Foran in her evidence:⁶

The Government has committed to New Zealand transitioning to 100% renewable electricity generation by 2030 and is developing policy packages which aim to accelerate the deployment of renewable electricity generation and reduce carbon emissions.

Alongside that sits New Zealand's commitment to both the United Nations Framework Convention on Climate Change (entered in 1992) and the Paris Climate Change Agreement (adopted in 2015) – and the commitment to reduce greenhouse gas emissions to 50% below the 2005 levels by 2030, and a domestic 'net zero' commitment of all greenhouse gas emissions (except methane) by 2050.

...

For these commitments to be achieved, rapid electrification of the economy will be required, and this will require a significant increase in the installed capacity of emissions free renewable electricity generation.

Ms Nicola Foran is employed by Manawa as the Environmental Policy Manager and has been employed by the company since 2013. Ms Foran will provide evidence regarding Manawa, broader central government context for the submission, Manawa's assets in the Otago region, and implications of the pRPS for its activities.

Ms Stephanie Styles is a Senior Planner at Boffa Miskell and addresses the policy context for renewable electricity generation, the appropriateness of the pRPS framework and the extent to which it complies with the relevant higher order statutory and national policy directions.

⁵ <https://www.beehive.govt.nz/release/fast-tracked-wind-farms-will-cut-emissions-and-create-jobs>

⁶ Statement of Evidence of Nicola Foran dated 23 November 2022 at paragraphs 13, 14 and 16.

12. At least currently, and for many years into the future, hydro-electricity provides the vast majority of Aotearoa's renewable capacity. Reaching 100% REG by 2030 will rely on the continued operation of these existing renewable assets.⁷ An overly strict approach to hydro-electricity therefore will not give effect to higher order policy and statutory direction.⁸
13. Reading the NPSFM and NPSREG together, freshwater plans should provide a pathway for the continued operation of, and maintained output from, HEPS, for upgrades to existing HEPS, and for enabling the development of new HEPS where those are consistent with environmental objectives. I address any perceived conflict between the two national policy statements later in these submissions.

Impact on Manawa

14. As Ms Foran explains in her evidence, a key concern for Manawa is the ongoing derogation of resource consents and the need to protect existing generation capacity. Operational flexibility and generation output is increasingly lost because of increasing restrictions put on HEPS. Loss of output from existing assets results in a need to make up more of the shortfall from either non-renewable sources, like fossil fuels, or development of new schemes in new areas.⁹
15. For its Waipori HEPS Manawa has recently renewed its four key deemed permits but only for a six year consent term. This means that further re consenting processes will be required in around five years' time. There are a multitude of other resource consents relating to Waipori and its other HEPS that will be affected by the pRPS. This is both directly, as being a matter to which regard is had in a consent application processes, and due to the influence it will have on the new Land & Water Regional Plan that will set the regulatory framework in which Manawa's renewal consents will be considered.

⁷ Statement of Evidence of Stephanie Styles dated 28 June 2023, paragraph 5.12, which explains:

Between 50% and 60% of New Zealand's REG comes from hydroelectric power schemes and the retention of this energy base is important to maintaining electricity supply at a local, regional and national level. It is also important that existing capacity and output is retained to support the move to 100% REG, as every reduction in output from the existing schemes means that even more new REG is required.

⁸ Including particularly ss7(b), (i) and (j) of the Act noted at paragraphs 24 and 25 of these submissions.

⁹ Statement of Evidence of Nicola Foran dated 23 November 2022 at paragraph 37.

16. The pRPS will also influence any new consents required for maintenance and upgrades and may, via the regional plan, result in the triggering of consent reviews to ensure limits are able to be met (or the guiding of those reviews were they to be required).
17. Manawa therefore has a keen interest in ensuring that the policy framework in which these processes occur is as supportive and enabling as it can be. It considers that this higher level direction for the region needs to be contained within the regional policy statement in order to comply with applicable statutory directions.
18. Erosion of these schemes' output on renewal will also undermine the transition to 100% REG, which the government has signalled needs to happen at pace and scale to effectively respond to the climate crisis. In this regard it is important to not view the NPSREG, which I will discuss in more detail shortly, in isolation. It is but one of a number of key directions relating to climate change and REG both within the RMA itself and in the NPSFM.

Scope of submissions

19. In these submissions I will:
 - (a) Explain the relevant legal framework as it applies for REG;
 - (b) Address key issues arising, including:
 - (i) The narrow approach to human health needs in priority 2 of the NPSFM.
 - (ii) The national and regional significance of Manawa's schemes (Taieri FMU vision).
 - (iii) The status of the draft NPSREG, including what happens if it is made operative before decisions on the pRPS are made.
20. I addressed the implications of the National Policy Statement for Indigenous Biodiversity (**NPSIB**) insofar as it relates to the freshwater provisions in my memorandum dated 18 August 2023 (accompanied by further evidence from Ms Styles). Manawa will also provide further evidence and submissions on the implications of the NPSIB for the non-freshwater parts of the pRPS as directed by that Panel.

21. Any changes made as an outcome of that further process are likely to have implications for the freshwater provisions and specifically to Policy LF-FW-P9. Ms Boyd in her opening statement for this hearing agrees that if the ECO chapter is amended to align with the NPSIB so that it does not apply to REG activities, then the amendment proposed by Ms Styles to clause (2) of that policy would be appropriate.¹⁰ That amendment would see the effects management hierarchy from the NPSFM remaining relevant to REG in a wetland context, but not the additional hurdle of the indigenous biodiversity hierarchy.

LEGAL FRAMEWORK

22. In this section I will focus on the key higher order provisions relating to Manawa's activities, which as I referred to earlier need to be considered together rather than looking at the NPSREG alone.
23. The pRPS must achieve the purpose of the Act, that is sustainable management as defined in s5, by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of its natural and physical resources.¹¹
24. REG is a key aspect of the sustainable management purpose of the Act (s5) – electricity enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety. The Environment Court has said that: ¹²

“[e]lectricity is a vital resource for New Zealand. There can be no sustainable management of natural and physical resources without energy, of which electricity is a major component”.

25. In addition, s7(j) explicitly requires all persons exercising functions and powers under the RMA to have particular regard to:

(j) The benefits to be derived from the use and development of renewable energy.

26. Section 7(b) relating to the efficient use and development of natural and physical resources and 7(i) relating to the effects of climate change, are also key.

¹⁰ Opening Statement of Ms Boyd dated 28 August 2023 at paragraphs 147 and 148. Also refer Statement of Evidence of Stephanie Styles dated 28 June 2023, paragraph 8.31.

¹¹ Section 59 of the Act.

¹² *Genesis Power Limited v Franklin District Council* [2005] NZRMA 541 at [64].

National Policy Statements

27. The RPS must *"give effect to"* national policy statements, including those for Renewable Electricity Generation, Electricity Transmission, Urban Development, Highly Productive Lands and Freshwater Management.
28. To the extent that there is room for differences to be found between the various national policy statements, the planning documents sitting under them should seek to reconcile these and, in my submission the regional policy statement, as providing the overarching regional direction, should strive to do this as much as possible to ensure consistency across the region.

NPSREG

29. The NPSREG is addressed in detail by Ms Styles.¹³ The matters of national significance to which the NPSREG applies are:¹⁴
- (a) the need to develop, operate, maintain and upgrade REG activities throughout New Zealand; and
 - (b) the benefits of REG.
30. The single objective of the NPSREG is:¹⁵
- 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.
31. In order to implement this overarching objective, the NPSREG includes a suite of policies to be given effect to:
- (a) Policy A is *"recognising the benefits of renewable electricity generation activities"*. It directs decision-makers to recognise and provide for the national significance of these activities and their significant benefits, which include:

¹³ Statement of Evidence of Stephanie Styles dated 23 November 2022 at paragraphs 5.4-5.6 and at Appendix One.

¹⁴ NPSREG page 4.

¹⁵ NPSREG page 3.

- (i) maintaining or increasing electricity generation capacity while avoiding, reducing or displacing greenhouse gas emissions; and maintaining or increasing security of electricity supply by diversifying the type and/or location of electricity generation.
- (b) Policy B is "*acknowledging the practical implications of achieving New Zealand's target for electricity generation from renewable resources*" and directs decision-makers to have particular regard to:
 - (i) maintenance of the generation output of existing generation activities can require protection of their assets, operational capacity and continued availability of the renewable energy resource;
 - (ii) even minor reductions in the generation output of existing generation activities can cumulatively have significant adverse effects on REG output; and
 - (iii) meeting or exceeding the national target for REG will require significant development of REG activities.
- (c) Policy C is "*acknowledging the practical constraints associated with the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities*". Two sub-policies sit under this policy:
 - (i) Policy C1 requires decision-makers to have particular regard to a number of matters, including the locational requirements of REG activity (ie it needs to be where the renewable energy resource is), and the logistical and technical practicalities associated with developing, upgrading, operating or maintaining these activities.
 - (ii) Policy C2 sets out a specific approach for managing the effects of REG activities. Decision-makers are specifically directed to have regard to offsetting measures or environmental compensation when considering any residual effects of REG that cannot be avoided, remedied or mitigated.

- (d) Policy D is "*managing reverse sensitivity effects on [existing and new renewable electricity generation] activities*" and requires such effects to be "*avoided*".
- (e) Policy E is "*incorporating provisions for renewable electricity generation activities into regional policy statements and regional and district plans*". This policy provides specific direction for the pRPS to include objectives, policies and methods for the development, operation, maintenance and upgrading of new and existing REG from different sources of renewable energy.
- (f) Policy F provides for small and community-scale renewable activities.
- (g) Policy G is to enable the identification of REG possibilities.

32. The pRPS needs to give effect to all those provisions of the NPSREG.

33. The NPSREG states in its preamble that:

This national policy statement does not apply to the allocation and prioritisation of freshwater as these are matters for regional councils to address in a catchment or regional context and may be subject to the development of national guidance in the future.

[my emphasis]

34. In my submission it is now well accepted that this means that the NPSREG:¹⁶

“should not be used to justify always giving hydro-electricity generation activities priority when making freshwater allocation decisions...

[that] [i]t envisages that there may be circumstances when this will not be appropriate and should not occur...

[but] should not be read as excluding the ability of regional councils to make freshwater allocation decisions which reflect the importance of renewable energy activities”.

Emissions Reduction and National Adaptation Plans

35. As the pRPS was notified prior to the RMA climate change amendments commencing, it is to be determined as if they had not yet been enacted.¹⁷ This means that what are now the s61(2)(d) and (e) obligations to have regard to any

¹⁶ *Carter Holt Harvey v Waikato Regional Council* [2011] NZEnvC 380 at [58] and [59]. The Court in *Re Otago Regional Council* [2021] NZEnvC 164 agreed with these observations (at [285]).

¹⁷ Schedule 12, Clause 26, Part 3 of the Resource Management Act 1991.

emissions reduction plan (**ERP**) or national adaptation plan (**NAP**) made in accordance with the Climate Change Response Act 2002 does not apply to the pRPS.

36. However, as the ERP and NAP are a management plan and/or strategy prepared under other legislation, they are still relevant to the Panel's consideration under s62(2)(a)(i) of the RMA. Given the scale of the crisis and its impacts (as evidenced by Cyclone Gabrielle in February this year), these documents are, in my submission, essential considerations. Meaningful action must be taken to respond to them via planning documents guiding and controlling future activities across all regions in Aotearoa.
37. The purpose of the ERP is for Aotearoa to contribute to the global effort to limit global warming to 1.5°C.¹⁸ It focusses on how we will reduce emissions, whereas the NAP addresses how we will adapt to the climate change impacts that are already locked in.
38. The ERP contains a suite of actions to reduce emissions in key sectors of the economy, including by *“phasing out fossil fuels and massively ramping up renewables in transport, electricity generation and industry”*.¹⁹ The range of benefits associated with decarbonising the energy sector are acknowledged, and a key action included to *“reduc[e] barriers to developing and efficiently using electricity infrastructure, including transmission and distribution networks”*.²⁰
39. The ERP explains that the:

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

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

To achieve this future, Aotearoa needs to move away from fossil fuels and shift towards increased renewable electricity generation, and the development and use of other low-emissions fuels.²¹

¹⁸ ERP at page 13.

¹⁹ ERP at page 21.

²⁰ ERP at page 201.

²¹ ERP at page 203.

40. “[A]ccelerating the rollout of renewable electricity generation” is required.²²
41. These very recent and clear statements from the government are important context for regional policy statements and planning documents that directly influence the uptake of REG in their areas. While not elevating the NPSREG above other NPS (as they are all important national directions), the ERP, in my submission, certainly provides additional support for **clear actions** being taken to protect existing renewable output and to provide a pathway for new development.

KEY ISSUES

Human health priority is not limited to ingestion and immersion

42. Policy LF-WAI-P1 sets out a three-tiered “priority” for all management of freshwater in Otago that generally reflects the hierarchy of obligations in Te Mana o Te Wai and the single objective of the NPSFM.²³
43. While LF-WAI-P1 generally reflects the NPSFM provisions, it adapts “priority 1” and “priority 2”. For priority 2 it amends it in quite a fundamental way, so that it applies only to the health needs of people interacting with water through ingestion and immersive activities. This is based on the reporting planner’s view that “*priority (2) as stated in the objective of the NPSFM relates to the health needs of people as they relate to physical contact with water*”.²⁴ With respect, this places an unduly narrow gloss on the NPSFM and one that is not borne out on review of its supporting documents.
44. It is apparent from the section 32 analysis prepared for the NPSFM and National Environmental Standards for Freshwater that the reference to health needs was not intended to be so limited. In the analysis of Policy 4 (Freshwater is managed as part of New Zealand’s integrated response to climate change) the s32 report authors conclude that the policy is effective because it:²⁵

Contributes to achieving the Objective (2.1 (1)(b) and (c)), by preserving hydroelectricity flexibility, which will secure renewable electricity generation, which is important for meeting the health needs of people (clause (b)) as well as enabling communities to provide for their social, cultural and economic well-being, now and into the future (clause (c));

²² ERP at page 207.

²³ At 1.3(5) and 2.1 respectively.

²⁴ Section 42A Hearing Report, 2 June 2023, paragraphs 817-821.

²⁵ Action for Healthy Waterways - Section 32 Evaluation, prepared for Ministry for the Environment by Harrison Grierson, 22 July 2020, section 7.4.2, pages 45-46.

45. Not only does this indicate a wider interpretation of and approach to priority 2 under the NPSFM objective than suggested by the reporting planner and counsel for ORC, but it explicitly acknowledges that REG is important for meeting the health needs of people and so contributes to achieving priority 2 as well as priority 3 in the NPSFM objective.
46. Neither Ms Boyd nor counsel for ORC address the statements made in the s32 analysis supporting the NPSFM. They appear to justify their approach by treating the “drinking water” example as exhaustive, saying that the words could have said “such as food and drinking water” if it was meant to be broader.²⁶ This narrow approach taken by the pRPS cannot be sustained. There are activities, like REG, that will be consistent with one or more of the priorities. In my submission giving effect to the NPSFM involves identifying and enabling these kinds of activities.
47. In light of the s32 report to the NPSFM, s7(j) of the RMA, and the directions in the NESREG, there are clear grounds, I submit, for providing for REG in LF-WAI-P1(2). Ms Styles explains in detail why it is that REG warrants this recognition, including as compared to other activities. She notes that, among other things, REG is identified as a lifeline utility and so has a special status distinct from other activities like food production.
48. This is appropriately carried through into LF-FW-P7A, as recommended to be amended by Ms Styles.²⁷ I address this policy, having regard to the additional response given Ms Boyd’s opening statement, in more detail below.

HEPS should be prioritised over other uses

49. Referring to the Supreme Court decision in Port Otago,²⁸ counsel for ORC says that the only potential area of national level conflict is as between NPSFM and NPSREG, although he says any conflict is addressed by the wording in the preamble.²⁹
50. I have already addressed the preamble generally above. In my submission, to suggest that the preamble alone “resolves” any conflict between the two national order instruments, overstates its effect. The preamble only refers to the allocation and prioritisation of freshwater, whereas a freshwater planning instrument does

²⁶ Opening submissions for ORC dated 28 August 2023, paragraphs 106-116.

²⁷ Statement of Evidence of Stephanie Styles dated 28 June 2023, paragraphs 8.27.

²⁸ *Port Otago Limited v Environmental Defence Society* [2023] NZSC 112.

²⁹ Opening submissions for ORC dated 28 August 2023, paragraphs 21-22.

much more than this. The preamble also needs to be read in full, with the relevant decisions that have interpreted and applied it in mind. Counsel for ORC does not refer to these. To reiterate, while the NPSREG cannot be used to always justify priority being given to HEPS, above all else – including the environment “[i]t should not be read as excluding the ability of regional councils to make freshwater allocation decisions which reflect the importance of renewable energy activities”.³⁰

51. I do not necessarily consider that there a conflict that needs to be resolved here, in the same way the NZCPS port and avoid policies need to be. Manawa has not suggested that the waterbody first approach should be put to one side to allow for hydro-electricity. But the short point is that instead of approaching it as a matter of conflicting direction, the pRPS needs to ensure that it gives effect to, ie implements, both sets of national direction as best it can.
52. This is not by allowing HEPS regardless of its effects, but by ensuring that there is some recognition and provision for REG, and a priority for these activities when looking at the suite of uses that will be enabled above bottom lines.
53. In other words, providing for some degree of priority, or at least special recognition, for REG over other uses that are not deemed nationally important.
54. Counsel for the ORC appears to acknowledge that the NPSFM already deals with a conflict by having exemptions for the larger hydro-electricity generation schemes.³¹ He does not also however acknowledge the clear conflict addressed in the NPSFW by providing a consenting pathway for specified infrastructure with a functional need to locate in water environments.
55. In *Re Otago*³² the Environment Court accepted the national importance of REG as reason to exclude the re-consenting of Manawa’s permits from the limited duration that would apply to other activities. This same reasoning can and should be applied when looking at whether access to water for renewables should be prioritised over other uses, or at the very least whether REG should be specifically identified as a relevant, and important activity, that needs to be considered and, where appropriate, provided for.

³⁰ Ibid at note 16.

³¹ Opening submissions for ORC dated 28 August 2023, paragraphs 146-150.

³² *Re Otago Regional Council* [2021] NZEnvC 164.

56. In relation to the interrelationship between the NPSFM and the NPSREG, the Court also said that the NPSFM recognises the national significance of renewables and the benefits of REG are acknowledged in the NPSFM (2020) through its policy on climate change.³³

National Policy Statement for Highly Productive Land (NPSHPL)

57. In response to the reporting planner's concern that including REG as a priority 2 could lead to other activities seeking inclusion also, Ms Styles comments that there is no national direction that states that primary production is nationally significant.³⁴
58. While others seek to argue that the NPSHPL does have this effect, in my submission Ms Styles is correct in her summary that this national policy statement relates to the value of soils and their ability to support productive activities.
59. The single objective of the NPSHPL is that:

Highly productive land is protected for use in land-based primary production, both now and for future generations.

60. All supporting policies are also framed around the protection of the land itself. There is questionable room to interpret this as also protecting the land based primary production activities that may be undertaken on that land. This would significantly expand the effect of the NPSHPL in a manner inconsistent to its framing.
61. In other words, while highly productive land might be protected for its best use as this land is a finite resource, it is quite a different thing to say that land based primary production activities must be prioritised. It is not relevant for the purpose of the NPSHPL whether the land is used for land-based primary production currently or not – it is focussed on the protection of the *potential* of the land itself.
62. The NPSHPL carries through a pathway for specified infrastructure where there is a functional or operational need for the use or development of this to be on highly productive land. In this way, we still see a priority for REG even when compared to productive land (for example if a HEPS needs to locate structures on this land).
63. It is not appropriate for water allocation for land-based primary production to be acknowledged in the Taieri FMU unless greater recognition is also provided to HEPS.

³³ Ibid at [282].

³⁴ Statement of evidence of Ms Styles dated 28 June 2023, paragraph 8.15.

64. The recognition of the precedence to be given to REG over other general uses is the foundation for Manawa's requested changes to LF-FW-P7A. Ms Styles' view is that to properly give effect to higher order directions, the pRPS should be more explicit about the priority to be afforded to REG. ORC have maintained a position that it is not appropriate to go into this level of detail in the regional policy statement, rather that is the job of the regional plan. They say that identifying REG as a priority would preempt the implementation of the NPSFM and specifically the National Objectives Framework including because hydro-electricity is but one of the values that need to be considered under Appendix 1B of the NPSFM.
65. That approach does have some attraction. However, for three reasons it is not entirely supported:
- (a) First, the RPS must give effect to the NPSREG and address relevant Part 2 matters. This is a legal requirement. The preamble is not the answer to this for the reasons outlined already.
 - (b) Second, Policy 4 of the NPSFM requires freshwater to be managed as part of Aotearoa's integrated response to climate change. Renewable electricity generation is part of that response. Internal NPSFM directions therefore require freshwater management to enable REG outcomes.
 - (c) Third, by identifying other uses or activities, for example as now proposed by Ms Boyd for food production in the vision applying across the entire region (LF-FW-O1A(7)), the pRPS is already providing for a degree of prioritisation within its freshwater provisions. This region-wide objective, in the ORC's opening statement version, applies in addition to the FMU specific visions. These vision statements will have a direct effect on the setting of objectives and outcomes at the regional plan level. This already sets up an inherent prioritisation.
66. Even if the Panel were to agree with Ms Boyd that the amendments suggested by Ms Styles to LF-P7A to incorporate a clearer priority order, and that decisions about prioritising allocation for certain activities, should be for the regional plan, it should carefully consider the wording across the relevant provisions to ensure that other activities do not gain an inappropriate "advantage" that will flow through into the regional plan. Referring to "food production" in O1A(7) may be an example of this.

National significance of the Manawa schemes

67. The FMU visions for the Clutha Mata-au FMU and North Otago FMU require recognition of the national significance of the Clutha and Waitaki HEPS respectively.
68. Manawa sought that the Taiari FMU vision objective (LF-VM-O4) similarly refer to the significance of the Deep Stream, Waipori and Paerau / Patearoa hydroelectric power schemes and this was supported in Ms Style's expert evidence.
69. The s42A report author had initially responded that it is not clear to her "*which of these power schemes Manawa Energy considers to be nationally significant and which regionally significant*" and that she did not recommend accepting the submission point without further evidence.
70. Ms Styes has now provided further evidence.³⁵ Her opinion is that the physical scale of schemes should not be a factor in what is recognised as being of significance at a regional and FMU level, given renewable generation is of national importance.
71. Ms Boyd has now accepted that it would be appropriate to refer to the schemes in the vision. Her wording, which is proposed to be consistent with other HEPS acknowledged across other visions, is supported.

Effect of the exemption for the "big 5"

72. For completeness, I address the effect of the exemption for the big 5, to support Manawa's case that it is appropriate to refer to its schemes in the vision.
73. The importance of the 5 large hydro-electric power schemes identified in the NPSFM and their contribution to electricity needs and climate change response in Aotearoa cannot be denied. Manawa is supportive of the recognition afforded to those schemes. However, their recognition and associated exemption is limited (relating only to meeting national bottom lines) and does not preclude provision for other smaller scale HEPS like those operated by Manawa.
74. Given the scale of the 5 large schemes, and their effects, more specific directives were warranted to ensure that the NPSFM did not result in their inability to continue operating. Recognising this, clause 3.31 allows the relevant regional council to set a target attribute state that is below the national bottom line where achieving that

³⁵ Statement of evidence of Ms Styles dated 28 June 2023, paragraphs 8.12-8.13.

bottom line would have a significant adverse effect on the scheme. An inability to meet national bottom lines is not likely to apply in the same way to smaller scale schemes which often have a smaller environmental footprint.

75. However, as recognised in the NPSREG, all schemes contribute to the national renewables targets and are nationally important. Small, distributed generation schemes are to be provided for (Policy F), recognising, as matters decision makers are to have particular regard to, that even minor reductions in generation output can cumulatively have significant adverse effects on national, regional and local output (Policy B). National, regional and local benefits are referred to throughout.
76. All schemes contribute to Aotearoa's climate change response. This means that all schemes, regardless of scale, should be recognised and enabled. The hydro-electric power generation value, which must be considered, under Appendix 1B of the NPSFM is not limited in relation to scale.
77. Given the Taieri FMU has HEPS located within it, recognition of its value for this appears to be entirely reasonable and in keeping with the NPSFM and NPSREG directions. Again, as Ms Styles has noted, the physical scale of the HEPS should not be a limiting factor as to whether or not they ought to be recognised as a value in an FMU.

Draft NPSREG

78. The Panel will be aware that the government has released a proposed NPSREG (2023) for consultation but that this document currently has no legal weight and so cannot directly influence the contents of the pRPS.³⁶
79. However, while the pRPS must give effect to the operative NPSREG, should a new NPSREG (2023) take effect before the decisions are made on the pRPS, the Panel will need to consider whether it can make any changes to the pRPS. This may involve consideration of the specific implementation clauses in the new NPSREG (2023),³⁷ and as well as scope and natural justice matters. These matters can only be

³⁶ Significant amendments could be made to the draft before it takes effect, for example, to further provide for the exemption for REG which was inserted into the NPSIB after consultation. We simply cannot know what the final NPSREG (2023) will say.

³⁷ This was considered relevant by the High Court in *Southern Cross Healthcare Limited v Eden Epsom Residential Protection Society* [2023] NZHC 1560 at [81] to [88].

addressed at a later stage, and Manawa will want to provide comment on them, should the need arise.

CONCLUDING THOUGHTS

80. Aotearoa is confronted with several major environmental challenges, of which biodiversity and freshwater are well known and acknowledged. The climate change crisis is equally recognised and no less important, I submit. The contribution REG will make to decarbonisation also cannot, and should not, be underestimated.
81. The Explanatory Note to the Natural and Built Environment Bill (now Act) identified in its General Policy Statement (p2) the enabling of REG, to affordably decarbonise the economy, as a problem with the current system that the Bill (now Act) is expected to fix.
82. While environmental bottom lines are important, and Te Mana o te Wai calls for a waterbody first approach, the pRPS needs take a more reasonable and enabling approach in relation to REG. This is already recognised to some extent by the NPSFM itself, while renewable energy is exempted from complying from the NPSIB, with the desire being to provide a more certain consenting pathway.
83. The pRPS must, I submit, foreshadow the choices that need to be made in the Land & Water Regional Plan and provide clear direction on provision for hydro-electricity generation rather than leaving this to be treated the same as other general uses of water. This does not need to be, and should not be, parked to be addressed via the regional plan. To do so would not comply with the statutory requirements for a regional policy statement. Either way, there is a strong case for prioritising access to water for HEPS over other uses, and care needs to be taken to ensure that the special recognition made for REG in the pRPS is not watered down by providing equivalent recognition to other uses which do not have the same level of importance.