

IN THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY

ENV-2024-CHC-

I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE

UNDER	the Resource Management Act 1991 (the RMA)
IN THE MATTER	of an appeal pursuant to Schedule 1, clause 14 of the Act
AND	
IN THE MATTER	of the Non-Freshwater Parts of the Proposed Otago Regional Policy Statement 2021
BETWEEN	OTAGO REGIONAL COUNCIL Respondent
AND	MANAWA ENERGY LIMITED Appellant

NOTICE OF APPEAL ON BEHALF OF MANAWA ENERGY LIMITED

DATED 16 MAY 2024

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TO: The Registrar
Environment Court
CHRISTCHURCH

1. Manawa Energy Limited (**Manawa**) appeals against a decision of the Otago Regional Council (**Council**) on the Non-Freshwater Parts of the Proposed Otago Regional Policy Statement 2021 (**POPERS**).

BACKGROUND AND DECISIONS APPEALED

2. Manawa made a submission on the PORPS. Manawa presented evidence and legal submissions in support of its submission.
3. Manawa is not a trade competitor for the purposes of section 308D of the Act.
4. Manawa received notice of the decision on 30 March 2024.
5. The decision was made by the Council (**Decision**).
6. The parts of the Decision being appealed are the decisions to reject the matters raised in Manawa's submission, or to amend the PORPS in a way that is inconsistent with the matters raised in Manawa's submission. Manawa appeals those parts of the Decision summarised in paragraph 7 below for the reasons set out in this Notice of Appeal.

SCOPE OF APPEAL

7. Manawa appeals the following parts of the Decision:
 - (a) The inclusion of overlapping provisions that apply to renewable electricity generation (**REG**) in the INF (Infrastructure) and EN (Energy) sections of the EIT (Energy, infrastructure and transport) chapter, in particular:
 - (i) EIT-INF-P13¹ and EIT-EN-P6;² and
 - (ii) EIT-EN-P7³ and EIT-INF-P15.⁴

¹ Locating and managing *effects of infrastructure, nationally significant infrastructure and regionally significant infrastructure* outside the coastal environment.

² Managing effects.

³ Reverse sensitivity.

⁴ Protecting *nationally significant infrastructure and regionally significant infrastructure*.

- (b) The application of provisions of the ECO (Ecosystems and indigenous *biodiversity*) chapter to REG, in particular ECO-P4,⁵ P5A⁶ and P6.⁷
 - (c) The correct use of the terms “energy” and “electricity”.
8. Manawa seeks the relief set out in this Notice of Appeal, or such alternative or consequential relief to address Manawa’s concerns.

GENERAL REASONS FOR APPEAL

9. The PORPS, in its present form:
- (a) Will not promote the sustainable management of the natural and physical resources in the Otago Region, and is therefore contrary to or inconsistent with Part 2 and other provisions of the RMA;
 - (b) Is inconsistent with other relevant planning documents, including the National Policy Statement on Renewable Electricity Generation 2011 (**NPS REG**) and the National Policy Statement for Indigenous Biodiversity 2023 (**NPS IB**);
 - (c) Will not meet the reasonably foreseeable needs of future generations;
 - (d) Will not enable the social, economic, and cultural wellbeing of the people of the Otago Region or the wider country;
 - (e) Does not appropriately avoid, remedy, or mitigate actual and potential adverse effects on the environment;
 - (f) Will not promote or enable efficient use and development of REG;
 - (g) Will not adequately protect and provide for Manawa’s current and future operations in the Otago region;
 - (h) Will not enable Otago to contribute appropriately to New Zealand’s climate change objectives; and

⁵ Provision for new activities.

⁶ Managing adverse effects of established activities on *significant natural areas*.

⁷ Maintaining indigenous *biodiversity*.

- (i) Is not the most appropriate way to achieve the objectives of the PORPS in terms of section 32 of the RMA.

- 10. In addition to the general reasons outlined above, Manawa appeals the decision for the specific reasons set out below.

SPECIFIC REASONS FOR APPEAL

EIT (Energy, infrastructure and transport) chapter

- 11. Manawa made several submissions regarding the structure of the EIT chapter and the approach of overlapping and inconsistent provisions within the INF and EN sections applying to REG. To better give effect to the NPS REG Manawa, together other REG submitters, promoted at the hearing stage a standalone EN section to operate in parallel to the INF section. This was rejected by the Council.
- 12. Manawa remains concerned about the conflicting requirements of the provisions for managing the effects of REG and reverse sensitivity, especially where this removes the benefit of a more enabling provision and undermines the importance of REG. This is especially appropriate given the greater recognition of its role in response to climate change in other chapters.

ECO (Ecosystems and indigenous biodiversity) chapter

- 13. Manawa raised concerns in its submissions about the implications of the ECO chapter provisions for REG. These concerns were raised in the context of its wider submission that the EN section of the EIT chapter be self-contained so that REG was not subject to a range of inconsistent policy directions.
- 14. The Council decided not to include stand-alone REG provisions. In relation to the application of the ECO provisions to REG, the Council decided to:
 - (a) Include a definition of “effects management hierarchy (in relation to indigenous biodiversity)” (**EMF IB**) that included a slightly different pathway for *regionally significant infrastructure (RSI)* and *nationally significant infrastructure (NSI)* that is either REG or the National Grid; and

- (b) Amend ECO-P4 to refer to the new EMH IB and include further activities to be provided for in *significant natural areas (SNA)*. This includes “*specified infrastructure*” but only where that “provides significant national or regional public benefit”, and where “there are no practicable alternative locations”; and
 - (c) Delete ECO-P5 and introduce a new ECO-P5A that enables maintenance, operation, and upgrade of established activities, excluding those managed under ECO-P3 and ECO-P4, provided they are no greater in intensity, scale, or character over time than at 4 August 2023 and do not result in the loss of extent or degradation of ecological integrity of a SNA; and
 - (d) Amend ECO-P6, including by adding a different requirement for RSI and NSI that is either REG or the National Grid.
15. While the Council’s general intent of providing for greater flexibility for REG is acknowledged, there remains a complicated and unclear set of policy directions that will apply to REG and this will undermine the suite of directions aimed at enabling these activities both at a national level and within the PORPS itself. The need to carve out these activities throughout the provisions demonstrates the need for a bespoke set of clear directions applying to them.
16. The operative NPS-REG includes in Policy C2 the key effects direction for REG that must be given effect to:
- When considering any residual environmental effects of renewable electricity generation activities that cannot be avoided, remedied or mitigated, decision-makers shall have regard to offsetting measures or environmental compensation including measures or compensation which benefit the local environment and community affected.
17. Clause 1.3(3) of the NPS IB excludes REG from its application and clarifies that it is not “*specified infrastructure*” for the purposes of that NPS.

18. The Panel (and Council) correctly accepted that the draft NPS REG was draft and had no weight in the proceedings, and so did not consider them further.⁸
19. Notwithstanding that, the Council accepted wording in the EMH IB that directly reflected Option 2A in 3.6 of the draft NPS REG. That draft NPS REG was subject to a public submissions process, no decisions have been released, and it is likely to be subject to further change.
20. The policies remain inconsistent in their interpretation and application to REG and are too restrictive when compared to the operative NPS REG to which the Council is obliged to give effect.

Correct use of the terms “energy” and “electricity”

21. Despite the Panel (and Council) apparently deciding to accept Manawa Energy’s submission regarding the correct use of the terms “energy” and “electricity”,⁹ not all relevant provisions have been amended to reflect this.

RELIEF SOUGHT

22. Manawa seeks the following relief:
 - (a) Amend the policies that deal specifically and/or additionally with managing the effects of REG (EIT-INF-P13 and EIT-EN-P6) and reverse sensitivity (EIT-EN-P7 and EIT-INF-P15) to remove any duplication, contradiction, and to better align with the policy direction provided for in the NPS REG;
 - (b) Include stand-alone provisions for managing the effects of REG, including on indigenous biodiversity, in the EN section of the EIT chapter;
 - (c) In relation to the correct use of the terms “energy” and “electricity” make the corrections shown in track changes in the below table:

⁸ Panel’s report and recommendations, paragraph 36, page 214.

⁹ Appendix 5, Part 1, Panel’s recommendations, page 45.

Part of PORPS and provision		Page
PART 1 – INTRODUCTION AND GENERAL PROVISIONS		
Description of the region	Renewable energy <u>electricity</u> generation facilities...	6
PART 2 – RESOURCE MANAGEMENT OVERVIEW		
SRMR – Significant resource management issues for the region		
SRMR-I2 – Climate change will impact our economy and environment	Statement ...the potential for renewable energy <u>electricity</u> generation.	93
PART 3 – DOMAINS AND TOPICS		
EIT – Energy, infrastructure and transport		
EIT-EN-O1 – Energy and social and economic well-being	‘...supported by renewable energy <u>electricity</u> generation’	233
EIT-EN-O2A – Greenhouse gas emissions and renewable energy targets	‘Otago’s renewable energy <u>electricity</u> generation’	233
EIT-EN-P5 – Non-renewable energy <u>electricity</u> generation	‘In relation to non-renewable energy <u>electricity</u> generation: (1)... non-renewable energy <u>electricity</u> generation activities... and facilitate the replacement of non-renewable energy sources...’	234
Anticipated environmental results		
EIT-EN-AER1	‘...generated by renewable energy <u>electricity</u> generation activities...’	240
EIT-EN-AER3	‘...associated with renewable energy <u>electricity</u> generation activities...’	240

- (d) Such further relief as the Court considers appropriate having regard to Manawa’s submission and the reasons for this appeal; and
- (e) Costs.

Attachments

23. Manawa attaches the following documents to this notice:
- (a) A copy of Manawa’s Energy’s submission (**Attachment A**);
- (b) A copy of the relevant decision (**Attachment B**); and

- (c) A list of names and addresses of persons to be served with a copy of this notice (**Attachment C**).

Signature: **MANAWA ENERGY LIMITED** by its duly authorised agent



Lara Burkhardt
Counsel for the Appellant

Date: 16 May 2024

Address for service of Appellant:

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

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

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

How to obtain copies of documents relating to appeal

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

Advice

If you have any questions about this notice, contact the Environment Court in Auckland.

Attachment A

Submission

Attachment B

Decision of the respondent

Attachment C

Names and addresses of persons to be served with copy of appeal

Otago Regional Council	warren.hanley@orc.govt.nz
Christchurch International Airport Limited	aime.green@chapmantripp.com
Transpower New Zealand Limited	ainsley@amconsulting.co.nz
Oceana Gold (New Zealand) Ltd	alison.paul@oceanagold.com
Meridian Energy Limited	andrew.feierabend@meridianenergy.co.nz
Rayonier Matariki Forests	andy.fleming@rayonier.com
Central Otago District Council	ann.rodgers@codc.govt.nz
Trojan Holdings	ben@cuee.nz
Wayfare Group Limited	ben@cuee.nz
Otago Water Resource Users Group	bridget.irving@gallawaycookallan.co.nz
Ravensdown Limited	carmen@planzconsultants.co.nz
Contact Energy Limited	chris.drayton@contactenergy.co.nz
Chorus, New Zealand Limited, Spark New Zealand Trading Limited and Vodafone New Zealand	chris@incite.co.nz
Federated Farmers of New Zealand	elinscott@fedfarm.org.nz
Queenstown Lakes District Council	Erin.auchterlonie@qldc.govt.nz
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Aurora Energy Limited	angus.robertson@auroraenergy.nz
Alluvium Ltd and Stoney Creek Mining Ltd	kate.mckenzie@tpri.co.nz
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Network Waitaki Limited ("NWL")	megan.justice@mitchelldaysh.co.nz
PowerNet Limited	megan.justice@mitchelldaysh.co.nz
Queenstown Airport Corporation Ltd	melissa.brook@queenstownairport.co.nz
Business South Inc	mike.collins@business-south.org.nz

Matakanui Gold Limited	craig@townplanning.co.nz
Royal Forest and Bird Protection Society NZ	P.Anderson@forestandbird.org.nz
City Forests Limited	peter.oliver@cityforests.co.nz
Dunedin International Airport Limited	Phil.page@gallawaycookallan.co.nz
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