

**From:** [Lynette Baish](#)  
**To:** [RPS](#)  
**Cc:** [Anita Dawe](#); [Peter Weir](#)  
**Subject:** Ernslaw One Submission to Otago Regional Council ORPS 2021  
**Date:** Friday, 3 September 2021 3:56:02 p.m.  
**Attachments:** [image001.png](#)  
[ORC ORPS 2021 Submission Covering Letter.pdf](#)  
[Submission to ORC Proposed Regional Policy Statement 2021.pdf](#)

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Good afternoon,

Please find attached a covering letter and a submission from Ernslaw One Ltd in respect of the Otago Regional Policy Statement 2021 which was notified in June 2021.

Please take the covering letter as our Form 5. I hope I have included the correct address on the letter.

Please accept our submission despite its lateness – we have had a bit of a time with server issues today which has complicated communications during the day.

With kind regards,

Lynette Baish

**Lynette Baish**  
Environmental Planner  
Ernslaw One Limited  
Mob 027 880 2964



CAUTION: This email is confidential and may be legally privileged. If received in error please destroy it and immediately notify the Sender. Thanks.



# ERNSLAW ONE LIMITED

Otago Regional Council  
Philip Laing House  
Level 2  
144 Rattray Street  
Dunedin 9016

3 September 2021

Dear Sir/Madam,

Ernslaw One Limited wishes to submit to the Otago Regional Council Proposed Policy Statement 2021. Our submission is presented in the attached document, and Form 5 outlined below.

## Form 5

Submission on notified proposal for policy statement or plan, change or variation  
Class 6 of Schedule 1, Resource Management Act 1991

To: Otago Regional Council  
Name of Submitter: Ernslaw One Limited  
The specific provisions of the proposal that the submission relates to are:  
The whole proposed policy statement  
Contact: Peter Weir, Head of Environmental Planning and Performance  
Address for Service: PO Box 36, Tapanui, West Otago  
Email: Peter.Weir@Ernslaw.co.nz

Please note that Ernslaw One Limited wishes to be heard in support of this submission. If other parties make similar submissions, Ernslaw One Limited would consider presenting a joint case with those parties at the hearing. Ernslaw One Limited could not gain an advantage in trade competition through this submission. We are not directly affected by an effect of the subject matter of the submission that adversely affects the environment and does not relate to trade environment or the effect of trade competition.

Peter Weir  
Ernslaw One Ltd  
Tel. 027 454 7873



# ERNSLAW ONE LIMITED

## SUBMISSION ON THE PROPOSED REGIONAL POLICY STATEMENT

**TO:** Otago Regional Council (ORC)

**SUBJECT:** Proposed Otago Regional Policy Statement (June 2021)

**SUBMITTER NAME:** Ernslaw One Limited

**ADDRESS FOR SERVICE:** PO Box 36, Tapanui, West Otago

Attn: Peter Weir Head of Environmental Planning and Performance  
Phone 027 454 7873, Email Peter.Weir@Ernslaw.co.nz

**DATE:** 3 September 2021

### Introduction

1. Ernslaw One Limited (Ernslaw) is a production forestry company managing land holdings of up to 130,000ha throughout New Zealand. This includes 20,860ha of plantation in Pinus radiata and Douglas Fir within the Otago Region.
2. Ernslaw has over 25,000 ha of post-1989 compliant forests, making it one of the largest owners of post-1989 forests in New Zealand. Its plantation forests are managed as a sustainable resource with strategic long-term planning of harvesting and planting operations occurring successionaly throughout the estate to meet its carbon liabilities.
3. The company strives to achieve and exceed best industry standards, working with over 400 contractors nationally to ensure its resource management and environmental obligations as a steward of the land are met, including through the responsible management of hazardous substances, pest and predator control, protection of habitats of rare, threatened and endangered species, and social and cultural sites of significance, within and around its forests.
4. As a Forest Stewardship Council® (FSC®) certified forest owner, Ernslaw is committed to meeting international standards of forestry accreditation. All of Ernslaws forests are certified under FSC by the FCS accredited certification organisation SGS. Products carrying the FSC label come from forests that are managed to meet the social, economic, and ecological needs of present and future generations.
5. Ernslaw wishes to make the below points in relation to the proposed regional policy statement as notified 26<sup>th</sup> of June 2021. Ernslaw would like to be heard in support of its submission. If other parties make similar submissions, Ernslaw would consider presenting a joint case with those parties at the hearing.

6. Ernslaw One Limited could not gain an advantage in trade competition through this submission. We are not directly affected by an effect of the subject matter of the submission that adversely affects the environment and does not relate to trade environment or the effect of trade competition.

### **Statutory Framework and Role of Otago Regional Policy Statement (ORPS) 2021**

7. The stated purpose of the ORPS 2021 is to provide an overview of significant issues for the region and establish the policies and methods to achieve the integrated management of the natural and physical resources of the region. This is achieved by identifying the desired environmental outcomes, and then including these as objectives in its regional plan/s. Ernslaw acknowledges the effort made by Otago Regional Council to produce the ORPS 2019 and agrees with the Councils approach to propose a revised ORPS in 2021 which aligns with changes in the statutory landscape<sup>1</sup> and formats the document in accordance with the required national planning standards. These changes ensure that the coming efforts to undertake regional plan-making, consultation and engagement are efficient and on-point.
8. However, further change in national direction is coming, therefore Ernslaw submits that ORPS 2021 should be redrafted as an RPS with a freshwater focus, to prioritise the changes necessary to give effect to NPSFM 2020 and NESF 2020. These higher order documents require urgent change to improve ecosystem health and freshwater quality within 5 years, and to reverse degradation within a generation. Any provisions that do not address freshwater specifically, should be redrafted into a future RPS document which responds to the wholesale changes in national direction that will invariably transform the RMA, and the suite of national policy statements including those informing indigenous biodiversity, development, and soils. For this reason, Ernslaw submits that ORPS 2021 should be deleted in its entirety and replaced with a freshwater focused RPS.
9. Accepting that more national direction is coming, Ernslaw recognises that all regional councils have tight statutory timeframes to work within to produce regional plans including those that set limits<sup>2</sup> on resource use as well as contaminant discharges into freshwater. Ernslaw is keen to collaborate with the Council, community, and other stakeholders to shape the regulatory landscape, notwithstanding any further changes to national direction.

### **Otago Regional Policy Statement (ORPS) 2021 and Integrated Resource Management**

10. An RPS is a touchstone between higher order documents that set national direction for natural and physical resources, and the regulatory machinery that delivers on community identified environmental outcomes in regions and districts. The ORPS 2021 builds on the 2019 version not just through its adaptation to changing statute and national policy, but also through its incorporation of additional significant emerging issues across the region.

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<sup>1</sup> Noting the Council has reviewed all NPS, NES, the Water Conservation (Kawarau) Order 1997, Kai Tahu Treaty Settlement Act 1998, MOU, statutory acknowledgements, and iwi management plans.

<sup>2</sup> Or create action plans for, as the case may be.

11. There is a notable shift in ORPS 2021 which recognises the primacy of the life supporting capacity and mauri of the natural environment and te mana o te wai, followed by the health of people and the social and economic well-being of communities. Supporting that recognition is the concept of integrated resource management where Objectives IM01 – IM04 set out a regard for long term vision, ki uta ki tai, environmental sustainability, and climate change. The proposed framework sets an expectation for integrated resource management that flows through to all other provisions of ORPS 2021. If multiple provisions are relevant, they must be considered together, as well as alongside Objectives IM01 – IM04.
12. Ernslaw is supportive of an approach that recognises and effectively provides for the diversity of different interests and values associated with different resources and that takes into account the interconnectedness of the environment, and the impact of management of one natural resource over another. On the face of it, this is achieved through the provisions of ORPS 2021 which provides a platform for the integrated management of natural and physical resources.
13. Ernslaw finds the Section 32 analysis supporting the ORPS 2021 to be deficient. There is no analysis of how plantation forestry activities have been regulated since the NESPF came into effect in 2018, no summary of Councils compliance monitoring and enforcement of the plantation forestry sector, and no justification for imposing further regulation over and above that already imposed via gazettal of the NES-PF in 2017. Further there is no supporting cost benefit analysis. Ernslaw recommends that Council carefully incorporate the findings and recommendations of the MPI / Te Uru Rākau year one review of the NESPF<sup>3</sup> before creating policy that would require District Councils in the Otago region to propose more stringent regulation of the plantation forestry sector under Regulation 6 of the NESPF.

### **Proposed Regional Policy Statement and the National Environmental Standard for Plantation Forestry (NESPF) 2017**

14. The NESPF 2017 is the rule framework informing plantation forestry activities including afforestation (setbacks from SNA, management of wilding conifers), clearance of indigenous vegetation and activities impacting freshwater quality and freshwater values including harvesting, earthworks, replanting, and mechanical land preparation.
15. Although the NESPF 2017 has not been subject to amending changes<sup>4</sup>, Ernslaw notes that ORPS 2021 includes more direct references to NESPF 2017 and draws on the impacts of forestry activities with special regard to sedimentation, erosion, SNA's, afforestation, and the management of wilding conifers. Ernslaw is concerned that proposed SRPR-18 (page 80), makes the unsupported assertion that sediment from forestry is having significant adverse effects on the coastal environment. Ernslaw contends that cannot be occurring since the NESPF took effect in 2018 and if it is, it represents a failure by the Regional Council to enforce NES-PF Regulation 97 (Discharges, disturbances, and diversions).

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<sup>3</sup> <https://www.mpi.govt.nz/dmsdocument/44914-Report-on-the-Year-One-Review-of-the-National-Environmental-Standards-for-Plantation-Forestry>

<sup>4</sup>Despite release in April 2021 of first MPI review of NESPF 2017.

16. The proposed ORPS 2021 (page 74), fails to make clear that the provisions of the NESPF 2017 take precedence over the Resource Management (National Environmental Standards for Freshwater) Regulations (NESF) 2020.<sup>5</sup> The regional council can only set rules<sup>6</sup> that are more stringent than the NESPF 2017 if there is evidence that the controls in the NESPF 2017 are not sufficiently stringent to meet the Councils objectives for freshwater. The Section 32 Document fails to show that the incumbent rule framework (the NESPF), is not working. Nor is the statement made in SRMR-I10, ORPS 2021, referencing “*sediment from development and forestry flows into streams and builds up in the coastal environment*”, evidentially supported.
17. The NESPF 2017 comprises a suite of stringent controls on forestry earthworks, quarrying, harvesting and stream crossing installation where there were previously no such regulations operative in Otago. NESPF 2017 sets a high test for water clarity with the implication that any sediment originating from a forestry earthwork or harvesting operation must not result in any conspicuous change in colour or visual clarity. Ernslaw contends that the NESPF provides a clear and well-constructed regulation to avoid, remedy or mitigate impacts of any sedimentation on any water body. Ernslaw is yet to see any regional council undertake a robust analysis to shows that the NESPF controls that came into effect in May 2018 are not sufficiently stringent to deliver on the objectives of the NPSFM (2020).
18. With regard to SRMR-I10 (page 83) and elsewhere, Ernslaw contends that sedimentation arising from forestry activities adversely affecting water quality since Gazettal of the NES-PF, arises where forestry activities are poorly managed and where compliance monitoring and enforcement by Council is lacking. For this reason, Ernslaw submits that the statement in SRMR-I10 be amended to read “*sediment from ~~poorly managed development and~~ forestry ~~may~~ flows into streams and builds up in the coastal environment.*” This correlates with the reference made in the Section 32 Report (para 285), that activities, including forestry, “*can be important contributors to the existing and future health and well-being of communities, so long as they are located and managed appropriately.*”
19. The section 32 Report (para 315) states that “*feedback from community consultation on the coastal environment noted that development along the coast was a concern, especially considering rising sea levels exacerbated by climate change.*” Ernslaw further submits, that the impacts of forestry on the coastal environment, and the impacts of development, are two very separate issues and should be treated as such.
20. The Regional Council must manage the effects of land and resource use coherently and consistently. Ernslaw acknowledges that regulation 6 of the NESPF 2017 clearly articulates the settings where Councils can be more stringent (SNAs including regionally significant wetlands,

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<sup>5</sup> <https://www.legislation.govt.nz/regulation/public/2020/0174/latest/link.aspx?id=LMS364212> and <https://environment.govt.nz/assets/Freshwater-policy/interaction-between-the-nes-f-and-nes-pf.pdf>

<sup>6</sup> If the rule gives effect to an objective developed to give effect to the NPSFM or specified policies in the New Zealand Coastal Policy Statement (NZCPS) 2010. A rule in a plan can also be more stringent than the NESPF if the rule recognises and provides for the protection of outstanding natural landscapes and features from inappropriate use and development, or significant natural areas. See <https://environment.govt.nz/assets/Freshwater-policy/interaction-between-the-nes-f-and-nes-pf.pdf>

ONFLs, upstream of water abstraction points, over shallow unconfined aquifers and in Karst terrain) or in giving effect to the NPSFM or NZ Coastal Policy Statement but only where there is evidence that that NESPF is failing to deliver on objectives. For forestry activities that are out of scope of the NESPF 2017 (e.g., burning forestry slash or agrichemical spraying), councils need to address competing interests in a resource, including cumulative impacts on common resources, and manage the interactions between multiple resource users. Ernslaw would be interested to participate, provide information and to assist in building any evidence needed should the regional council consider that the NESPF is not sufficient to safeguard freshwater values and environmental quality, or propose any rules intended to be more stringent than the NESPF.

21. Section CE-M3, ORPS 2021 states that the Regional Council must prepare, amend, or maintain its regional plans no later than 31 Dec 2028, including to “manage the discharge of contaminants into coastal waters by controlling the impacts of vegetation removal on sedimentation including the impacts of harvesting plantation forestry (CE-M3 – Regional Plans (4)(d)(ii)).” Again, the NESPF is purpose designed to ensure that in the undertaking of any forestry activities, plantation forest owners avoid, remedy, or mitigate the impacts of sedimentation and erosion.
22. Furthermore, plantation forestry works to standards and practices including the NZ Forest Owners Association (NZFOA) Forest Practice Guides (2020)<sup>7</sup>, earthworks, erosion and sediment control methods in the NZFOA Forest Road Engineering Manual (2020)<sup>8</sup> and other industry guidance provided by MPI/Te Uru Rakau. Forest practices and recommended operational standards are regularly updated and reviewed to ensure that forestry is working to best and current practices. These include best management practices for earthworks stabilisation and mechanisms to avoid, remedy or mitigate loss of soil from cutover. Replanting is undertaken swiftly to ensure the succession of rotations within forests, which also maintains a continuous carbon stock.

### Proposed Regional Policy Statement and Direction for Regional and District Plan Rules

23. Plantation forestry is itself a collection of highly orchestrated activities occurring on a rotational basis and supported by a diverse and highly specialised workforce. Harvest planning is a long-term planning exercise, supported by the installation over time, of an infrastructure within the forest to access the crop, provide drainage, sediment and erosion controls and manage the impact of storms and weather events. Any restriction on harvesting activities over and above the NESPF would have to be justified by evidence and pass a rigorous cost-benefit analysis before being worked through with the industry and MPI / Te Uru Rākau, given the significant impact such changes would have on the wider market and economic base, communities and the work force, forestry assets and the NZ’s climate change policy, to avoid the creation of stranded assets.
24. Ernslaw supports the provisions in ORPS 2021 which enable collaborative engagement between different local authorities, landowners, and communities for the management of eco-systems, freshwater or otherwise, and indigenous biodiversity. Many forest companies have invested in

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<sup>7</sup> <https://docs.nzfoa.org.nz/forest-practice-guides/>

<sup>8</sup> <https://docs.nzfoa.org.nz/live/nz-forest-road-engineering-manual/>

technology to detect rare, threatened, and endangered species to meet obligations under the Wildlife Act and regional plan rules, schedules and maps defining significant indigenous vegetation and significant indigenous habitats. In many cases, forestry companies hold a wealth of data including monitoring and survey data collected over time, that could be shared with regional and district councils to ensure that setting of significant natural areas and boundaries around significant natural habitats are accurate, ground-truthed, and not based on a blanket approach to protection whereby constraints are imposed without a solid evidence base.

25. It should be acknowledged that, with effective risk-based compliance monitoring and enforcement of NESPF in place, as per the MPI / Te Uru Rākau guidance to Councils<sup>9</sup>, significant adverse environmental effects from the regulated plantation forestry activities can and will be avoided. Very few locations in Otago are so steep and erodible, that clear fell harvesting would give rise to significant adverse environmental effects. ORPS 2021 needs to recognise the long-term provision of positive ecosystems services that plantation forestry can provide, including the sequestration of carbon. ORPS 2021 currently fails to recognise that afforestation and the spatial extension of new plantation land area, as well as the consequent displacement of pastoral agriculture, will bring multiple eco-system services and benefits.
26. ORPS 2021 states that territorial authorities must prepare, amend, or maintain their district plans by no later than December 2026 to control the “*establishment of new or any spatial extension of existing plantation forestry activities were necessary to give effect to an objective developed under the NPSFM (ILF-LS-M12 – District Plans)*”. ORPS 2021 highlights wilding conifers as an adverse effect of forestry and afforestation, and the Section 32 Report (para 821/822) states that the Reference Group (Ecosystems and Indigenous Biodiversity) have expressed a preference for a prohibition on afforestation of species prone to wilding spread.
27. Wilding conifer risk is the subject of Sub-Part 1 of the NPSFM and is supported by the Wilding Risk Calculator which produces a score of wilding risk. The NESPF already requires a land use consent for afforestation of areas of high environmental risk. Low risk areas are appropriately a permitted activity, subject to controls including spatial buffers from significant natural areas, riparian margins, and neighbouring properties. Larger plantation forestry owners proactively work to monitor and destroy wildings in sensitive areas. Ernslaw submits that adequate controls exist within the NESPF 2017 in this regard (refer Regulations 11 and 79)<sup>10</sup>.
28. It is too early to review the effectiveness of NESPF wilding conifer controls in place since 2018, as trees planted in the interim are at least 5 years away from producing cones or fertile seeds. There is no evidence therefore, that the NESPF 2017 is not sufficiently stringent to manage wilding conifer risk. Should council have concerns, collaboration with industry to review the effort that has been made to control and manage wilding since NESPF 2017 regulation, and prior to NESPF 2017 regulation, would be the ideal first step.

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<sup>9</sup> <https://www.mpi.govt.nz/dmsdocument/28584/direct>

<sup>10</sup> <https://www.legislation.govt.nz/regulation/public/2017/0174/latest/whole.html#DLM7371044> and <https://www.legislation.govt.nz/regulation/public/2017/0174/latest/whole.html#DLM7372150>  
<https://www.mpi.govt.nz/dmsdocument/27933/direct>  
<https://www.mpi.govt.nz/dmsdocument/27954/direct>



29. Finally, noting the stringent timeframes in which councils must notify and then make operative planning documents to give effect to freshwater objectives and national direction, Ernslaw considers it prudent that the chapeau to Policies CE-M3 and ILF-LS-M12, is amended to read “*review and finalise*” instead of “*prepare, amend or maintain*” as it is critical that plans are finalised, and that Council’s effort extend beyond simply “preparing.”

### Submission Requests

30. Ernslaw generally supports the intent of ORPS 2021, however given impending changes in national direction, Ernslaw submits that ORPS 2021 be deleted and that a new RPS be drafted to prioritise regional policy needed to give effect to the NPSFM 2020 and the NESF 2020.
31. Ernslaw requests the rewording of SRMR-I10 per paragraph 18 above.
32. Ernslaw submits that Policies CE-M3 (4)(d)(ii), and ILF-LS-M12, are reconsidered given the NESPF provides for the regulation of plantation forestry activities resulting in specified adverse effects and there is no evidence in the Section 32 to say the NESPF is not effective in this regard.
33. Ernslaw further suggests in respect of Policies CE-M3 and ILF-LS-M12, that wording “*prepare, amend or retain*”, be amended to “*review and finalise*” for the reason stated in paragraph 26.

Submission prepared by,



**Lynette Baish, MNZPI**

**Ernslaw One Ltd**