31 October 2019

Ministry for the Environment
PO Box 10 362
Wellington 6143

By email: consultation.freshwater@mfe.govt.nz

Contact Energy submission on the ‘Action for Healthy Waterways – Reform Package’

Contact Energy agrees with the Government’s commitment to improve the health and wellbeing of New Zealand’s water resources and its status as tāonga for all New Zealanders.

We believe that there are opportunities to create a better balance in the package between improving water quality outcomes and the urgent need to transition to a low emissions economy.

The Government and the Minister have publicly committed to an ambitious climate change agenda. Those ambitions rely heavily on maintaining and increasing water-dependent renewable electricity generation. Without some changes the reform package risks inhibiting that ambition.

We acknowledge that steps have been taken to try and establish an ‘exception’ for the country’s most important hydro schemes, but this requires strengthening to realise the goal of protecting and enhancing hydro operations.

We encourage the Government to ensure the decisions it makes provide clear, consistent regulatory settings and encourage investment in renewable energy to support the goals of quality freshwater and a low carbon future.

Please find attached additional details in our full submission, we are happy to discuss and provide further information on any of the matters raised.

Yours sincerely

Consent Manager
Generation and Development
Submission by Contact Energy Limited on “Action for Healthy Waterways – A Discussion Document on National Direction for Our Essential Freshwater, September 2019”

The importance of access to water for renewable electricity generation

1. Providing a regulatory environment encouraging renewable electricity generation (“REG”) is key to transitioning to a low carbon future, allowing the ongoing substitution of fossil fuels and helping the Government and the country to achieve our climate change ambitions.

2. Contact agrees with ambitious targets to reduce emissions and improve New Zealand’s climate change resilience. This will require not only the protection of existing REG but also increases in the efficiency and flexibility of them, alongside the development of a substantial volume of new renewable electricity generation.

Contact’s views on the need for water reform

3. Contact agrees with the Government that New Zealand’s water is a tāonga, a resource that requires care and respect for its mana, integrity and health. Contact also agrees that freshwater quality has deteriorated seriously in some catchments and where that has occurred, action is required to improve them.

4. We accept our responsibility to minimise effects on New Zealand’s freshwater and ecosystems, and we are continually moving forward to help achieve this. Since 2015 in particular, Contact has actively focused on water stewardship by executing our long term plan to help improve the water quality and mauri of the fresh water we use, while simultaneously reducing our greenhouse gas emissions.

5. The large reduction in Contact’s emissions over the last decade (outlined in the following table from our 2019 Annual Report) has been achieved alongside a reduction in our environmental impacts on freshwater, demonstrating that an effective balance can be struck between water quality and the needs of renewable electricity generation (REG’s) without radical policy changes.
6. In our experience, maintaining and improving the health and wellbeing of water can be achieved alongside providing for important human needs. For example, in the past 15 years Contact has greatly reduced discharges of geothermal water and heat at Wairakei; slashed the levels of H2S in that discharge by developing and building a world-first bioreactor to control it; significantly increased the number of eels able to pass up and down the Clutha Mata-Au; planted, fenced and protected hundreds of hectares of streamside vegetation; ceased the take and discharge of freshwater needed for the former Otahuhu Power Station; offset impacts on wetlands at Ohaaki; and carried out many other activities with DoC, Council, and the community to control introduced water weeds and improve native fish habitats across the Clutha catchment.

Overview of Contact’s submission

7. Contact agrees with the high level intent of the reforms, to drive improvements the quality and ecosystem functioning of our degraded and deteriorated rivers and restore Te Mana o Te Wai.

8. The application of the freshwater reform package across all bodies of freshwater, irrespective of their health and capacity for human use, combined with its strict and absolutist nature though, could significantly constrain the use of fresh water for essential services, including renewable electricity generation.

9. In particular, some parts of the package, such as in relation to river flows and lake levels, fish passage and instream activities, would make it very challenging (or impossible) to consent new renewable electricity generation, re-consent existing renewable electricity generation, or to maintain or improve the output, efficiency and flexibility of NZ’s existing REG infrastructure. Such constraints will handicap an
opportunity to transition at a reasonable rate and cost to a renewable, reliable, low emissions energy future.

10. Contact considers that the package needs to strike a better balance between improved water quality outcomes and a low emissions economy.

11. To achieve this balance, amendments are needed to ensure that the framework recognises the freshwater needs of REG and provide a feasible resource consenting pathway commensurate with its importance to people and our climate future.

12. It is critical that freshwater management under the RMA recognises the reality that REG’s such as hydro need to locate where the resource is available and may have environmental effects that cannot always be fully avoided, remedied or mitigated. Allowing the effects management hierarchy to be employed ensures that where there are residual effects, the ability to offset and compensate will avoid a ‘no effects’ regime.

13. With those issues in mind, Contact’s main concerns with the freshwater reform package include the following issues:
   
   (a) Objective 2.1 of the National Policy Statement for Freshwater Management ("NPSFM"), and in particular the impact of the rigid hierarchy of priorities
   
   (b) Certain parts of the National Objectives Framework ("NOF"), including the approach in 3.9 to setting attribute states and limits in 3.10
   
   (c) Policy 3.11, environmental flows and levels, and how those provisions may impact existing hydro REG’s in particular
   
   (d) policies 3.15 and 3.16 and the inflexible nature of the strong avoidance policies in relation to effects on wetlands, streams and river beds
   
   (e) 3.17 and the application of new fish passage requirements in relation to existing hydro REG’s
   
   (f) The ineffectiveness of the so-called ‘hydro exception’ in 3.22
Response to issues and questions

Objective 2.1 of the NPSFM and the hierarchy of priorities

1. Contact is concerned that the rigid hierarchy of obligations as expressed in Objective 2.1 and reflected throughout the NPSFM will make it unreasonably challenging, if not impossible, to consent, re-consent or improve the performance and output of existing hydro REG activities over time.

2. The strict prioritisation is reflected in other provisions throughout the NPSFM, such as policy 2.2.2 and in particular the need in 3.9 for all target attribute states to be set “at or above the current state”, no matter how healthy or large the sustainable capacity of the waterbody is. This approach has the clear potential to freeze and then unwind many of the benefits of renewable electricity generation.

3. Under Objective 2.1, decision-makers will have to always prioritise fresh water health in all resource management decisions, irrespective of any wider environmental or social costs and benefits. This includes in relation to the effects of climate change or the benefits of renewable electricity generation. In nearly all cases, it is self-evident that restrictions on or cessation of human use will, if only incrementally, “improve the health and wellbeing” of water and ecosystems under priority 2.1(a). Our concern is how strictly that will need to be applied under the NPSFM and how that might affect REG’s in future.

4. The hierarchy in objective 2.1 and the emphasis which runs through most of the policies in Part 3 of the NPSFM will also apply without distinction to those waterbodies degraded below a reasonable bottom line and need action, and those that are not and can support human use.

5. Nor does it provide any flexibility for specific situations, where for example, there may be an important community or nationwide need for existing or additional REG, and where the effects of protecting the water at all costs will have its own countervailing adverse effects (e.g. inhibiting substitution of carbon emitting fossil fuels).

6. In our view, the strict prioritisation of values in Objective 2.1 creates an overly strong and inflexible protection-focussed rather than sustainability-focussed regime that will drive freshwater decision-making.

7. Contact supports a more balanced approach to encourage the improvement of both the quality and mauri of fresh water while providing for renewable electricity generation. In essence, we are seeking that the importance of prioritising the health and wellbeing of water be recognised while providing for human needs and wants, rather than before. In that regard, 2.2 Policy 13 “Communities are enabled to provide for their economic wellbeing while managing freshwater in a manner consistent with Te Mana to Te Wai” is supported. Our concern is that it is likely to be rendered ineffective and irrelevant by the countervailing, more specific or higher priority requirements of the NPSFM.
8. To avoid this outcome, a consenting pathway using the effects management hierarchy should always be available. This would allow Councils to assess new or existing renewable electricity generation activities in their particular context to determine what effects the proposal would have on fresh water; to what extent freshwater outcomes could be improved alongside good renewable electricity generation outcomes; and which obligation should carry the most weight in the circumstances. Allowing recourse to offsets, compensation, remediation and restoration for unavoidable residual environmental effects in this way can have significant positive impacts on water quality, ecosystems and Te Mana o Te Wai in otherwise degraded or vulnerable areas.

9. In respect of the supporting policies in 2.2, it is crucial that an integrated approach is applied, one that recognises the benefits of renewable energy and acknowledges the need to address climate change. In relation to Policy 2.2 (4) for instance, freshwater should be managed in an “integrated way that considers the effects of the use and development of land and water on a whole-of-catchment basis, including the effects on sensitive environments, and on the response to climate change”.

10. That should cascade down into 3.4 Integrated Management, where the benefits of renewable electricity generation and the effects of climate change should be reflected.

   (a) “recognise the interactions ki uta ki tai between freshwater, land, waterbodies, freshwater ecosystems, other ecosystems, and sensitive receiving environments, including the coastal environment and on climate change; and

   (b) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects or on renewable generation activity.”

11. Part B of our submissions suggests a number of other ways of ensure this balance is corrected and restored.

Subpart 2 National Objectives Framework (“NOF”)

12. Contact is concerned that as currently drafted, the new NOF - in particular the requirement to maintain or improve fresh water at or above the current state of the attribute - seeks to safeguard all attributes at any cost, while at the same time failing to recognise the importance of maintaining and increasing renewable electricity generation.

13. The new framework establishes a flat "no effects" regime. The following section of our submission concentrates on the ways to help manage that.

Identifying Freshwater Management Unit Values – General

14. Under both the current and draft NPSFM (policy 3.7) the categories of “compulsory values”, “other values that a council considers applies” and “any other values as the council considers” must be identified.
15. In the NPSFM “Hydro-electric generation” is merely an “other value” as opposed to a compulsory national value, so it is not mandatory to include it in relevant FMUs. This is despite the National Policy Statement for Renewable Electricity Generation 2011 ("NPSREG") already recognising the national significance of renewable generation activities.

16. If hydro-electric generation is not a compulsory value it will be difficult to include or recognise and protect its output, capacity and flexibility in RMA plans and decisions.

17. Amendments are required to ensure that if an FMU holds values for hydro-electric generation then identification of that value be compulsory under 3.7.

Attributes - General

18. Contact recognises the need to broaden the range of attributes in the current NPSFM to provide a more holistic approach, encompassing water quality and quantity as well as ecological processes, aquatic life, mahinga kai and habitat.

19. However, we are concerned that the blanket nationwide application of the attributes and the resource use limits that fall out of them under policy 3.10 will not provide the necessary flexibility to respond to specific circumstances or allow environmentally responsible, sustainable activities that do not threaten bottom-lines.

Policy 3.9 and 3.10 - setting target attribute states and limits on resource use

20. Under the proposed NOF and policy 3.9(2) regional councils must set objectives and targets for each attribute\(^1\) which will maintain or improve the attributes at or above their current state and improve any attribute unable meet or exceed the bottom lines.

21. This is much more restrictive than the existing NPSFM which requires the improvement of attributes over and above the national bottom line, as opposed to current state.

22. This makes it essentially a requirement to safeguard existing attributes at all costs. In other words, it establishes a “ratchet” or "no effects" regime that does not allow for any adverse effects on these attributes on any FMU.

23. It is likely that any increases in New Zealand’s hydro renewable electricity generation capacity will have some environmental effects on freshwater bodies while having significant countervailing national and climate change benefits. The new framework will therefore make it very difficult to maintain or improve the flexibility, efficiency, output or capacity of existing renewable electricity generation, and potentially impossible to establish a consenting pathway for new renewable electricity generation affecting water. A ‘no new effects’ approach also overlooks the improvements to freshwater health that can come from environmental offsets, compensation and remediation.

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\(^1\) The attributes of fresh water include ‘compulsory values’ which include ecosystem health (such as water quality, quantity, habitat, aquatic life and ecological processes), human contact, threatened species and mahinga kai. Attributes also include ‘other values’ such as natural form and character and hydro-electric generation. Regional councils can also include any other attributes they consider as necessary.
Contact therefore seeks that the National Objectives Framework be amended to:

(a) ensure that the NOF provides a consenting pathway for the operation, development, maintenance and upgrading of both new and existing REG; and

(b) potentially develop different objectives frameworks for high quality fresh water that can sustain human use and another for low quality FMU’s requiring action, which would recognise the varying quality and resource use pressures across New Zealand, and

(c) Require councils to have proper regard to the national significance of existing renewable generation activities and the NPSREG when setting target attribute states under 3.9(6), and in turn, the limits in 3.10, and environmental flows and levels in 3.11.

Policy 3.11 - Setting environmental flows and levels

25. The NPSFM includes new provisions requiring regional councils to set environmental flows and levels for each FMU on the basis of identified environmental outcomes and then set take and other limits in order to meet them.

26. Management of storage lake levels, river flows and rates and fluctuations is absolutely essential for ensuring that the operational capacity, flexibility and output of hydro generation schemes are, at the very least, maintained. It is therefore critical that the needs of hydro renewable electricity generation be recognised and provided for when setting environmental flows, lake levels and water takes.

27. We are concerned with the direction in 5.11 of the discussion document which says “Ensuring all resource consents are aligned with the newly established allocation limits and minimum flow regimes will be key to delivering the outcomes of this package”. It appears the intention is that existing water permits, including for nationally important renewable electricity generation can and will be reviewed and retrospectively changed to achieve this.

28. As discussed above, hydro-electric generation is not a compulsory value and (outside of policy 3.22) barely reflected throughout the body of the NPSFM. As a result there is a real risk that hydro-electric generation value will not be identified or, if it is, as an insufficiently important one on suitable FMU’s. This creates a real risk that an environmental outcome will be set without proper regard for hydro REG’s, and that flows, levels and take limits will fail to give sufficient attention to their needs and benefits.

29. We propose amendments to either or both of:

(a) the 'exception' regime in 3.22 (which will be discussed below) to provide Contact with the certainty that in relation to the consented Clutha Hydro Scheme, environmental flows and levels will be developed based on maximising the hydro-electric values and availability in the Clutha Hydro Scheme FMU, while maintaining freshwater health; and
the policies in relation to setting environmental flows, levels and water takes, including policy 3.7 and 3.9, to ensure they are set on the basis of maintaining and enhancing hydro-electric generation (among other matters).

Subpart 3 – Specific requirements

Policy 3.15 wetlands and their provision in the National Environmental Standard for Freshwater

30. Contact supports the goal of preventing as far as practicable further loss of wetlands and their overall protection and enhancement. It is important however, for the NPSFM to clarify that the provisions preventing further loss apply only to existing and not former wetlands that have already been modified or lost.

31. Provided that certainty is in place, Contact supports the bulk of the wetlands policy, and in particular 3.16(7) encouraging restoration and the recognition of the ability to offset and compensate for adverse effects.

32. We are particularly mindful of 3.16(2), which requires every regional council to have a policy that “The loss or degradation of all or any part of a natural inland wetland is avoided.” Case law following the King Salmon decision has held (in relation to the NZCPS) that “avoid” means “do not allow” and that some policies can be so directive that they act like a rule. This policy would make it very challenging, if not impossible to consent or re-consent any REG’s having an effect on any part of a wetland, no matter how minor, transitory or low its significance.

33. The NESFW does appear intended to provide an explicit consenting pathway for existing hydro renewable electricity generation and new renewable electricity generation using the effects management hierarchy, including the concept of offsetting for residual effects, which Contact supports in this context. However, at best there is real uncertainty about whether the wetland policies will provide for a consent framework and how mitigation, offsetting and compensation for effects on wetlands may fit within it.

34. Contact has other concerns with the wetland section of NESFW which need to be addressed:

   (a) while most activities provide an exemption for existing hydro renewable electricity generation they do not recognise the benefits of or exempt other types of existing renewable electricity generation

   (b) the exemptions do not extend to the "upgrading" of existing hydro renewable electricity generation;

   (c) The overall drafting and intent of this part of the NESFW appears to need some work, such as

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2 Clause 3.15(4).
(i) for earth disturbance where there is an exemption for new renewable electricity generation but not for existing hydro renewable electricity generation

(ii) the requirements for meeting the standards are unclear and uncertain; and

(iii) there are some gaps in the activity status pathway.

35. Some of these matters we have attempted to address in Part B of our submission.

Policy 3.16 Streams and their provision in the NES

36. Contact supports the objective of preventing as far as practicable further net loss of stream and river habitat, particularly streams in cities and towns which is the sole focus of the discussion document.

37. We accept the importance of ensuring that effects on stream and river habitats are minimised and opportunities to enhance or restore them are adopted.

38. However, changing the current extent of rivers or stream beds would clearly be an essential component of developing any new hydro REG. In relation to new wind farms or geothermal generation, the need to locate some infrastructure within narrow constraints imposed by the location of the renewable resource could also affect stream beds.

39. Therefore it is important that the stream and river package does not impose a ‘no-effects’ regime by “avoiding” all effects on streams and rivers. A feasible consenting pathway needs to be provided, such as under the effects management hierarchy described in 3.16(3). As it stands, it appears that the effects of an application for consent that adversely affects any ‘stream’ are intended to be managed in light of 2.2 Policy 9 of the NPSFM which states “there is no further net loss of streams.” This creates a necessary link to the ability to offset and compensate compared with the absolute avoidance approach for wetlands in 2.2 Policy 8.

40. We also recognise that "nationally significant infrastructure" is intended to be exempt from some parts of the regime, such as the avoidance of “infilling”. We are unsure about what ‘infilling’ means and seek clarity on the coverage, application, extent of any exceptions.

41. Contact requests that that the stream and river policies be comprehensively amended and clarified to make their scope and coverage much clearer, and either:

(a) narrow the application of the policies to urban “streams” (in accordance with the thrust of the discussion document); and/or

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3 As currently drafted, clause 3.16(5) of the NPSFM provides that every regional council must make or change their regional policies and plans to “ensure that the infilling of river or stream beds is avoided, unless there are no other practicable alternative methods of providing for the activity and it is part of a limited list of exempted activities”

4 Contact considers that here are uncertainties and concerns about the definition of “net loss” in the proposed NPSFM and whether this is essentially requiring a “net gain” which is a high threshold.
(b) remove the ‘avoid’ policies and provide a clear, consistent and coherent consenting pathway for all existing and new REG; and

(c) either amend the definition of "nationwide significant infrastructure" in the NESFW (and insert this into the NSPFM for clarity) to include both existing and new REG; and/or

(d) insert a specific exemption for existing REG; and

(e) amend the definition of "net loss" to provide certainty and clarity of meaning

(f) clarify the meaning, coverage and use of the word “stream”

(g) clarify the meaning of the word “infilling”.

3.17 – Fish passage and threatened species

42. Contact is supportive of the inclusion of compulsory values for threatened species and mahinga kai. We agree that proper consideration must be given to the protection and enhancement of threatened indigenous fish and ensuring that impacts on them are considered, particularly when any new in-stream structures are proposed.

43. We carry out our activities with this goal very much in mind. (We are happy to provide on request a summary of the work we are currently undertaking in relation to the wellbeing of native fish on the Clutha Mata Au).

44. Contact supports the requirements in the NPSFM and NESFW for fish passage in relation to new instream structures.

45. However, Contact does not support the new requirements extending to existing large instream structures, such as the dams on the Clutha Hydro Scheme. Under the proposed provisions there is significant uncertainty and risk that existing, long-standing and nationwide significant hydro renewable electricity generation developments will be required to try and retrofit their instream structures in an attempt to provide fish passage.

46. We accept that focus on facilitating threatened and native fish passage must always be an important part of any hydro renewable electricity generation resource consent process. The issue was thoroughly assessed in relation to our Clutha Hydro Scheme where it was accepted that given current fish pass technology and equipment; the height and scale of the dams and headwaters; and the potentially significant adverse effects on generation output, capacity, flexibility and storage, a requirement to try and retrofit physical passage around or through the dams was uncertain and impracticable.

47. Instead, the consents require the implementation of the ‘best practicable option’ to facilitate fish passage and this is required to regularly reviewed and reported on by Contact. Currently trap and transfer operations for upstream migrating elver and downstream adults is the best practicable option to address those impacts.
48. We therefore consider that amendments are required to ensure that existing hydro structures, including the Clutha Hydro Scheme, is not subject to the new fish passage requirements in policies 3.17(4) and (5).

49. We suggest that the 'exception' in 3.22 be amended to provide certainty that the Clutha Hydro Scheme will not be caught by new and additional requirements over and above the conditions in consents.

Subpart 4, policy 3.22, Exceptions for major hydro schemes

50. Contact supports the underlying intent of this policy, which is to recognise that:

   (a) in some catchments significant and practically irreversible modifications to natural functioning have occurred due to historic hydro renewable electricity generation development;

   (b) hydro renewable electricity generation plays a critical role for New Zealand’s renewable electricity generation output, storage, flexibility and firming and the delivery of clean, secure, affordable energy;

   (c) hydro renewable electricity generation is critical to the decarbonisation of our economy in the coming decades; and

   (d) there is highly significant financial, social and environmental value in these schemes which needs to be recognised and protected when considering the impact of any new RMA requirements.

51. However, clause 3.22 is currently not nearly sufficiently directive to be characterised as an ‘exception’, it is at most a relevant consideration only.

52. In addition to the strongly directive policies in the NOF, the freshwater reform package imposes strict and directive policies in relation to settling environmental flows and levels, fish passage, wetlands, and activities in stream and river beds (among others). If the continued efficient and effective performance of existing hydro schemes is to be encouraged and enabled by the Government, amendments are required to frame Clause 3.22 in much stronger directive terms, covering those matters as well. As such the exception is neither broad nor strong enough take precedence over the strongly directive provisions elsewhere in the NPSFM which may affect the operation of existing hydro schemes.

53. It is important and sensible that existing hydro schemes, which by and large create no ‘new’ adverse effects, are able to run as efficiently, effectively and flexibly as possible, consistent with acceptable water quality outcomes. We are strongly of the view that the Clutha Hydro Scheme currently does so under the suite of resource consents granted by the Otago Regional Council until 2042.

54. To be clear, Contact is not seeking a ‘free ride’ in terms of managing the effects of our operations. An effective exception for Contact’s Clutha Hydro Scheme would potentially affect only a small fraction of all the other steps that may need to be taken by Council to maintain or improve freshwater health under the new national direction.
As far as the water quality, primary contact and human contact components and attributes are concerned, our operations have no or very minor impact on them.

55. Providing an effective exception regime in 3.22 to prevent a reduction in hydro scheme performance would provide an appropriate balance between recognising the benefits of existing hydro schemes, while recognising the importance of delivering environmental outcomes, including improved water quality.

56. We further note that the 'exceptions' framework should be amended to recognise that “activities” not just structures may potentially adversely impact fresh water.

Other issues and observations

Question 17 - New planning process for freshwater

57. Contact has no issue with the proposed planning process but does have concerns about the resources available in New Zealand to run those processes concurrently and within tight timeframes, while delivering robust, long term sustainable outcomes.

Question 79 - potential areas of tension between this document and other national direction?

58. Continued access to freshwater to allow for renewable electricity generation while seeking to improve fresh water quality is essential to meeting the Government’s ambitious climate change targets. The fundamental importance of REG’s contribution has already been recognised in the NPSREG.

59. The discussion document explicitly states (on page 100) that “The relationship between the NPSFM and the NPSREG is not clearly articulated.” Contact agrees with this statement but disagrees that "The proposal in this document relating to renewable generation is expected to assist local authorities to implement both pieces of national direction consistently”.

60. The freshwater reform package should be amended to require those making decisions on fresh water to explicitly recognise and give significant weight to the NPSREG and the significance of renewable electricity generation in relation to New Zealand’s climate change and greenhouse gas emission goals.

61. In the absence of clear alignment there will be conflict between the two NPS’ creating significant uncertainty about how decision-makers are to provide for existing and future renewable electricity generation. Given the newer and strongly directive policies in the NPSFM it is likely that the NPSFM will 'trump' the NPSREG.

62. Contact considers that NPSFM need to be reviewed thoroughly to recognise and provide for renewable electricity generation, including in the ways set out in our submission.
Submission by Contact Energy Limited on “Action for Healthy Waterways – A Discussion Document on National Direction for Our Essential Freshwater, September 2019”

Part B - CONTACT ENERGY’S SUGGESTED AMENDMENTS TO THE NPSFM AND NESFW

Contact suggest the following key amendments to the NPSFM. These are *not exhaustive* of the matters covered in our substantive submission, which may require other changes to the consultation draft.

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<td>Preliminary Provisions</td>
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<td>Objectives and Policies</td>
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| Objective 2.1 | Hierarchy of obligations is too rigid and requires amendment to provide a more balanced approach to allow the benefits of REG to be recognised. | **Amend** Objective 2.1 as follows (or words to similar effect): The objective of this National Policy Statement is to ensure resources are managed in a way that prioritises:
   a) first, maintains and improves the health and wellbeing of waterbodies and freshwater ecosystems; and while:
   b) second, enabling people and communities to provide for their essential health needs of people; and
   c) third, providing for the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future. |
| 2.2 Policy 4 | Amendments to ensure effects are managed in a truly integrated way across the whole environment | **Amend** Policy 4 as follows (or words to similar effect):
   Freshwater should be managed in an integrated way that considers the effects of the use and development of land and water on a whole-of-catchment basis, including the effects on sensitive environments, and on the response to climate change. |
| 2.2 Policy 8 | Amendments to ensure that the NPSFM wetland provisions do not impose a no-effects regime | **Amend** Policy 8 as follows (or words to similar effect):
   There is no further net loss or degradation of natural inland wetlands |
| 2.2 Policy 13 | Amendment to recognise the benefits and or essential need for water use in providing for the health and wellbeing of people and communities. This policy will balance the remainder of the policies which are focused on environmental protection. | **Amend** Policy 13 as follows (or words to similar effect):
   People and Communities are enabled to provide for their social and economic wellbeing, while maintaining and improving the health and wellbeing of waterbodies and freshwater ecosystems in a manner consistent with Te Mana o te Wai and as required by the national objectives framework and other requirements of this National Policy Statement.
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| 2.2 New Policy – Renewable Electricity Generation | Insertion of a new policy that specifically recognises the benefits of REG is required to balance the 12 environmental protection policies and ensure that a consenting pathway is provided for REG. This amendment aligns with the NPSREG and also creates a link with the 'exception' regime in subpart 4 of the NPSFM. | Insert a new policy as follows (or words to similar effect):  
The national significance of the benefits of renewable electricity generation are recognised, and the development, operation, maintenance and upgrading of renewable electricity generation activities is enabled. |

### National objectives framework

| Clause 3.4 (1) Integrated Management | Amendments to ensure effects are managed in a truly integrated way across the whole environment | a) recognise the interactions ki uta ki tai between freshwater, land, waterbodies, freshwater ecosystems, other ecosystems, climate change, and sensitive receiving environments, including the coastal environment; and  
b) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects or on the benefits derived from renewable generation activity. |

| Clause 3.7 – Values and environmental outcomes | Amendments to clarify that values and outcomes to include REG as applicable.  
This approach provides balance and aligns with the NPSREG. | Amend Clause 3.7 as follows (or words to similar effect):  
3.7 identifying values and environmental outcomes.  
1) Every regional council must identify the values that apply to each FMU, as follows:  
c) the compulsory values as set out in Appendix 1A;  
d) any of the other values set out in Appendix 1B that the council considers applies;  
e) the value of the FMU for renewable electricity generation.  
f) any other value as the council considers, after consultation with its community and tangata whenua, applies  
2) For each FMU, or for individual waterbodies or freshwater ecosystems within an FMU, the regional council must describe the environmental outcomes that it wants to achieve for:  
a) the value Ecosystem Health, and each of its components; and  
b) the value Human Contact, and each of its components; and  
c) the value[s] [Mahinga Kai or Tangata Whenua Value and] Threatened Species;  
d) the value of renewable electricity generation, where applicable; |
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<td>Clause 3.9 – Target attribute states</td>
<td>Amendments to clarify that outcomes extend beyond environmentally focused outcomes and must include REG as applicable. Amendments to provide certainty that the standard approach for setting target attributes does not apply in full to REG. Amendments broaden consideration of the impacts of climate change to the solutions as well. Amendments also strengthen linkages to the requirements of other national directions.</td>
<td>Amend clause 3.22 as set out in these submissions and Amend clause 3.9 as follows (or words to similar effect): 1) In order to achieve the environmental outcomes described under clause 3.7, every regional council must set a target attribute state for every attribute, as at each relevant monitoring site. 2) Every target attribute state must: a) for attributes relating to the value Human Contact, be above the current state of that attribute as determined under clause 3.8; and b) for all other attributes, be at or above the current state of that attribute as determined under clause 3.8. 3) However, if the current attribute state is worse than the national bottom line for that attribute (as identified in Appendix 2A or 2B), the target attribute state must be set at, or better than, the national bottom line. This subclause does not apply to (see subpart 4 for exceptions to this). 4) … 5) … 6) When setting target attribute states, regional councils must: a) have particular regard to the following: i. the foreseeable impacts of climate change and climate change mitigation; ii. the long-term vision set under clause 3.2; iii. the environmental outcomes set under clause 3.7(2); iv. the connections between waterbodies; v. the connection of waterbodies and coastal water; and vi. natural fluctuations in water quality; and b) use the best information available at the time; and c) not delay making decisions because of uncertainty about the quality or quantity of the information; and d) take into account results or information from freshwater accounting systems; and e) give effect to consider the requirements of all other national directions.</td>
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<td>Clause</td>
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| Clause 3.10 – Limits on resource use | Amendments also strengthen linkages to the requirements of other national directions. | **Amend clause 3.10 as follows (or words with similar effect):**  
5) In setting limits on resource use, regional councils must:  
   a) use the best information available at the time (which may include measured, modelled, or estimated data); and  
   b) take into account results or information from freshwater accounting systems; and  
   c) give effect to the requirements of all other national directions;  
6) Action plans may be published either by including them in a regional plan, or by being published separately.  
**NOTE:** Proposed amendments to clause 3.22 as set out in these submissions relate to clause 3.10. |

**Specific Requirements**

| 3.16 Streams | Amendments to ensure that the NPSFM stream provisions do not apply to REG in full and ensure that the NPSFM does not impose a no-effects regime. Amendments will also ensure alignment with the NESFW which does provide a consenting pathway for REG activities in streams. Contact seeks a definition or clarification of the meaning of “infilling”. | **Amend Clause 3.16 as follows (or words with similar effect):**  
...  
(5) Every regional council must make or change its regional policies and plans to ensure that the infilling of river or stream beds is avoided, unless there are no other practicable alternative methods of providing for the activity, and it is part of an activity:  
   a) designed to restore or enhance the natural values of the stream or of any adjacent or associated ecosystem; or  
   b) necessary to enable the development, operation, maintenance and upgrade of nationally significant infrastructure; or  
   c) necessary to enable the development, operation, maintenance and upgrade of renewable electricity generation;  
   d) required for the purposes of flood prevention or erosion control. |

| Clause 3.17 – Fish Passage | Amendments required to ensure the fish passage requirements only apply only to new structures. | **Amend Clause 3.17 as follows (or words with similar effect):**  
...  
(6) However, the above policies do not apply to instream structures necessary for the maintenance, upgrade and operation of REG consented and / or constructed prior to the commencement date of this National Policy Statement. |

**Subpart 4 - Exceptions**
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<td>Clause 3.22 - Exception for large hydro schemes</td>
<td>Contact supports the underlying intention of the exemption which is to recognise the importance of REG. However, Contact is concerned that clause 3.22 is not sufficiently directive and will therefore be subject to the more directive requirements in the NPSFM (wetlands, streams, fish passage etc). Amendments are therefore required to recognise and provide for all REG but particularly existing hydro Contact considers that such amendments would provide an appropriate balance between recognising the benefits of REG while recognising the importance of delivering environmental outcomes, including improved water quality.</td>
<td><strong>Amend</strong> Clause 3.22 as follows (or words to similar effect effect): <strong>Subpart 4 Exceptions Existing hydro-electricity generation activities</strong> 3.22 <strong>Exception for large hydro schemes</strong> Recognise and provide for the ongoing benefits of existing hydro-electricity generation activities 1) This section applies to, <strong>but is not limited to</strong>, the following 6 hydro-electricity generation schemes <strong>(referred to as Schemes):</strong> a) Waikato Hydro Scheme; b) Tongariro Power Scheme; c) Waikaremoana Power Scheme; d) Waitaki Hydro Scheme; e) Manapouri Power Scheme; f) Clutha Hydro Scheme. 2) When setting limits, <strong>environmental flows and levels</strong>, or developing action plans, and when making plan changes required by this National Policy Statement, regional councils must <strong>have regard to the importance of</strong> not adversely impacting the generation capacity, <strong>output</strong>, storage and operational flexibility of a <strong>hydro-electricity generation Scheme</strong>. 3) <strong>In achieving subclause (2)</strong>, regional councils may <strong>accordingly</strong> set target attribute states that are below national bottom lines in respect of waterbodies or freshwater ecosystems that are adversely impacted by structures that form part of any <strong>hydro-electricity generation Schemes</strong>, to the extent of such an impact. 4) Despite subclause (3), regional councils must still set target attributes states that, to the extent possible <strong>and consistent with subclause (2)</strong>, improve any waterbody or freshwater ecosystem affected by any <strong>hydro-electricity generation Scheme</strong>. 5) Subclause (1) only applies to structures that were <strong>first operational as part of any hydro-electricity generation Scheme that was first operational</strong> on or before 1 August 2019, including any subsequent maintenance, repair, or like for like replacement, works.</td>
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| Appendix 1A | Amendments to include REG as a compulsory value. This is crucial to enable values, and therefore outcomes, targets and flows and levels to be set having considered REG. | **Amend Appendix 1A** to include "renewable electricity generation" as a compulsory value. This is based on the 'other value of "hydro-electric power generation" with the following amendments:
### Table of Contact’s proposed changes to the NESFW

Contact seeks the following amendments to the NESFW. These are not exhaustive of the matters covered in our substantive submission, which may require other changes to the consultation draft.

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<td><strong>Wetlands</strong></td>
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| Clause 1  General Definitions | Amendments to the definition of “hydro scheme” to make it explicit that it includes the ‘upgrading’ of all existing REG’s | **Amend** Clause 1 as follows (or words to similar effect):
(1) In this Standard:
Act means the Resource Management Act 1991

The definition of existing hydro scheme should be moved up to the general definition section (because it applies to subparts 1 -3, not just subpart 1) and be reworded as follows (or words with similar effect):

existing renewable electricity generation activities hydro scheme means any renewable hydro-electricity generation structures and activities scheme that have been constructed and that was first operational on or before 1 August 2019

The definition of nationally significant infrastructure should be moved up to the general definition section (because it applies to subparts 1 -3, not just subpart 1) and be reworded as follows (or words with similar effect):

nationally significant infrastructure means all or any of the following:
- State highways;
- the national grid electricity transmission network;
- national renewable electricity generation activities facilities that connect with the national grid, other than the facilities of existing renewable electricity generation activities hydro schemes;
- ........
|
| Clause 6 – Standard conditions for nationally significant infrastructure | Amendments to provide clarity that the RMA and NES are not ‘no-effects’ regime and to align with the RMA which enables applicants to offer environmental compensation.
Contact supports the intent of this clause in that it is limited to nationally significant infrastructure and therefore does not include existing hydro schemes. | **Amend** Clause 6 as follows (or words of similar effect):
Any consent granted for activities referred to in this subpart that relate to new or existing nationally significant infrastructure must include at least the following conditions:
- to the extent that adverse effects on a natural wetland cannot be practicably avoided, remedied, or mitigated, any significant residual adverse effects on the natural wetlands must be offset or compensated for to achieve a net gain;
- the person undertaking the activity is subject to the standard wetland monitoring condition for the duration of the consent;
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<td>c) the person undertaking the activity must implement best practice erosion and sediment control measures for the duration of land disturbance, and these must be installed before the start of the land disturbance and be maintained until the site is stabilised against erosion.</td>
<td>Amend Clause 7 as follows (or words of similar effect): <strong>7 Vegetation destruction – discretionary activities</strong> Vegetation destruction carried out in, or within 10 m of, any part of a natural wetland is a discretionary activity if it is carried out: a) for the purpose of restoring or maintaining the natural wetland; or b) for education or recreation purposes (including the construction and maintenance of structures such as boardwalks and signage that are constructed for educational or recreational purposes); or c) for the purpose of maintaining, upgrading or meeting the operational needs of an existing renewable electricity generation activities hydro scheme; or d) for public flood control or drainage; or e) for the purpose of building, maintaining, or operating any new or existing nationally significant infrastructure.</td>
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<td>Clause 7 – Vegetation destruction</td>
<td>Amendments for clarification that discretionary activities include the upgrading of existing REG and for consistency.</td>
<td><strong>Amend</strong> Clause 7 as follows (or words of similar effect):</td>
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<td>Infilling</td>
<td>Amendment to provide certainty about what activities the requirements will apply to.</td>
<td><strong>Amend</strong> Clause 18 as follows (or words with similar effect): Insert a definition of “infilling” in the NESFW to ensure it does not include deposited sediment behind structures associated with existing renewable electricity generation activities.</td>
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<td>Clause 18 – Infilling bed of river</td>
<td>Amendments to ensure that the fish passage requirements do not apply to consented and / or constructed REG.</td>
<td><strong>Amend</strong> Clause 19 as follows (or words with similar effect): 1) This subpart applies only in respect of structures consented and constructed after the commencement date of this National Policy Statement, including the maintenance, upgrading or operation of existing renewable electricity generation activities and associated infrastructure.</td>
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