

# Written Submission on Freshwater Planning Instrument Parts of Proposed Otago Regional Policy Statement 2021

*Submissions must be received by Otago Regional Council by 3 pm Tuesday 29 November 2022*

## To: Otago Regional Council

1. **Name of submitter** (*full name of person/persons or organisation making the submission. Note: The submissions will be referred to by the name of the submitter*)

Minister for the Environment

2. This is a submission on the **Freshwater Planning Instrument Parts of Proposed Otago Regional Policy Statement 2021**.
3. I **could not** gain an advantage in trade competition through this submission. (*See notes to person making submission*)
4. I **wish** (*Select one*) to be heard in support of my submission
5. If others make a similar submission, I **will** (*Select one*) consider presenting a joint case with them at a hearing

## 6. Submitter Details

- a. **Signature of submitter** (*or person authorised to sign on behalf of submitter*)

Shannon Wallace, on behalf of the Minister for the Environment



- b. **Signatory name, position, and organisation** (*if signatory is acting on behalf of a submitter organisation or group referred to at Point 1 above*)

*Name: Shannon Wallace*

*Position: Principal Analyst*

*Organisation: Ministry for the Environment*

- c. **Date**

28/11/2022

**Address for service of submitter** (This is where all correspondence will be directed)

**d. Contact person** (name and designation, if applicable)

Shannon Wallace

**e. Email:**

[freshwater@mfe.govt.nz](mailto:freshwater@mfe.govt.nz); [Shannon.wallace@mfe.govt.nz](mailto:Shannon.wallace@mfe.govt.nz)

**f. Telephone:**

022 023 4929

**g. Postal address** (or alternative method of service under [section 352](#) of the Act):

Ministry for the Environment  
PO Box 10362  
Wellington 6143

**7. My submission is:**

1. Pursuant to clause 6 of the First Schedule of the Resource Management Act 1991 (RMA), I, Hon David Parker, Minister for the Environment, make the following submission in respect of the Proposed Otago Regional Policy Statement 2021.
2. Overall, the proposed regional policy statement (pRPS) is a positive step forward for freshwater management in the region, providing a stronger direction than the existing RPS that was notified in 2015.
3. The key points made in this submission are framed in the interest of improving freshwater outcomes in the region. The submission points within this submission are not exhaustive of my interests as Minister for the Environment.
4. This submission largely focusses on the approach to freshwater management in the pRPS, and the direction set for the development of a new Land and Water plan, expected to be notified in 2023.
5. The over-allocation associated with the continued abstraction from deemed mining permits is the central concern of this submission and the proposed relief seeks to ensure the RPS establishes a robust framework for the development of the Land and Water plan to ensure this over-allocation is phased out in a timely manner.
6. The deemed permit provisions were included in the Resource Management Act 1991 as a transitional arrangement with the expectation that the 30-year period would be used to establish minimum flows and transition into a RMA complaint framework that protected environmental values. As there is still a lack of clear and robust minimum flows in place for all catchments there is still degradation occurring despite these long transitional timeframes being provided.
7. The abstraction allowed under the deemed permits, and lack of clear direction to phase out over-allocation in the operative planning framework, has also facilitated the expansion of intensive farming activities that are reliant on this water and have contributed to degrading water quality.

8. At my direction, Honorary Professor Peter Skelton undertook an investigation into ORC's freshwater allocation functions with a specific focus on how the council was placed to transition from the deemed permit regime in 2021. Note two of his findings below:
  - a. There is a lack of clear and robust minimum flows and a failure to address over-allocation.
  - b. The existence of the deemed permits has also limited the ability of the Water Plan to manage water quality and quantity.
9. Professor Skelton found that a new fit-for-purpose planning framework is required in Otago to assess applications to replace deemed permits that provides certainty for the community with clear timeframes and established minimum flows<sup>1</sup>.
10. Both the Skelton Report and cases like the Lindis River Minimum Flow case and Proposed Plan Change 7 have considered the operative water plan is not fit-for-purpose.
11. To provide for sustainable management as required by the RMA, it is essential that a robust and fit-for-purpose planning framework is put in place in Otago in a timely manner. Further, it is critical that it address the over-allocation associated with deemed permits. The pRPS is the start of that process which will guide the development of the new Land and Water plan. The Land and Water plan, in turn, must include a full and now long overdue minimum flow regime to phase out overallocation which should be not only enabled but required by this pRPS.
12. I seek a number of amendments to the pRPS to ensure the framework will achieve this. The specific provisions of the pRPS that my submission relates to are set out in Attachment 1.
13. The amendments being sought include:
  - a) Context and discussion regarding the significant issue of over-allocation.
  - b) Further urgency and direction in the pRPS to address over-allocation and the resulting environmental degradation is required.
  - c) Strengthening the vision for the Manuherekiia rohe to ensure over-allocation is phased-out and eliminated, and the catchment has a comprehensive system of environmental flows and limits that provide for ecosystem health and the other values in the NPS-FM. There should be interim steps to ensure progress is being made to the 2050 vision for the Manuherekiia rohe.
14. I seek amendments to a number of provisions in the pRPS:
  - d) Amend LF-WAI-P1 – Prioritisation to “in all decision making affecting freshwater”
  - e) Amend LF-VM-O2 – Clutha Mata-au FMU vision to include a clear vision of the catchment that has phased out existing over-allocation and avoids future over-allocation
  - f) Amend LF-VM-O2 – Clutha Mata-au FMU vision (timeframes) to include interim steps in a manner similar to the consultation version of the pRPS, (noting that a timeframe of 2040 for quality and flows may still be longer than reasonable)
  - g) Amend LF-FW-P7 – Fresh water to read: “Environmental outcomes, attribute states (including target attribute states), limits, environmental flows and levels ensure that”
  - h) Amend LF-FW-M6 – Regional plans to clarify that environmental flows and levels can be used to phase out over-allocation together and as part of take limits

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<sup>1</sup> Investigation of Freshwater Management and Allocation Functions at Otago Regional Council, Report to the Minister for the Environment by Professor Peter Skelton 2019

Column 1	Column 2	Column 3	Column 4
<p><i>The <b>specific provisions</b> of the proposal that my submission relates to are:</i></p> <p><i>(Please enter the relevant objective, policy, method, or 'other' provision reference where possible. For example, 'AIR-O1'.)</i></p>	<p><i>I <b>support</b> or <b>oppose</b> the specific provisions or wish to have them <b>amended</b>.</i></p> <p><i>(Please indicate "support" or "oppose" or "amend")"</i></p>	<p><i>The <b>reasons</b> for my views are:</i></p>	<p><i>I seek the following <b>decision</b> from the local authority:</i></p> <p><i>(Please be as clear as possible – for example, include any alternative wording for specific provision amendments.)</i></p>
<p><b>Full RPS</b></p>	<p>I <b>support</b> the pRPS but recommend minor <b>amendments</b></p>	<p>Overall, the pRPS is a positive step forward and provides a much stronger direction for freshwater management than the existing RPS and subsequent plans.</p>	
<p><b>SRMR – Significant resource management issues for the region</b></p>	<p>Amend</p>	<p>There is not sufficient recognition of over-allocation as a significant issue for the region.</p>	<p>Recommend adding in a discussion around the over-allocation and the historic context of deemed mining permits.</p>
<p><b>LF–WAI–P1 – Prioritisation</b></p>	<p>Amend</p>	<p>The wording "<i>in all management of freshwater</i>" is unduly limiting and could be interpreted to exclude land use decisions, which does not align with Te Mana o Te Wai or the Objective of NPS-FM.</p>	<p>Amend LF –WAI–P1 – Prioritisation to "<i>in all decision-making affecting freshwater</i>"</p>
<p><b>LF–VM–O2 – Clutha Mata-au FMU vision</b></p>	<p>Amend</p>	<p>The vision does not sufficiently capture a future state where over-allocation is addressed. Where it does touch on allocation it is limited by statements such as "wherever possible", while such limitations are not put on other visions.</p> <p>Omitting reference to an environmental issue as significant as over-allocation from these visions may not be giving effect to NPS-FM requirement for long term visions to be informed by an understanding of the history</p>	<p>Amend LF–VM–O2 – Clutha Mata-au FMU vision to include a clear vision of the catchment that has phased out existing over-allocation and avoids future over-allocation.</p>

		and environmental pressures on the FMU.	
<b>LF-VM-O2 – Clutha Mata-au FMU vision (timeframes)</b>	Amend	The timeframes, particularly 2050 for the Manuherekia rohe, should provide interim timeframe steps to recognise that addressing overallocation cannot be left until close to the 2050 timeframe.	Amend LF-VM-O2 – Clutha Mata-au FMU vision (timeframes) to include interim steps in a manner similar to the consultation version of the pRPS, although 2040 for quality and flows may still be longer than reasonable.
<b>LF-FW-P7 – Fresh water</b>	Amend	The phrase “Environmental outcomes, attribute states (including target attribute states) and limits ensure that” could be interpreted as excluding the use of environmental flows and levels.	Amend LF-FW-P7 – Fresh water to read: “Environmental outcomes, attribute states (including target attribute states), limits, environmental flows and levels ensure that”.
<b>LF-FW-M6 – Regional plans</b>	Amend	The separation out between (4) which requires flows and level regimes and (5) which requires limits to be set puts phasing out over-allocation in the limits section. This could result in an interpretation that flows and levels cannot be used to phase out over-allocation.	Amend LF-FW-M6 – Regional plans to clarify that environmental flows and levels can be used to phase out over-allocation together and as part of limits.
<b>Note:</b> Additional rows for each separate provision or submission point should be added as required.			