

**BEFORE THE COMMISSIONERS APPOINTED ON BEHALF
OF THE OTAGO REGIONAL COUNCIL**

UNDER the Resource Management Act
1991 (the **Act** or **RMA**)

IN THE MATTER of an original submission on the
Proposed Regional Policy
Statement for Otago 2021
(**PRPS**)

BETWEEN **OTAGO WATER RESOURCE
USER GROUP**

**Submitter OS00235 and
FS00235**

**FEDERATED FARMERS NZ
INC**

**Submitter OS00239 and
FS00239**

DAIRY NZ

Submitter FS00601

AND **OTAGO REGIONAL COUNCIL**

Local Authority

EVIDENCE IN CHIEF OF KATE SCOTT



GALLOWAY COOK ALLAN LAWYERS
Bridget Irving / Phil Page
bridget.irving@gallowaycookallan.co.nz
phil.page@gallowaycookallan.co.nz

P O Box 143
Dunedin 9054
Ph: (03) 477 7312
Fax: (03) 477 5564

EVIDENCE IN CHIEF OF KATE SCOTT

INTRODUCTION

1. My full name is Kate Louise Scott. I am a resource management planner and farm environmental planner, as well as being the Founder and an Executive Director of Landpro Limited. My current role at Landpro is GM Farm Environmental.
2. I hold a Bachelor of Arts Degree, double major in Geography and Political Science from Victoria University, Wellington. I also hold a number of post graduate qualifications, including a certificate in Farm Environmental Planning from Massey University, and the qualification of 'approved provisional auditor' for ISO140001 – Environmental Management Systems.
3. I am a Nuffield Scholar (2018), and during my scholarship I undertook a body of research entitled *Enabling Better Environmental Outcomes in Agriculture* which focused on ways to achieve better environmental outcomes utilising both regulatory and non-regulatory approaches.
4. I have been a practicing planning consultant for twenty years, providing consultancy services to a wide range of clients throughout New Zealand, including within the Otago Region.
5. My experience as a resource management planner is varied but has predominantly focused on rural and regional planning matters over the past 10 to 15 years, and has covered all aspects of planning, including preparation of resource consent applications, preparing assessment of effects, resource consent compliance and general consent strategy related work. This work has predominantly been focused on the energy and infrastructure and rural sectors.
6. From 2013 to 2018 I acted in the capacity of Project Manager for the Manuherikia Catchment Water Strategy Group (MCWSG), which was tasked with looking at a variety of options for water management within the Manuherikia Catchment, including the replacement of deemed

permits, the upgrade of Falls Dam, and overall enhancement of the catchment for environmental gain.

7. I am also experienced in facilitating stakeholder and community engagement and I am often engaged as an expert across New Zealand in this space.
8. The majority of my work now focuses on undertaking strategic environmental advisory work and farm environmental work within the rural sector to facilitate a ground up approach to change, including regulatory change. I am regularly sought to provide expertise across New Zealand in this regard, including most recently for the design and implementation of work associated with MPI's Integrated Farm Planning (IFP) framework¹, which considers the holistic and interconnected nature of farm planning across a variety of different aspects, including meeting all regulatory requirements that farmers and growers must meet across the various aspects of their businesses.
9. I hold professional membership with the New Zealand Institute of Primary Industry Management (NZIPIM), the Resource Management Law Association (RMLA), New Zealand Institute of Management (NZIM), and the New Zealand Institute of Directors (NZIOD).
10. My experience in community led environmental change projects also extends to a number of voluntary roles, including as a Trustee of Wai Wānaka, where I chair the *Jobs for Nature Project*. The project helps to deliver environmental outcomes through on the ground actions such as farm environment plans and riparian planting, biodiversity and freshwater monitoring and pest control.²
11. I am also the Deputy Chair of Thriving Southland, which is a community driven charitable entity which focuses on supporting catchment groups, rural landowners and communities to drive change for better environmental outcomes. Thriving Southland has been delivering with the financial support of MPI the *Change and Innovation Project* which

¹<https://www.mpi.govt.nz/funding-rural-support/farming-funds-and-programmes/integrated-farm-planning-work-programme/>

² www.waiwanaka.nz

supports rural communities and catchment groups to undertake land use practice change with a focus on enhancement of the environment³.

12. I also Chair the New Zealand Rural Leadership Trust (NZRLT) which enables the delivery of the Kellogg and Nuffield Scholarship Programmes, as well as leading and contributing to work in the strategic leadership space for the New Zealand Food and Fibre Sector.
13. I have been given a copy of the Environment Court's code of conduct for expert witnesses. I have reviewed that document and confirm that this evidence has been prepared in accordance with it and that all opinions that I offer in this evidence are within my expertise. I have not omitted to refer to any relevant document or evidence except as expressly stated. I agree to comply with the code and in particular to assist the Commissioners in resolving matters that are within my expertise.

Scope of Evidence

14. The purpose of this evidence is to set out the broad suite of regulatory changes that are in the pipeline and which are affecting the Food and Fibre sector already or which will do so within the 'life' of the proposed RPS. I intend to cover:
 - (a) Evolving Operational Context for Farmers and Growers;
 - (b) Provide an overview of the national regulatory framework applicable to the pORPS;
 - (c) Give context to the complexity of Otago's regional policy statements and how regional policy statement uncertainty has complicated lower order planning documents;
 - (d) The convergence of associated issues, and the timing of these key national regulatory documents

³ www.thrivingsouthland.co.nz

- (e) The need for efficient, effective implementation of planning and policy frameworks that still achieve associated objectives and visions while providing a pathway for transitional change.
15. For clarity I note that while I am a resource management planner, this evidence does not purport to provide a full planning assessment of the pORPS. It is provided in the context of my knowledge as a Farm Environmental Planner, and my experience and understanding of the national regulatory framework and associated existing impacts, timeframes and other expectations and consequent pressures on resource users and rural communities.

OPERATIONAL CONTEXT FOR FARMERS & GROWERS

16. Over the past few years, farmers, growers, industry bodies and catchment groups across Otago have committed to an increasing range of environmental projects and actions, alongside an ongoing commitment to the adoption of good management practices in order to improve environmental outcomes on farm. The drivers for this change are both regulatory and non-regulatory.
17. In part this has been driven by the replacement of deemed permits in some communities, or through other non-regulatory measures such as industry assurance programmes e.g. New Zealand Farm Assurance Programmes (NZFAP), or industry driven initiatives such as Red Meat Profit Partnerships (RMPP) Action Groups, as well as national and regional regulatory requirements such as;
- (a) National Policy Statement for Freshwater Management (NPSFM)
 - (b) Resource Management (Measurement and Reporting of Water Takes) Regulations 2010
 - (c) Resource Management (Stock Exclusion) Regulations 2020
 - (d) Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F)

- (e) ORC Plan Changes 7 and 8
 - (f) Consultation and development of the impending Land and Water Plan
 - (g) Building (Dam Safety) Regulations 2022
 - (h) Draft National Policy Statement for Indigenous Biodiversity
 - (i) He Waka Eke Noa Development and Consultation
 - (j) Various District Plan Change processes (deemed relevant on the basis that the RPS is partially implemented through district planning instruments.
 - (k) Health and Safety Regulations.
 - (l) Other broad ranging industry engagement initiatives.
18. Regardless of the vehicle for change, there has been a significant shift amongst rural landowners and rural communities to do more for the environment at both farm and catchment scale.
19. I am also seeing this change materialise through an increase in the uptake of voluntary Farm Environmental Plans over the past 2-3 years (albeit Certified Freshwater Farm Plans have now been introduced as a nationwide regulatory requirement, although are yet to be implemented) and a growing interest in Integrated Farm Planning approaches.
20. Many of these environmental initiatives and actions have started, or have otherwise accelerated or been amended, in light of changing regulatory expectations and timeframes, i.e. a desire to “get ahead of regulation”, although this does not capture all farmers and growers.
21. While regulations alone are not the complete answer to environmental improvements, they do remain a necessary tool to help drive practice change for some resource users. They are most successful when they are ambitious, but still workable, practical and achievable on the ground.

22. We need to be able to start with the desired outcomes, which is where the pORPS and the objectives and visions set through this process become fundamental. Where there is insufficient detail captured in the pORPS, then subsequent planning processes become constrained and result in impractical outcomes or possible unintended policy/planning consequences which result in long term conflict of provisions or long term constraints, both of which can have an adverse effect in terms of the inability to achieve good environmental outcomes.
23. If more significant changes in practice or infrastructure are necessitated, as will likely be the case in some parts of Otago to ensure that the National Bottom Lines are achieved, an appropriate transitioning pathway needs to be provided to enable farmers and growers to prioritise and plan for the associated investment and resourcing required. This ensures they can navigate a way through for the future of their businesses, families and communities, and are thereby more likely to buy into solutions.
24. It is important that regulation, and the resulting transitioning timeframes, equally recognise that agriculture and horticulture are biological processes, and that responses to changed practices and behaviours generally do not show results immediately. There is typically a time lag between practice change and the desired environmental outcomes. The same is true when farm system changes are required, these can take many years to implement and refine, especially where science may still be developing, for example in the emissions space.
25. Furthermore, most farmers and growers do not have access to immediate or unlimited funds and resources, so careful prioritisation and planning is needed as to what investments and practice changes can occur at given staged timeframes, in line with the priorities pertinent to regulations, and to their farming businesses and other financial or other commitments.
26. With the introduction of CFWFPs under Part 9A RMA, landowners will need to address risk in a catchment context, as well as provide clear

actions to avoid remedy or mitigate adverse effects on freshwater. It is imperative therefore that the RPS and subsequent LWP does not create duplication, but a pathway for clarity to provide clear linkages.

27. Frequent amendments to the overriding regulatory context can frustrate and distract farmers and growers from any planned course of practice change and can otherwise limit banks and investors from approving associated funding required, given investment uncertainty.
28. It is a usual occurrence for me to hear comments to the effect "I am waiting for some certainty on the rules rather than incurring the costs and undertaking change, only for it to change and change again". Farmers are having to make trade-offs without full knowledge of the purpose or the effects. To this end, in my experience the greater certainty, and clarity of outcomes that can be provided at the outset and signalling of a clear pathway forward with timeframes, the more on board with change rural landowners will be. This is further reason in my view to provide for clear transitional pathways, avoid duplication (particularly through the RPS and subsequent LWRP process) and set clear integrated objectives.
29. In order to have successful environmental outcomes, resource users need sufficient time, certainty and clarity as to the regulatory context to enable them to undertake appropriate investment of time, resources and necessary funds to facilitate required change. Duplication can also be seen as a deterrent to change.
30. More recently, progress has been challenging for many individuals and groups, as the applicable national regulatory context has both increased in intensity, proliferation of instruments and in the acceleration of associated timeframes and requirements, and thereby uncertainty. This has been exacerbated by the regularity and frequency of amendments needing to be made to the Essential Freshwater

Regulations,⁴ released in September 2020, which will be discussed in greater detail below.

NATIONAL REGULATORY FRAMEWORK

Essential Freshwater Policy Overview

31. The Essential Freshwater Package was introduced in September 2020 and was part of the national direction intended to protect and improve rivers, streams, lakes, wetlands and estuaries. The package aimed to:
 - (a) Stop further degradation of freshwater;
 - (b) Start making immediate improvements, so water quality improved within five years; and
 - (c) Reverse past damage, to bring waterways and ecosystems to a healthy state within a generation.

32. It consists of the following;
 - (a) National Policy Statement for Freshwater Management (NPSFM); and
 - (b) Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F).
 - (c) Resource Management (Stock Exclusion) Regulations 2020.

33. The NPSFM introduced the National Objectives Framework (NOF) which is the framework for managing freshwater to achieve specified water quality outcomes, which are specified as National Bottom Lines (NBL). Each region may set water quality limits that are more stringent than the NBL but not less stringent. The NPSFM is further discussed in Paragraphs 37 to 53.

⁴ Package including the National Policy Statement for Freshwater Management 2020, the Resource Management (National Environmental Standards for Freshwater) Regulations 2020, and Resource Management (Stock Exclusion) Regulations 2020.

34. The NES-F was introduced as an interim approach (to meet the aims of the reform set out in Paragraph 31) during the period from the introduction of the NES-F until such time as Regional Councils could give effect to the NPSFM to control the effects of certain land use activities on water quality. The NES-F therefore resulted in more immediate limitations on farmers with the introduction of both permitted standards and consented activities including:
- (a) Excluding stock from waterways
 - (b) Controlling feedlots and stockholding areas
 - (c) Controlling intensive winter grazing practices
 - (d) Restricting agricultural intensification
 - (e) Managing nitrogen discharges.
35. Appendix 1 provides detailed list of the specific NES-F requirements under each of the above areas.
36. Compliance is not always possible due to a range of factors on farm. When compliance with specified permitted activities is not achieved, landowners will be required to obtain consent, resulting in additional compliance and consenting obligations for some landowners.
37. In the future as we transition from NES-F to LWRP provisions there will be a need to recognise that greater land use optimisation will be necessary as farms diversify and change to meet regulatory requirements. We must therefore consider whether the PORPS provides for this flexibility in the future.

The National Policy Statement for Freshwater Management (NPSFM)

38. National Policy Statements (NPSs) set out objectives and policies, associated implementation timeframes and context, and apply nationally. Councils are required to give effect to NPSs through their own policy statements and planning documents but have a degree of flexibility in the approach they can take in this regard.

39. While the National Planning Standards⁵ were introduced in 2019 to make council plans and policy statements easier to prepare, understand and comply with, there is still a variation in the approach and response regional councils take to giving effect to NPSs, with the resulting lower order planning framework often equally varied. On that basis, it is difficult to predict with any certainty the structure, approach and contents of a regional planning statement or lower order planning document.
40. While multiple NPSs⁶ are relevant to the pORPS, the most relevant in this context is the National Policy Statement for Freshwater Management (NPSFM).
41. The intent of the NPSFM is to set out the long term objectives and policies for freshwater management under the Act. The first NPSFM in New Zealand took effect in 2011, following years of background work and a Board of Inquiry process.
42. In Otago, the first regional plan to address freshwater management (the *Regional Plan: Water for Otago (the Otago Water Plan)*) was notified in 1998, and became operative in 2004, prior to the NPSFM 2011 taking effect. In the period between 2004 and 2011 the Regional Plan: Water for Otago went through numerous plan change processes, including Plan Change 6A (PC6A). PC6A was ORC's response to the region's water quality management issues, and it took a largely effects-based approach with minimal resulting consenting requirements on Otago farmers.
43. While PC6A's notification also preceded the NPSFM 2011 taking legal effect, through ensuing Environment Court appeal processes, ORC confirmed its position that it considered PC6A did appropriately still give effect to the NPSFM 2011. The matter was successfully mediated without the need for any Environment Court hearings.

⁵ <https://environment.govt.nz/acts-and-regulations/national-planning-standards/>

⁶ Including the National Policy Statement for Urban Development (NPSUD); National Policy Statement for Highly Productive Land (NPS-HPL) National Policy Statement for Electricity Transmission (NPSET) and the draft National Policy Statement for Indigenous Biodiversity (NPSIB).

44. Following the resolution of PC6A appeals, numerous catchment groups were established to support communities and farmers to navigate a pathway to achieving improved environmental and on-farm outcomes and to help them meet their regulatory requirements into the future.
45. On 1 August 2014, three years after the NPSFM 2011 first took effect, the NPSFM was amended and replaced by the NPSFM 2014.
46. The NPSFM 2014 introduced a national objectives framework in an endeavour to ensure regional councils applied the NPSFM in a more consistent way across the country. It introduced compulsory values (ecosystem health and human health for recreation) and associated national bottom lines.
47. A further three years on, in 2017, the NPSFM 2014 itself was amended, including an introduction to the concept of Te Mana o te Wai (TMOTW), and a greater focus on giving effect to the Treaty of Waitangi. In the same period of time, in August 2017, the Ministry for the Environment released an independent review of the implementation and effectiveness of the NPSFM in achieving its objectives and policies⁷. This included a stocktake of the NPSFM implementation for the Otago region⁸, in which the ORC confirmed its position that it considered that both the NPSFM 2011 and NPSFM 2014 had been appropriately implemented through the Otago Water Plan.
48. As a part of that review report, it was further noted that:

“ORC has chosen to use a consultative rather than collaborative process for policy development and planning. It feels that this approach has worked efficiently, avoiding the time and expense that collaborative planning processes have required in other regions.”⁹

⁷ [National Policy Statement for Freshwater Management implementation review: National themes report and regional reports | Ministry for the Environment](#)

⁸ [npsfw-implementation-review-regional-chapter-otago.pdf \(environment.govt.nz\)](#)

⁹ Ibid at page 11

“Some stakeholders felt that Plan Change 6A is not being implemented properly, because not all information is reaching farmers to enable them to make any necessary changes to comply with the plan change. Stakeholders are unsure how ORC will approach compliance. Farmers feel that they should receive more guidance from ORC around what their responsibilities are concerning the environment and water management.”¹⁰

49. In the period from 2017 to 2019, uncertainty about implementing the plan change resulted in increased misalignment between catchment and individual long-term projects and objectives, with that of the wider region.
50. This malfunction precipitated ministerial intervention. Professor Peter Skelton’s Report¹¹, led to the Minister’s recommendation that ORC undertake a comprehensive programme of work, including a review of its Regional Policy Statement (RPS) and to notify a new Land and Water Regional Plan by 31 December 2023. The history of the Otago RPS is in and of itself complex and will be discussed in greater detail below.
51. ORC commenced its response to the Minister’s recommendations in early 2020. However, during the period of this workstream, on 3 August 2020, the NPSFM 2017 was again replaced, this time by the NPSFM 2020.
52. The NPSFM 2020 introduced a step-change in the required response from local authorities, including the entrenchment of Te Mana o te Wai as the fundamental concept within the NPSFM, along with six principles and a hierarchy of obligations, prioritising the health and wellbeing of water bodies and freshwater ecosystems.
53. Under the NPSFM 2020, regional councils were to give effect to its requirements by 31 December 2024, although ORC continued with its

¹⁰ Ibid at page 15.

¹¹ [Investigation into whether the Otago Regional Council was adequately carrying out its freshwater management functions | Ministry for the Environment](#)

earlier commitment to have an updated Land and Water Plan for Otago notified before 31 December 2023.

54. ORC's continuation of its earlier timeframe commitments resulted in an accelerated work programme within ORC, which increased resource user's uncertainty as to both the direction the Otago regulatory context might go, and how that would impact their businesses, and the actions they'd already either funded or committed to undertake.

NPS-FM Sediment and Nutrient requirements

55. These regulations include sediment requirements that mean that the agricultural sector must improve drainage and water control structures as well as strengthening banks and increased sediment trapping.
56. The NOF process will set instream nutrient concentration thresholds for nutrient affected attributes in rivers. Both the sediment and nutrient requirements are regulatory requirements which are not yet certain. Without that certainty it is not possible to predict how they will manifest as resource user obligations.
57. It does however remain unclear how Otago intends to achieve the National Bottom Lines based on the direction provided within the PORPS, or what timelines for this change are sought, creating a challenge for those who may wish to act now, but lack the certainty to do so.

National Environmental Standards for Freshwater 2020 (NES-F)

58. National Environmental Standards (NESs) allow government to promote the adoption of consistent standards across regional and district levels. They are regulations issued under the Resource Management Act (the Act) that prescribe technical standards, methods, required timeframes and other requirements for operability across New Zealand. They are specific requirements with the force of a rule, and local authorities must enforce them.
59. NESs are implemented and enforced by Councils, alongside the implementation and enforcement of their own rules and regulations.

Importantly in this context, NESs have the ability to specify that they are a minimum standard, allowing local authorities to apply more stringent requirements in their own plans. This enables local authorities to take a more nuanced approach to the specific issues and context of their regions, but also risks leaving resource users and communities ‘uncertain’ as to what their responding actions should be during the period between the NES coming into force, and Council’s finalising regional planning rules, including whether action taken now will be sufficient or “wasted” once the new plan based regime is determined.

60. There are a number of NESs in force in New Zealand, covering a range of matters including Plantation Forestry, Air Quality, Sources of Drinking Water, Telecommunication Facilities, Electricity Transmission Activities, Contaminants in Soil, Marine Aquaculture, Storage of Outdoor Activities and Freshwater.
61. The National Environmental Standards for Freshwater 2020 (NES-F) are the first New Zealand NES that relate to freshwater. The wider regulations came into force on 3 September 2020. However, a number of subparts have specified alternative dates for when they take effect.
62. The NES-F was introduced to regulate activities that pose risks to the health of freshwater and freshwater ecosystems. They include requirements that restrict further land use intensification until the end of 2024, requirements for intensive winter grazing practices, provisions that regulate the protection of wetlands and streams, ensure connectivity of fish passage, set minimum requirements for feedlots and other stockholding areas, and regulate the discharge and reporting of synthetic nitrogen fertiliser use.
63. In many cases, resource users will need to apply for a resource consent to continue carrying out their activities, which might have previously been permitted under lower order planning documents.
64. There is a risk that continual and protracted changes result in change fatigue and confusion such that landowners are no longer attuned to what is required, and example of this is the new requirements for effluent storage and animal discharges which were brought about by

Plan Change 8, which in my view are poorly understood or known about throughout much of Otago.

65. The NES-F was introduced amidst substantial pushback from the rural sector, with many aspects considered impractical and unworkable. Many standards have been reviewed since that time, with further amendments to provisions and timeframes both proposed and adopted, to make these interim measures workable. There is however an opportunity to be learnt from this, that working with rural landowners to help determine practical and workable outcomes will result in greater buy in and adoption.
66. As a consequence, there has been uncertainty for resource users as to what provision is now considered final, and what else may potentially shift or change. There has also been confusion around existing use rights under the Act, and how these apply, and what dates consents are needed by for activities such as Intensive Winter Grazing, or when reporting timeframes applied for synthetic nitrogen fertiliser use.
67. In the context of this evidence, it is the NES-F that is currently of most relevance to farmers and growers (from the range of New Zealand's NESs in effect). The NES-F introduced the concept of the reference period (July 2014 - June 2019), and to ensure the risk of duplication is minimised we must consider the implications of this in future planning documents. Clear, certain requirements that do not conflict across instruments is essential to ensuring that the limited pool of resource user investment goes toward improving outcomes rather than parsing the fragmented regulatory landscape.
68. The cost of compliance versus the cost of practice change is a real concern that needs to be addressed if we want to create a pathway to achieving improvements with respect to water quality and water quantity and to give effect to Te Mana o te Wai.

Certified Freshwater Farm Plan Regulations

69. One of the key elements of the Essential Freshwater package was the introduction of mandatory Certified Freshwater Farm Plans (CFWFP), which were introduced under Part 9A RMA.
70. All farmers and growers¹² will be required to have a certified freshwater farm plan (CFWFP) in place. The timeframes for implementation are still to be determined but are anticipated to be phased in throughout the country from 2023.
71. CFWFPs will require the identification of key risks to the farm, including both inherent and management risks, and the measures to be undertaken to mitigate such risks, i.e., the actions to be taken. They will in time set out the broader water quality objectives of the catchment within which the farm is located, and how the actions taken on farm will seek to achieve the catchment objectives. CFWFPs will require clear outcomes or goals to be met and will need to demonstrate how outcomes will be achieved. Such plans will be subject to certification by a suitably qualified person as well as being subject to regular audit.
72. Implementation timeframes are still to be determined but are likely to be a phased implementation on a catchment by catchment basis. If the RPS can provide clarity around the objectives and outcomes sought, then tools like CFWFPs will become a more useful and valid approach to integrated catchment management at a farm scale.
73. Over time Government expects that freshwater farm plans will be increasingly relied on, and may have a mandate broader than freshwater, for example such plans may also address GHG emissions requirements in the future.
74. The requirement to adopt a CFWFP will initially be an onerous and costly requirement for farmers especially where there are no or limited other obligations for similar plans, as is the case in the neighbouring regions of Canterbury and Southland to build on. To this end the introduction of CFWFPs are likely to be felt more acutely by farmers in

¹² All pastoral and arable landowners of 20ha or more or all horticultural landowners of 5ha or more

Otago, which points to the opportunity and need from a transitional planning perspective to recognise that this mandatory tool provides a pathway to avoid uncertainty and duplication.

75. The success of such an approach however will be dependent upon the ability to take an integrated approach, recognising that farm systems are holistic and dynamic, and that layers of regulatory obligation will reduce the effectiveness of an approach in terms of outcomes.
76. To give some weight to this concern and the need for transitional pathways and truly integrated management the example I use is a large high country sheep and beef client, who currently has obligations for environmental management plans and environmental compliance as follows:
 - (a) Irrigation Consents & Compliance Management ORC, including replacement circa 2026/2027;
 - (b) Meat Processor Assurance Programme Requirements (NZFAP+);
 - (c) Wool Marketing Assurance Programme Requirements (ZQ Merino);
 - (d) NES-F Consenting and Compliance for Intensive Winter Grazing (Slope Trigger) and associated Winter Grazing Management Plan.
 - (e) Future CFWFP Obligation once implementation timeframes known.
 - (f) Future Crown Pastoral Land Act Obligations for consenting.
77. Currently this client is subject to three or more audit and compliance processes. The information required for the two processor environmental programmes is largely the same, albeit each has a different set of information it is seeking, and different ways the information is to be provided. Once CFWFP's are implemented a third

environmental plan will be required, providing some of the same information again, but for a different purpose.

78. The costs associated with ongoing duplication that farmers have to endure is significant, and often results in reduced funds available for onground action which would in all likelihood have a greater benefit for the environment compared to the cost of duplication.

Intensive Winter Grazing

79. The NES-F, focused on those land use activities deemed to have an adverse effect on water quality. Intensive Winter Grazing was once such activity which is now controlled via Subpart 3 NES-F (Rule 26 & Rule 27). The requirements of the NES-F cease on 1 January 2025.
80. The NES-F effectively sought to control further intensification of agricultural land use both generally and in relation specifically to intensive winter grazing. Where an activity was carried out during the reference period (1 July 2014 – 30 June 2019) the landowner is afforded existing use rights. A change of use or any intensification beyond the existing use rights will trigger the need for resource consent.
81. Since the NES-F was introduced in September 2020, there have been a number of amendments made to the provisions specifically relating to intensive winter grazing. Amended NES-F Intensive Winter Grazing (IWG) regulations come into force on 1 November 2022 and require farmers to either;
- (a) Meet the permitted activity requirements of Rule 26; or
 - (b) Obtain a resource consent where the permitted activity requirements cannot be met (Rule 27).
82. For completeness it is noted that the alternative pathway detailed in the NES-F whereby the CFWFP can serve as an alternative to obtaining resource consent is not a method currently available, leaving those requiring consent no alternative but to obtain a consent if they wish to remain compliant.

83. The intensive winter grazing rules introduce new obligations on farmers in relation to;
- (a) The area of land on which intensive winter grazing can occur without the need to obtain a resource consent;
 - (b) The slope of the land on which intensive winter grazing can occur without the need to obtain a resource consent;
 - (c) The requirement to avoid cultivation and or grazing of critical source areas;
 - (d) The requirement to replant grazed areas as soon as practical after the completion of grazing;
 - (e) The requirement to minimise pugging.
84. In practice, within Otago most farmers or landholdings triggering the need for consent for IWG are triggering consent on the basis of the breach of slope rule, i.e., planting of winter crops on slopes greater than 10 degrees, and or the inability to avoid cultivating critical source areas. This is especially the case for sheep and beef farms, where there are often very limited areas of land which would be under 10 degrees slope.
85. Where this is the case, it is impossible to avoid the need for consent as growing conditions also dictate that it is not possible to feed livestock without the use of winter crops. In terms of the cultivation of critical source areas, experience has shown that on slopes of greater than 10 degrees it is sometimes impossible to safely avoid what in summer may be depressions and in winter critical source areas during planting.
86. On smaller units that either undertake dairy support or self-contained dairy units these landowners are typically triggering the need for consent on the basis of the 50ha or 10% (whichever is the greater) trigger.
87. In either case, where the applicant is undertaking their activities at the same scale as what occurred during the maximum year within the

reference period, to date the consenting process has been reasonably straight forward to navigate, and generally met with a pragmatic approach by processing officers.

88. In my opinion this is in part due to the lack of conflicting rules within the Otago Water Plan, compared to for example Southland where additional complexity arises due to some landowners triggering the need for consent under both pWLP and NES-F requirements.
89. Certainty is seen as being beneficial to the farmers in this instance and has to date provided confidence and flexibility for our clients to progress with obtaining consent, knowing that the process has been relatively straightforward, and knowing that a reasonable term of consent, i.e. greater than 5 years can be obtained.

Feedlots & Stockholding Areas

90. Controls on feedlots and stockholding areas in terms of age and weight of stock, permeability of the feedlot, storage and disposal of effluent, and location of the feedlot or stockholding area in relation to waterbodies are contained in the NES-F. In many cases consent can be avoided when there is a CFWFP in place.
91. Consents may be required for activities that were previously able to be undertaken as a permitted activity, and because CFWFP's are not yet in place, consents may need to be sought in the interim, resulting in additional costs and uncertainty when another pathway has been provided.

Agricultural Intensification and Change of Land Use

92. Regulations around intensification in the NES-F include limitations on conversion to from forestry to pastoral land use, increase in dairy or dairy support land use, increase in irrigation on dairy farm land and use of land as dairy support.
93. Other than for use of land as dairy support which is not permitted without consent to increase beyond the reference period, if any increase in area for the land uses outlined above is greater than 10ha

from that in the 12 months to 2 September 2020, then a consent is required.

94. Because Council provisions have not had time to catch up this can mean that farmers need to obtain a costly and complex consent when there is no clear regional planning framework or outcomes to reference.

Wetlands, Reclamation and Fish Passage Requirements

95. The NES-F introduced extensive requirements on farmers when 'natural wetlands' are present in areas of their farming property.
96. It also introduced additional consenting requirements in relation to the reclamation of waterways, which in an ephemeral environment such as is the case in parts of Otago can create additional consenting and compliance obligations.

Nitrogen cap guidance

97. These provisions set a yearly limit on the amount of synthetic nitrogen that farmers may apply to grazed land on each of their contiguous landholdings.
98. This is aimed at limiting impacts of nitrogen on waterways and also introduces additional compliance reporting requirements specifically for dairy farmers.

Resource Management (Stock Exclusion) Regulations 2020

99. The Resource Management (Stock Exclusion) Regulations 2020 (the 'Stock Exclusion Regulations') came into force on 3 September 2020. They apply to cattle, deer and pigs, with the acknowledgement¹³ that extending requirements to sheep and goats would result in disproportionate costs in comparison to actual environmental risk or benefit.

¹³<https://www.mpi.govt.nz/dmsdocument/16513-National-Stock-Exclusion-Study-Analysis-of-the-costs-and-benefits-of-excluding-stock-from-New-Zealand-waterways-July-2016>

100. The Stock Exclusion Regulations largely require the exclusion of stock from specified wetlands, lakes, and rivers more than one metre wide, but there is a differentiated approach depending on stock type, terrain, and in some cases intensity (such as where animals are break-fed, grazing annual forage crops or on irrigated pasture).
101. Different timeframes apply in different scenarios, with all requirements applying immediately for new land uses.
102. A key aspect of many of the Stock Exclusion Regulations related to a Low Slope Map, which was formally released as part of the Stock Exclusion regulations. Again, this has been contentious, and captured numerous areas of higher slope land as 'low slope' due to the 'averaging' approach taken, largely where land parcels contained a higher proportion of low slope than higher slope land. Subsequently, amendments have been proposed to the map to remedy many of these issues, although changes have not been confirmed yet.
103. There remains uncertainty for landowners as to what resulting restrictions and requirements apply to their stock. Firstly, will the recently proposed amendments to the low slope map be adopted? In many cases, this significantly changes the resulting requirements on beef and deer farmers. Secondly, what wet areas on farm will be considered 'natural wetlands' and thereby have resulting implications and exclusion restrictions up on them? Thirdly, would ORC take an approach more stringent than what central government considered necessary, and further extend stock exclusion restrictions?
104. In the absence of this information landowners are left in the impossible position of having to bet their practice change investment on what outcome they or increasingly their team of experts think is most likely.

National Environmental Standards for Human Drinking Water 2007

105. Proposals to amend the Resource Management (National Environmental Standards for Sources of Human Drinking Water)

regulations 2007) have the potential to affect the ability of farmers to intensify, subdivide or undertake primary production activities. These regulations also affect irrigation companies that provide water to supply domestic drinking water supplies.

Proposed National Policy Statement on Indigenous Biodiversity 2022

106. For pastoral farming, some areas may be identified as significant natural areas (**SNAs**). These may be areas such as gullies with indigenous forest, shrubland remnants and grasslands with threatened species present.
107. Councils advise landholders on how to best manage SNAs to protect their values. Where maintenance of improved pasture is required, it will be able to continue within some parameters.
108. This proposed NPS requires management of new activities in and around an SNA where those activities will have adverse effects on the SNA, or where existing activities are intensified or increased in scale.
109. There is a high likelihood that this will further constrain the way in which farmers operate and manage their properties, leading to a disjointed approach to natural resource management.
110. The PRPS needs to provide well defined objective that truly support a holistic and integrated management approach that provides for a greater balance of regulatory and non-regulatory methods. An overly regulatory and prescriptive approach runs the risk of unintended consequences and conflict between the many regulatory (and non-regulatory) requirements farmers face.

National Policy Statement for Highly Productive Land 2022 (NPSHPL)

111. The Government developed the NPSHPL to respond to the *Our Land 2018* report, which described the threats facing highly productive land in New Zealand.
112. The NPSHPL requires the country's most productive land to be identified and managed to prevent inappropriate subdivision, use and development.

113. As a result, it limits the options for farmers regarding their land. For the most part, farmers in possession of highly productive land can only conduct primary production activities or supporting activities on their land as a result of the NPSHPL.
114. It therefore represents another limitation on what farmers can do with their land. There are likely instances where otherwise productive land is constrained by compliance obligations to the extent where it is no longer viable. In these cases the land would be hamstrung from efficient use by regulation.
115. The implications of the NPSHPL will vary across Otago depending on the underlying class of land. However, there will be instances where preserving primary production impairs landowners' ability to adapt land use to facilitate more diverse business models. An example of this would be where an aggregate quarry was to be established and subdivided off from the primary pastoral use. Under the NPSHPL, this would almost be impossible, which points to the need for the PORPS to provide clarity around how these provisions will be managed to minimise unintended consequences within an Otago specific setting.

Climate Change Response (Zero Carbon) Amendment Act 2019

116. This Act seeks to:

- (a) price agricultural emissions
- (b) accelerate mitigation technologies
- (c) support producers to make changes; and
- (d) transition to lower emissions land uses and systems

117. These will all inevitably require cost on behalf of the agricultural sector in order to comply with new rules.

Pricing Agricultural Emissions

118. The Government is at present seeking consultation on its proposals regarding pricing of agricultural emissions until 18 November 2022,

following the earlier release of the primary sector working group, He Waka Eke Noa's proposal.

119. The government proposal includes:
- (a) A farm level, split gas levy for pricing agricultural emissions
 - (b) Two options for pricing synthetic nitrogen fertiliser emissions
 - (c) An interim processor level as a transitional step if the farm level levy cannot be implemented by 2025
 - (d) Recognition for some types of sequestration in an adjacent contractual system from 2025, with a long term goal of integration of new vegetation categories into the NZ ETS.
120. Inevitably the proposals will result in cost to the agricultural sector over and above what is already required to meet freshwater obligations.

He Waka Eke Noa

121. He Waka Eke Noa is a partnership between Iwi, Government and the Primary Sector to reduce primary sector emissions. It involves working to equip farmers to measure, manage and reduce on farm agriculture greenhouse gas emissions and adapt to climate change. The intention is to enable sustainable food and fibre production for future generations while also meeting emissions reduction targets.
122. He Waka Eke Noa recommended that the Government introduce a farm level split gas levy on agricultural emissions with built in incentives to reduce emissions and sequester carbon.
123. We also need to consider the challenges for farmers in a holistic manner, whereby the solutions for freshwater, biodiversity and greenhouse gas emissions will be interrelated, therefore there is a strong need to minimise duplication.

REGIONAL PLANNING FRAMEWORK

Plan Change 7 (Water Permits) to the Regional Plan: Water

124. Plan Change 7 became operative on 5 March 2022, after being notified in March 2020.
125. The proposal was to add an objective, policies and rules that manage the replacement of expiring deemed permits and water permits. The plan change was considered the first step in the transition from the Otago Water Plan to a new 'fit for purpose' Land and Water Regional Plan.
126. The plan change introduced considerable uncertainty and cost for water users especially given that the plan change required re-notification once called in by the EPA. When this is considered in the context of the work that many permit holders had started many years before the introduction of the plan change, it is evident that a new integrated approach with clear transition pathways is necessary.
127. In the food and fibre sector, planning tends to be undertaken across 10, 20 or even 30 year timeframes. Short term consents without surety of supply restricts resource users ability to plan for the medium to long term. For many it has stalled plans to upgrade to more efficient forms of infrastructure as funding is no longer available with short term consents.

Plan Change 8 (Rural discharges) to the Regional Plan: Water

128. Plan Change 8 became fully operative from 3 September 2022. The rural provisions were made operative earlier, on the 4 June 2022 and are set out in the following parts of Plan Change 8:
 - (a) Part A: Discharge Policies;
 - (b) Part B: Animal waste storage and application;
 - (c) Part C: Good farming practices;
 - (d) Part D: Intensive grazing;
 - (e) Part E: Stock access to water; and

- (f) Part F: Sediment traps.
129. The Plan Change will have significant effects on how farmers store and apply their animal waste. Whilst the Plan Change 8 hearing process resulted in changes that sought to avoid duplication with the NES-F requirements, there will remain some farmers who face increasing costs of compliance as a result of these changes.
130. For example, a dairy client is currently required to undertake the following, in addition to other regulatory obligations;
- (a) Determine the minimum volume of storage required.
 - (b) Complete a drop test to determine suitability of current storage pond.
 - (c) Subject to whether the current pond is of sufficient size and not leaking, capital expenditure may be required to replace or upgrade storage ponds.
 - (d) Obtain a resource consent for the discharge of effluent, and land use consent for corresponding storage facility.
 - (e) Potentially obtain NES-F consent for IWG.
 - (f) Prepare and implement a CFWFP, including certification and audit costs, but excluding costs associated with implementation of action plan, as this will be very farm specific depending on the type of mitigations deployed.
131. Estimated costs associated with these actions are set out in Appendix 2 and range from a total of approximately \$33,500 up to \$133,500 ex GST.
132. These costs must be incurred before any action or benefit for the environment can be undertaken and excludes the additional costs likely to arise through other regulatory obligations, including emissions, and biodiversity.

THE ADDITIONAL COMPLEXITY OF OTAGO'S POLICY STATEMENTS

133. The Regional Policy Statement (RPS) is an important policy document for a region. It sets the direction for both district and regional council lower order planning documents.
134. Since 2016, the complexity for Otago planning processes has been compounded by the number of partially or fully operative policy statements in place, or otherwise proposed, for the region.
135. The original RPS for Otago was operative, or partially operative, from 1998 until its revocation on 15 March 2021. Many regional plan and district plan reviews and plan changes gave effect to its provisions and subsequently, numerous council workstreams have been set up under its ethos.
136. The first proposed replacement RPS for Otago was notified in 2015, with decisions released in October 2016. The document went through significant Council hearings, Environment Court mediation and hearings, and subsequently through both the High Court and Court of Appeal on specific matters. The matters subject to appeal and therefore not yet operative, have since been referred to as the Proposed Otago Regional Policy Statement 2016 (PORPS 2016). Matters that were beyond appeal became partially operative on 15 March 2021 and referred to subsequently as the Partially Operative Otago Regional Policy Statement 2019 (POORPS 2019).
137. Despite the significant resources from submitters, Council and the wider community invested into the above processes, a further Otago Regional Policy Statement was notified on 26 June 2021, following the completion of the work recommended by Professor Skelton. This ORPS, the focus of current hearings, takes a significantly different approach to the operative and partially operative RPSs and again, amends the direction of workstreams, community and catchment effort and as a consequence, the ultimate direction for lower order plans, and therefore the rules that landowners and resource users will have to comply with on the ground.

138. The constant shifting of ORPS positions within the region has created further uncertainty, complexity and confusion for councils and resource users across the region.

OTHER THREATS

139. Climate change means that farms will be disproportionately affected compared to other sectors, including by extreme weather conditions such as drought.
140. Coastal farming will be subject to managed retreat under the new National Adaptation Plan 2022.
141. Agricultural plastics form a disproportionate percentage of New Zealand's plastic use and therefore the proposed changes to the use of plastics in the country considered in recent MFE publications will likely have a disproportionate impact on the agricultural sector.
142. Other non- regulatory driven change and risk of duplication lies in the various consumer driven obligations for change which manifest typically in the form of some industry assurance program requirement, i.e. NZFAP Plus, Co-Operative Difference, ZQ Merino etc.

THE CONVERGENCE OF ASSOCIATED ISSUES, AND THE TIMING OF KEY NATIONAL REGULATORY DOCUMENTS

143. Resource users need certainty, in order to be able to commit resources, time and efforts into on-the-ground practice change and infrastructure improvements. As I've described above, numerous associated issues and complexities have converged for Otago resource users, leaving them in a state of uncertainty and confusion, and for many a resulting state of inertia or frustration as to what is now expected of them, in short timeframes that often conflict or contradict each other.
144. Farmers and growers acknowledge that their business should continue to operate in a sustainable manner, and that for many, either

resource consent, practice change or a working farm plan solution is required. Where investment, development or expansion of productive activities can occur in accordance with plans and regulations, and in a way which avoids, remedies, or mitigates adverse effects, and ultimately gives rise to environmental benefits, such activities should continue, and not be prevented.

145. To meet future change requirements, greater flexibility that enables land use optimisation will be necessary. There is a risk that the PORPS will not enable this type of approach in its current form, and nor subsequently will lower order planning document, which will result in creating unintended constraints to change, because a truly integrated and holistic approach will not have been achieved.
146. Where change is necessitated on-farm, there needs to be an acknowledgement that sufficient transitioning is likely to also be required.

TENSIONS CREATED BY THE VARIOUS CHANGES

147. All of these changes are driving at environmental improvement of some sort. However, it does not mean that all the changes or responses required by the various regulations are aligned.
148. For example, Stock exclusion requirements and freshwater farm plans will encourage and support the establishment of riparian planting to reduce contaminant losses to water and enhance freshwater habitats. However, these types of activities do not assist with emissions reduction. Therefore, individual farmers are likely to have to make a choice about which thing to focus on, or put another way make choices to “trade off” one environmental aspect over another.
149. Given that the emissions pricing regime will directly affect the bottom line I expect to see many farmers focus on reducing their emissions, rather than continuing to invest in measures that proactively respond water quality initiatives. They will obviously have to continue to

implement good practice, but the 'extra' things are likely to stop or be pared back significantly.

CONCLUSION

150. The agricultural sector is subject to reform from all angles at this moment in time and this is not expected to change in the near future.
151. The reforms already in place will take decades to implement properly, with much of the cost borne by farmers themselves.
152. The sector does not disagree with the intent behind the reforms but needs time to properly be able to implement them in a way that will result in the best environmental outcomes.
153. Given that there is so much regulatory change currently being deployed in the rural sector, it is critical that combined and cumulative effects of reforms are considered by decision makers in determining whether the visions and objectives in the RPS are 'ambitious but achievable'.
154. The RPS should recognise the need for transitional provisions and take particular care to avoid unintended policy consequences. This should be recognised through a more explicit approach where competing priorities are acknowledged, and that where such competing values materialise, i.e. water vs carbon, that this should be signalled so that farmers can be directed to undertake action in accordance with the priorities identified, because there are insufficient resources available to enable everything to be undertaken and still achieve better outcomes for the environment.
155. The implications of not providing clear direction and clear priorities are starting to arise in an Otago context already. There are many farmers being forced to make a decision between pastoral farming and the planting of pine trees due to rising uncertainty and costs. Is that what Otago wants in its catchments? Have the hydrological implications of mass pine forestry been considered? What about landscape and

effects on the soil resource? Let alone the economic and social effects on the community?

156. This is an example of the lack of integration and explicit decisions about which issues are most important having unplanned for consequences. And yet this is exactly what the RPS is supposed to do.

157. This can be achieved through clear visions, priorities and values and by providing for a joined up holistic and transitional pathway to implement and adopt efficient change on the ground.

Date: 23 November 2022

Name: Kate Scott

Appendix 1: Detailed NES-F Requirements

- (a) Excluding stock from waterways
 - (i) Dairy cattle, dairy support, and pigs must be excluded from lakes and rivers that are wider than 1 metre
 - (ii) Intensively grazing beef cattle and deer on any terrain must be excluded from any lake or water body wider than 1 metre
- (b) Deer and beef cattle on low slope land must be excluded from any lake or water body wider than 1 meter Controlling feedlots and stockholding areas
 - (i) Any stock holding areas for younger cattle (e.g., calf sheds) is a permitted activity if 90% of the stock are less than 4 months old or weigh no more than 120 kg
 - (ii) Any stock holding area for larger and older cattle must
 - (1) be sealed to a minimum permeability of 10^{-9} m/s;
 - (2) Effluent must be collected, stored and disposed of in accordance with Regional Plan rules or a Resource Consent
 - (3) Stock holding areas must be 50 m from a waterbody, bore, drain and the coastal marine area.
- (c) Controlling intensive winter grazing practices
 - (i) The Area of farm used for intensive winter grazing is no greater than 50 ha or 10% of the area of the farm,
 - (ii) The slope of any intensive winter grazing land is 10 degrees or less

- (iii) Livestock must be kept at least 5 m away from the bed of any river lake wetland, or drain
 - (iv) Critical source areas must not be grazed between 1 May and 30 September each year, vegetation cover must be maintained, and annual forage crops cannot be cultivated or harvested from a CSA.
- (d) Restricting agricultural intensification
- (i) Limiting the area of a dairy farm to the same area it was at the close of 2 September 2020 + 10 ha
 - (ii) Limiting the area of irrigated dairy farm land to no more than was irrigated for the 12 months prior to 2 September 2020 + 10 ha
 - (iii) Limiting dairy support land to the area that was used as dairy support within the reference period
 - (iv) Limiting intensive winter grazing land to that same area as was grazed within the reference period
 - (v) If any form of intensification is proposed, including an increase in the area of land to be intensively winter grazed or a change of land use, then Council must be satisfied that the contaminant loads and concentrations in the catchment will not increase beyond that measured/experienced at the close of 2 September 2020
- (e) Managing nitrogen discharges.
- (i) Requiring all synthetic nitrogen fertiliser application to be less than 190 kg/ha/year

**Appendix 2: Example Dairy Farm Costs associated with Plan Change
8/NES-F Compliance**

<i>Action</i>	<i>Estimated Cost</i>
Determine the minimum volume of storage required	\$1500 ex GST
Complete Drop Test	\$5000 ex GST.
Replace or upgrade storage ponds (depending on new storage system that may be deployed).	\$10,000 and \$100,000 plus ex GST.
Obtain a resource consent for the discharge of effluent, and land use consent for corresponding storage facility	\$7000 and \$12,000 ex GST
Obtain NES-F consent for IWG	\$2000 and \$5000 ex GST (provided no intensification is proposed).
Prepare and implement a CFWFP, including certification and audit costs, but excluding costs associated with implementation of action plan	\$8,000 to \$15,000 plus ex GST.