

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

Purpose of Investigation

1. The purpose of this investigation is to identify whether the Otago Regional Council (ORC or the Council) are adequately carrying out their functions under section 30(1) of the Resource Management Act 1991 (RMA) in relation to freshwater management and allocation of resources.
2. The investigation is focussed on the exercise of the Council function 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). This matter relates particularly to the Manuherekia, Upper Cardrona and Arrow rivers before the deemed permits expire in 2021.

Context

3. When the Resource Management Act 1991 (RMA) was enacted mining privileges granted or authorised under the Water and Soil Conservation Amendment Act 1971, and the Water and Soil Conservation Act 1967, were deemed to be water permits, discharge permits or a permit that confers on its owner rights over land in respect of which the holder is not the owner. These permits expire on the 30th anniversary of the date of commencement of the Act (this will be 1 October 2021).
4. Around 300 deemed permits remain in the Otago region. A significant number of the permits that have not yet been transitioned to standard resource consents are in the catchment areas of the Manuherekia, Upper Cardrona, and Arrow rivers.
5. In 2018, the ORC intended to notify a significant plan change to set minimum flow rates for the Arrow, Cardrona and Manuherekia catchments. This proposed plan change was halted and the Council is now planning to prepare a comprehensive minimum flows and allocation plan change in December 2025.
6. In August and December 2018, the Minister for the Environment (the Minister) wrote to ORC expressing concerns about the decision not to proceed with the plan change and met with ORC to discuss this on 22 March 2019. The Minister also noted an expectation that the ORC establish a framework that provides for a plan change to set minimum flows, ahead of the deemed permit expiry.
7. To date, no plan change has been notified. Until this occurs all applications to replace deemed permits will be considered under the current operative plan which does not contain minimum flow rates or other specific limits.
8. As the timeframe from notification to decisions on an RMA plan is 2 years, there is an increasing likelihood that the large volume of applications to replace the deemed permits will occur under the existing operative plan.

9. The Minister requires an understanding of the ability of ORC to carry out their functions under section 30(1) of the RMA in relation to freshwater management and allocation of resources. In particular, the adequacy of the current planning framework and the capability of the ORC to process and make decisions on consents in a manner consistent with the obligations on the Council to set minimum water flows and allocation limits in their regional plan (as required by the National Policy Statement for Freshwater Management 2014 (NPS-FM)) .

Scope of the Investigation

10. The investigation will address the following:
 - i. adequacy of the current planning framework from a RMA and NPS-FM standpoint;
 - ii. adequacy of the performance by ORC of functions relating to planning for discharges of contaminants to land and water, and taking, using, damming or diverting water. This will focus particularly on the Manuherehia, the Upper Cardrona and Arrow Rivers, and whether the planning framework will be appropriate and sufficient in time to consider applications for new water permits once deemed permits expire;
 - iii. adequacy of ORC resources, including its capacity to develop and implement an adequate planning framework that gives effect to the NPS-FM;
 - iv. Treaty partners and stakeholder perspectives; and
 - v. any other relevant contextual matters.

Methodology

11. The investigator will:
 - a. 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;
 - b. the discussions with the ORC will be based around a set of investigation questions, prepared by the investigator. These questions will be pre-circulated to the ORC and the interested parties consulted;
 - c. undertake any additional research and analysis to the discussions required to complete the investigation;
 - d. seek the views of Ngāi Tahu as tangata whenua;
 - e. seek the views of the Department of Conservation, Federated Farmers (Otago Division), Otago Fish and Game Council, and any other stakeholders the investigator deems necessary;
 - f. complete a draft findings report, including recommendations for the Minister for the Environment on the options for addressing any issues identified in the investigation; and
 - g. finalise and present a copy of the report to the Minister for the Environment.

Term of investigation

12. The investigation must begin no later than 1 July 2019 and be completed by 3 September 2019.
13. The Investigator must report back to the Minister with their final opinion by 3 September 2019.

Costs

14. The cost of the salary of the investigator will be covered by the Ministry for the Environment.