

Extraordinary Council Meeting Agenda - 18 May 2022



Meeting will be held in the Council Chamber at Level 2, Philip Laing House
144 Rattray Street, Dunedin - Councillors
[ORC YouTube Livestream - Members of the Public](#)

Members:

Cr Andrew Noone, Chairperson	Cr Gary Kelliher
Cr Michael Laws, Deputy Chairperson	Cr Kevin Malcolm
Cr Hilary Calvert	Cr Gretchen Robertson
Cr Michael Deaker	Cr Bryan Scott
Cr Alexa Forbes	Cr Kate Wilson
Cr Carmen Hope	

Senior Officer: Sarah Gardner, Chief Executive

Meeting Support: Dianne Railton, Governance Support Officer

18 May 2022 01:00 PM

Agenda Topic	Page
1. APOLOGIES No apologies were received prior to publication of the agenda.	
2. CONFIRMATION OF AGENDA Note: Any additions must be approved by resolution with an explanation as to why they cannot be delayed until a future meeting.	
3. CONFLICT OF INTEREST Members are reminded of the need to stand aside from decision-making when a conflict arises between their role as an elected representative and any private or other external interest they might have.	
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5. CLOSURE

4.1. Minister's s24A Investigation - May 2022

Prepared for:	Council
Report No.	GOV2229
Activity:	Governance Report
Author:	Anita Dawe, Acting General Manager Policy and Science
Endorsed by:	Sarah Gardner, Chief Executive
Date:	18 May 2022

PURPOSE

- [1] To outline the background and immediately preceding actions that led to the Minister for the Environment initiating a second investigation into the Otago Regional Council.

EXECUTIVE SUMMARY

- [2] The ORC is progressing an agreed programme of works as a result of a 2019 investigation into ORC's functions predominantly related to freshwater.
- [3] Councillors have asked the Minister for the Environment if he might consider a further conversation on that agreed programme, to enable a delay in notification of the Land and Water Regional Plan.
- [4] As a result of that request, the Minister has appointed Hon Professor Skelton to undertake a second investigation, to determine why an extension might be needed.

RECOMMENDATION

That the Council:

- 1) **Notes** the six-monthly report sent to the Minister for the Environment on 28 March 2022.
- 2) **Notes** the letter from the Chair of the Otago Regional Council to the Minister for the Environment that accompanied the six-monthly report on 28 March 2022, concerning the timeframes for notification of the Land and Water Regional Plan.
- 3) **Notes** the response from the Minister for the Environment, in May 2022, initiating a second investigation pursuant to section 24A of the Resource Management Act 1991.

BACKGROUND

- [5] In 2019, the Minister for the Environment undertook a review of ORC's water management framework. As a result of that review, six monthly reports to the Minister on progress against his recommendations are required. In addition, a work programme was agreed by Council, that included a review of the partially operative Regional Policy Statement (RPS) and notification of a new RPS by June 2021¹, and development and notification of a new Land and Water Regional Plan by December 2023.

¹ Originally the proposed RPS was to be notified by November 2020 but with the Ministers agreement, the timeframe was extended until June 2021.

- [6] The proposed RPS was notified in June 2021, with submissions and further submissions closing through 2021, and a Freshwater Hearings Panel appointed to hear submissions to the proposed RPS.

DISCUSSION

- [7] Work on the development of the proposed Land and Water Regional Plan (LWRP) has been underway since the work programme was agreed in 2019.
- [8] The most recent six-monthly review (Attachment 1) highlighted the continued progress toward the notification of the LWRP, albeit the programme pivoted with the latest Covid restrictions.
- [9] The programme is condensed, and staff have designed the process for achieving it within the available timeframe. The programme is on track, although unplanned matters such as the High Court declaratory proceeding in relation to the proposed RPS, and the most recent LWRP engagement pivoting to an online model have raised further challenges.
- [10] While the view of staff is that the programme can be achieved on time, and the Chief Executive recommended careful consideration before any approach to the Minister about the current timetable, Councillors wrote to the Minister in March 2022, asking for dialogue on whether a 12-month extension for the LWRP might be possible (Attachment 2).
- [11] The advice of the Chief Executive to Council when considering approaching the Minister for an extension highlighted the following:
- The request could impact on relationships with the Minister, with our Treaty Partners and stakeholders. This is because any delay means processes take longer to address issues, expectations based on current timeline commitments would not be met, the Minister's goal for changes to water quality within a generation might be compromised and implementing Te Mana o te Wai across Otago would be delayed.
 - Practical implications such as the timing of the 6 year consents out of Plan Change 7, where that timeframe was specifically chosen to dovetail consent expiry with new policy provisions being notified in 2023.
 - The timeframe for all other Regional Council's to meet NPSFM requirements for water policy that requires notification of plans in 2024, which means any extension would need to align with that timeframe but would also put our Land and Water Plan in the queue for hearing by decision makers i.e. the Freshwater Commissioners
 - Organisational impact i.e. cost and impacts of staff committed to the 2023 timeframe.
 - The impact of a decision to ask for a slow down or delay on governance and government confidence and possible further options for Ministerial intervention.
- [12] In response to the letter of Chair Noone to the Minister, the Minister has initiated another section 24A Resource Management Act 1991 investigation, to gather more evidence and understand why an extension might be required (Attachment 3).
- [13] As in 2019, the Minister has appointed the Hon Professor Peter Skelton to undertake the investigation and will consider what actions, if any, are required once the investigation is complete.

OPTIONS

- [14] There are no genuine options available. The aim of Councillors and staff is to assist Professor Skelton to complete the investigation and enable reporting back to the Minister

CONSIDERATIONS**Strategic Framework and Policy Considerations**

- [15] This paper does not relate directly to the strategic framework except that the development of the LWRP impacts on a number of the Strategic Directions.
- [16] The LWRP is being prepared to give full effect to the National Policy Statement for Freshwater Management 2020.

Financial Considerations

- [17] There will be costs associated with staff time to support the investigation which can be met from existing budgets.

Significance and Engagement Considerations

- [18] The investigation will be of interest to a significant part of the community. Where possible, the findings will be made public.

Legislative and Risk Considerations

- [19] The Minister has initiated an investigation in accordance with the powers available to him under section 24A of the Resource Management Act 1991

Climate Change Considerations

- [20] This is not relevant for this paper.

Communications Considerations

- [21] Staff will work with the Communications team to ensure that information is accessible wherever possible.

NEXT STEPS

- [22] The next steps are to support the investigation and respond to any recommendations from the Minister for the Environment.

ATTACHMENTS

1. Letter to Minister Parker - fifth progress report under S 27 of the RMA 1991 - 28 March 2022 [4.1.1 - 12 pages]
2. Letter to Hon David Parker re fifth progress report under S 27 of RMA 1991 - 28 March 2022 [4.1.2 - 1 page]
3. Letter to Chair Noone from Hon David Parker - 5 May 2022 [4.1.3 - 1 page]



Our Ref: A1620252

28 March 2022

Minister for the Environment
Private Bag 18041
Parliament Buildings
Wellington 6160
BY EMAIL: 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 2020¹, 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.*

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

For our future

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



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>
<p>Consenting</p>	<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 Manuherekia 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>	
<p>Monitoring & Enforcement</p>	<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>



	<p>the resource dedicated to data monitoring from 3 to 4 FTE.</p>	<p>inspections have increased by 9.4%.</p>
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:

Action	What we advised in October 2021	Latest Update
<p><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>	<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>
<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>	<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&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&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 8th and 9th 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"> • Judge Laurie Newhook - Chair and Freshwater Commissioner • Ron Crosby – Freshwater Commissioner • Bianca Sullivan – ORC nominated panel member • Allan Cubitt – ORC nominated panel member • Rauru Kirikiri – tangata whenua nominated panel member. <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: https://www.orc.govt.nz/media/10015/agenda-council-20210623.pdf</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. 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: 1) <i>Notes this report.</i> 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></p>	<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 (agenda-council-20210623.pdf (orc.govt.nz)).</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>Resolution CM21-140: 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.</p> <p>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 Manuherekia 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 Manuherekia 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; or 021 445 993).

Yours sincerely

A handwritten signature in black ink that reads "Sarah Gardner".

Sarah Gardner
Chief Executive Officer



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

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

For our future

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

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

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).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'David Parker'.

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 | beehive.govt.nz