Sensitivity classification

Ministry for the Environment
Manatū Mō Te Taiao

BRIEFING NOTE

Ōtūwharekai/Ashburton Lakes – Next steps and supporting information for CAB-279

Date Submitted:	21 July 2023	Tracking #: BRF-3256	
Security Level	Policy and Privacy Sensitivity classification	MfE Priority:	

	Action sought:	Response by:
Hon David PARKER, Minister for the Environment	Take paper to Cabinet Approve and sign letters	Next CAB 24 July 2023
To/CC Hon Damien O'Connor, Minister of Lands	No action needed	

Actions for Minister's Office Staff	**Send the signed letters** to ECan, LINZ, and ADC **Return** the signed report to MfE.
Number of appendices and attachments 5	1 Cabinet paper – CAB-271 2 Talking Points 3 Letter to Land Information New Zealand 4 Letter to Environment Canterbury 5 Letter to Ashburton DC

Key contacts

Position	Name	Cell phone	1st contact
Principal Author	Rowan Taylor		
Responsible Manager	Owen West		
Director	Sara Clarke	021 708 305	✓

Ōtūwharekai/Ashburton Lakes – Next steps and supporting information for CAB-279

Key Messages

1. The Ōtūwharekai/Ashburton Lakes *Lessons Learnt* report prepared by the Ministry was delivered to you in May and later released on the Ministry's website.

2. This briefing sets out next steps for applying the lessons and ensuring that agencies are taking the necessary actions to ensure lake recovery. It provides:

    a. answers to the questions you asked in response to BRF-3093 including extra information requested in relation to the *Lessons Learnt* report

    b. a Cabinet paper, as requested, noting for your colleagues' information the steps you have taken and are considering taking to address the report findings

    c. talking points should you wish to present the Cabinet paper as an oral item

    d. a joint letter (with Environment Canterbury), as requested, to approve, sign, and send to the Commissioner of Lands regarding your expectations for land management affecting the lakes

    e. a letter to approve, sign, and send to Environment Canterbury

    f. a letter to approve, sign, and send to send to Ashburton District Council.

Recommendations

We recommend that you:

a.	**Note** the information provided in response to your questions	Yes/No
b.	**Either** take the attached paper to Cabinet	Yes/No
b.	**Or** take an oral item to Cabinet informed by the attached talking points	Yes/No
d.	**Sign** and send the attached letter to Land Information New Zealand	Yes/No
e.	**Sign** and send the attached letter to Environment Canterbury	Yes/No
f.	**Sign** and send the attached letter to Ashburton District Council	Yes/No

Signature

Sara Clarke Director – Implementation	

Hon David PARKER, Minister for the Environment	
[Date field]	6/8/23

Purpose

1. This paper:

    a. addresses your questions on BRF-3093 (Ōtūwharekai/Ashburton Lakes *Lessons Learnt* report)

    b. attaches, as requested, a Cabinet paper noting the findings of the report, the steps you are taking, and future steps that you may consider

    c. attaches talking points should you decide to make an oral presentation to Cabinet

    d. attaches a joint letter, as requested, from yourself and the chair of Environment Canterbury (ECan) to Land Information New Zealand (LINZ) regarding your expectations for the Ōtūwharekai/Ashburton Lakes

    e. attaches letters to Environment Canterbury (ECan) and to the Ashburton District Council (ADC).

Background

2. BRF-3093 provided an overview of the Ōtūwharekai/Ashburton Lakes *Lessons Learnt* report prepared for you by the Ministry and publicly released in May 2023.

3. You annotated BRF-3093 with several questions. This section sets the context for our answers and for the analysis and advice that follows them.

The Canterbury freshwater management system

4. ECan's freshwater management system, though innovative and pioneering a decade ago, has not been able to protect the Ōtūwharekai/Ashburton Lakes from nutrient contamination, algal growth, and varying degrees of eutrophication.

5. Livestock account for over 90 percent of the nutrient load entering the lakes. Most of this is from sheep. The basin has over 40,000 sheep, nearly 2,500 cattle, and nearly 4,000 deer.[1] The *Lessons Learnt* report found that the Canterbury Land and Water Regional Plan (LWRP) had not effectively controlled this nutrient load.

6. It found that the LWRP has flawed regulatory settings, was vulnerable to error at multiple points, and had limited capacity to detect or correct errors. Vulnerabilities were found in:

    a. the rules and methods

    b. the design and implementation of the nutrient management system, which hinges on output controls, farm plans, and good management practices

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[1] Livestock tallies are approximate and are based on collated information from a range of sources.

c. the oversight and monitoring of the system, which relies largely on third parties.

7. Many of the vulnerabilities related to the LWRP's output control regime which relied on a complex suite of error-prone components, including:

    a. Overseer modelling of farm nutrient loss

    b. nitrogen loss limits based on a farm's estimated historical loss

    c. farm plans based on good management practices rather than outcomes

    d. third party implementation and oversight.

8. Despite nitrogen losses and farm plans being rated by auditors as compliant with the LWRP, the Ōtūwharekai/Ashburton Lakes have continued to languish.

9. Because the LWRP has no self-correction mechanism and no additional regulatory levers to drive nutrient loss reductions, lake protection largely rests on voluntary mitigations by the farmers, aided by ECan and the Ōtūwharekai Working Group (ECan, Ngāi Tahu, DOC, Land Information NZ (LINZ), ADC, Fish and Game, Ministry for Primary Industries (MPI)).

10. ECan and the Ministry have procured research on mitigation options and costs. The options range from livestock restrictions (e.g., reducing, excluding, seasonal removal, ending winter grazing) to technical interventions (eg, wetland denitrification, constructed nutrient barriers). These options vary widely in their effectiveness and their cost.

11. For the farmers, cost is a major limiting factor. If the mitigations that they consider affordable are insufficient to achieve the necessary nutrient reductions, stronger mitigations will be needed, potentially including land use change and permanent stock reductions. These measures will be challenging to implement voluntarily.

12. Whether or not a satisfactory voluntary solution can be found, the larger lesson of the *Lessons Learnt* report is that a better regulatory solution is needed for the lakes, and for the region. This means comprehensively revising the LWRP to address the vulnerabilities identified in the report.

13. Improving the regional plan is not the whole answer though. The report notes that other factors have also influenced lake outcomes. It alludes to, but does not elaborate on, other drivers that have enabled or encouraged land use intensification in the basin. Among these, are actions taken (or not taken) by other regulatory agencies.

14. LINZ and ADC both have land management responsibilities in the basin but have not prevented intensification. Both are members of the Ōtūwharekai Working Group, but it is not clear what else they are doing for lake protection and recovery beyond supporting the voluntary measures. The roles of these agencies are discussed further below.

LINZ, Crown pastoral land, and tenure review

15. LINZ is a significant landowner and administrator in the Ōtūwharekai/Ashburton Lakes basin. It owns two Crown pastoral leases (Upper Lake Heron and Mount Arrowsmith) **(Map 1).** Before tenure review, LINZ managed five pastoral leases (**Map 2** and **Table 1**).

Discretionary activity consents

16. Crown pastoral leases have conditions which set livestock limits and restrict activities such as clearing scrub, creating tracks, or cultivating land. To exceed these conditions, lessees must get a discretionary activity consent from the Crown Commissioner for Lands. LINZ manages this process on the Commissioner's behalf.

17. For many decades, the Commissioners have allowed pasture improvement in the basin, though at a reduced rate since 1990. Recent research by ECan, using aerial images from 1990 to 2019, found that, of the potentially developable land in the upper Ashburton River catchment (ie, the area south of Lake Heron), 35 percent was developed before 1990, and 6 percent between 1990 and 2019[2] - most of this on Crown pastoral land.

18. The Commissioner also approved significant increases in livestock. For example, from the 1950s into the 1990s, the lease for Upper Lake Heron Station had a base stock limit of 4,400 sheep in winter, 5,600 sheep in summer, and 100 cattle. By 2001, the farm had a "personal exemption" for 7,600 sheep and 400 cattle[3] and, by 2016, it was reported to be carrying 10,000 sheep and 450 cattle.[4]

19. Similarly, the Clent Hills stock limit went from 4,500 + 10% sheep in the 1950s-90s to 8,000 sheep and 130 cattle by 2001, just before it entered tenure review.[5]

20. Mount Arrowsmith Station's flock was permitted to more than double between 1998 and 2012, rising from 6,000 to 14,000 stock units[6], comprised of 10,500 sheep, 400 cattle, and 700 deer.[4] At the 2013 Canterbury Ballance Farm Environment Awards the farm's growth was rewarded with the Beef+Lamb New Zealand Livestock Farm Award which recognises "the livestock farmer who demonstrates in a practical way the choices that have been made to farm for the long term".[6]

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2 Philip Grove, Mark Parker, Tina Bayer, Duncan Gray (2021) **Agricultural land use change in mid-Canterbury hill and high country, 1990-2019.** Report No. R20/62. Environment Canterbury Regional Council.

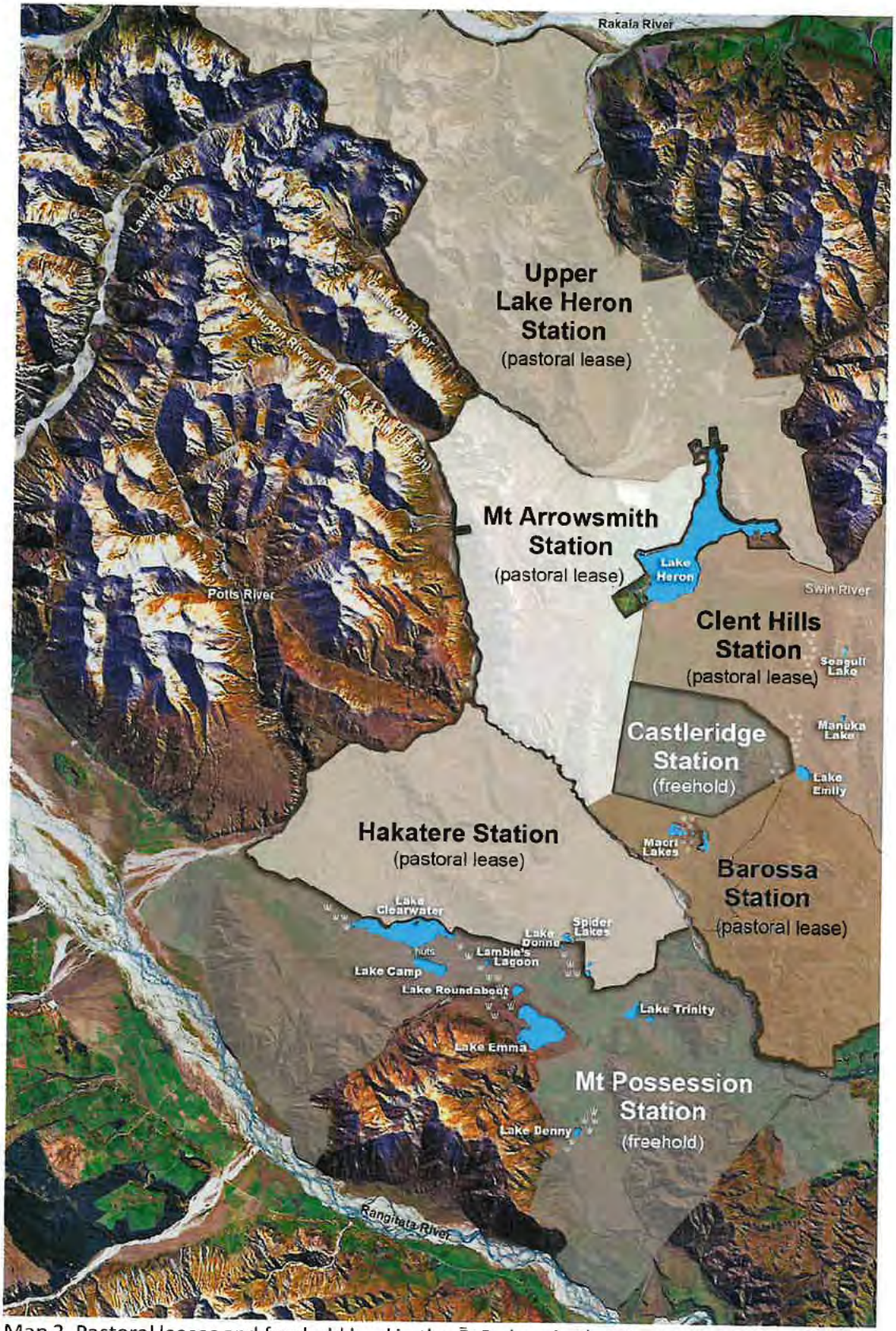
3 Don McGregor (2001) **Due diligence report on Upper Lake Heron Station.** Prepared for LINZ

4 Benjamin A. Payne (2016) **Beyond 'Interfering Greenies' and 'Intransigent Farmers': The Contested Place of Tenure Review in New Zealand's High Country. Part I of II.** A thesis submitted for fulfilment of the requirements for the degree of Doctor of Philosophy in Geography. University of Otago.

5 Don McGregor (2001) **Due diligence report on Clent Hills Station**. Prepared for LINZ

6 NZ Farm Environment Trust (2013) **Ballance Farm Environment Awards Good Fun, Says Canterbury Farmer** Media Release. 26 Aug 2013

Map 1. LINZ, DOC, and freehold land in the Ōtūwharekai/Ashburton Lakes basin



Map 2. Pastoral leases and freehold land in the Ōtūwharekai/Ashburton Lakes basin, 1996

Table 1: Crown pastoral leases in the Ōtūwharekai/Ashburton Lakes catchments

Station Name (and lake catchment)	Date	Ownership status and recent history
Current Pastoral Leases		
Upper Lake Heron (Lake Heron)	-	Pastoral lease. In 2014, the leaseholder added some freehold land acquired from the **Clent Hills** tenure review (see below).
Mt Arrowsmith (Lake Heron, Maori Lakes)	-	Pastoral lease. In 2014, the leaseholder added some freehold land acquired from the **Clent Hills** tenure review (see below).
Former Crown Pastoral Leases		
Barrosa (Maori Lakes)	1970	On expiry of its 33-year lease, **Barrosa Station** was subdivided into two sections. The north-west section (2,600ha) was freeholded, and the remainder (5,740ha) leased.
	1992	The freehold part (2,600ha) was sold to the current owners in 1992 and renamed **Castleridge.**
	2011	Through tenure review, part of the leasehold land went to DOC in 2011. The remainder was freeholded and sold to **Castleridge.**
Clent Hills (Lake Emily, Lake Heron)	2003	10,000ha was surrendered for purchase by DOC's Nature Heritage Fund. A consortium of neighbouring stations leased the remaining 2,182ha (**Castleridge, Mt Arrowsmith**, and **Upper Lake Heron**).
	2014	Via tenure review, the leased land was freeholded and split among the leaseholders (**Castleridge, Mt Arrowsmith**, and **Upper Lake Heron**).
Hakatere (Lake Clearwater)	2003	13,000ha was surrendered to the Crown as result of historic run plan land improvement agreements and transferred to DOC in 2006.
	2007-2008	The remainder of the lease (approx. 9,000ha) was sold to the Nature Heritage Fund in 2007. In 2008, two small areas were transferred from DOC to **Mt Possession Station** in exchange for freehold land adjoining Lake Clearwater.

21. LINZ's support for intensification reflected a view, embedded in the Crown Pastoral Land Act 1998, that the Crown pastoral leases should be managed primarily for economic performance. Now, however, the Crown Pastoral Land Reform Act 2022 requires that ecological values be given greater priority in land management decisions.

22. While this may limit further intensification, it is unclear how it will affect the management of the intensive farming systems already in place, and their effects on the lakes.

Tenure review

23. From 1998 to 2022, LINZ managed the tenure review of Crown pastoral leases by which the less productive pastoral lease land was transferred to the Department of Conservation (DOC) and the more productive land was freeholded.

24. The challenge of carrying the same or more livestock on less land led to further intensification on many of the freehold farms, though note that much of this development had already taken place before tenure review.

25. In the 2000s, large areas of Clent Hills, Barossa, and Hakatere stations were transferred to DOC and the remaining land was freeholded, sold, and incorporated into the surrounding four farms (Upper Lake Heron, Mount Arrowsmith, Castleridge, and Mount Possession).

26. Today, LINZ only manages the pastoral lease land on Mount Arrowsmith and Upper Lake Heron stations both of which are in the Lake Heron catchment.

Ashburton District Council, vegetation clearance, and lakeside dwellings

27. ADC is both a landowner (of the hut settlement land at Lake Clearwater and the public toilets near Lakes Clearwater, Camp, and Heron) and a regulator (of land use, indigenous vegetation clearance, and surface water activities).

28. The district plan, adopted in 2014, recognises the importance of the lakes and has rules relating to land use and the clearance of indigenous vegetation. However, it appears to have done little to limit intensification in the Ashburton high country.

29. The *Lessons Learnt* authors were told that ADC had received only one consent application for vegetation clearance in the Ōtūwharekai /Ashburton Lakes basin. This suggests that the 334 hectares of land development in the upper Ashburton catchment between 2013 and 2019[7] was either a permitted activity or went unnoticed by ADC's compliance staff.

30. ADC has a special interest in Lakes Clearwater and Camp because of its landlord responsibilities at the hut settlement. In 2022, it adopted a 30-year plan for these lakes which focuses mainly on the management of recreational use and wastewater, though it also includes a commitment to lobby ECan for better protection of the lake catchment.

31. Research indicates that a small percentage of the nitrogen in Lake Clearwater may come from toilet seepage. To address this, ADC has installed new public toilets at Camp and

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[7] Philip Grove, Mark Parker, Tina Bayer, Duncan Gray (2021) **Agricultural land use change in mid-Canterbury hill and high country, 1990-2019.** Report No. R20/62. Environment Canterbury Regional Council.

Clearwater and has made all hut owners upgrade their toilets from long drops to holding tanks. ADC now intends to look at the options for managing grey water.

32. Apart from making improvements at these lakes and supporting the voluntary mitigations by farmers through the Ōtūwharekai Working Group, it is unclear what else ADC is doing to improve lake outcomes. Given the intensification that has occurred, and the large area of farmland that is still developable, it may be timely for ADC to examine its planning and compliance performance in the basin and make any necessary improvements.

Answers to your questions on BRF-3093

Q1: Discuss whether some farms are still at a low intensity with outputs that, if they were universal for other land, would likely protect the lakes.

33. All four farms are predominantly sheep farms with a mix of intensive and extensive grazing. Besides sheep, they also run small herds of beef cattle and three also run deer. Although we do not have details for each farm[8], **Map 3** shows that all have large areas of intensively developed land alongside undeveloped land that is grazed at lower intensities.

34. Limiting all farms to low intensity grazing would certainly lower nutrient losses, but even at low intensities, pastoral farming can still affect lakes (e.g., Lake Wanaka),[9] particularly if they already have a high base load of nutrients.

35. At present, we do not know how low the stocking rates will need to go to protect the lakes. ECan has commissioned NIWA to answer this question for each farm.

36. The other unknown is whether low intensity farming is an economically viable option now. To reduce stocking rates, the animals must be dispersed over a wider area of land. But since much of the basin's less productive land is now in the conservation estate, the farms have less land than before to spread their stock out over.

37. These area limitations could mean that some farms may have to actually reduce their stock numbers in order to get stocking rates down to the necessary level. For economic reasons, this is unlikely to happen voluntarily. It will likely require firm regulation and possibly fiscal measures. The Ministry has commissioned AgResearch to estimate the likely costs of nutrient mitigation, including stock reduction, for each farm.

38. If it is found that the necessary nutrient reductions cannot be economically achieved under the current farming system, then other farming or land use options may need to be looked at, such as farm consolidation or managed retreat with pasture retirement.

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[8] MfE does not have access to the farms' Overseer data on inputs and land use (eg, livestock numbers, stocking rates, supplementary feed, fertiliser use, exotic pasture area, winter grazing area) nor the farm plan audit reports (describing relevant management actions, farm practices, and nitrogen outputs).

[9] Amy Katherine Weaver (2016) **Low-intensity land use in grassland catchments: Effects on a large, oligotrophic lake.** PhD Thesis, University of Otago, Dunedin, New Zealand, June 2016

Map 3. Developed land (green), undeveloped land (brown), and conservation land (red)

Q2: Is MfE's Lessons Learnt report released publicly? Has it been seen by Ngāi Tahu, Fish and Game etc?

39. As advised by officials already,the report has been released on the MfE website. Ngāi Tahu and Environment Canterbury had fact checked the report before it was finalised. Fish and Game, other Ōtūwharekai Working Group members, and interviewees for the report were each provided with advance copies.

Q3: Discuss my RMA powers of direction

40. The RMA gives you powers to direct a plan change, a plan review, or the call in of a nationally significant matter, including a plan change or resource consent application. More specifically, you may **direct** a council to:

S25A – **prepare** a regional plan or a plan change or variation to a regional or district plan to address an issue relating to a function under s30 (which, in this case, would be "the control of the use of land for the purpose of—

(i) soil conservation:

(ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:

(iii) the maintenance of the quantity of water in water bodies and coastal water:

(iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water").

S25B – **review** the whole or any part of a regional or district plan (except a regional coastal plan)

S142 - **refer** to a board of inquiry or the Environment Court a nationally significant matter that has been lodged with a council, such as a plan, plan change, or resource consent application.

41. Other powers that you could consider using include, in order of severity, the power to:

S26 - **make grants and loans** to assist in achieving the purpose of the RMA

S27 - **require information** from a council on any of its functions, duties and powers

S24A – **investigate and make recommendations on** the council's exercise, performance, failure, or omission in any of its functions powers or duties

S25 – **appoint one or more persons to the council** to exercise or perform any functions, powers, and duties that the council is not exercising or performing.

42. Some of these intervention options are discussed further in the analysis and advice section below and we can provide more detailed advice on all of the options if required.

Q4. I'm also interested in whether these high-country properties sell as a factor of production or for other values (i.e., how many are working farms and how many are, for example holiday homes with incidental farming activity)

43. All four farms are working farms producing a diverse range of animal products from sheep, cattle, and deer. In addition, the two Crown leases cater to tourists. Mount Arrowsmith has a visitor lodge while Upper Lake Heron has a heliski and lodgings partnership with its eastern neighbour, Glenfalloch Station, which is leased by a branch of the same family.

44. According to the Infobel business directory, the four farms encompass six registered companies with around 40 casual and permanent staff and an estimated turnover of $16.3 million.[10] Their combined land valuations total almost $69 million (over $51 million for the freehold land and over $17 million for the leasehold). Their capital valuations come to around $77 million (approximately $58 million freehold and $19 million leasehold).[11]

45. The proprietors live and work on three of the farms. The Mount Arrowsmith lessee uses it for family holidays while employing farm managers to work the farm. All farms have increased in intensity since the 1990s and have purchased neighbouring land as it became available through tenure review.

46. None of the farms have been sold in the last 25 years.

47. Upper Lake Heron Station. In 1921, the Todhunters, a prominent Canterbury farming family with three other leasehold farms in the high country, took up this lease and have retained it through several generations. In the 2003 tenure review of neighbouring Clent Hills Station, they and two other neighbouring farms began leasing parts of Clent Hills that had not gone to DOC. In 2014, they bought this land freehold.

48. Mount Possession Station. In the 1970s, the Whytes from Hawkes Bay purchased this farm freehold from the University of Canterbury and, in 1986, they purchased the adjoining Edendale Station. The family also took up the Crown pastoral lease on another adjoining farm, Hakatere Station, part of which was surrendered to DOC in 2003. After selling the rest of the Hakatere lease to DOC in 2007, a partial swap-back occurred in 2008, with the undeveloped Mt Possession land adjoining Lake Clearwater being exchanged for two areas of developed ex-Hakatere land.

49. Castleridge Station. In 1992, the Harmers bought the freehold north-western part of Barrosa Station (which had been freehold since 1969 and had come into the portfolio of South Canterbury financier, Alan Hubbard). They renamed it Castleridge. In the 2011 tenure review of the remaining Barrosa pastoral lease, they purchased freehold the land

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[10] Infobel company directory for New Zealand (accessed 26 June 2023) https://www.infobel.com/en/newzealand/whyte_farming_company/ashburton_lakes/NZ100461394-033039842/businessdetails.aspx

[11] Ashburton District Council valuations as recorded in the CanterburyMaps Property Search website (accessed 26 June 2023) https://propertysearch.canterburymaps.govt.nz/

that had not gone to DOC. They had also, since 2003, been leasing a part of the neighbouring Clent Hills Station, which they purchased freehold in 2014.

50. Mount Arrowsmith Station. In 1997, the Wareings, whose transport business has branches throughout Canterbury and the West Coast, bought the lease for Mount Arrowsmith and, like the neighbouring farms, began growing their herds and expanding their area of productive land. In 2003, they leased a part of Clent Hills Station and, in 2014, bought it freehold.

51. In summary, the farms are working farms that have not changed hands for some decades. All have expanded in area, intensified their land use, and diversified their production, and their proprietors all profess a strong lifestyle commitment to their properties.

Q5. What is meant by the comment in the Lessons Learnt report that ECan considers achieving new targets and limits will be difficult?

52. The report states that:

> *ECan staff consider that achieving the new targets and limits with the currently available set [of] tools will be challenging. They expect only incremental improvements and consider that new economic tools are required. These could sit alongside the planning framework to support landowners in transitioning to more sustainable land uses.*

53. This comment expressed ECan's view that effective nutrient reductions will be difficult to achieve with the current regulatory tools (output controls and farm plans) for many of the reasons identified in the *Lessons Learnt* report and also because of the scale of the changes needed, which may be very costly.

54. If the cost of achieving the necessary reductions exceeds what farmers are able or willing to bear, then any new regulatory measures may need to be accompanied by fiscal tools to ensure a workable transition, either by incentivising change, or assisting on-farm mitigation or, alternatively, enabling a managed retreat.

Analysis and Advice

Cabinet paper or oral item - Need for action

55. You requested a noting paper to inform your Cabinet colleagues of the situation with the nationally significant Ōtūwharekai/Ashburton Lakes and of the actions that you have already taken, are now taking, and may consider taking in the future.

56. The attached draft Cabinet paper *Need for action on Ashburton high country lakes* **(Attachment 1)** notes that urgent action is needed to stop the lakes from tipping into fully eutrophic states, that current regulatory measures have not worked, and that new approaches are needed to begin the lakes' recovery.

57. The paper notes that you, having reviewed the Ministry's *Lessons Learnt* report and the mitigations research procured by the Ministry, have discussed the findings with ECan, and

have now sent letters (see below), outlining your concerns and expectations, to LINZ (jointly authored with ECan) and to ECan and ADC.

58. Further, the Cabinet paper notes that while your current approach is to work with ECan on achieving lake recovery and addressing the *Lessons Learnt* findings, you also have the option, if necessary, of using your RMA intervention powers.

59. If, given current Cabinet workloads, you wish to make an oral presentation rather than table the paper, talking points on these matters are attached **(Appendix 2)**.

RMA Powers and ECan

60. The use of RMA powers to direct a council requires a clear rationale and objective and reasonable evidence that the council would not otherwise achieve the desired outcome.

61. In this case, two obvious objectives emerge from the *Lessons Learnt* report: lake protection and recovery at Ōtūwharekai, and regionwide improvements in the freshwater management system. Your RMA powers could be used to ensure that ECan achieves these objectives within reasonable timeframes.

62. Whether the council is likely to achieve these objectives in the absence of intervention is not clear at present. ECan acknowledges the vulnerabilities in the planning system and is aware of the need for changes.

63. The issue now is for this awareness to be translated into positive actions. While work is underway at ECan to ensure that the LWRP will be NPS-FM compliant by the time it is notified in 2024, we do not know if this work will also address all, or any, of the planning system vulnerabilities identified in the *Lessons Learnt* report.

64. Before issuing any Ministerial direction on this, it would be prudent to seek confirmation from ECan on how and when the report findings will be addressed and to only consider using RMA powers if ECan's intentions, or lack of progress, make this necessary.

65. ECan also has options for taking action on the Ōtūwharekai consents. Two applications are on hold and the two active consents are potentially reviewable. Your direction powers could be used to call in the two Ōtūwharekai/Ashburton Lakes consent applications, given that Ōtūwharekai is a nationally significant wetland area.

66. However, for this, you would need to show that the consents are not being progressed by the council. Our recent indications are that, following the *Lessons Learnt* report, progress may be occurring. Again, it would be prudent to seek confirmation.

67. A further consideration, before using your powers of direction, is the potential usefulness of the other RMA options available to you. For example, you can require the council to report progress to you or provide information (such as the Overseer and audit files relating to farm inputs and land management in the Ōtūwharekai/Ashburton Lakes basin).

68. You can also investigate and make recommendations on the council's freshwater management system as you have previously done in Otago. Many of the issues identified in the *Lessons Learnt* report are likely to apply more broadly throughout the region.

69. Such an investigation might also look at issues not covered in the report, such as, for example, the efficacy of the devolved zone committee process, the council's role in WCO compliance, and the effectiveness of the council's management of groundwater, river quality, nutrient loss in dairy areas, irrigation, and river encroachment by farmland.

70. We note that an earlier briefing on this topic (BRF-487 Ō Tū Wharekai (Ashburton) lakes – Update and Options, September 2021) contained this noting recommendation:

> **Note** that officials will carry out a wider investigation into the extent of the problem of highly over-allocated and/or degraded waterbodies in Canterbury resulting from inadequate LWR plans and long-term consents.

71. This work has not yet progressed, but the need for it has not diminished.

72. If requested, we can provide more detailed advice on each of these intervention options.

Letters to ECan, LINZ and ADC

73. In the meantime, our advice is to build on your May visit by sending a letter to ECan thanking the council for the opportunity to discuss the report findings, outlining your expectations going forward, and requesting regular progress reports. A letter to this effect has been prepared for your approval and signature **(Appendix 3).**

74. This approach will give ECan the opportunity to be proactive. Should the council response or progress be unsatisfactory, our advice is to then consider using your RMA powers, including, but not limited to, your powers of direction.

75. We also attach two other draft letters for you to approve and sign. One is the letter that you intend to send to LINZ. During the meeting with ECAN it was decided that this would be a joint letter. This joint letter has been shared with ECAN for its input **(Appendix 4)** and the other is a suggested letter to ADC **(Appendix 5)** as the third regulatory body in the basin.

76. Given the environmentally adverse land-use changes that have occurred on the watches of LINZ and ADC, a review of their land management rules, consenting policies, and compliance practices could be a significant next step towards supporting lake recovery.

77. There is also a need for greater agency collaboration on regulatory matters in the basin, especially around rules, consent applications, and compliance actions.

78. The Mackenzie Agreement provides a model for how such collaboration and information sharing can be integrated into routine practice. ECan, LINZ and DOC already participate in the Mackenzie process and, with ADC, could establish something similar for the Ōtūwharekai/Ashburton Lakes.

Other considerations

Consultation and collaboration

79. ECan was consulted on some of the factual content in this briefing.

Risks and mitigations

80. No risks.

Treaty analysis

81. No Treaty issues.

Legal issues

82. No legal issues.

Financial, regulatory and legislative implications

83. No financial implications.

Next steps

84. If you approve, sign the attached letters for sending to ECan, LINZ, and ADC.

85. If you approve, take the attached paper and/or talking points to Cabinet.

Appendix 1: Cabinet paper

Need for action on Ashburton high country lakes

CAB-279 Cabinet Paper.docx

Appendix 2: Talking points

Need for action on Ōtūwharekai/Ashburton high country lakes

Introduction and summary

1 I want to inform you of the actions I have taken and propose to take as Environment Minister to address:

- the risks facing the Ōtūwharekai/Ashburton Lakes in the South Island high country and
- the planning system vulnerabilities that have failed to control those risks.

2 In brief, action is needed to prevent further contamination and start the recovery of these nationally significant high-country lakes.

3 Having (a) procured research on the mitigations required, (b) received a *Lessons Learnt* report on the causes of the lakes' decline, and (c) discussed these matters with the regional council, I have now written to the three land management agencies (ECan, ADC, and LINZ), outlining my concerns and expectations.

4 I am watching progress and, in the new year, will consider what further steps may be needed, including potential ministerial intervention under the Resource Management Act 1991 (RMA).

5 Potential interventions include: investigating performance; directing a plan review or plan change; or calling in a consent application.

6 I expect to be in a position to report back to you on this matter in the new year.

Relation to government priorities

7 Protecting and restoring freshwater quality is one of the government's top environmental priorities.

8 These lakes are a test case for our 2020 Action for Healthy Waterways (Essential Freshwater) reform package [CAB-18-MIN-0296] which aims to:

- stop further degradation of freshwater
- start making immediate improvements so that water quality improves within five years (i.e., by 2025), and
- reverse past damage to bring waterways and ecosystems to a healthy state within a generation (i.e., by 2050).

9 The lakes are also a test for the Te Mana o te Wai hierarchy of obligations which:

- underpins the National Policy Statement for Freshwater Management 2020 (NPS-FM 2020), and which
- requires regulators to prioritise freshwater ecological health over any competing outcomes, including economic and social ones.

The lakes are nationally significant

10 There are a dozen lakes in all. They lie in a basin surrounded by hills and mountains between the Rakaia and Rangitata rivers. The landscape has similarities to the Mackenzie basin, though on a smaller scale.

11 It is a nationally significant wetland area which the Department of Conservation (DOC) and Ngāi Tahu have been working to restore.

12 The lakes are popular recreation areas, havens for wildlife, and have special significance for Ngāi Tahu.

13 However, being small and shallow, they are also vulnerable to nutrient accumulation from surrounding land use.

The lakes are contaminated by nutrients (nitrogen and phosphorus)

14 Eight of the lakes are monitored by the regional council, Environment Canterbury (ECan), and most are contaminated by excessive nutrients (nitrogen and phosphorus) which promote the growth of harmful algae.

15 None of the lakes meets the regional plan's objectives for water quality and ecological health as measured by the trophic level index (TLI).

16 Some are now at risk of flipping into a fully eutrophic state in which algae proliferate, fish die, and the water becomes unfit for recreational and cultural use.

17 Once a lake reaches that state, the chances of recovery are low. Restoration can be very difficult and costly.

The main source of contamination is intensive pastoral farming

18 Over 90% of the contaminating nutrients come from pastoral land grazed by over 40,000 sheep, nearly 2,500 cattle and nearly 4,000 deer.

19 Other nutrient sources, such as waste from wildfowl and from lakeside dwellings and campsites, account for barely 5% of the contaminant load.

20 Through tenure review, DOC has retired large areas of low productivity pastoral land in the basin, but the lakes remain at risk from the areas that are intensively farmed.

21 The four farms in the area have intensified their land use and stocking rates in recent decades. Between 1998 and 2012, one farm went from 6,000 stock units to 14,000.

22 Two of the farms are Crown pastoral leases. Two are privately owned freehold properties, parts of which were formerly pastoral leases.

ECan is the main agency responsible for protecting the lakes

23 Environment Canterbury (ECan) is responsible for managing freshwater throughout the region

24 It's main instrument for this is the Land and Freshwater Regional Plan (LWRP) which was first notified in 2012 and adopted in 2015.

25 The plan has not managed to halt the lakes' decline, despite the four farms in the area complying with its farm plan requirements and output controls.

26 (Note, however, that two of the farms do not have current resource consents and their applications are on hold pending further information.)

LINZ also has land management responsibilities

27 Land Information NZ (LINZ) and Ashburton District Council (ADC) also have land use management responsibilities in the basin.

28 LINZ owns and oversees the two Crown pastoral leases. The lease conditions require lessees to get a discretionary activity consent from the Commissioner for Crown Lands before they can exceed the livestock limit or disturb soil or vegetation.

29 These conditions have not prevented land use intensification on the leased farms.

30 I expect the Crown Pastoral Land Reform Act 2022 to change the way these properties are managed in future because of the requirement to give higher priority to ecological values.

31 However, the question remains of how the already intensified farmland is to be managed.

Ashburton District Council also has land management responsibilities

32 Ashburton District Council manages land use and indigenous vegetation clearance through its district plan.

33 Resource consent is required for certain types of land use and indigenous vegetation clearance.

34 These rules have not prevented intensification and vegetation change in the lake catchments.

35 Ashburton District Council also owns the land on which the hut settlement is located at Lakes Clearwater and Camp.

36 The council recently adopted a 30-year plan for these lakes. To reduce the risk from toilet seepage it has upgraded public toilets and made hut owners upgrade theirs.

37 While the council's improvements at Lakes Clearwater and Camp are positive steps, the big question is whether it can ensure that its regulatory and compliance systems will effectively limit further intensification in the lake catchments.

Actions so far - Lessons Learnt report, research on lake recovery options, discussions with ECan, letters of expectation

38 At my request, Ministry officials have:

- Prepared a *Lessons Learnt* report on why the regional plan has not protected the lakes, and

- Procured research from NIWA and AgResearch on methods for reducing nitrogen loss and the costs of implementing these.

39 I have met with ECan to discuss the *Lessons Learnt* findings and to outline my expectations for lake recovery and planning system improvement.

40 I have also sent letters of expectation to ECan, LINZ, and Ashburton District Council.

The Lessons Learnt report found vulnerabilities in the plan and compliance systems

41 I received the *Lessons Learnt* report in May and it was subsequently publicly released.

42 It found that many of the vulnerabilities in the LWRP were linked to:

- its heavy reliance on output controls
- unreliable tools and methods for estimating and managing nitrogen loss
- excessively high nitrogen loss limits, and
- third-party oversight that lacks transparency and accountability.

43 The LWRP' does not restrict intensification and does not set limits on the land uses and farm inputs that give rise to nitrogen loss.

44 Instead, it requires farmers to:

- set their own nitrogen output limits based on the farm's previous estimated nitrogen losses
- use farm environment plans and good management practices to self-manage their high-risk land uses and inputs, and
- hire experts to estimate nitrogen outputs and to audit compliance with the limits.

45 To date, the farms are complying with their nitrogen limits and have received A-grade audits, but the lakes are not improving.

46 I have discussed the findings with ECan, underlining the need for the revised freshwater plan to have more effective rules, limits, and methods.

47 Because the LWRP lacks any other provisions enabling ECan to require changes in farm practice, lake recovery is now reliant on voluntary mitigations by the farmers.

Voluntary Action Plan

48 ECan is working with the farmers and a coalition of interested groups called the Ōtūwharekai Working Group whose members include ECan, LINZ, Ashburton District Council, DOC, MPI, three Ngāi Tahu rūnanga, and the farmers themselves.

49 Their focus to date has been on finding affordable mitigations that can reduce nutrient loss without impacting on the farms' economic bottom-lines.

50 Cost has been identified as a potentially significant barrier to achieving full lake health within the current intensive farming systems in the Ashburton Lakes basin.

51 ECan and MfE have each procured research from NIWA to assist in identifying mitigations that can be implemented now.

52 This has resulted in some helpful voluntary actions, such as land use changes near the lakes. However, these changes are not sufficient, on their own, to get nitrogen discharges down to the necessary levels. Additional measures are required.

53 ECan has commissioned additional research from NIWA on what those further mitigation options might be for each farm. This work is still in progress,

54 Meanwhile MfE has commissioned AgResearch to provide cost estimates of getting the nitrogen levels down to the levels necessary for lake health. This is also work in progress.

55 If it turns out that significant land use change and livestock reductions are required, these may be costly and challenging to achieve through a voluntary approach.

56 In that case, they will need to be firmly locked into the regional freshwater plan and supported by the plans and actions of the other agencies, LINZ and Ashburton District Council.

Next steps – a new plan and potential Ministerial intervention

57 ECan, like all regional councils, is required to notify a new or revised freshwater plan before the end of 2024 to give effect to the National Policy Statement for Freshwater Management 2020.

58 I have informed ECan that I expect the notified plan to also take into account the findings of the *Lessons Learnt* report.

59 This includes making full use of the regulatory tools provided for in the NPS-FM 2020 which, in addition to output controls, include input controls and resource use limits.

60 I have requested that ECan provide me with regular progress reports on the steps they are taking in this regard.

61 Depending on progress, I reserve the option of using Ministerial intervention under the RMA, if I think it is needed.

Potential Ministerial interventions

62 The RMA intervention options that I may consider include:

- Investigating performance - section 24A allows the Minister to investigate performance of a local authorities RMA functions and make recommendations.
- Directing a plan change - section 25A gives the Minister the power to direct a regional council to prepare a plan change to address an identified issue.
- Directing a review of a plan - section 25B gives the Minister the power to direct a council to review whole or part of a regional or district plan.
- Appointing one or more commissioners - section 25 gives the Minister the power to appoint commissioners to exercise or perform all or any of those

functions, powers, or duties in place of the local authority as they relate to the RMA responsibilities.

- Calling in a matter of national significance – section 142 gives the Minister the power to call in a resource consent application, proposed plan change, or other matter, for referral to a board of inquiry to the Environment Court.

63 In deciding which, if any, of these options might be merited, I will also consider ECan's management of other lake and freshwater catchments.

64 This is because many of the system vulnerabilities identified in the *Lessons Learnt* report are not limited to the Ashburton Lakes and are likely to affect water bodies elsewhere in the region.

65 For now, I am giving the council and other agencies the opportunity to demonstrate that they are addressing the issues raised effectively.

66 I expect to be in a position to report back to Cabinet on this matter in the new year.

Hon David Parker

Minister for the Environment

Appendix 3: Letter to Land Information New Zealand

Craig Harris
Commissioner of Crown Lands
Toitū Te Whenua/Land Information New Zealand

Adrienne Meikle
Acting Secretary
Toitū Te Whenua/Land Information New Zealand

Dear Craig and Adrienne

Ōtūwharekai/Ashburton Lakes and future catchment management

As you may be aware, in May, the Ministry for the Environment published the Ōtūwharekai/Ashburton Lakes Lessons Learnt report which examines the regulatory and institutional vulnerabilities that have allowed Ashburton's high-country lakes to decline.

Some lakes are now close to flipping into a eutrophic state from which recovery will be difficult. Over 90 percent of the decline is due to nutrient loss from pastoral farms.

The report's main focus is on the regional council's planning, consenting, and compliance systems, but it also suggests that Crown pastoral lease variations and discretionary activity consents have played a part historically by enabling land use intensification.

We understand, for example, that the livestock limits for Upper Lake Heron and Mount Arrowsmith stations were significantly relaxed in the 1990s and early 2000s enabling stock units to more than double and remain at or near that level ever since. Similar permissions appear to have been given to Clent and Barossa Stations in the decade preceding their tenure reviews.

Given the current state of Lake Heron and of the Maori Lakes, and the sizable nutrient reductions now required to restore Te Mana o te Wai to them, it seems clear that Crown pastoral land management must play a critical role in their recovery.

We are aware that LINZ and the Commissioner's office are now well placed to do this under the Crown Pastoral Land Reform Act 2022 which requires inherent values (ecological, landscape, cultural, heritage, and scientific) to be maintained and enhanced.

Also, as a participant in the Ōtūwharekai Working Group, which brings farmers, agencies, and iwi together to find voluntary solutions for the lakes, LINZ is now well poised to work more closely with other agencies in the basin. This would address another Lessons Learnt finding. The report identifies inconsistent coordination and information-sharing among statutory agencies as a contributing factor to the land use intensification.

Following the example provided by the Mackenzie Alliance, which LINZ also participates in, we suggest that there may be merit in establishing an Ōtūwharekai Alliance involving yourselves, DOC, ECan, and ADC. Its main focus would be on setting up systems and processes for sharing information and seeking aligned decision-making on land use in the basin.

We invite you to share your thoughts on this idea and, in that spirit, to also share with us any steps that LINZ may be taking, planning, or considering for the reduction of nutrient loss from Crown pastoral lease land in the Ōtūwharekai/Ashburton Lakes area.

Yours sincerely

Hon David Parker
Minister for the Environment

Peter Scott
Chair, Environment Canterbury

Superseded – refer attachment

Appendix 4: Letter to Environment Canterbury CE and chair

Peter J Scott
Chair, Environment Canterbury
Councillor.Scott@ecan.govt.nz

Dr Stefanie Rixecker
Chief Executive, Environment Canterbury
Stefanie.rixecker@ecan.govt.nz

Dear Peter and Stefanie

Ōtūwharekai/Ashburton Lakes and expectations for the future planning framework

Thank you for hosting my May visit to discuss the Ōtūwharekai/Ashburton Lakes and the findings of the Ministry's *Lessons Learnt* report. It was encouraging to hear of the work that you have been leading with the rūnanga and farmers, via the Ōtūwharekai Working Group, to progress support for voluntary actions while future regulatory settings are being developed.

I remain concerned, nonetheless, that the lakes are still at risk of flipping into a eutrophic state and will need significant nutrient reductions before they can start to improve.

My overall expectation, based on our discussion, is that Environment Canterbury will take all necessary steps to restore the Ōtūwharekai/Ashburton Lakes in accordance with the NPS-FM. I would expect this to include but not necessarily be limited to:

- progressing the existing voluntary steps with farmers
- exploring what can be done through current and pending consents
- revising the Land and Water Regional Plan (LWRP) with urgency
- considering how the new tools introduced as part of the Freshwater Farm Plan system can be accelerated for this catchment
- strengthening the council's compliance monitoring and enforcement (CME) processes, and
- continuing the collaborative alliance with other statutory agencies in the Ashburton Lakes basin to cohesively regulate land use management.

To stay informed of developments on this matter, I am requesting that you provide me with quarterly progress reports, beginning in the first week of October 2023.

Yours sincerely

Hon David Parker

Minister for the Environment

Sensitivity classification

Office of the Minister for Minister for the Environment

ENV - Cabinet Environment, Energy and Climate Committee

Need for action on Ashburton high country lakes

Proposal

1 This paper informs you of actions I have taken and propose to take to address:

- the risks facing the Ōtūwharekai/Ashburton Lakes in the South Island high country and
- the planning system vulnerabilities that have failed to control those risks.

2 The lakes in this iconic landscape are contaminated by excessive nutrients. These come predominantly from pastoral land use which has gradually intensified over several decades. Some lakes are now at risk of becoming fully eutrophic.

3 This has happened under the watch of Environment Canterbury's (ECan) Land and Water Regional Plan (LWRP), Ashburton District Council's (ADC) District Plan, and Land Information NZ's (LINZ) Crown pastoral lease management system

4 These agencies were acting respectively in accordance with the Resource Management Act (RMA) and the now superseded Crown Pastoral Lands Act 1998.

5 At my request, Ministry officials have:

- prepared a *Lessons Learnt* report on why the regional freshwater planning, consenting, and compliance systems have not protected the lakes, and
- procured (with ECan) research reports on methods for reducing nitrogen and phosphorus discharges and the costs of implementing these.

6 I have discussed the findings with ECan, underlining the need for its new freshwater plan to have rules, limits, and methods that are more effective than the current ones as well as the need for stronger compliance monitoring and enforcement (CME) processes and for greater collaboration among the agencies regulating land use.

7 I have reiterated this in a letter to ECan which expresses my overall expectation that ECan will take all necessary steps to restore Te Mana o te Wai to the Ōtūwharekai/Ashburton Lakes in accordance with the NPS-FM, including:

- progressing the existing voluntary steps with farmers
- exploring what can be done through current and pending consents

- revising the Land and Water Regional Plan (LWRP) with urgency
- strengthening the council's compliance monitoring and enforcement (CME) processes, and
- considering the merits of a Mackenzie-style collaborative alliance with other statutory agencies in the Ashburton Lakes basin to cohesively regulate land use management.

8 The letter also requests quarterly progress reports beginning in October 2023.

9 In addition, I have written to ADC and LINZ seeking information on the steps being taken to protect the lakes from inappropriate land use and seeking their views on the merits of collaborating more closely with ECan and the other agencies.

10 All agencies accept that the lakes are in trouble and that they each have a role to play in addressing this. The hard questions boil down to the specific actions being taken and how effective they will be. That is what I will be watching over the next six months.

11 I propose to observe progress and work with the regional council. Although, as Minister, I also have options to drive more positive action through intervention under the Resource Management Act 1991 (RMA) but am not considering these at present.

Relation to government priorities

12 Protecting and restoring freshwater quality is one of the government's top environmental priorities. These lakes are both a case study of the challenges involved and a test case for our 2020 Action for Healthy Waterways (Essential Freshwater) reform package [CAB-18-MIN-0296] which aims to:

- stop further degradation of freshwater
- start making immediate improvements so that water quality improves within five years (i.e., by 2025), and
- reverse past damage to bring waterways and ecosystems to a healthy state within a generation (i.e., by 2050).

13 The lakes are also a test for the Te Mana o te Wai hierarchy of obligations which underpins the National Policy Statement for Freshwater Management 2020 (NPS-FM 2020), and which requires regulators to prioritise freshwater ecological health over any competing outcomes, including economic and social ones.

Executive Summary

14 This paper notes that action is needed to prevent further degradation and begin the recovery of Ashburton's nationally significant high-country lakes by 2025. Having procured research on the mitigations required, received a lessons-learnt report on the causes of the lakes' decline, discussed these matters with the regional council, and written to the three land management agencies (ECan, ADC, and LINZ), I am now monitoring progress and considering what further steps, if any, may be needed.

Background

15 The Ōtūwharekai/Ashburton Lakes basin, located between the Rakaia and Rangitata rivers, is one of New Zealand's best remaining examples of an inter-montane wetland system. The network of lakes and wetlands is surrounded by grassland, some of which is being grazed and some of which has been recently retired.

16 The area is included in Arawai Kākāriki, the Department of Conservation's (DOC) flagship wetland research and restoration programme. It has high cultural and mahinga kai value for Ngāi Tahu, being a statutory acknowledgement area in the Ngāi Tahu Settlement Act 1998. It is also popular with recreational visitors. One lake has a permanent hut settlement.

17 Eight of the lakes are monitored annually. All are partially eutrophic, and none meets the trophic level objectives of the regional council's LWRP. Several are on the verge of becoming fully eutrophic - a state that makes recovery very difficult.

18 For a decade, the lakes have failed to recover under the LWRP's Lake Zone nutrient management regime. This regime relies heavily on output controls managed through nitrogen loss limits, farm plans, and good management practice with third party implementation and auditing. For various reasons identified in the *Lessons Learnt* report, this system has not worked.

19 As similar controls are among the planning options provided for in the Essential Freshwater package, gaining an understanding of why they were unsuccessful for the Ashburton Lakes may help us prevent the same vulnerabilities from occurring elsewhere or being carried over into new systems. Furthermore, if successful controls can be put in place for the lakes, they can become an exemplar for others to learn from.

20 At my request, therefore, the Ministry has:

- prepared and published a *Lessons Learnt* report focusing on system vulnerabilities that have contributed to the lakes' state **(Appendix 1)**
- circulated this report to Ministry teams working on the national farm plan system and RM reform to alert them to potential vulnerabilities that may need addressing
- procured research on nitrogen loss reduction methods and their costs **(Appendix 2)** to inform both the Ōtūwharekai Working Group's efforts on voluntary reductions and ECan's review and revision of the LWRP.

Lessons Learnt report

21 The *Lessons Learnt* report identifies numerous vulnerabilities in the LWRP, including:

- the setting of a farm nitrogen loss limit that was too high to drive the necessary reductions, being based on previous farm performance rather than lake ecology
- the lack of linkage between the output controls and the LWRP's objectives for lake trophic levels
- the unreliability and imprecision of the tools used by farmers, advisors, contractors, and auditors to calculate, achieve, and validate compliance with the limits (i.e.,

Farm Environment Plans, Good Management Practices, Overseer modelling software)

- vulnerabilities in the implementation, auditing, and oversight procedures, including reliance on third parties, a lack of transparency, and restricted access to key output control data

- no contingency provisions in the regional plan, and few other regulatory options, to adjust course when lake outcomes were not being met by the plan's nutrient management regime.

22 These vulnerabilities were exacerbated by:

- a lack of land use monitoring data to identify changes in vegetation cover and farming intensity

- the inherent practical difficulties of monitoring, verifying, and managing diffuse discharges over large areas and diverse topographies.

23 The report also identifies historical factors outside the planning system that may have contributed to the pressures on the lakes by encouraging or enabling farm intensification. These include:

- conflicting government signals on how to prioritise environmental outcomes for freshwater when faced with conflicting economic, and social outcomes

- late and limited national direction on the above, and on the management of diffuse discharges, and

- independent land use decisions by different agencies, including LINZ which is responsible, via the Crown Commissioner of Lands, for granting land use permits to pastoral leaseholders, and ADC, which is responsible for land use and indigenous vegetation protection.

Lake and nutrient research

24 ECan and DOC have been monitoring Ashburton's high county lakes and wetlands (though not the surrounding land use), since 2005.

25 They have also procured research on nutrient loss in the lake catchments, including the 2014 and 2021 Cawthron Institute studies using the national CLUES (Catchment Land Use for Environmental Sustainability) model and more recent work by NIWA **(Appendix 2).**

26 The Ministry, too, has funded some of the NIWA research and is currently funding an AgResearch report on the cost of nutrient mitigation options in the lake catchments.

27 The overwhelming finding of these studies, to date, is that the lakes are all in a degraded state, which has built up over time, and their recovery will require large reductions in nutrient loss from the surrounding land.

28 The research effort now is on trying to identify effective nutrient reduction measures and cost these. This information is needed to assess what can be achieved voluntarily and what cannot. It will also inform the design of regulatory measures for changing land use and farming intensity, and any fiscal measures needed to support this.

Voluntary Action Plan

29 The magnitude of the necessary nutrient reductions may require significant land use change, such as livestock reductions in parts of the catchment. However, other than audited farm environment plans (FEPs), all of which comply with current LWRP requirements, the LWRP has no provisions enabling ECan to require such changes.

30 ECan is therefore reliant on the voluntary actions of the four catchment farms, supported by the Ōtūwharekai Working Group whose members are: the farmers, ECan, Te Rūnanga o Arowhenua, Te Ngāi Tūāhuriri Rūnanga, Te Taumutu Rūnanga, Te Rūnanga o Ngāi Tahu, LINZ, Department of Conservation (DOC), Central South Island Fish and Game, ADC, and Ministry for Primary Industries (MPI).

31 Whilst these voluntary actions have already resulted in land use changes near the lakes, they are not considered sufficient, on their own, to achieve lake health. Additional measures will be required, which may need to include significant land use change and reductions in livestock numbers.

32 Because these changes may be costly and challenging to implement on a voluntary basis, they will need to be firmly locked in by the revised regional freshwater plan.

Analysis

33 The primary statutory responsibility for lake restoration lies with ECan, though LINZ and ADC also play important roles.

34 Along with other regional councils, ECan is on a tight timeframe to revise the freshwater provisions of its regional plan for notification in 2024 to bring them into line with the NPS-FM 2020.

35 I expect the notified plan to take into account the findings of the *Lessons Learnt* report and avoid the current plan's vulnerabilities. This means making full use of the regulatory tools provided for in the NPS-FM 2020. In addition to output controls, these include input controls and resource use limits.

36 It also means strengthening the compliance monitoring and enforcement processes and collaborating more effectively with other statutory agencies on land use in the region.

37 I have discussed these matters with ECan and we are in broad agreement on the issues raised and the need to address them. I have followed up our discussion with a letter confirming my expectations and requesting quarterly progress reports on the steps being taken.

38 Given ECan's acknowledgement of the issues raised in the *Lessons Learnt* report and its intention to address them, my approach is to work with them on this.

39 Other approaches that I am not considering at present include my option to use Ministerial powers under the RMA. These enable me to :

- Investigate performance - section 24A allows the Minister to investigate performance of a local authorities RMA functions and make recommendations
- Direct a plan change - section 25A gives the Minister the power to direct a regional council to prepare a plan change to address an identified issue

- Direct a review of a plan - section 25B gives the Minister the power to direct a council to review whole or part of a regional or district plan

- Appoint one or more commissioners - section 25 gives the Minister the power to appoint commissioners to exercise or perform all or any of those functions, powers, or duties in place of the local authority as they relate to the RMA responsibilities

- Call in a matter of national significance – section 142 gives the Minister the power to call in a resource consent application, proposed plan change, or other matter, for referral to a board of inquiry to the Environment Court.

40 I am also in dialogue with the other agencies that work in the basin with a view to achieving a cohesive multi-agency approach to land use management.

41 I have co-authored with ECan a joint letter to LINZ seeking information on the steps being taken to limit land use intensification around the lakes and seeking a view on the need to collaborate more closely with the councils on land management.

42 In addition, I have written to ADC seeking information on the steps it is taking to limit land use intensification around the lakes and seeking a view on whether it sees its regulatory system as adequately managing intensive land use around the lakes.

43 I expect to be in a position to report back on the outcomes and progress of these discussions in the new year.

Financial Implications

44 There are no financial implications.

Legislative Implications

45 There are no legislative implications.

Impact Analysis

46 Not applicable.

Population Implications

47 There are no population implications.

Human Rights

48 Not applicable.

Consultation

49 Not applicable.

Communications

50 Not applicable.

Proactive Release

51 Yes.

Recommendations

The Minister for the Environment, recommends that the Committee:

1 **Note** that, in 2020, Cabinet agreed to the Essential Freshwater package of policies and regulations [CAB-18-MIN-0296] which among other things aims to:

- stop further degradation of freshwater
- start making immediate improvements so that water quality improves within five years (from 2020), and
- reverse past damage to bring waterways and ecosystems to a healthy state within a generation.

2 **Note** that these aims are not being met in the nationally and culturally significant Ōtūwharekai/Ashburton Lakes catchment whose lakes are partially eutrophic and in danger of tipping into a fully eutrophic state.

3 **Note** that the Minister for the Environment has received the Ōtūwharekai/Ashburton Lakes *Lessons Learnt* report, which identifies system vulnerabilities, and Ōtūwharekai research reports which identify potential mitigation options.

4 **Note** that, the Minister for the Environment has discussed this matter Environment Canterbury (ECan)

5 **Note** that, the Minister has written to ECan, LINZ and ADC outlining his concerns and expectations

6 **Note** that, if necessary, the Minister will consider the need for intervention under sections 24 and 25 of the RMA.

7 **Invite** the Minister for the Environment to report back to Cabinet on this matter in the new year.

Authorised for lodgement

Hon David Parker

Minister for the Environment

Appendix 1

Ōtūwharekai/Ashburton Lakes lessons-learnt report

Link:

Ōtūwharekai/Ashburton Lakes lessons-learnt report | Ministry for the Environment

Appendix 2

Research reports on potential mitigations for lake recovery

1. *In lake mitigations*

Prepared by NIWA for Ministry for the Environment and Environment Canterbury November 2022

In Lake Mitigations v26_FINAL.pdf

2. *Catchment Interventions*

Prepared by NIWA and AgResearch for Ministry for the Environment and Environment Canterbury

Catchment Mitigations V3 FINAL.pdf

3. *Cost Effectiveness Analysis*

Prepared by NIWA for Environment Canterbury December 2022

NIWA Client report - FINAL.pdf

Hon David Parker BCom, LLB

Attorney-General
Minister for the Environment
Minister of Transport
Associate Minister of Finance

COR-5058

Peter J Scott
Chair, Environment Canterbury

Councillor.Scott@ecan.govt.nz

Dr Stefanie Rixecker
Chief Executive, Environment Canterbury

Stefanie.rixecker@ecan.govt.nz

Dear Peter and Stefanie

Ōtūwharekai/Ashburton Lakes and expectations for the future planning framework

Thank you for hosting my May visit to discuss the Ōtūwharekai/Ashburton Lakes and the findings of the Ministry's *Lessons Learnt* report.

It was encouraging to hear of the work that you have been leading with the rūnanga and farmers, via the Ōtūwharekai Working Group, to progress support for voluntary actions while future regulatory settings are being developed.

I remain concerned that the lakes are still at risk of flipping into a eutrophic state and will need significant nutrient reductions before they can start to improve. I look forward to seeing your progress towards taking the necessary steps to restore the Ōtūwharekai/Ashburton Lakes in accordance with the National Policy Statement for Freshwater Management.

Yours sincerely

Hon David Parker
Minister for the Environment

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Hon David Parker BCom, LLB

Attorney-General
Minister for the Environment
Minister of Revenue
Associate Minister of Finance

COR5070

Craig Harris
Commissioner of Crown Lands
Toitū Te Whenua/Land Information New Zealand

Adrienne Meikle
Acting Secretary and Chief Executive
Toitū Te Whenua/Land Information New Zealand

✓ Sent 17/8/23.

Dear Craig and Adrienne

Ōtūwharekai/Ashburton Lakes and future catchment management

As you may be aware, in May, the Ministry for the Environment published the Ōtūwharekai/Ashburton Lakes Lessons Learnt report which examines the regulatory and institutional vulnerabilities that have allowed Ashburton's high-country lakes to seriously decline in quality.

Ōtūwharekai has one of New Zealand's best remaining inter-montane wetland systems and provides habitat for nationally significant species. What's more, the lakes have high cultural value for Ngāi Tahu, and Ōtūwharekai is a statutory acknowledgement area in the Ngāi Tahu Settlement Act 1998.

The water quality in some lakes is now so deteriorated that the lakes are close to flipping into a eutrophic state from which recovery will be difficult. Over 90 percent of the decline is due to nutrient loss from pastoral farms. Alongside this, mana whenua have identified that the cultural health of the area continues to diminish, and that there is a need for urgent action to address the state of cultural health in the Ōtūwharekai/Ashburton Lakes area.

The Lessons Learnt report's main focus is on the regional council's planning, consenting, and compliance systems, but it also suggests that Crown pastoral lease variations and discretionary activity consents have played a part historically by enabling land use intensification.

We understand, for example, that the livestock limits for Upper Lake Heron and Mount Arrowsmith stations were significantly relaxed in the 1990s and early 2000s enabling stock units to more than double and remain at or near that level ever since. Similar permissions appear to have been given to Clent and Barossa Stations in the decade preceding their tenure reviews.

Given the current state of Lake Heron and of the Maori Lakes, and the sizable nutrient reductions now required to restore Te Mana o te Wai to them, it seems clear that Crown pastoral land management must play a critical role in their recovery.

We are aware that LINZ and the Commissioner are now well placed to do this under the Crown Pastoral Land Reform Act 2022 which requires inherent values (ecological, landscape, cultural, heritage, and scientific) to be maintained and enhanced and enables the

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commissioner to consider cross-boundary effects, including impacts on catchments and waterbodies not on the pastoral land.

Also, as a participant in the Ōtūwharekai Working Group, which brings farmers, agencies, and iwi together to find voluntary solutions for the lakes, LINZ is now well poised to work more closely with other agencies in the basin. We know that more than just regulatory tools will be needed to support better outcomes for the lakes, and we understand that the working group is now developing a set of actions through a lake-by-lake catchment management strategy.

Taking action shouldn't be left to one or two key agencies, and we ask that all members of the working group, including LINZ, demonstrate leadership and commitment to this work. Agencies will need to think beyond their regulatory roles to support and fund collective solutions given the myriad of legacy decisions and incentives that have led us here.

This would help address another Lessons Learnt finding which identifies inconsistent coordination and information-sharing among statutory agencies as a contributing factor to the land use intensification.

Finally, we would like to understand what next steps LINZ is planning or considering for the reduction of nutrient loss from Crown pastoral lease land in Ōtūwharekai, and the timeframes for these. Environment Canterbury is now assessing the Resource Management Act consenting pathway for Ōtūwharekai, and ongoing coordination between LINZ and Environment Canterbury will be important to ensure agency actions are aligned.

To reflect the need for urgency in Ōtūwharekai, it would be prudent that these next steps are shared and discussed by Environment Canterbury and LINZ by the end of August 2023.

Yours sincerely

Minister for the Environment

Peter Scott

Chair, Environment Canterbury