



# **Follow up Investigation of Freshwater Management and Allocation Functions at Otago Regional Council**

## **Report to the Minister for the Environment**

**by**

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**CNZM; D.Nat.Res (Hon); LLB; FEIANZ**



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*

## Acknowledgements

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Cover photo: Falls Dam and the Hawkdun Range, Central Otago (R McClean, 25 June 2019)



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# Executive Summary

In 2019 the Minister for the Environment asked me to investigate the freshwater management and allocation functions exercised by the Otago Regional Council ('ORC' or 'the Council'). In that investigation I noted that the Otago region was at a critical juncture for freshwater planning, with the looming deemed permit renewals and developing a new fit for purpose freshwater planning regime being just two of a number of challenges the Council needed to address.

Following the 2019 investigation the Minister provided the Council with several recommendations designed to ensure that deemed permit renewals could not lock in over-allocation for the future and to hasten the development of a new and effective freshwater management framework.

By letter dated 5 May 2022 the Minister appointed me to conduct a follow up investigation. This was triggered by a request from ORC's Chair Andrew Noone to the Minister seeking a discussion with him about an extension to the date for notification of a new Land and Water Regional Plan (LWRP). It is progress towards the implementation of the 2019 recommendations that the Minister has now asked me to investigate and report on.

This report provides an assessment of progress towards all the recommendations made by the Minister in 2019. However, it also focuses on the specific recommendation to notify a new LWRP by December 2023.

ORC has now fully implemented a number of the Minister's 2019 recommendations:

- The Minister recommended an interim planning framework to ensure deemed permits were not 'rolled-over' into long-term resource consents. This has been met through Plan Change 7 that is now operative and working as intended.
- The Minister recommended a new Regional Policy Statement (RPS) be notified by June 2021. ORC has notified a new RPS, although progress has been slowed by High Court proceedings relating to its legality as a freshwater planning instrument.
- The Minister requested ORC provide updates on organisational capability and capacity. I am pleased to report significant improvements have been made since 2019. The staff appear to be a high functioning team with a wide range of knowledge, skills and capacity to deliver on the recommendations, and the ultimate outcome of improved freshwater management in Otago.

While there is still work to be done, the immediate risks of over-allocation associated with deemed permits being locked in for the long term has been effectively addressed. Meeting these recommendations has been a significant undertaking for the Council, the staff, and the Otago community and they should all be commended on progress to date.

In the course of this second inquiry, I sought clarification from the Councillors on reasons for an extension of the notification date. There was no consensus position, and several Councillors expressed the view that an extension was not necessary. I sought the views of ORC staff and their overall opinion was that the timeframes are tight but they remain on target to meet them. Both Councillors and staff noted the current and future timeframe risks caused by the delay to the RPS process by the High Court proceedings.

I am not convinced there is any need for an extension to the timeframe for notifying the LWRP at this time. However, if the RPS process raises further complications there may be merit in considering an extension, and I expect that would become clearer in early 2023. I have already communicated this finding to the Minister who has informed the Council that no extension will be granted.

During this investigation I have become concerned about the conduct of Councillors towards the staff and the potential impact this may have on the Council's ability to progress the LWRP, and wider freshwater matters.

Key staff noted the difficulty in performing their duties due to the conduct of Councillors. Examples given included Councillors intentionally trying to "*trip staff up*", asking for further information solely to delay decision-making, and, an unwillingness to accept answers Councillors did not want to hear. Staff noted this was impacting their ability to give free and frank advice.

In the light of the discussions and conclusions reached in my interim report and now in this final report, I make the following recommendations to the Minister for the Environment:

1. I confirm the recommendation made in my interim report to not grant an extension to the timeframe for public notification of the LWRP at this time.
2. That the Minister retains the recommendations and timeframes set by him for Otago Regional Council in 2019 as they are still appropriate.

# Introduction

On 28 March 2022, the Minister for the Environment, the Hon David Parker (“the Minister”) received the fifth 6-monthly progress report from the Otago Regional Council (“the Council” or “ORC”). This report is one of the requirements laid down by the Minister in his recommendations to the Council in 2019, following a report to the Minister by myself in the same year. A copy of that report is attached to this report as Appendix 1. A letter accompanying that report from the Council’s Chair Andrew Noone, also sought a meeting with the Minister on behalf of the Council, to discuss extending the timeframe for notification of a new Land and Water Regional Plan (LWRP). The promulgation of this Plan is also a requirement laid down by the Minister in his recommendations to the Council in 2019. A copy of this accompanying letter is attached to this report as Appendix 2.

By letter, dated 5 May 2022, I have been engaged by the Minister acting under section 24A of the Resource Management Act 1991 (“the Act” or “RMA”), to investigate whether the Council is adequately carrying out its functions under section 30(1) of the Resource Management Act 1991 in relation to freshwater management and allocation of resources.

Specifically, the Minister has directed me to investigate the Council’s progress towards the recommendations he made in 2019 <sup>1</sup> following my previous investigation, and to determine whether they are still appropriate.

A copy of the letter of appointment is attached to this report as Appendix 3. Also attached to this report as Appendix 4 is a copy of the letter from the Minister to Andrew Noone acknowledging receipt of ORC’s fifth report and advising him of my appointment.

## Term of investigation

The investigation began on 9 May 2022 and was to be completed on 25 May 2022. However, I requested an extension to the term of the investigation due to unforeseen personal circumstances, which the Minister accepted. The term was then extended to 30 June 2022. My interim findings were sent to the Minister on 26 May 2022 and should be read together with this final report to complete the outcome of my investigations. The Terms of Reference for this investigation can be viewed in Appendix 5.

## Scope of the investigation

This investigation has examined:

1. The Council’s progress towards implementing the Minister’s 2019 recommendations and specifically the likelihood of the Council meeting the December 2023 timeframe for notifying a new LWRP;

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<sup>1</sup> [letter-to-orc-re-s24a-investigation-from-hon-david-parker-18112019.pdf](#)



2. Whether the recommendations and timeframes set in 2019 are still appropriate given changes and progress made to date, including:
  - The impact of the now fully operative Plan Change 7
  - The relationship between the operative Regional Policy Statement (RPS), proposed RPS and development of the new LWRP, including an assessment of any risks associated with developing the LWRP before the proposed RPS is fully operative;
3. Any other relevant contextual matters.

## My role

For transparency, I wish to make clear that I am undertaking this investigation in my private capacity. My former roles as Chief Freshwater Commissioner for New Zealand, an appointed Regional Commissioner/Councillor for The Canterbury Regional Council, an Environment Court Judge and a University Professor of Environmental Law are relevant only insofar as they enable me to bring certain insights and experience to the investigation.

## Methodology

The investigation involved reviewing relevant documents, interviewing relevant Council staff and discussions with the Chair of Aukaha, which is the consultancy service of the five Rūnaka and Rūnanga of Te Rūnanga o Ngāi Tahu in the rohe. Appendix 6 to this report lists the people I have interviewed either in person or by telephone for the purposes of compiling this report. The process has included:

- Review of progress reports and planning documents relating to the Minister's 2019 recommendations
- Meetings with council planning, science and economics staff
- Discussion with Edward Ellison, the Aukaha Chair by telephone
- Discussions with Otago Regional Councillors at a face-to-face meeting in Dunedin on 18 May 2022, and a further conversation with Edward Ellison at the same meeting
- Further discussion with Otago Regional Councillors by zoom on 25 May 2022

## Council co-operation

In carrying out this investigation, I have had free access to all relevant Council information. I have also had the full co-operation of the Otago Regional Councillors and the staff, and in

particular Sarah Gardner the Council's Chief Executive <sup>2</sup>. I am confident that I have been able to make all the necessary inquiries to enable me to complete this investigation.

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<sup>2</sup> Sarah Gardner has now departed from this role.

# 2019 Investigation of Freshwater Management and Allocation Functions at Otago Regional Council (“2019 Investigation”)

To provide context for this report, I now refer to a brief overview of the report and Minister’s recommendations following the 2019 investigation.

In 2019 I was appointed by the Minister to investigate whether the Council was adequately carrying out its functions under section 30(1) of the RMA in relation to freshwater management and allocation of resources.

The Minister wanted to know if the Council had or would have an RMA-compliant planning and consenting framework in place to process and make decisions on new water permit applications by 1 October 2021 when the Region’s remaining 356 historic deemed permits were due to expire many of which were in the Manuherekia catchment, and the Upper Cardrona and Arrow Rivers.

This investigation focused on the Council’s Regional Plan: Water for Otago (“the Water Plan”) and its associated documents and processes, including the RPS and the Council’s science, plan-making and consenting capacities.

The full report on this investigation is available on the ORC website<sup>3</sup>.

## The Minister’s Recommendations

Following my 2019 report, the Minister made the following recommendations under section 24A of the RMA:

*In line with Professor Skelton’s recommendations, I formally recommend, under section 24A of the RMA, that ORC:*

- 1. take all necessary steps to develop a fit for purpose freshwater management planning regime that gives effect to the relevant national instrument(s) and sets a coherent framework for assessing all water consent applications, including those that are to replace deemed permits.*
- 2. develop and adopt a programme of work to achieve the following:*

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<sup>3</sup> Skelton, Peter (2019) Investigation of Freshwater Management and Allocation Functions at Otago Regional Council - Report to the Minister for the Environment. Wellington: Ministry for the Environment. [section-24a-otago-investigation-report-final-october-2019.pdf \(orc.govt.nz\)](#)

- *by November 2020, a complete review of the current RPS that is publicly notified, with the intention that it be made operative before the review of its LWRP is notified.*
  - *by 31 December 2023, a new LWRP for Otago that includes region-wide objectives, strategic policies, region-wide activity policies, and provisions for each of the Freshwater Management Units, covering all catchments within the region.*
3. *prepare a plan change by 31 March 2020 that will provide an adequate interim planning and consenting framework to manage freshwater up until the time that new discharge and allocation limits are set, in line with the requirements in the National Policy Statement for Freshwater Management*<sup>4</sup>.

It is against these recommendations that this follow-up investigation will assess progress.

Alongside these recommendations the Minister required ORC to provide, under section 27 of the RMA, six monthly reports in relation to the following matters:

- progress made in developing science, planning, consenting, monitoring and enforcement, and land management organisational capability and capacity.
- progress in achieving the above recommendations 1, 2 and 3.
- a summary of freshwater resource consenting activity for the reporting period.

Subsequent to these recommendations the Council requested an extension to the November 2020 deadline to notify a new RPS which was granted, giving a new required notification date of 30 June 2021.

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<sup>4</sup> [letter-to-orc-re-s24a-investigation-from-hon-david-parker-18112019.pdf](#)

# The 2022 Investigation

## Letter from ORC requesting a discussion on extending the notification date of the LWRP

On 28 March 2022, ORC Chair Andrew Noone wrote to the Minister asking him to consider having a discussion with the Council on a longer timeframe for the notification of the LWRP. The reason given in the letter is a quote from a Council resolution:

*“Approves the fifth report to the Minister for the Environment, that reports on progress against the recommendations made in his letter of 19 November 2019; and include a covering letter from the Chair inviting the Minister to consider having a discussion with Council on a longer timeframe with Council to notify the Land and Water Plan, to allow a smoother and stronger plan framework built on an RPS that has been allowed to settle. Given that there may be potential savings in the Annual Plan if ORC was able to extend the timeframe, Council would welcome an indication before the end of May 2022”<sup>5</sup>.*

## The Statutory and Planning Instrument Context for the 2022 investigation

### National Policy Statement for Freshwater Management

The RMA enables the Minister to promulgate National Policy Statements and National Environmental Standards which give direction to councils on the setting of environmental objectives, policies and limits. In 2011, the then Minister established the National Policy Statement for Freshwater Management (“NPS-FM”) which has since been revised three times, with the most recent amendments coming into force in 2020, notably after my 2019 report and the Minister’s recommendations.

The major relevant changes contained in NPS-FM 2020 are:

- Te Mana o Te Wai is the fundamental concept of the NPS-FM that is relevant to all freshwater management decisions. This includes a hierarchy of decision-making that prioritises:
  - a) *first, the health and well-being of water bodies and freshwater ecosystems*
  - b) *second, the health needs of people (such as drinking water)*
  - c) *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future*<sup>6</sup>.

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<sup>5</sup> See Appendix 2 for full letter.

<sup>6</sup> National Policy Statement for Freshwater Management 2020 ([environment.govt.nz](https://environment.govt.nz))

- The introduction of the Freshwater Planning Process (“FPP”) which must be followed by regional councils when preparing, changing, or varying regional policy statements and regional plans that give effect to NPS-FM (discussed below).

A summary of the NPS-FM 2020 is attached as Appendix 7.

An exposure draft of further proposed changes to the NPS-FM 2020 was released on 31 May 2022. This is not relevant for this report, but I note any changes to the NPS-FM 2020 will need to be considered by the Council once completed.

## **The Freshwater Planning Process**

The FPP is the new plan-making process that regional councils must use for proposed freshwater provisions in Regional Policy Statements and Regional Plans (excluding Regional Coastal Plans).

This process must be used for proposed Regional Policy Statements or Regional Plans that give effect to the NPS-FM 2020 or otherwise relate to freshwater. If only part of the planning instrument relates to freshwater, the council must use the FPP for that part, and use the Schedule 1 process for the other parts.

The FPP was introduced to enable regional councils to make changes to their freshwater plans in a robust but more efficient way than the current RMA Schedule 1 planning process provides for.

The FPP intends to streamline decisions on freshwater plans by:

- requiring regional councils to notify freshwater plans that give effect to the NPS-FM by 31 December 2024 and make final decisions within two years of notification.
- establishing independent freshwater hearings panels with enhanced hearings powers, made up of expert freshwater commissioners, council and tangata whenua nominees.
- providing for submitter appeal rights to the Environment Court only in certain circumstances.

There is detailed guidance on the FPP available on the Ministry for the Environment website <sup>7</sup>.

## **Deemed Permits**

Deemed permits and their expiry on 1 October 2021 were a significant driver behind the Minister’s direction to carry out the 2019 investigation. The impact and history behind deemed

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<sup>7</sup> Essential Freshwater: A new Freshwater Planning Process factsheet

<https://environment.govt.nz/publications/essential-freshwater-a-new-freshwater-planning-process-factsheet/>

permits were examined in-depth in Appendix 5 of the 2019 report and do not require further elaboration here.

## Operative Otago RPS

The Operative Otago RPS has had several provisions finalised since 2019 but there have been no amendments of relevance to this follow-up report.

## The Regional Plan: Water

The Regional Plan: Water (“the Water plan”) is discussed on pages 21 and 22 of my 2019 report. Since then, there have been five amendments which are briefly summarised below but do not (with the exception of Plan Change 7 discussed later) require detailed examination for the purpose of this report:

**Table 1: Changes and Amendments to the Regional Plan: Water since 2019**

Plan Change 6AA	Plan Change 6AA postpones the date when certain rules controlling discharge contaminant concentration and rules on nitrogen leaching come into force from 1 April 2020 to 1 April 2026.
Amendment 3 (NPS Freshwater Management 2020) to the Regional Plan: Water	<p>Clause 1.7 of the NPS-FM 2020 directs regional councils to amend regional plans by inserting specific provisions without the need for an RMA Schedule 1 process. The specific provisions are set out in NPS-FM 2020:</p> <ul style="list-style-type: none"> <li>• Clause 3.22(1) (Natural Inland Wetlands)</li> <li>• Clause 3.24(1) (Rivers)</li> <li>• Clause 3.26(1)(2) (Fish Passage)</li> </ul> <p>This amendment inserts these provisions.</p>
Plan Change 5A (Lindis: Integrated water management)	<p>Plan Change 5A (Lindis: Integrated water management) introduced:</p> <ul style="list-style-type: none"> <li>• Minimum flows and allocation limits for the Lindis River and connected Lindis Alluvial Ribbon Aquifer; and</li> <li>• Maximum allocation limits for other aquifers in the Bendigo-Tarras Basin.</li> </ul>
Water Permits Plan Change (Plan Change 7) to the Regional Plan: Water	Adds an objective, policies and rules that manage the replacement of expiring deemed permits and water permits. Discussed below.
Plan Change 8 (Discharge Management) to the Regional Plan: Water	Plan Change 8 (Discharge management) was made partially operative on 4 June 2022. It addresses specific activities known to be, or likely to be contributing to water quality issues in parts of Otago, and gaps in the rules and policy framework for managing contaminant discharges to water. The

	provisions made operative are the rural discharge provisions set out in Parts A – F of the Plan Change, with the Environment Court yet to release decisions on Part G and Part H of the plan change.
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## Water Permits Plan Change (Plan Change 7)

ORC notified the Water Permits Plan Change (“Plan Change 7”) in March 2020. The purpose of Plan Change 7 was to introduce a planning framework to manage the significant number of deemed permits expiring in 2021 before a new LWRP could be put in place. This was to prevent these permits from being granted for long durations under the existing framework that was not “fit for the purpose”<sup>8</sup>. The plan change was intended to be a first, and interim, step in the transition from the Regional Plan: Water for Otago to a new LWRP and a direct response to the Minister’s third recommendation.

The approach proposed in Plan Change 7 was to limit the duration of new resource consents for water takes to six years until a new LWRP was finalised. Acknowledging the difficulty short duration water take consents could impose on water users, the plan also sought to introduce an ‘easy’ pathway for existing permit holders to gain a shorter-term consent via a controlled activity process.

Plan Change 7 was notified in March 2020 and during the submission period the plan change was “called in” by the Minister as a proposal of national significance under part 6AA of the RMA. Following submissions, Plan Change 7 was referred directly to the Environment Court.

Between March and June 2021, the Environment Court held a hearing into the provisions of Plan Change 7 and matters raised in submissions. Decisions on the Plan Change were released in October and November 2021.

The Environment Court approved policies seeking either to ‘only grant’ or to ‘avoid’ (as the case may be) consents exceeding six years duration with a very limited exception for hydroelectric generation.

The Court made specific mention of the implications for those seeking to replace existing deemed permits:

*We acknowledge that, as a result of the changes to the plan change made by this decision, most, if not all, of the hundreds of permits holders who have already applied for resource consent in respect of expiring permits, will need to amend their applications if they wish to have the security of the applications being granted as a controlled activity*<sup>9</sup>.

<sup>8</sup> Skelton, Peter (2019) Investigation of Freshwater Management and Allocation Functions at Otago Regional Council - Report to the Minister for the Environment. Wellington: Ministry for the Environment. [section-24a-otago-investigation-report-final-october-2019.pdf \(orc.govt.nz\)](https://environmentcourt.govt.nz/assets/Documents/Decisions/2021-10-22-ORC-PC7-2021-NZEnvC-164-Interim-Decision.pdf)

<sup>9</sup> 2021-10-22 ORC Plan Change 7 – [2021] NZEnvC 164 – Interim Decision: <https://environmentcourt.govt.nz/assets/Documents/Decisions/2021-10-22-ORC-PC7-2021-NZEnvC-164-Interim-Decision.pdf>



There were no appeals from the Environment Court's decision and Plan Change 7 was made operative on 5 March 2022.

## Proposed Regional Policy Statement

The proposed Regional Policy Statement (pRPS) was notified on 26 June 2021. The pRPS was notified in its entirety as a freshwater planning instrument, and the council included the following statement with its notification:

### *Freshwater Planning Instrument*

*The Otago Regional Council is satisfied that the whole of the PORPS 2021 is a freshwater planning instrument and therefore will be subject to the freshwater planning process set out in Section 80A of the Resource Management Act 1991.*

*The PORPS is considered to meet the requirements of Section 80A(2)(a) and 80A(2)(b) of the Resource Management Act 1991 because the Chapters of the PORPS 2021 are either giving effect to any national policy statement for freshwater management or relate to freshwater.*

*The single purpose of the Resource Management Act 1991 is to promote the sustainable management of natural and physical resources. That purpose can only be achieved through an integrated approach to the task of managing those resources. The PORPS 2021 has been prepared to achieve that outcome. To not have it considered a freshwater planning instrument would be to defeat that purpose<sup>10</sup>.*

As a Freshwater Planning Instrument, the pRPS is now being considered by a Freshwater Hearings Panel ("the Panel") which has been appointed by the Chief Freshwater Commissioner (a role I held at the time of appointment). The panel is required to complete the hearings process within 2 years.

### *High Court proceedings on the pRPS*

On 3 September 2021 ORC began High Court proceedings seeking declarations that the pRPS is a freshwater planning instrument as defined in the RMA and that it can continue, in its entirety, under FPP. If the Court finds the pRPS is not a freshwater planning instrument ORC seeks in the alternative, declarations that the pRPS is split into freshwater and non-freshwater parts and no additional notification is required for either part.

The central question in these proceedings is whether or not the pRPS, in its entirety, is a freshwater planning instrument as per section 80A of the RMA.

A hearing before Justice Nisbett was held on February 8 and 9 2022. The High Court has advised the Panel considering the pRPS that Justice Nisbett's judgment is unlikely to be available before the end of June 2022.

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<sup>10</sup> Public notification of the Proposed Otago Regional Policy Statement, 26 June 2021: [porps-2021-public-notice.pdf \(orc.govt.nz\)](https://www.orc.govt.nz/porps-2021-public-notice.pdf)

### *Progress of the Freshwater Hearings Panel in hearing the pRPS*

All submissions on the pRPS closed on 1 December 2021 and all documents relevant to the process have now passed to the Panel who will hear the pRPS through the FPP process.

To address the complications caused by the High Court proceedings discussed above, the Panel requested feedback from all parties on how to progress the hearing prior to a decision from the High Court <sup>11</sup>. Several options were considered including identifying chapters or provisions that are unquestionably freshwater issues and proceeding to conduct hearings on those matters.

After considering the views of parties the Panel decided to await the decision of the High Court on the status of the pRPS before commencing any part of the hearing <sup>12</sup>. This delay will have timeframe implications for a decision on the pRPS, which is in turn relevant for the notification of the LWRP and is considered below.

### *Submissions and response on use of the Freshwater Planning Process*

A number of submissions on the RPS challenged the use of the FPP process, suggesting that not all of the RPS “relates to freshwater” <sup>13</sup> and should be split into parts, with those non-freshwater parts going through the Schedule 1 process. The s42A staff report <sup>14</sup> notes the High Court proceedings on this matter and recommends the RPS hearing be conducted in accordance with the Judgement of the High Court when given.

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<sup>11</sup> Second minute and directions of hearings panel into Otago Regional Council Proposed Regional Policy Statement 18 March 2022: [minute-2-and-directions-18-march-2022.pdf \(orc.govt.nz\)](#)

<sup>12</sup> Third minute and directions of hearings panel into Otago Regional Council Proposed Regional Policy Statement 14 April 2022: [third-minute-and-directions-14-april-2022.pdf \(orc.govt.nz\)](#)

<sup>13</sup> Resource Management Act 1991 No 69 (as at 12 April 2022), Public Act 80A Freshwater planning process – New Zealand Legislation

<sup>14</sup> [00-proposed-amendments-porps.pdf \(orc.govt.nz\)](#)

# Conversations with Te Rūnanga o Ngāi Tahu

In early May 2022, I had a telephone conversation with Edward Ellison, Chairman of Aukaha and Policy Committee Member at ORC. He indicated to me that the rūnaka and rūnanga did not favour any extension of time for notifying the LWRP.

Mr Ellison was present at the extraordinary meeting held with Council on 18 May 2022 where he again advised that he had sought the views of the relevant rūnaka and rūnanga (via Aukaha). He said that they do not believe there is a need for extension to the current 31 December 2023 timeframe to notify a new LWRP, and indeed oppose it.

No conversation was held with a representative from Te Ao Marama Incorporated.

# Discussion, Findings and Recommendations

## Discussion

*Otago Regional Council: Fifth Report: Report under Section 27 of the Resource Management Act 1991*

In ORC's fifth report, it was said that the timelines set by the Minister are generally on track. The first stage of community engagement on the LWRP has been completed, with the next step being the preparation of technical analysis by staff so that the next set of community engagements can be undertaken in July 2022.

In this report, ORC also stated that *"there is some risk related to the RPS process and the Declaratory Judgement in particular and the flow-on impacts that will have to the LWRP"*<sup>15</sup>.

### *Councillors Views*

When I asked the Councillors at the 18 May 2022 meeting what extension of time for notification of the LWRP was being sought, Chair Andrew Noone proposed a 3-to-6-month extension. Some other Councillors agreed with this proposal, but others did not support any extension of the notification timeframe.

A mixture of reasons were provided by Councillors supporting an extension. These were:

- Rate increases if the current timeframe remained.
- Impacts of COVID-19, such as the number of people who were unwell and the fact that the Government has allowed other forms of consultation faced with impacts of COVID-19 to have extended timeframes.
- To improve the final output of the proposed LWRP.
- To ensure that staff health and wellbeing is prioritised, and staff burnout does not occur just to meet the timeframe.
- To increase the amount of consultation that is undertaken on the LWRP.
- The decisions regarding the High Court process and the proposed RPS are yet to be released and are expected in June.
- To provide a safety net of time in case the Council does not reach the notification period within the original timeframe.
- ORC is currently in the process of implementing the Environmental Implementation Plan which it was said supports the building of relationships around LWRP futures.

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<sup>15</sup> See Appendix 1.

### *Feedback from Staff on the impacts of a timeframe extension*

During my investigation I was told by staff that they were not informed of the request by Council to have a discussion with the Minister about extending the timeframe, nor was advice from staff sought on this matter.

When I asked staff about working to the current timeframe, they advised:

- The timeframe is tight however they are still on target to meet it.
- The suggested timeframe for extension (3-to-6 months) had not been discussed with staff.
- They advised that nationally there is a 20% gap between staff and local government positions available. Consequently, it is important that ORC ensures staff continuity.

They also said that an extension to the current timeframe itself could lead to burnout. However, the outgoing Chief Executive Sarah Gardner and other senior ORC staff assured me they are on track to notify the LWRP, and they have confidence in the resilience of their teams. Staff also advised me that funding will be available in the next financial year for the continuation of this programme.

### *Relationship between the operative RPS, pRPS and development of the new LWRP, including an assessment of any risks associated with notifying the LWRP before the RPS is fully operative*

The timing and co-dependency of the various existing and proposed plans and potential short term resources consents for deemed permit replacement does raise some risks that need to be addressed.

#### Deemed permit replacement resource consents

Plan Change 7 was made operative on 5 March 2022 and contains a clear 6-year duration policy for resource consents granted as replacements for existing deemed permits <sup>16</sup>.

My understanding is that this duration policy was agreed to align with the expectation that a new LWRP would be notified by December 2023, and thus within the 6-year duration a new plan would become operative against which any replacement consents would be considered.

ORC's resource consenting team informed me they expect to have most of the replacement consents processed by the end of 2022. Given the directive duration policy referred to above, one can conclude a number of these deemed permit replacement consents will expire, and thus be seeking re-consenting before the end of 2028, noting it is not uncommon for applicants to apply for replacement consents well in advance of existing consents expiry (and at least 6 months is required for s124 continuation).

Without an extension the LWRP would be notified in 2023. Assuming two years for the FPP process with no appeals ORC would have an operative plan by the end of 2025 / early 2026 <sup>17</sup>.

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<sup>16</sup> [plan-change-7-as-amended-by-the-environment-court-clean-version.pdf \(orc.govt.nz\)](#)

<sup>17</sup> FPP guidance and RMA

If a 6-month extension to the LWRP notification date was granted, then this would have implications for the replacement consents already granted for a maximum of 6 years under Plan Change 7. This is assuming that the LWRP will take two years and have no appeals.

In addition, this also suggests that there is a risk that if the LWRP notification were to be delayed a situation could occur where both an operative and a proposed regional plan are required to be considered when assessing applications to replace the deemed permits. This could undermine the hard work done to get Plan Change 7 in place to avoid consents needing to be considered under the currently operative water plan.

#### *Final development and hearing of the LWRP without an operative RPS*

On the current timeframe the LWRP will need to be moved through pre-hearing consultation by mid-2023 to meet the December deadline. Given the High Court delay the pRPS is not likely to be made operative, assuming no appeals, until about the same time as the LWRP pre-hearing consultation is taking place.

If there are any further delays (appeals or implications from the High Court decision for example) then the LWRP consultation, and potentially the hearing, could begin before the pRPS is operative. This would not be ideal given that the LWRP would be required to give effect to any regional policy statement and have regard to any proposed regional policy statement, particularly noting the deficiencies of the currently operative RPS set out in my 2019 investigation. This is another reason for ensuring that the pRPS is notified and made operative as soon as possible.

## Findings

### *Otago Regional Council: Fifth Report: Report under Section 27 of the Resource Management Act 1991*

After talking with staff and Councillors at ORC, I concur with the conclusions set out in the fifth report. The staff I talked to during my investigation all said that their work programmes were on track to meet the timeframes set by the Minister.

As the fifth report says, there is the potential for the process of the RPS to have flow-on effects for the LWRP. This matter was raised by several staff and Councillors during my investigation, however staff assured me that whilst the timeframes are tight, they are currently on track to meet them.

If the RPS process raises further complications there may be merit in considering an extension, and I expect that would become clearer in early 2023.

#### *Councillors and Staff Views*

I now refer to the reasons given by some Councillors as to why an extension to the timeframe has been sought. First, I acknowledge that rate increases are a significant issue, but a 3-to-6-month extension to the LWRP would at best delay a small part of this, and further consultation could actually result in more, not less, overall cost.

While I accept more consultation could be desirable, I have found nothing to suggest the consultation to date and the currently agreed plan for further consultation is inadequate. There was no indication from Councillors or staff that they are at risk of failing to carry out the consultation requirements of the RMA or NPS-FM 2020. Furthermore, staff told me that they are undertaking further engagement with stakeholders in the community throughout their work programmes.

Regarding extending the timeframe to improve the final output of the LWRP, all Councils have to make a call about when policies and plans are sufficiently complete to fulfil statutory and community expectations. Staff assured me they can meet the timeframes set by the Minister, and are doing so within their science, planning and economics work programmes whilst simultaneously meeting their statutory expectations. If ORC wishes to alter the LWRP in the future, it can always do a plan change at any time.

When I raised the topic of staff health and wellbeing being prioritised as a reason given by Councillors to extend the timeframe, staff were surprised as they told me they had not heard this from Councillors before. They also said that an extension to the timeframe could lead to burnout.

The delays to the RPS caused by the High Court declaratory proceedings may present a legitimate need for extension. The time between an expected decision on the RPS and notifying the LWRP, which will need to give effect to the RPS, is now quite tight. If the RPS were to be delayed any further, or, if there are major changes to the RPS through the FPP, or, if there are significant appeals on matters relevant to the LWRP, a delay to the December 2023 notification may be appropriate. However, I expect this would become clearer in early 2023.

Councillors suggested an extension to the timeframe could provide a safety buffer in case the original 31 December 2023 for notification was unable to be met. As both staff and Councillors have indicated that the Council is on track to notify by the due date. This reason for an extension at this time is untenable.

Staff told me that the Environmental Implementation Plan is a separate piece of work and will continue to go ahead simultaneously with the LWRP.

Although a resolution was made by the Council to invite *“the Minister to consider having a discussion with Council on a longer timeframe with Council to notify the Land and Water Plan”*<sup>18</sup>, as previously mentioned, I found out during my investigation that not all Councillors were in favour of a timeframe extension. Furthermore, those who were in favour of an extension had not prepared a cohesive view prior to my investigation as to a duration or reasons for an extension. Councillor Roberston said that Chair Noone wanted the Councillors to present their individual views. However, the suggestion of a 3-to-6-month extension was offered by Chair Noone, and those that were in favour of an extension went along with this timeframe.

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<sup>18</sup> See Appendix 1.

## Progress Assessment against the Minister's 2019 Recommendations

### Recommendation 1: Develop a fit for purpose freshwater management regime

*Take all necessary steps to develop a fit for purpose freshwater management planning regime that gives effect to the relevant national instrument and sets a coherent framework for assessing all water consent applications, including those that are to replace deemed permits.*

Recommendation 1 is a catch all recommendation requiring an integrated and coherent freshwater planning framework that gives effect to NPS-FM 2020. The major milestones in achieving recommendation 1 are the interim consenting framework (Plan Change 7), the pRPS, and, the LWRP which are individually captured in the discussion on the succeeding recommendations. There are also a number of more specific plan changes at various stages of development that complete ORC's proposed 'fit for purpose' freshwater management planning regime. In the latest progress report, against this recommendation, the Council notes:

*"The hearing for the rural provisions of Plan Change 8 occurred in November 2021, and a decision on the provisions was released at the end of January 2022. The appeal period has just passed, with no appeals received however staff have identified a minor error in the decision and are waiting on the decision to be reissued. Once that happens, staff will prepare a paper to Council, to approve the Plan Change. The decision on Plan Change 1: Dust Suppressants, was released in March 2022, after the Environment Court considered the mediation agreement and evidence, without a formal hearing. These provisions are now in the appeal phase and subject to no appeals being lodged, will be taken to Council for approval in due course. Mediation on the urban provisions of PC8 occurred in November 2021, and while several matters were agreed, there remained outstanding issues around the proposed rules to manage residential earthworks. The PC8 Urban Provisions are now set down for a contested hearing late in March 2022"<sup>19</sup>.*

I note since the fifth report Plan Change 8 has become operative.

I also note here the work the Consenting Team has been doing to assist those applicants seeking to replace deemed permits. The imposition of a hard maximum 6-year duration for water takes has a considerable impact on the community and I understand ORC has done an excellent job working with its community and the relevant planning consultants to make this process as user friendly as possible.

Overall, the Council appears on track to meet this recommendation at this time. The true test of whether the regime is in fact 'fit for purpose' will come in the detail of the planning instruments yet to be finalised. The pRPS and LWRP will need to contain robust provisions to phase out all existing over-allocation, but as those provisions are not yet finalised, I cannot make any further assessment.

### Recommendation 2: Notify a new RPS 2020 (2021) and LWRP by 2023

*Develop and adopt a programme of work to achieve the following:*

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<sup>19</sup> As in Appendix 1.



- *by November 2020, a complete review of the current RPS that is publicly notified, with the intention that it be made operative before the review of its LWRP is notified*
- *by 31 December 2023, a new LWRP for Otago that includes region-wide objectives, strategic policies, region-wide activity policies, and provisions for each of the Freshwater Management Units, covering all the catchments within the region.*

### *Current and Proposed Regional Policy Statements*

A programme of work has been adopted to achieve the complete review of the RPS. As previously mentioned in this report, the Council requested an extension to the November 2020 deadline, and this was granted, giving a new notification date of 30 June 2021. A complete review of the RPS was publicly notified by the end of June 2021 meaning ORC has met this recommendation.

The RPS is not yet fully operative as it has been held up in High Court proceedings and the decision of the Judge is currently reserved <sup>20</sup>. If the High Court does not agree that the RPS is a freshwater planning instrument in its entirety, the timeframe for progressing the pRPS may be impacted <sup>21</sup>.

The pRPS is also set down to be heard by the Freshwater Hearings Panel, with a commencement date of 19 September 2022 <sup>22</sup>.

Port Otago Limited lodged an appeal with the Court of Appeal relating to the partially operative RPS. The Court of Appeal dismissed the appeal, and Port Otago Limited have since requested leave to appeal to the Supreme Court. ORC's fifth report states, "*no decision on that leave application has yet been made*".

### *Land and Water Regional Plan*

A programme of work is underway to ensure the notification of a new LWRP by 31 December 2023. The first round of consultation has been completed, with the second scheduled to be undertaken in mid to late 2022 <sup>23</sup>.

The science approach for the LWRP was adopted by Council in June 2021 and the work programme to support this is well underway. The economics work programme has three stakeholder workstreams to develop robust knowledge about the Otago region and will also be undertaking the development of a Regional Economic Profile for Freshwater. The contract for delineating Outstanding Water Bodies was about to be awarded at the time of receiving ORC's fifth report.

Following conversations with ORC staff and Councillors, I can confirm that the staff are on track to notify the LWRP by the currently due date.

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<sup>20</sup> [Proposed Regional Policy Statement 2021 \("PORPS"\) – High Court Declaratory Proceedings \(orc.govt.nz\)](#)

<sup>21</sup> See Appendix 1.

<sup>22</sup> [proposed-otago-rps-panel-minute-4.pdf \(orc.govt.nz\)](#)

<sup>23</sup> See Appendix 1.

### Recommendation 3: Put in place an interim framework

*Prepare a plan change by 31 March 2020 that will provide an adequate interim planning and consenting framework to manage freshwater up until the time that new discharge and allocation limits are set, in line with the requirements in the National Policy Statement for Freshwater Management.*

A plan change was notified in March 2020 in direct response to this recommendation<sup>24</sup>. As previously mentioned in this report, the Water Permits Plan Change (Plan Change 7) had the purpose of introducing a planning framework which would manage the deemed permits expiring in 2021 before a new LWRP could be put in place. Plan Change 7 was made operative on 5 March 2022.

In its fifth progress report, ORC said that a staging plan has been set out to process resource consent applications covered under Plan Change 7, which has been agreed upon with consultants and applicants. ORC also said that staff are working through permits in one part of the region at a time to enable the water use analyses to be undertaken for permits in a similar area. The report further states that a project team has been set up to work through consents relating to the Manuharekia catchment.

Staff have advised me that Plan Change 7 is working as intended, and has made implementation easier. A working group has developed practice notes on how Plan Change 7 is to be applied which has been shared with consultants and stakeholders to ensure clear interpretation. Staff said the feedback they have received from consultants and stakeholders is that they are happy with progress.

Some Councillors raised concerns about the costs to their constituents of the deemed permit replacement consents due to the short duration of these consents under Plan Change 7. Staff advised that they are applying standard charges established under the RMA. They also told me that this has been the only issue raised by consultants and stakeholders. These costs are out of scope for my investigation.

### Reporting Requirements

*Provide six-monthly reports in relation to the following matters:*

- *progress made in developing science, planning, consenting, monitoring and enforcement, and land management organisational capability and capacity*
- *progress in achieving the above recommendations 1, 2 and 3*
- *a summary of freshwater resource consenting activity for the reporting period*

Pursuant to Section 27 of the RMA, ORC has provided five six-monthly reports on the aforementioned matters to date, with the most recent being sent to the Minister on 28 March 2022. The following is a summary of the fifth report<sup>25</sup> as well as what I established throughout my investigation.

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<sup>24</sup> [Plan Change 7 \(Water Permits\) to the Regional Plan: Water \(orc.govt.nz\)](#)

<sup>25</sup> See Appendix 1 for full report.

*Progress made in developing science, planning, consenting, monitoring and enforcement, and land management organisational capability and capacity*

Science: The science team are largely in the implementation phase, and have recruited a new science manager. There are 2 science positions yet to be filled but ORC is using consultants in the interim. The team has no shortage of enthusiasm or effort. It also noted that while the timeframes are tight, they are still achievable.

Planning: Te Ao Marama Incorporated has requested a seat on ORC's LWRP Governance Group. This request is currently under consideration. The group is co-chaired by Chair Noone and Ngāi Tahu kaumatua Edward Ellison. Councillor Robertson said that at the most recent LWRP Governance Group meeting, a robust presentation was given by staff who said they are on track throughout all parameters of the work programme.

One senior position on the team has been filled but other positions remain vacant. Staff and Councillors both commented that they are happy with the degree of resilience built into their work programme even though there are vacancies. One example of this is that ORC is using consultants to support the Land and Freshwater Team to implement Plan Change 8 as they are facing resourcing pressures there.

Consenting: A lot of work was put in to get the team prepared for Plan Change 7 consents, including resources that have been developed for external use. It is anticipated that the bulk of deemed permit consents should be processed by the end of the year. The team are processing consents with a 6-year duration and developing a plan as to how they will process them in the future under the new LWRP. The overflow of consent processing is undertaken by contractors.

Monitoring and Enforcement: There has been an increase in staff turnover and positions available, so the team is recruiting. It has expanded its undertaking of compliance, monitoring and enforcement activities, including its environmental monitoring system which has seen an increase of 9.4% in compliance inspections. The economics team is working with the Ministry for Primary Industries to create a farm monitoring programme collating biophysical, financial and nutrient loss data.

Land Management Organisational Capability and Capacity: There has been an increase in staff, including 1 role that is funded through the Jobs for Nature funding. Further positions in the team are being recruited for. A draft framework for delivery via Catchment Action Plans was endorsed by Councillors in December 2021. The Catchment Action Plans are intended to align with Freshwater Management Units (FMUs), and to give effect to the action plans required by the NPS-FM 2020.

I am pleased to report significant improvements have been made since 2019. The staff appear to be a high functioning team with a wide range of knowledge, skills and capacity to deliver on your recommendations, and the ultimate outcome of improved freshwater management in Otago.

*A summary of freshwater resource consenting activity for the reporting period*

In its fifth report, ORC has provided a detailed summary of freshwater resource consenting activity for the reporting period <sup>26</sup>. ORC has been providing regular updates to the Ministry for the Environment on freshwater consents.

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<sup>26</sup> As in Appendix 1.

## An additional matter

### *Councillors Conduct towards Staff*

I wish to discuss the conduct of Councillors towards staff as it has the potential to affect the notification date of 31 December 2023.

Key staff noted that they have had difficulty in performing their duties due to the conduct of Councillors. Staff told me that from time to time Councillors had delayed approvals and decision-making. Examples given included Councillors intentionally trying to “trip staff up”, asking for further information or the same information several times within a month solely to delay decision-making, and, an unwillingness to accept answers Councillors did not want to hear. Staff noted this was impacting their ability to give free and frank advice.

These issues were demonstrated at the 25 August 2021 Council meeting where Council was presented with a recommendation to ‘note’ proposed minimum flows for the Manuherekia catchment. Staff referenced 10 scientific studies specifically undertaken to inform this recommendation as well as consideration of a range of planning matters <sup>27</sup>.

The Council did not ‘note’ these minimum flows, and instead requested that further science be developed. While it is appropriate for Councillors to question staff recommendations, it is hard to accept, in the light of the information provided by staff, that this decision was solely due to concerns around the science as recorded in the Council’s Agenda and Minutes <sup>28</sup>.

I raised these matters with the Councillors on 25 May 2022, and Councillor Michael Laws stated that he and his colleagues have never sought to delay decisions. He further said that the Council decision pertaining to the refusal to ‘note’ the recommendation for a minimum flow regime in the Manuherekia catchment was made because Council was made aware that the relevant Technical Advisory Group had not completed its work programme. Therefore, a decision backed with science could not be made. He told me that staff advice is professional and well-informed, however not always complete, meaning it is their responsibility as Councillors to seek more information so that their decisions are defensible in every quarter. Having regard to the comprehensive investigation made by staff in relation to the Manuherekia catchment minimum flow issue I find it difficult to accept Councillor Laws’ explanation. I assured the Councillors that I asked the staff I talked to about the defensibility of their advice for all purposes, and was assured that they were satisfied that their advice was robust and defensible.

An unwillingness to accept staff advice may impact on how information is delivered to Council in the future, including in the matter of the new LWRP. If staff are repeatedly having the robustness of their advice called into question, the Council may find it difficult to retain staff or receive free and frank advice. Some staff advised me that they have difficulty working with Councillors, and are frustrated with the conduct of Councillors towards them. Staff further expressed concern about potential staff losses due to this conduct, which could slow down the progress on the new LWRP.

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<sup>27</sup> Otago Regional Council: Council meeting and Agenda – 25 August 2021

<sup>28</sup> Explanation to accompany Notice of Motion, page 113, Otago Regional Council: Council meeting and Agenda – 25 August 2021

I have a real concern that if Councillors conduct towards staff is not improved, the Council risks losing staff and undoing the capability and capacity progress that has been achieved to date.

## Recommendations

In the light of the discussions and conclusions reached in my interim report and now in this final report, I make the following recommendations to the Minister for the Environment:

1. I confirm the recommendation made in my interim report to not grant an extension to the timeframe for public notification of the LWRP at this time.
2. That the Minister retains the recommendations and timeframes set by him for Otago Regional Council in 2019 as they are still appropriate.

Dated at Christchurch this 30 June 2022

A handwritten signature in black ink, appearing to read 'Peter Skelton', written in a cursive style.

Honorary Professor Peter Skelton CNZM; D.Nat.Res (Hon); LLB; FEIANZ

# Appendix 1

## Otago Regional Council's Fifth Progress Report



Our Ref: A1620252

28 March 2022

Minister for the Environment  
Private Bag 18041  
Parliament Buildings  
Wellington 6160  
BY EMAIL: [D.Parker@ministers.govt.nz](mailto:D.Parker@ministers.govt.nz)

Dear Minister

### Report under Section 27 of the Resource Management Act 1991

In accordance with your letter of 18 November 2019 and following on from our first two reports in 2020, and two reports in 2021 (March and October), the following comprises the Otago Regional Council's fifth report, in accordance with Section 27 of the Resource Management Act 1991 (the Act) and the recommendations pursuant to Section 24 of the Act.

This report will address the following:

- *Progress made in developing science, planning, consenting, monitoring and enforcement, and land management organisational capability and capacity; and*
- *Progress in achieving the [above] recommendations 1, 2 and 3 (copied below for ease of reference):*
  1. *Take all necessary steps to develop a fit for purpose freshwater management planning regime that gives effect to the relevant national instruments and sets a coherent framework for assessing all water consent applications, including those that are to replace any deemed permits;*
  2. *Develop and adopt a programme of work to achieve the following*
    - i. *By November 2020<sup>1</sup>, a complete review of the current RPS that is publicly notified, with the intention that it is made operative before the review of its LWRP is notified;*
    - ii. *By 31 December 2023, a new LWRP for Otago that includes region-wide objectives, strategic policies, region-wide activity policies, and provisions for each of the Freshwater Management Units, covering all catchments within the region.*
  3. *Prepare a Plan Change by 31 March 2020 that will provide an adequate interim planning and consenting framework to manage freshwater up until the time that new discharge and allocation limits are set, in line with the requirements in the National Policy Statement for Freshwater Management; and;*
- *A summary of freshwater resource consenting activity for the reporting period.*

<sup>1</sup> Please note an extension of this date to 30 June 2021 as per your letter to ORC of 11 September 2020.

*For our future*

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**Progress Made in Developing Science, Planning, Consenting, Monitoring and Enforcement, and Land Management Organisational Capability and Capacity**

The following table outlines the particular improvements in each of the areas specifically identified in your report.

Area	What we advised in October 2021	Latest Update
Science	<p>The Science Team is in place and developing and implementing programmes for biodiversity, land and water. An experienced team of mentors have also been engaged to support the Science Team deliver the programme of work for the new Land and Water Plan.</p> <p>The Manager Science position is vacant and under recruitment. Two vacancies in the science team continue to prove hard to fill in a competitive market. In these circumstances ORC is reliant on consultants to carry out work.</p> <p>A new team leader role in the Environmental Monitoring Team is being recruited.</p> <p>In May 2021 ORC completed the move from Hilltop to Aquarius, our new Environmental Monitoring System. Aquarius is now providing greater quality assurance of environmental data. Focus is now on developing a web interface to provide enhanced access to environmental water data for customers, stakeholders and the public.</p>	<p>The Science Team is in place and developing and implementing programmes for biodiversity, land and water. Most programmes are now in an implementation phase.</p> <p>The Manager Science position has been filled. Two vacancies in the science team continue to prove hard to fill in a competitive market. In these circumstances ORC is reliant on consultants to carry out work.</p> <p>A new team leader role in the Environmental Monitoring (EM) Team has been recruited. Further resources will be established in the Environmental Monitoring team in the first half of 2022 to support the growing work programme. The EM team work closely with the Science team and are responsible for the State of the Environment monitoring programme. Their work programme will also be critical to the implementation of the NPSFM, including through the increased monitoring requirements.</p>
Planning	<p>A full governance model for the delivery of the new Land and Water Plan is now in place including project management and engagement expertise to support the delivery team. The governance arrangements also provide for partnership with Ngai Tahu at every level of decision making. The Land and Water Regional Plan Governance Group is co-chaired by ORC's Chairman Andrew Noone, and Ngai Tahu kaumatua Edward Ellison. Membership also includes Hoani Langsbury for Ngai Tahu, and Councillor Gretchen Robertson. In addition, other councillors and Ngai Tahu representatives attend meetings to provide additional input on specific FMU's as required.</p>	<p>The Land and Water Regional Plan Governance Group are continuing to meet. Recently a request was made by Te Ao Marama Inc to have a seat on the Governance Group and that request is under consideration.</p> <p>One of the Senior vacancies in the Land and Freshwater team has been filled, however we have been unable to fill the urban vacancy and the second Land and Freshwater vacancy.</p> <p>The Land and Freshwater team are continuing to be involved in work on implementing Plan Change 8, and in particular the Rural Provisions which are to be made operational in March or April this year. This has put some</p>

	<p>ORC's Long-Term Plan provides for 3 fixed term (3 year) roles in the Land and Freshwater team. All three of these roles have been filled with a range of graduate planners and planners, with commencement dates ranging from September through November 2021.</p> <p>There are also two senior vacancies in the Land and Freshwater team and one vacancy in the urban team, which are all being recruited.</p> <p>Members of the Land and Freshwater team are continuing to be involved in work on the implementation of Plan Change 8 provisions and supporting the Essential Freshwater package.</p>	<p>resourcing pressure on the team which is being alleviated through the use of consultants.</p> <p>The development of the RPS has also been heavily reliant on the use of consultants.</p> <p>The timeline for the RPS is subject to the current High Court declaratory proceedings. The High Court have advised that it will be no sooner than July before a decision is issued, and the hearings on the proposed RPS will have commenced by that stage. If the Declaratory Judgement does not consider the pRPS a freshwater instrument in its entirety, there will be implications in terms of when the RPS will be operative. This in turn impacts the proposed LWRP.</p>
Consenting	<p>Staffing levels remain in line with those indicated in the previous report and support is continued to be provided by contractors for over-flow processing. An additional FTE is now budgeted for the next financial year at the Principal level to support the wider team.</p> <p>Work on the Manuharekia consents has continued by the project team set up to process the permits. These applications are 'on hold', at the request of the consent holders, waiting for a decision on Plan Change 7. The applications are being processed by an external consultant, with internal project leadership.</p> <p>Applications for permits relating to deemed and water permits that expire on 1 October have continued to be lodged. Most of these are 'on hold' pending a decision on Plan Change 7. This will be a bubble of work for the team when a decision is released, but it is manageable with the resources in place. Staff are in regular communication with these applicants. At the time of writing 9 days before 1 October, applications were still being submitted.</p> <p>Preparation work is being undertaken to be ready for a decision on Plan Change</p>	<p>Staffing levels remain in line with those indicated in the previous report and support is continuing to be provided by contractors, for over-flow processing.</p> <p>Significant work was undertaken to prepare the team for processing consents under Plan Change 7 once the decision was released. This included multiple training sessions and updates to existing procedures. Work was completed on updating report templates, drafting practice notes and updating conditions. Extensive work was completed to prepare resources for external use including new application forms, practice notes and a form to be used when amending applications. Stakeholders and consultants have been kept regularly up to date on processing and resources available.</p> <p>An update on consent processing under Plan Change 7 is provided further down in the report.</p>



	<p>7. This includes drafting new application forms, updating report templates, drafting practice notes and updating conditions. These cannot be finalised until there is a decision and are in outline form at present. Legal advice is also being sought about the implications of the decision on PC7 for existing applications. This is to ensure we provide clear advice to applicants and process consents in line with the RMA and best practice</p>	
Monitoring & Enforcement	<p>Staffing levels remain in line with those indicated in the previous report. Two additional FTE are budgeted for the 2021/22 year to support delivery of the ORC Compliance Plan 2020-22 and new regulations in place.</p> <p>The ORC Regulatory Committee approved an operational compliance programme for the 2021/22 year. There has been a delay in some on-site audits due to Covid-19 Alert Level restrictions, but it is expected that targets will be met by year end.</p> <p>The RMA Compliance and Enforcement Policy was adopted by the Regulatory Committee in March 2021. The Policy is consistent with the principles of the Regional Sector Strategic Compliance Framework 2019-24 and the MfE Best Practice Guidelines. There have been significant improvements made to the enforcement process and framework.</p> <p>Ongoing training for staff continues to ensure understanding of the rules and a consistent approach is taken to compliance monitoring and enforcement.</p> <p>Aquarius, ORC's new Environmental Monitoring System includes significant custom configuration designed to improve the Council's monitoring of water metering and sampling data relating to resource consents.</p> <p>Two additional FTE are budgeted for the 2021/22 year in the Council's Regulatory Data and Systems Team. One will support the technical management of the new system, the other will increase</p>	<p>Internal appointment of two additional FTEs for roles of Principal Advisor Investigations (new role), and a Principal Compliance Specialist (additional role) have been made. These positions focus on supporting improved good practice and increasing the compliance monitoring and enforcement (CME) capabilities across the team.</p> <p>Staff turnover has increased, with six Environmental Officers, two Environmental Data Officers and one Incident Responder recruited in the last six months.</p> <p>Recruitment is underway for a Team Leader Compliance Monitoring (in Central Otago), a Team Leader Investigations and a Senior Investigator. It has been challenging to recruit suitably qualified people for these roles in a competitive labour market.</p> <p>A total of 27.60 FTE dedicated to CME activities is budgeted in the 2021/22 financial year.</p> <p>Ongoing business process and system improvements continue to enable staff to better undertake their CME activities, including introducing tools for mobility in the field, updating SOPs and streamlining our enforcement and compliance monitoring processes. These efficiency improvements are reflected in both increased on-site audits and inspections as well as formal enforcement actions being taken by ORC.</p> <p>Work continues to improve the Council's new Environmental Monitoring System. Year on year desktop compliance</p>

	the resource dedicated to data monitoring from 3 to 4 FTE.	inspections have increased by 9.4%.
Land Management	<p>As of 9 July 2021, a new Environmental Implementation Team has been established (previously referred to as the Biosecurity and Rural Liaison Team). The team comprises a range of roles and specialist areas of focus aimed at better supporting the delivery of Council's biosecurity, biodiversity, and freshwater operational work. Additional funding from the 2021–2031 Long-Term Plan, has enabled the revision and creation of new roles and supports an increase in staff numbers.</p> <p>The new team comprises additional 'on the ground' community facing roles, as well as specialist operational advisory and environmental project management delivery roles, spatial analysis capabilities and quality assurance functions. In addition to its traditional core responsibilities (biosecurity compliance, land management and development of partnerships), the team will also facilitate the design and implementation of Council's new integrated catchment approach (as adopted through the Long-Term Plan), deliver the non-regulatory Land and Water Regional Plan actions and design and deliver, with others, locally specific targeted environmental action plans.</p> <p>The 2021–2031 Long-Term Plan provides for 27 full time equivalents (FTEs) in Y1 (2021/22), 34 FTEs in Y2 and 37 FTEs in Y3. The team currently has a head count of 19 staff.</p>	<p>Since October 2021, the Environmental Implementation Team has increased to 28 FTEs, including 1 role funded through Jobs for Nature project funding.</p> <p>Recruitment is underway for a biosecurity specialist position, a project delivery role and three additional catchment advisors.</p> <p>The team has been building on the core biosecurity work by increasing the strategic focus and face to face community-led management approaches. The new biosecurity specialist will enable further strategic approaches and integration of the biosecurity work.</p> <p>On the ground community facing work continues to build with catchment advisors making new networks and developing projects. In addition, the project delivery specialists are managing large scale projects involving the community and mana whenua partners.</p> <p>Work on the Integrated Catchment Management approach has progressed with a draft framework for delivery through Catchment Action Plans being endorsed by Council in December 2021. This framework is being developed further through an internal cross-directorate working group before going to the community and our mana whenua partners for collaborative development of integrated catchment action plans. These CAPs are planned to align to the FMUs and will give effect to the action plans required in the NPSFM 2020.</p>

### Progress in Achieving the specified recommendations

The particular recommendations as outlined in the original letter, and ORC's response, to date, is detailed below:

<b>Action</b>	<b>What we advised in October 2021</b>	<b>Latest Update</b>
<i>Take all necessary steps to develop a fit for purpose freshwater management planning regime that gives effect to the relevant national instruments and sets a coherent framework for assessing all water consent applications, including those that are to replace any deemed permits.</i>	<p>Mediation on the rural provisions of Plan Change 8 has been undertaken and all provisions were agreed. Given the call-in is a first instance hearing, the provisions have been set down to be heard by the Environment Court in the week of 1 November 2021. The hearing is uncontested and several of the submitters are preparing evidence for or to support ORC.</p> <p>Mediation on dust suppressants which is part of Plan Change 1 occurred on 6 September 2021, however the mediation on Landfills (PC1) and Regionally Significant Infrastructure (PC8) that was scheduled for 7 September was vacated due to the Covid-19 lockdown and some parties unable to participate fully.</p> <p>Mediation on the urban provisions of PC8 was set down for 4 and 5 October 2021 but has also been vacated due to the Covid-19 lockdown. Staff are anticipating that hearings will be required, irrespective of the mediation outcome, for the balance of PC8 and for PC1 and they are likely to occur in early 2022.</p> <p>See below for update on Plan Change 7.</p>	<p>The hearing for the rural provisions of Plan Change 8 occurred in November 2021, and a decision on the provisions was released at the end of January 2022. The appeal period has just passed, with no appeals received however staff have identified a minor error in the decision and are waiting on the decision to be reissued. Once that happens, staff will prepare a paper to Council, to approve the Plan Change.</p> <p>The decision on Plan Change 1: Dust Suppressants, was released in March 2022, after the Environment Court considered the mediation agreement and evidence, without a formal hearing. These provisions are now in the appeal phase and subject to no appeals being lodged, will be taken to Council for approval in due course.</p> <p>Mediation on the urban provisions of PC8 occurred in November 2021, and while several matters were agreed, there remained outstanding issues around the proposed rules to manage residential earthworks. The PC8 Urban Provisions are now set down for a contested hearing late in March 2022.</p>
<i>By November 2020, a complete review of the current RPS that is publicly notified, with the intention that it be made operative before the review of the LWRP is notified</i>	<p>The proposed RPS21 was publicly notified, as a freshwater instrument, on 26 June 2021. The period for making submissions closed on 3 September, and an approximate total of around 1500 submissions have been received. More than 1000 of those do not have any contact details on them and will need to be considered by the Hearing Panel to determine their validity.</p> <p>ORC provided a submission period of 50 working days, rather than the</p>	<p>The Summary of Decisions Requested on the proposed RPS21 was released for further submissions on 30 October, with the period for submissions running from 1–12 November 2021. A corrigendum was released on 17 November and open for further submissions until 1 December 2021.</p> <p>59 further submissions were received in total, with 55 submissions received by the closing date.</p> <p>On 11 November 2021 the ORC</p>



	<p>statutory minimum of 40 working days. The submission period coincided with the August 2021 Covid-19 Level 4 lockdown and ORC received requests to extend the submission period. ORC did not extend the period for submissions but did advise parties that it would not oppose the receipt of late submissions.</p> <p>In July 2021 the Royal Forest and Bird Protection Society (F&amp;B) wrote to ORC questioning the decision of Council that the pRPS21 is a freshwater instrument in its entirety. On Friday 3 September, ORC lodged joint proceedings to the High Court to determine whether the pRPS21 is a freshwater instrument in its entirety. ORC is plaintiff in the Statement of Claim and F&amp;B is the other party to the proceedings. Due to the nature of the High Court claim, ORC has sought directions that all submitters to the pRPS21 are served notice of the proceedings. Directions from the High Court have been issued, and a hearing date set down to consider this matter on 8<sup>th</sup> and 9<sup>th</sup> February 2022.</p> <p>While the High Court proceedings are underway, staff continue to progress the proposed RPS process, and prepare the documents required to be provided to the Chief Freshwater Commissioner in December 2021. Staff are working to summarise the decisions requested and make the summary available, as soon as practically possible.</p> <p>ORC is having ongoing discussions with the Chief Freshwater Commissioner in terms of both timing, and the actual process, for hearing a freshwater instrument. ORC has completed the process to identify its nominations for the Freshwater Hearings Panel to hear the pRPS21.</p> <p>Recommendations are being made to Council in September 2021.</p> <p>With regard to the partially operative RPS, the Court of Appeal hearing in</p>	<p>advised the Chief Freshwater Commissioner (CFC) of its two Commissioner nominees to sit on the Freshwater Hearing Panel. ORC also advised on this date of its intention to provide the pRPS21 as a Freshwater Instrument in its entirety.</p> <p>On 2 December 2021 the ORC advised the CFC of the local tangata whenua nominee.</p> <p>The CFC (Professor Skelton) appointed 4 of the members of the Freshwater Hearing Panel in December 2021, and the Chair, Judge Newhook appointed the fifth and final member on 17 January 2022.</p> <p>The Freshwater Hearings Panel appointed is:</p> <ul style="list-style-type: none"> <li>• Judge Laurie Newhook - Chair and Freshwater Commissioner</li> <li>• Ron Crosby – Freshwater Commissioner</li> <li>• Bianca Sullivan – ORC nominated panel member</li> <li>• Allan Cubitt – ORC nominated panel member</li> <li>• Rauru Kirikiri – tangata whenua nominated panel member.</li> </ul> <p>The Panel issued its first Minute and Directions on 1 March, with the hearings on the pRPS set to commence on 30 May 2022, and sit every second week until approximately October 2022.</p> <p>The High Court declaration hearing on whether the proposed RPS21 is a freshwater instrument in its entirety was heard in February 2022, with the decision reserved. This process presents some risk to the RPS if the Court does not agree that the RPS is a freshwater instrument in its entirety. Such a decision may impact the timeframe for progressing the RPS. As noted above, the pRPS hearings will have commenced before a decision is made.</p> <p>With regard to the partially operative</p>
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	<p>relation to the Port appeal was undertaken in Wellington in early July. A decision on that appeal is anticipated soon.</p>	<p>RPS, the Court of Appeal dismissed Port Otago Limited's (PoL) appeal. PoL have now sought leave to apply to the Supreme Court on the same matter. No decision on that leave application has yet been made.</p>
<p><i>By 31 December 2023, a new LWRP for Otago that includes objectives, strategic policies, region-wide activity policies, and provisions for each of the FMU's, covering all catchments within the region</i></p>	<p>The Water Plan review is now being finalised.</p> <p>In June 2021, Council noted the proposed broad scale regional approach to be taken by the ORC Science Team to underpin the Land and Water Regional Plan development. This paper to Council outlined the high-level science work programme now being implemented. The programme has workstreams covering water quantity, surface water quality, groundwater, land use, soil attributes, wetlands, estuaries, biodiversity, ecological habitats and fish passage. The link to the 23 June 2021 Council Agenda – 7.7 Science Programme to Inform the Land and Water Plan is: <a href="https://www.orc.govt.nz/media/10015/agenda-council-20210623.pdf">https://www.orc.govt.nz/media/10015/agenda-council-20210623.pdf</a></p> <p>Staff have commenced work in the Upper Lakes rohe, and the Catlins FMU, and community consultation sessions in those two areas are scheduled for November this year. Staff are also working on an online consultation platform that will enable consultation to continue, should another lockdown occur.</p> <p>The Arrow and Cardrona minimum flows and allocation, as recommended by staff, have been formally noted by Council. No additional work is proposed on flows and allocation in these rivers. The resolution is set out in full below;</p> <p>Moved: Cr Deaker Seconded: Cr Calvert</p> <p>That the Committee:</p> <ol style="list-style-type: none"> <li>1) <i>Notes this report.</i></li> <li>2) <i>Notes the flow and allocation limits that will be adopted for the Arrow and Cardrona Rivers as part of the Land and Water Regional Plan;</i></li> </ol>	<p>The Policy Team are leading the first-round consultations and working in partnership with iwi on the overarching policy direction for the LWRP.</p> <p>Consultation summaries for Upper Lakes and Catlins FMU are now finalised.</p> <p>Staff have now commenced work in all remaining Freshwater Management Units and/or rohe.</p> <p>The first round of consultation for the Dunstan, and Roxburgh rohe and the Clutha Mata-au FMU were undertaken in late February and early March. This consultation was undertaken online, in accordance with ORC's response to the current Covid-19 Traffic Light settings.</p> <p>The first round of consultation for North Otago, Dunedin and Coast and Taieri FMU's are scheduled for mid-March and will also be undertaken online.</p> <p>A second round of community engagement is scheduled to commence mid-2022.</p> <p>The science work programme is well underway, with contracts in place to support internal staff with modelling for water quality and water quantity. The science approach was adopted by Council in June 2021 and the agenda link is copied here for your assistance (<a href="https://www.orc.govt.nz/media/10015/agenda-council-20210623.pdf">agenda-council-20210623.pdf</a> (<a href="https://www.orc.govt.nz">orc.govt.nz</a>)).</p> <p>The science programme includes quality modelling to undertake analysis of future mitigation scenarios for nitrogen, phosphorus, sediment and E.coli at the regional scale. The quality models will assess the</p>

<p>3) <i>Notes the process going forward, for the full Land and Water Regional Plan.</i></p> <p>In accordance with the approach to the LWRP adopted by Council in July 2020, staff recommended that Council note their advice on Manuherekia rohe minimum flows at the August 25 Council meeting. Staff are now implementing Council's resolution that requests reports from the Technical Advisory Group (TAG) established in 2019 to advise ORC with regard to the Manuherekia rohe on further science to be completed for the catchment. The TAG was established in response to criticism in 2019 around the science underpinning the minimum flows that were proposed at that time. The TAG included representatives from the irrigation community, the Department of Conservation, Fish and Game and iwi and were tasked with working together to establish as much agreement about the science to support flows and allocation.</p> <p>The full resolution from the August meeting is:</p> <p><b>Resolution CM21-140:</b> Cr Noone Moved, Cr Calvert Seconded</p> <p>That the Council:</p> <p>1) <i>Requests that the Technical Advisory Group (TAG) be requested to provide regular reports to the Strategy and Planning Committee on progress towards finalising the required science for the Manuherekia catchment.</i></p> <p>The TAG has met in September and will report back to Council in October.</p>	<p>effectiveness of a series of on-land mitigation strategies at reducing instream contaminant levels at region-wide scale. This modelling approach will draw on and refine work published by Our Land and Water programme as a part of the National Science Challenge.</p> <p>The quantity modelling commissioned to date includes bespoke modelling in 15 catchments where detailed analysis is required. All other catchments will be covered by a region-wide model. This modelling is also supported by ecological habitat model development in some catchments, although this work may not be completed this summer as river flows have persisted at unseasonably high levels.</p> <p>With regard to the Manuherekia rohe, the Technical Advisory Group are continuing to work to an agreed set of tasks, and likely to report back to Council in May this year.</p> <p>The economics work programme includes an Industry Action workstream, a Farmer Grower workstream, and a Māori economy workstream. The Industry Action Group has been set up to provide comments on the set of actions (mitigations) developed by ORC to deliver on the ground changes. Those actions will also be reviewed by an independent consultant with specific expertise in on farm mitigations.</p> <p>The Farmer Grower workstream is being developed in conjunction with the Ministry for Primary Industries (MPI) and industry good groups from across agriculture, horticulture and viticulture to develop robust industry knowledge for Otago. Technical experts will use the information to test the impacts of different actions on rural businesses in terms of profitability, production and employment. The economics work also includes Catchment Stories which is designed to allow communities to showcase</p>
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		<p>their voice, outlining the on the ground actions already occurring within their catchments.</p> <p>The Māori economy work – Te Ōhanga ki Kai Tahu – has been designed to provide Aukaha and Te Ao Marama to consider their ōhanaga (both historical and present day) as part of their mahi on the implications of the Land and Water Regional Plan for Kai Tahu. They will also look to highlight the kaitiakitanga and manaakitanga of mana whenua in catchments ki uta ki tai (from the mountains to the sea). The final part of the economics programme at this stage is to prepare a Regional Economic Profile for Freshwater. This project is about exploring the economy's use of water as inputs and outputs, the value of that use (as income and employment) and connections between industries.</p> <p>A contract for delineating Outstanding Water Bodies is about to be awarded, and legal services are being procured.</p>
<p><i>Prepare a Plan Change by 31 March 2020 that will provide an adequate interim planning and consenting framework to manage freshwater up until the time that new discharge and allocation limits are set, in line with requirements in the NPSFM.</i></p>	<p>Plan Change 7 has now concluded the substantive hearings (over more than 10 hearing weeks) across Dunedin and Cromwell. The Environment Court also undertook a helicopter site visit across the Upper Taieri and Manuharekia valleys, and a 4WD trip across Alexandra, Clyde, and Cromwell. A decision is due in mid-October (delayed from September due to the latest Covid-19 lockdown). The latest communication from the Environment Court is a Minute at the start of September to confirm the status of the proposed RPS.</p>	<p>The final decision on Plan Change 7 was released on 17 November 2021, after an interim decision approving the plan change was released on 22 October 2021. Appeals on the interim and final decisions closed in November and December 2021 respectively.</p> <p>No appeals were received and Plan Change 7 was approved by Council in February and operative on and from 5 March 2022.</p> <p>This action is now considered complete.</p> <p>With regard to consent processing, applications covered by Plan Change 7 are being processed in a staging plan that has been agreed with consultants and applicants. This also allows for people to be working on one part of the region at once and allows time for the water use analysis to be completed for permits in a similar area at one time.</p> <p>Work on the Manuharekia consents has continued by the project team set up to</p>

		<p>process the permits. These applications were 'on hold', at the request of the consent holders, waiting for a decision on Plan Change 7. The applications are being processed by an external consultant, with internal project leadership. Staff are currently undertaking the water use analysis for these takes and providing these reports to the Manuherekia applicants. The applicants will then use these to help inform amendments to their applications.</p> <p>There have been concerns raised by some councillors about the cost of the deemed permit replacement consents in light of the PC7 decision and the subsequent short terms on these consents. Staff continue to apply charges consistent with the RMA.</p>
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**Summary of Freshwater Resource Consenting Activity – for the period 11 September 2021 – 28 February 2022**

The following is a summary of the freshwater resource consenting activity for the reporting period:

- Between 11 September 2021 and 28 February 2022, the Otago Regional Council received 37 applications for water take consents. These applications are being processed as 42 separate resource consents, with 21 for taking groundwater and 21 for taking surface water. Of the 37 applications, 8 relate to the replacement of Deemed Permits.
- From the 37 applications lodged between 11 September 2021 and 28 February 2022, Council issued 20 resource consents, 5 for taking groundwater and 15 for taking surface water. Of the remaining 17 resource consents, 12 are currently being processed and 5 have been rejected or withdrawn.
- The Council also issued a further 51 resource consents relating to applications lodged before 11 September 2021. These include 9 resource consents for taking groundwater and 42 for taking surface water. Of the 51 resource consents issued, 29 related to the replacement of 31 Deemed Permits.
- In total, the Council is currently processing 117 applications for water take consents. These applications are being processed as 206 Resource Consents, with 20 for taking groundwater and 186 for taking surface water. Of the 117 applications, 70 relate to the replacement of Deemed Permits.
- Between 11 September 2021 and 28 February 2022 two applications relating to taking water were publicly notified, and 9 applications were limited notified.



- There are currently no active Deemed Permits in the Otago Region, excluding those operating under s124.
- No new appeals relating to decisions on an application for new water permits relating to Deemed Permit, have been lodged with the Environment Court.

#### Conclusion

Work is generally on track for completion within the timelines your recommendations prescribe. However, there is some risk related to the RPS process and the Declaratory Judgement in particular and the flow-on impacts that will have to the LWRP.

#### Next Steps

With the first stage of community engagement for the LWRP complete, staff are now working on preparing the technical analysis required for the next round of community engagement due to commence in July. The focus for the RPS team is on preparation and attendance at the hearings. Our next report back to you will be in October 2022.

In the interim, if you have any questions or need further clarification, please don't hesitate to get in touch with Anita Dawe ([anita.dawe@orc.govt.nz](mailto:anita.dawe@orc.govt.nz); or 021 445 993).

Yours sincerely



Sarah Gardner  
Chief Executive Officer

# Appendix 2

## Letter from Otago Regional Council Chair Andrew Noone dated 28 March 2022



Our Ref: A1621133

28 March 2022

Hon David Parker  
Minister for the Environment  
Private Bag 18041  
Parliament Buildings  
Wellington 6160  
BY EMAIL: [D.Parker@ministers.govt.nz](mailto:D.Parker@ministers.govt.nz)

Dear Minister Parker,

At our Council meeting on the 23rd March we considered the fifth progress report to you as Minister for the Environment, since our commitment to notifying a Land and Water Regional Plan by 2023.

The report was approved by Council, including a covering letter from the Chair. We are asking you to consider having a discussion with the Otago Regional Council on a longer timeframe for notification of the LWRP; the reasons are outlined in the resolution below.

*"Approves the fifth report to the Minister for the Environment, that reports on progress against the recommendations made in his letter of 19 November 2019; and include a covering letter from the Chair inviting the Minister to consider having a discussion with Council on a longer timeframe with Council to notify the Land and Water Plan, to allow a smoother and stronger plan framework built on an RPS that has been allowed to settle. Given that there may be potential savings in the Annual Plan if ORC was able to extend the timeframe, Council would welcome an indication before the end of May 2022".*

If you require further information when considering this request please let me know.

Yours sincerely

A handwritten signature in black ink that reads "Andrew Noone".

Cr Andrew Noone  
Chairperson

027 430 1727  
[andrew.noone@orc.govt.nz](mailto:andrew.noone@orc.govt.nz)

*For our future*

70 Stafford St, Private Bag 1954, Dunedin 9054 | ph (03) 474 0827 or 0800 474 082 | [www.orc.govt.nz](http://www.orc.govt.nz)

# Appendix 3

## Letter of Appointment for this Investigation

**Hon David Parker** BCom, LLB

Attorney-General  
Minister for the Environment  
Minister for Oceans and Fisheries  
Minister of Revenue  
Associate Minister of Finance



5 May 2022

Professor Peter Skelton  
Skeltonp@xtra.oc.nz

Dear Peter

### **Section 24A Investigation of Otago Regional Council under the Resource Management Act 1991**

In accordance with section 24A of the Resource Management Act 1991 (RMA), I am appointing you to investigate whether Otago Regional Council (ORC) is performing its functions under section 30(1) of the RMA in relation to freshwater management and allocation of resources. Specifically, I would like you to investigate ORC's progress towards the recommendations I made in 2019 following your previous investigation, and identify any further actions necessary to ensure these recommendations are met.

The scope and timing of the investigation is outlined in the attached Terms of Reference.

Shannon Wallace at the Ministry for the Environment has been assigned as your Ministry contact to support you in this investigation, and Jazmynn Hodder-Swain can assist on a day-to-day basis with logistics, etc. and is available to accompany you on the ground as necessary. You can contact Shannon at [Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz) and Jazmynn at [Jazmynn.Hodder-Swain@mfe.govt.nz](mailto:Jazmynn.Hodder-Swain@mfe.govt.nz) to discuss any matters related to this investigation.

Your appointment will be subject to any necessary procurement, contracting and remuneration process as required by the Ministry for the Environment.

Yours sincerely

Hon David Parker  
**Minister for the Environment**

# Appendix 4

## Receipt of Acknowledgement from the Minister to the Otago Regional Council Chair

**Hon David Parker** BCom, LLB

Attorney-General  
Minister for the Environment  
Minister for Oceans and Fisheries  
Minister of Revenue  
Associate Minister of Finance



5 May 2022

Andrew Noone  
Chairperson  
Otago Regional Council  
[andrew.noone@orc.govt.nz](mailto:andrew.noone@orc.govt.nz)

Dear Andrew

Thank you for your letter and progress report on 28 March 2022, including a request for a discussion on a longer timeframe for notifying the Land and Water Regional Plan.

As you are aware, the timeframes I recommended were based on the findings of Professor Peter Skelton's 2019 report. To properly assess your request for an extension I would like to have more evidence on progress and why an extension may be required.

With this in mind, in accordance with powers under section 24A of the Resource Management Act 1991, I am appointing Peter Skelton to investigate whether the Otago Regional Council (ORC) is performing its functions under section 30(1) of the Act in relation to freshwater management and allocation of resources.

The investigation will focus on how ORC is tracking towards my 2019 recommendations and what, if any, action is needed to ensure the recommendations are met. Advice on any need for delay to the notification dates will be within scope of the investigation.

I ask for your co-operation with this investigation. I will be considering what action to take after I receive advice following completion of the investigation.

Should you have any questions about this investigation, please contact Stephanie Frame, Manager Implementation and Oversight at the Ministry for the Environment ([stephanie.frame@mfe.govt.nz](mailto:stephanie.frame@mfe.govt.nz)).

Yours sincerely

Hon David Parker  
Minister for the Environment

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand  
+64 4 817 8710 | [d.parker@ministers.govt.nz](mailto:d.parker@ministers.govt.nz) | [beehive.govt.nz](http://beehive.govt.nz)

# Appendix 5

## Terms of Reference for Section 24A Investigation of Otago Regional Council under the Resource Management Act 1991

### Purpose of Investigation

1. The purpose of this investigation is to identify whether Otago Regional Council (ORC or the Council) is adequately carrying out its functions under section 30(1) of the Resource Management Act 1991 (RMA) in relation to freshwater management and allocation of resources.
2. This investigation will focus on ORC's progress towards the recommendations of Minister for the Environment (the Minister) in 2019 to provide a fit for purpose freshwater planning regime and an assessment as to whether those recommendations and associated timeframes are still appropriate<sup>29</sup>.

### Context

3. At the direction of the Minister, an investigation into freshwater management at ORC was undertaken in 2019. This investigation focussed on the exercise of the ORC functions in relation to its planning framework and its ability to process and transition deemed permits in a consistent way under the RMA and National Policy Statement for Freshwater Management (NPS-FM). It related particularly to the Manuherekia, Upper Cardrona and Arrow rivers before the deemed permits expire in 2021.
4. The 2019 investigation found, among other things:
  - There is large variation in the planning frameworks for the region's catchments to deal with the expiry of deemed permits.
  - The Council will need to make a substantial investment to update the RPS and the Water Plan to provide for existing and proposed national direction and legislative changes
  - A reviewed Water Plan will need to be notified by 31 December 2023 to give effect to the NPS-FM. This will also be required to be restructured into the National Planning Standards template.
5. Following this investigation, the Minister made the following recommendations (summarised):
  - Take all necessary steps to develop a fit for purpose planning regime

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<sup>29</sup> Recommendations of the Minister for the Environment contained in letter titled: Section 24A Report: Investigation of Freshwater management and Allocation Functions at Otago Regional Council under section 24A of the Resource Management Act 1991 2019

- Review and update the Regional Policy Statement by November 2020
  - Notify a new Land and Water Regional Plan (LWRP) by December 2023
  - Prepare a plan change to provide an adequate interim planning and consenting framework to manage deemed permit renewals by March 2020
  - Provide 6 monthly updates on progress
6. ORC wrote to the Minister on 28 March 2022, with its fifth progress report against the recommendations. In its cover letter it requested a meeting to discuss an extension to the December 2023 deadline to notify an updated LWRP.
7. ORC has cited a desire for a “smoother and stronger plan framework built on a regional policy statement that has been ‘allowed to settle’” and “potential savings in the Annual Plan” as reasons to extend the notification date.

### **Scope of the Investigation**

8. The investigation will address the following:
1. The Council’s progress towards implementing the Minister’s 2019 recommendations and specifically the likelihood of ORC meeting the 2023 timeframe to notify a new Land and Water Regional Plan;
  2. If the recommendations and timeframes set in 2019 are still appropriate given changes and progress made to date, including:
    - The impact of the now fully operative Proposed Plan Change 7
    - Relationship between the operative Regional Policy Statement (RPS), proposed RPS and development of the new LWRP, including an assessment of any risks associated with developing the LWRP before the RPS is fully operative;
  3. Any other relevant contextual matters.

### **Methodology**

9. The investigator will:
- Spend the time needed with ORC to inform Councillors of the investigation, and then undertake discussions with council staff with a focus on Senior Leadership, Planning Policy Manager, relevant Policy Planners, and technical staff;
  - Undertake any additional research and analysis from the discussions required to complete the investigation;
  - Seek the views of Ngāi Tahu as tangata whenua and any stakeholders the investigator deems necessary;
  - Complete a draft findings report, including recommendations for the Minister; and

- Finalise and present a copy of the report to the Minister for the Environment.

**Term of investigation**

10. The investigation must begin no later than 9 May 2022 and be completed by 20 May 2022
11. The investigator must report back to the Minister with his final opinion by 25 May 2022

**Costs**

12. The cost of the salary of the investigator and associated disbursements will be covered by the Ministry for the Environment.



# Appendix 6

## People Interviewed for this Investigation

Name	Title
Sarah Gardner	CEO (at time of investigation)
Anita Dawe	Acting General Manager – Policy and Science
Joanna Gilroy	Consents Manager
Richard Saunders	General Manager – Regulatory Communications
Peter Constantine	Contractor for ORC – Planner
Tom Dyer	Science Manager
Anne Duncan	Manager (Strategy)
Ann Yang	Senior Economist
Edward Ellison	Chairman of Aukaha and Policy Committee Member at ORC
Chair Andrew Noone	
Deputy Chair Michael Laws	Was Deputy Chair at time of investigation
Councillor Hilary Calvert	
Councillor Peter Scott	
Councillor Gretchen Robertson	
Councillor Bryan Scott	
Councillor Michael Deaker	
Councillor Kate Wilson	
Councillor Michael Laws	
Councillor Gary Kelliher	
Councillor Alexa Forbes	
Councillor Kevin Malcolm	



# Appendix 7

## Summary of the National Policy Statement for Freshwater Management 2020

The NPS-FM 2020 requires every regional council, in consultation with its community, to develop a plan for maintaining or improving the state of freshwater in the region. There are a number of compulsory values and attributes (measures of the state of a river or lake) that must be met, and communities can choose to go above and beyond these. Regional councils must notify their new or amended plans giving effect to the NPS-FM 2020 by 31 December 2024. The timeframe for action to achieve attribute target states is a long-term process set by councils in consultation with their communities.

### Te Mana o te Wai

Te Mana o te Wai is the fundamental concept that underpins the NPS-FM 2020. Under the NPS-FM 2020 councils must:

- give effect to Te Mana o te Wai
- set a long-term vision (ie, multi-generational) for water informed by the aspirations of tangata whenua and communities
- actively involve tangata whenua in freshwater management (eg, preparation of policy statements and plans)
- investigate options for tangata whenua involvement in other RMA processes in relation to freshwater. For more detailed information see the [Te Mana o te Wai factsheet](#).

### Māori values and mahinga kai

The NPS-FM 2020 includes a new compulsory value for mahinga kai. This requires regional councils to work with and enable tangata whenua to identify measures of freshwater health in their local contexts.

### Ecosystem health

The NPS-FM 2020 requires regional councils to manage and report on all aspects of ecosystem health, including:

- water quality (chemical, physical)
- water quantity (water flows and levels)
- habitat (for plants and animals)
- aquatic life (abundance and diversity of animals, plants, and microbes)
- ecological processes (interactions between them all).

### Threatened species

The NPS-FM 2020 also introduces a new threatened species value, and requires councils to prevent further loss of natural inland wetlands and rivers.

### Fish passage

Councils must also take action to maintain or improve the passage of fish in respect of instream structures.

### Attributes for ecosystem health

The NPS-FM 2020 sets out 22 attributes (indicators) of freshwater health. Through their planning documents, regional councils are required to maintain or improve all of these attributes.

New attributes include sediment, dissolved oxygen, and a higher standard for *E. coli* contamination at popular swimming sites during summer.

Some of the attributes will be managed through setting limits; others through an action plan approach.

For more details please refer to the [information sheet on attributes](#).

