

5 December 2022

Otago Regional Council  
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**Proposed Otago Regional Policy Statement 2021 – Freshwater Planning Instrument Part**

Please find enclosed the submission by the Director-General of Conservation in respect of the proposed Otago Regional Policy Statement (pORPS) 2021 – Freshwater Planning Instrument. The submission identifies the Director-General's concerns.

Please contact Murray Brass in the first instance if you wish to discuss any of the matters raised in this submission via [mbrass@doc.govt.nz](mailto:mbrass@doc.govt.nz) or on 027 213 3592.

Yours sincerely



Aaron Fleming  
Director Operations Kaihautū Matarautaki, Southern South Island  
Department of Conservation  
*Te Papa Atawhai*

**RESOURCE MANAGEMENT ACT 1991**

**SUBMISSION ON THE PROPOSED OTAGO REGIONAL POLICY STATEMENT 2021  
- FRESHWATER PLANNING INSTRUMENT PART**

**TO:** Otago Regional Council

**SUBMISSION ON:** Proposed Otago Regional Policy Statement

**NAME:** Penny Nelson  
Director-General of Conservation / *Tumuaki-Ahurei*

**ADDRESS:** Department of Conservation  
Private Bag 5244  
Dunedin 9054  
Attn: Murray Brass

**STATEMENT OF SUBMISSION BY THE DIRECTOR-GENERAL  
OF CONSERVATION *TUMUAKI-AHUREI***

Pursuant to clause 6 of the First Schedule of the Resource Management Act 1991 (RMA), I, Aaron Fleming, Operations Director *Kaihautū Matarautaki*, Southern South Island, acting upon delegation from the Director-General of Conservation *Tumuaki-Ahurei*, make the following submission in respect of the Proposed Otago Regional Policy Statement for the Otago Regional Council.

1. This is a submission on the Proposed Otago Regional Policy Statement 2021 – Freshwater Planning Instrument part.
2. The specific provisions of the Proposed Regional Policy Statement that my submission relates to are set out in Attachment 1 to this submission. The decisions sought in this submission are required to ensure that the proposed Otago Regional Policy Statement:
  - a. Recognises and provides for the matters of national importance listed in section 6 of the Act and has particular regard to the other matters in section 7 of the Act.
  - b. Gives effect to the New Zealand Coastal Policy Statement and the National Policy Statement for Freshwater Management.
  - c. Promotes through an integrated approach the sustainable management of natural and physical resources.
  - d. Implements and promotes sound resource management practice through necessary and appropriate objectives, policy and methods.

I **seek** the following decisions from the Council:

1. That the particular provisions of the Proposed Otago Regional Policy Statement that I support, as identified in Attachment 1, are retained.
2. That the amendments, additions and deletions to the Proposed Otago Regional Policy Statement sought in Attachment 1 are made.

3. Further, alternative or consequential relief to like effect to that sought in 1 and 2 above is made

I wish to be heard in support of my submission and if others make a similar submission, I will consider presenting a joint case with them at the hearing.



Aaron Fleming  
Operations Director *Kaihautū Matarautaki* Southern South Island  
Department of Conservation  
*Te Papa Atawhai*

Pursuant to delegated authority  
On behalf of  
Penny Nelson  
Director-General of Conservation / *Tumuaki-Ahurei*

Date: 5 December 2022

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011.

**ATTACHMENT 1:**

**PROPOSED OTAGO REGIONAL POLICY STATEMENT 2021  
FRESHWATER PLANNING INSTRUMENT PART  
SUBMISSION BY THE DIRECTOR-GENERAL OF CONSERVATION**

The specific provisions that my submission relates to are set out in Attachment 1. My submissions are set out immediately following these headings, together with the reason and the decision I seek from the Council.

The decision that has been requested may suggest new or revised wording for identified sections of the proposed regional policy statement. This wording is intended to be helpful but alternative wording of like effect may be equally acceptable. Text quoted from the Proposed Otago Regional Policy Statement (pORPS) is shown in quotation marks. The wording of decisions sought shows new text as underlined and original text to be deleted as ~~strikethrough~~.

Unless specified in each submission point my reasons for supporting are that the policies are consistent with the purposes and principles of the Resource Management Act 1991 (RMA).

REF	RPS PROVISION	POSITION AND REASON	RELIEF SOUGHT
Entire Freshwater Planning Instrument	All	For the avoidance of doubt, provisions which are not specifically addressed below are supported for the reasons given in the s32 Report.	Retain as notified, except where specific charges are requested below.
RMIA – Resource management issues of significance to iwi authorities in the region	RMIA-WAI-I1 – Loss and degradation of water resources	Support as generally appropriate, but recognising that the mana whenua status of Ngāi Tahu papatipu rūnaka means that they speak best for the issues of significance to iwi authorities.	Retain as notified, subject to any changes sought by Ngāi Tahu papatipu rūnaka.
	RMIA-WAI-I3 - Effects of land and water use activities on freshwater habitats	Support as generally appropriate, but recognising that the mana whenua status of Ngāi Tahu papatipu rūnaka means that they speak best for the issues of significance to iwi authorities.	Retain as notified, subject to any changes sought by Ngāi Tahu papatipu rūnaka.
Part 3 - Domains – LAND AND FRESHWATER	All	Support in part – these provisions recognise and provide for freshwater environments, and generally align with the RMA and higher order documents. However, significant amendment and additions are required in order to fully address freshwater issues	Retain as notified, except where specific charges are requested below.

REF	RPS PROVISION	POSITION AND REASON	RELIEF SOUGHT
		and improve integration across freshwater, land and coastal domains.	
	LF-WAI-O1 – Te Mana o te Wai	Oppose – this provision fails to recognise the interconnectedness of freshwater and coastal water, which is required to enable integrated management. The provision also fails to recognise that Te Mana o te Wai as outlined in the NPSFM 2020 Section 1.3 is a fundamental concept that applies to all those involved in freshwater management.	Amend Clause (1) as follows, or words to like effect: “ ... (1) <u>freshwater, and land and coastal waters</u> have a connectedness that supports and perpetuates life ...  AND insert a new clause as follows or words to like effect:  <u>“(6) all people and communities have a responsibility to exercise stewardship, care, and respect in the management of fresh water.”</u>
	LF-WAI-P1 - Prioritisation	This policy appropriately gives effect to the requirements of the NPSFM 2020, in particular Objective 2.1. However, the policy is inconsistent with the s42A Report recommended version of Policy IM-P1 (‘Integrated approach to decision-making’), which would combine the first and second priorities into one.	Retain as notified, except that if IM-P1 does not reflect the same three-level prioritisation then insert a new clause as follows or words to like effect:  <u>“(4) if there is a conflict between this policy and other provisions in this RPS that cannot be resolved by the application of higher order documents, then this policy takes precedence over Policy IM-P1.”</u>
	LF-VM-O2 to P6 -freshwater visions overall	Oppose overall for the following reasons: <ul style="list-style-type: none"> <li>- the visions place an inappropriate level of weight on the feedback from early community engagement, and so fail to adequately account for subsequent and ongoing engagement through the Schedule 1 process,</li> <li>- the visions are inconsistent in their structure, content and drafting, creating a risk that relevant matters are missed or inappropriately weighted,</li> <li>- the structure needs to be revised to be clear and consistent, which requires that all potentially relevant matters are expressly considered for all FMU/rohe, and that differentiation between FMU / rohe is</li> </ul>	Amend all freshwater visions to: <ul style="list-style-type: none"> <li>- provide a consistent and clear structure across and between each FMU / rohe (which could include an over-arching vision or visions),</li> <li>- appropriately recognise the relevant values and issues in every FMU / rohe,</li> <li>- provide appropriate timeframes and staged targets, and</li> <li>- in addition, incorporate further specific relief as set out below.</li> </ul>

REF	RPS PROVISION	POSITION AND REASON	RELIEF SOUGHT
		<p>demonstrably based on the specific characteristics of each FMU/rohe,</p> <ul style="list-style-type: none"> <li>- timeframes are too long (especially those out to 2050), so will be inadequate to achieve the purpose of the RMA,</li> <li>- the visions lack staged targets which would help ensure that the final targets are effective.</li> </ul> <p>Although the following specific comments are intended to address obvious gaps or shortcomings in the proposed visions, they are by no means exhaustive and are intended to be considered in the context of the above submission point seeking a wider review of the visions.</p>	
	LF-VM-O2 Clutha / Mata-au vision	<p>Oppose – this vision fails to recognise the significance of the Kawarau River Water Conservation Order</p> <p>This vision is inconsistent with the approach taken to wetlands in other FMUs. In particular, Lake Tuakitoto has significant values which warrant specific recognition in the same way as the Waipoūri / Waiholā wetlands in LF-VM-O4 for the Taieri FMU.</p> <p>This vision also fails to recognise the significant issues with flooding and climate change in this catchment.</p>	<p>Amend Clause 2 as follows or words to like effect:  “(2) fresh water is managed in accordance with the LF-WAI objectives and policies, <u>and consistent with the Kawarau River Water Conservation Order.</u>”</p> <p>AND</p> <p>Insert the following new clause or words to like effect:  “(x) <u>healthy wetlands are restored in the upper and lower catchment wetland complexes, including Lake Tuakitoto</u>”</p> <p>AND</p> <p>Insert the following new clause or words to like effect:  “(x) <u>land and water management practices improve resilience to the effects of flooding and climate change</u>”</p>
	LF-VM-O2 Clutha / Mata-au vision – Dunstan, Manuherikia and Roxburgh rohe	<p>Oppose – this vision fails to recognise the dryland nature of much of this rohe.</p> <p>This vision fails to recognise the significant populations of indigenous fish within this FMU, particularly threatened non-diadromous galaxiids.</p>	<p>Insert the following new clause or words to like effect:  “(x) <u>water and land management recognise the drylands nature of much of this rohe and the resulting low water availability.</u>”</p> <p>AND</p>

REF	RPS PROVISION	POSITION AND REASON	RELIEF SOUGHT
		<p>The vision also fails to address the pressures that urban development can put on freshwater resources.</p>	<p>Insert the following new clause or words to like effect:  <u>“(x) Populations of threatened indigenous fish are stable or increasing”</u></p> <p>AND</p> <p>Insert the following new clause or words to like effect:  <u>“(x) urban development is located and designed to protect and enhance gully heads, rivers, lakes, wetlands, springs and riparian margins.”</u></p>
	<p>LF-VM-O3 North Otago vision</p>	<p>Oppose – this vision fails to recognise the dryland nature of much of North Otago.</p> <p>This vision also fails to recognise the significant populations of indigenous fish within this FMU, which include Threatened non-diadromous galaxiids and Canterbury mudfish.</p> <p>This vision also fails to recognise the network of coastal wetlands and estuaries which mobile species use as part of a wider network of habitats</p>	<p>Insert the following new clause or words to like effect:  <u>“(x) water and land management recognise the drylands nature of much of this FMU and the resulting low water availability.”</u></p> <p>AND</p> <p>Insert the following new clause or words to like effect:  <u>“(x) populations of threatened indigenous fish are stable or increasing”</u></p> <p>AND</p> <p>Insert the following new clause or words to like effect:  <u>“(x) indigenous species can migrate easily and as naturally as possible along the coast using a network of wetlands and estuaries”</u></p>
	<p>LF-VM-O4 Taieri vision</p>	<p>Oppose – this vision fails to recognise the Taieri River’s status as a Ngā Awa catchment.</p> <p>This vision fails to fully recognise the Upper Taieri Wetland Complex (ie the Styx (Paerau) Basin Wetlands, the Maniototo Basin Wetlands and Taieri Lake Wetlands).</p> <p>This vision fails to recognise the significance of all indigenous fish rather than only galaxiid species, which within this FMU include the threatened kanakana / lamprey and at risk tuna / longfin eel.</p>	<p>Amend Clause 1 as follows or words to like effect:  <u>“(1). fresh water is managed in accordance with the LF-WAI objectives and policies, and consistent with the status of the catchment as a Ngā Awa river.”</u></p> <p>AND</p> <p>Amend Clause 3 as follows or words to like effect:  <u>“(3) healthy wetlands are restored in the upper and lower catchment wetland complexes, including the Waipori/Waihola Wetlands, <del>Tunahuketaka/Lake Taieri, scroll plain</del> Upper Taieri Wetland Complex, and tussock areas</u></p>

REF	RPS PROVISION	POSITION AND REASON	RELIEF SOUGHT
		<p>This vision also fails to recognise the significant issues with flooding and climate change in this catchment.</p> <p>This vision also fails to recognise the network of coastal wetlands and estuaries which mobile species use as part of a wider network of habitats</p> <p>The vision also fails to recognise the adverse ecological effects that poorly timed and sized discharges from the dams at Lake Mahinerangi and Logan burn have on downstream wetland function.</p>	<p>AND Amend Clause 6 as follows or words to like effect: “(6). water bodies support healthy populations of galaxiid species, <u>kanakana / lamprey and tuna / longfin eel.</u>”</p> <p>AND Insert the following new clause or words to like effect: “(x) <u>land and water management practices improve resilience to the effects of flooding and climate change</u>”</p> <p>AND Insert the following new clause or words to like effect: “(x) <u>indigenous species can migrate easily and as naturally as possible along the coast using a network of wetlands and estuaries</u>”</p> <p>AND Insert the following new clause or words to like effect: “(x) <u>discharges from Lake Mahinerangi and Loganburn are managed to avoid adverse effects on downstream ecosystem function</u>”</p>
	<p>LF-VM-O5 Dunedin and Coast vision</p>	<p>Oppose – although this vision recognises that discharges from urban areas are a significant issue in this FMU, the effects of this are only specifically addressed in terms of human safety, not ecosystems or indigenous biodiversity.</p> <p>The vision also fails to address the pressures that urban development can put on freshwater resources and the coastal environment.</p> <p>This vision also fails to recognise the network of coastal wetlands and estuaries which mobile species use as part of a wider network of habitats</p>	<p>Amend Clause 5 as follows or words to like effect: “(5) discharges of contaminants from urban environments are reduced so that water bodies are safe for human contact <u>and able to support healthy indigenous biodiversity and ecosystems.</u></p> <p>AND Insert the following new clause or words to like effect: “(x) <u>urban development is located and designed to protect and enhance gully heads, rivers, lakes, wetlands, springs, riparian margins, estuaries and the coastal environment.</u>”</p> <p>AND Insert the following new clause or words to like effect:</p>



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		This vision also fails to recognise the network of coastal wetlands and estuaries which mobile species use as part of a wider network of habitats	<u>“(x) indigenous species can migrate easily and as naturally as possible along the coast using a network of wetlands and estuaries”</u>
	LF-VM-O6 Catlins vision	<p>Oppose – this vision fails to recognise the importance of fish passage to indigenous fish within this FMU, which include the threatened kanakana / lamprey and at risk tuna / longfin eel.</p> <p>This vision also fails to recognise the network of coastal wetlands and estuaries which mobile species use as part of a wider network of habitats</p>	<p>Insert the following new clause or words to like effect:  <u>“x. indigenous species can migrate easily and as naturally as possible to and from the coastal environment.”</u></p> <p>AND</p> <p>Insert the following new clause or words to like effect:  <u>“(x) indigenous species can migrate easily and as naturally as possible along the coast using a network of wetlands and estuaries”</u></p>
	LF-VM-P5 – Freshwater management units (FMUs) and rohe	<p>Support – delineation of FMUs gives effect to the NPSFM 2020, and the use of rohe to provide a further level of detail is appropriate in the Otago context.</p> <p>The boundaries proposed are generally appropriate from an ecological perspective, but the Director-General would be open to considering changes which other submitters may propose where they would be consistent with ecological and catchment boundaries.</p>	Retain as notified, subject to consideration of any changes sought in other submissions.
	LF-FW-O8 - Fresh water	<p>Oppose – this is the key objective in terms of freshwater values and fails to address a number of significant issues:</p> <ul style="list-style-type: none"> <li>- the interconnectedness of land with freshwater, estuarine and coastal water, and</li> <li>- the need to support indigenous vegetation, fauna and ecosystems, not just the health of people and mahika kai, and</li> <li>- Otago’s importance as a refuge for threatened indigenous fish, and</li> <li>- the importance of some locations and habitats for specific life stages of indigenous species.</li> </ul>	<p>Amend Clause (3) as follows or words to like effect:  <u>“(3) the interconnection of <u>land</u> fresh water (including groundwater) and coastal waters is recognised,</u></p> <p>AND insert the following new clauses or words to like effect:  <u>“(x) <u>fresh water sustains indigenous vegetation, fauna and ecosystems”</u>,</u></p> <p>AND  <u>“(x) <u>non-diadromous galaxiid and Canterbury mudfish populations and their habitats are protected and restored”</u></u></p> <p>AND</p>

REF	RPS PROVISION	POSITION AND REASON	RELIEF SOUGHT
		<p>The objective also seeks that indigenous fish can migrate but fails to recognise that in some cases it is not appropriate to provide for fish passage (as recognised in NPSFM 3.26), which can be a particular risk to threatened indigenous non-diadromous fish. As an alternative to the relief sought, ORC could instead insert NPSFM 3.26.</p>	<p><u>“(x) habitats that are essential for specific components of the life cycle of indigenous species, including breeding and spawning grounds, juvenile nursery areas, important feeding areas and migratory and dispersal pathways, are protected and restored”</u></p> <p>AND</p> <p><u>“(x) changes to flows, fish passage or fish barriers only occur where doing so would not enable the passage of undesirable fish species where it is considered necessary to prevent their passage in order to protect desired fish species, their life stages, or their habitats.</u></p>
	<p>LF-FW-09 - Natural wetlands</p>	<p>Oppose – this policy is inconsistent with Policy 6 of the NPSFM 2020, which requires that wetland values be protected, <i>and</i> their restoration is promoted.</p> <p>Ephemeral wetlands can have significant natural and biodiversity values but are not always recognised as wetlands, so for the avoidance of doubt should be specifically included under this policy.</p> <p>This policy also fails to recognise the importance of wetlands to mobile species such as waterfowl and rails.</p>	<p>Amend as follows or words to like effect:  <u>“Otago’s natural wetlands, including ephemeral wetlands, are protected <del>or</del> and restored so that...”</u></p> <p>AND insert the following new clause or words to like effect:  <u>“(5) their provision of habitat for mobile species such as waterfowl and rails is maintained.”</u></p>
	<p>LF-FW-P7 - Fresh water</p>	<p>Oppose – Clause 6 refers to “environmental limits”, whereas the relevant term in the NPSFM 2020 is the more specific “environmental flows and levels”.</p>	<p>Amend as follow, or words to like effect:  <u>“...6. freshwater is allocated within environmental <del>limits</del> flows and levels and used efficiently.”</u></p>
	<p>LF-FW-P9 – Protecting natural wetlands</p>	<p>Oppose – Clause (1)(b)(v) would rely on the ‘effects management hierarchy’ to manage effects other than on indigenous biodiversity. However, the s42A Report for the non-freshwater parts of the pORPS 2021 recommends replacing the notified definition of this term with “means an approach to managing the adverse effects of an activity”, which would provide no effective control on those effects. It would be more certain and effective to include specific</p>	<p>Amend as follows, or words to like effect:  <u>“...(1)(b)(v) the other effects of the activity (excluding those managed under (1)(b)(iv)) are managed by applying the effects management hierarchy (in relation to natural wetlands and rivers), and...”</u></p>

REF	RPS PROVISION	POSITION AND REASON	RELIEF SOUGHT
		reference to the separate definition of 'effects management hierarchy (in relation to natural wetlands and rivers)', which would then link through to Policy LF-FW-P13A.	
	LF-FW-P15 – Stormwater and wastewater discharges	Oppose – although the general approach of this policy is appropriate, wastewater and stormwater are very different in their nature, management and effects. It would improve clarity and effectiveness to separate these out into separate specific policies. This would also provide the opportunity to review the content of the policies to ensure that all relevant effects are adequately addressed.	Amend by separating into two policies - one specific to wastewater and one specific to stormwater – and review to ensure that the effects of these two types of discharges are both adequately addressed.
	LF-FW-M6 – Regional plans	Support in part – these provisions are generally appropriate, but should be reviewed for consistency with changes to the Objectives and Policies as a result of submission points above.	Retain as notified, except where revisions are required for consistency with above submission points.
	LF-FW-M7 – District plans	Support in part – these provisions are generally appropriate, but should be reviewed for consistency with changes to the Objectives and Policies as a result of submission points above.  These provisions also fail to address natural character, which is a relevant land use matter for district plans.	Retain as notified, except where revisions are required for consistency with above submission points.  AND insert the following additional clause, or words to like effect:  <u>“...(x) include provisions to preserve the natural character of lakes and rivers and their margins from the adverse effects of land use and development and activities on the surface of water.”</u>
	LF-LS-P21 – Land use and fresh water	Oppose – this policy limits the freshwater values considered to quantity and quality, whereas the NPSFM 2020, Te Mana o te Wai and ki uta ki tai require a wider approach. At a minimum, this should include consideration of freshwater ecosystems, and a more integrated approach to managing riparian margins as the interface between land and fresh water.	Amend as follows or words to like effect:  “Achieve the improvement or maintenance of freshwater quantity, <del>or</del> <u>quality, and ecosystem values</u> to meet environmental outcomes set for Freshwater Management Units and/or rohe by:  (1) ...  (2) <u>..., and</u>

REF	RPS PROVISION	POSITION AND REASON	RELIEF SOUGHT
			<u>(3) managing riparian margins to maintain or enhance their habitat and biodiversity values, reduce sedimentation of water bodies, and support improved functioning of catchment processes.”</u>
	LF-LS-M11 Regional plans	Oppose – this method fails to recognise or address matters relating to land other than a narrow range of effects on water, and so fails to give effect to the rest of the RPS or higher order documents.	Revise to ensure that regional plans give effect to all relevant matters relating to land.
Part 5 – APPENDICES AND MAPS	MAP1	Oppose - These maps are inconsistent in their approach to the coastal marine area, with estuarine areas and inlets included within some FMUs and not within others. It would give better effect to ki uta ki tai and integrated management to include those areas within FMUs in all cases.	Amend the coastal boundaries of FMUs to include all estuarine areas and enclosed shallow inlets – including for example the Tautuku and Kaikorai estuaries, Hoopers Inlet, Papanui Inlet, Purakaunui Inlet and Blueskin Bay.