

Waka Kotahi NZ Transport Agency submission on a notified proposal for the Proposed Otago Regional Policy Statement 2021 (Freshwater Planning Instrument Parts) under Clause 6 of Schedule 1 of the Resource Management Act 1991

29 November 2022

Otago Regional Council
Private Bag 1954
Dunedin 9054

via email: fpisubmission@orc.govt.nz

This is a submission on the following:

Freshwater Planning Instrument Parts of the Proposed Otago Regional Policy Statement 2021

The specific provisions of the proposal that this submission relates to are:

The Freshwater Planning Instrument Parts of the Proposed Otago Regional Policy Statement 2021 (PORPS) in its entirety insofar as it relates to Waka Kotahi NZ Transport Agency's statutory obligations in terms of ensuring an effective, efficient and safe transport network.

Waka Kotahi submission is:

1. Waka Kotahi is a Crown entity that takes an integrated approach to transport planning, investment and delivery. The statutory objectives of Waka Kotahi are to undertake its functions in a way that contributes to an effective, efficient and safe land transport system in the public interest. Waka Kotahi's vision is for a sustainable, multi-modal land transport system where public transport, active or shared modes are the first choice for most daily transport needs.
2. Waka Kotahi has a mandate under the Land Transport Management Act 2003 (LTMA), the Government Rounding Powers Act 1989 (GRPA), and the Government Policy Statement on Land Transport 2021/22-2030/31 (GPS) to carry out its functions in a way that delivers on the transport outcomes set by the government.
3. In the 2021-2024 National Land Transport Programme, Waka Kotahi has allocated significant investment in the Otago Region to the improvement, operation and maintenance of the State Highway network, including public transport investment, walking and cycling and transport planning. In addition, Waka Kotahi co-funds the local roading network. Waka Kotahi is therefore a significant investor in the infrastructure required to ensure people and communities of the Otago region are provided with their social, economic and cultural well-being, as well as their health and safety.
4. Overall, Waka Kotahi has an interest in the Proposed Otago Regional Policy Statement 2021 (Freshwater Planning Instrument Parts) as a result of its role as a:
 - Transport investor – to maximise effective, efficient and strategic returns for New Zealand;
 - Planner of land transport networks – to ensure the integration of infrastructure and land use so as to support liveable communities and the development of an effective and resilient land transport network for customers;

- Provide for access to and the use of the land transport system – to shape smart, efficient, safe and responsible transport choices; and
 - Manager of the state highway network – to deliver efficient, safe and responsible highway solutions for customers.
5. The Waka Kotahi submission seeks amendments to the Proposed Otago Regional Policy Statement 2021 (Freshwater Planning Instrument Parts) in the following areas:
- Amendments to provisions to provide some flexibility in order to allow water bodies to be modified, in appropriate circumstances.
 - Amendments to provisions to ensure that there is flexibility for nationally and regionally significant infrastructure that have a location or functional need to be located in outstanding waterbodies, allowing adverse effects on significant and outstanding values to be remedied or mitigated.
 - Amendments to a provision to allow stormwater discharged from nationally and regionally significant infrastructure to be managed under the appropriate policies in Chapter 11 – Energy, Infrastructure and Transport.
6. The changes requested are made to:
- Ensure that Waka Kotahi can carry out its statutory objective and functions.
 - Reduce interpretation and processing complications for decision-makers.
 - Provide clarity for all policy statement users.
7. Further points are summarised in Table 1, which forms the bulk of our submission.
8. Where a provision is not specified in Table 1 below, Waka Kotahi generally supports the way it is drafted.
9. Waka Kotahi could not gain an advantage in trade competition through this submission.

Waka Kotahi seeks the following decision from the local authority:

Amend the provisions of the Proposed Otago Regional Policy Statement 2021 (Freshwater Planning Instrument Parts) as detailed in Table 1 (attached), including such further, alternative or consequential relief as may be necessary to fully achieve the relief sought in this submission.

Waka Kotahi wishes to be heard in support of its submission. If others make a similar submission, Waka Kotahi will consider presenting a joint case with them at a hearing.

Signature of person authorised to sign on behalf of Submitter:



Richard Shaw

Team Lead Environmental Planning (South) / Poutiaki Taiao
Waka Kotahi NZ Transport Agency
EnvironmentalPlanning@nzta.govt.nz
Richard.Shaw@nzta.govt.nz



Table 1: Decisions Sought on the Freshwater Planning Instrument Parts of the Proposed Otago Regional Policy Statement 2021

The following table sets out the amendments sought by Waka Kotahi to the Freshwater Planning Instrument Parts of the Proposed Otago Regional Policy Statement 2021 and also identifies those provisions that Waka Kotahi supports.

Underline = proposed additions

Strikethrough = ~~proposed deletions~~

Provision	Support / Oppose	Submission / Reasons	Relief Sought
LF-VM – Visions and management			
LF-VM-O2 – Clutha Mata-au FMU vision	Support in part	<p>Waka Kotahi generally supports Objective LF-VM-O2 but is concerned with clause (c)(i), which states that there is to be no further modification of the shape and behaviour of water bodies in the Lower Clutha rohe.</p> <p>As part of the Waka Kotahi role in delivering a safe and efficient transport network, there is sometimes the need to modify the shape and / or behaviour of a water body in order to protect the existing State Highway from damage, particularly from erosion and scour. For example, a large flood event may cause the banks of a water body to erode and direct the flow towards the banks where a State Highway is located. Waka Kotahi must subsequently undertake works within the water body to reshape the water body and direct flow away from the State Highway to ensure it is not eroded and damaged. This would be considered as modifying the shape and behaviour of a water body under Objective LF-VM-O2 and thus would not be allowed.</p> <p>Waka Kotahi therefore seeks that the objective is amended to provide some flexibility and allow modification of water bodies in appropriate circumstances.</p>	<p>Amend Objective LF-VM-O2 as follows:</p> <p><i>“In the Clutha Mata-au FMU:</i></p> <p>....</p> <p><i>(7) in addition to (1) to (6) above:</i></p> <p>...</p> <p><i>(c) in the Lower Clutha Rohe:</i></p> <p><i>(i) minimise there is no further modification of the shape and behaviour of the water bodies and promote opportunities to restore the natural form and function of water bodies, are promoted wherever possible,</i></p> <p><i>...”</i></p>
LF-VM-O5 – Dunedin & Coast FMU vision	Support in part	<p>Waka Kotahi generally supports LF-VM-O2 but seeks that the objective be amended to provide some flexibility in regard to the modification of waterbodies (as for the reasons stated above in relation to Objective LF-VM-O2).</p>	<p>Amend Objective LF-VM-O5 as follows:</p> <p><i>“By 2040 in the Dunedin & Coast FMU:</i></p>

Provision	Support / Oppose	Submission / Reasons	Relief Sought
			<p>....</p> <p>(4) minimise there is no further modification of the shape and behaviour of the water bodies and promote opportunities to restore the natural form and function of water bodies, are promoted wherever possible,</p> <p>...”</p>
LF-FW – Fresh water			
LF-FW-O8 – Fresh water	Support in part	<p>Waka Kotahi supports the intention of the objective but is concerned that clause (5) may be interpreted to mean that <u>all</u> adverse effects on significant and outstanding values of outstanding water bodies must be avoided.</p> <p>This issue has previously been raised during submissions, further submissions and pre-hearing discussions on the PORPS (non-freshwater parts). The Section 42a Hearing Report for Chapter 9: Land and Freshwater states that protection cannot be achieved by avoiding, remedying or mitigating adverse effects; rather, the author states that protection requires a more stringent approach (avoid all adverse effects).</p> <p>This would mean that Objective LF-FW-O8 is interpreted to mean that all adverse effects on significant and outstanding values of outstanding water bodies are to be avoided, which is too stringent for infrastructure providers such as Waka Kotahi. Waka Kotahi manages several assets that are located in, over, or under outstanding water bodies (such as the Clutha River / Mata-Au or</p>	<p>Amend Objective LF-FW-O8 as follows:</p> <p><i>“In Otago’s water bodies and their catchments:</i></p> <p>....</p> <p><i>(5) the significant and outstanding values of Otago’s outstanding water bodies are identified and protected, <u>except for regionally and nationally significant infrastructure which shall be managed in accordance with EIT-INF-P13 and P13A.</u>”</i></p>

Provision	Support / Oppose	Submission / Reasons	Relief Sought
		<p>Taieri River), and various works occur within these outstanding water bodies, such as new bridges, upgrades or maintenance activities, which sometimes result in temporary adverse effects that cannot be avoided.</p> <p>Waka Kotahi therefore seeks that Objective LF-FW-O8 be amended to provide some flexibility for nationally and regionally significant infrastructure that have a locational or functional need to be located in these outstanding waterbodies and may create temporary adverse effects cannot be avoided on significant or outstanding values (but would instead be remedied or mitigated). Waka Kotahi seeks that regionally and nationally significant infrastructure are managed under the objectives and policies in Chapter 11 – Energy, Infrastructure and Transport.</p>	
LF-FW-P9 – Protecting natural wetlands	Support	Waka Kotahi supports this policy as it generally reflects the direction for regional plans (in this case, a regional policy statement) provided in Section 3.22 of the NPSFM.	Retain Policy LF-FW-P9 as notified.
LF-FW-P15 – Stormwater and wastewater discharges	Support in part	<p>Waka Kotahi is generally supportive of this provision but is concerned with clause (2)(b), which requires all stormwater to be discharged into a reticulated system, where one is available. This would require indirect stormwater discharges from the State Highway, which may currently discharge onto or over land where they may enter groundwater, to be discharged into a reticulated system.</p> <p>It is unclear when a reticulated system would be considered to be “available”. Waka Kotahi considers that this needs to be defined further. Waka Kotahi notes that in a practical sense, a number of</p>	<p>Amend Policy LF-FW-P15 to state that regionally and nationally significant infrastructure should be dealt with under Chapter 11 – Energy, Infrastructure and Transport, as follows:</p> <p><i>“Minimise the adverse effects of direct and indirect discharges of stormwater and wastewater to fresh water by:</i></p> <p>...</p>

Provision	Support / Oppose	Submission / Reasons	Relief Sought
		<p>matters need to be considered when determining whether a reticulated system is the best option for a stormwater discharge – such as proximity of the system, the practicality of discharging into the reticulated system (such as terrain and extra infrastructure required), and whether the owner of the system approves of the discharge.</p> <p>Waka Kotahi seeks that the Policy be amended to take into account the practicality of discharging stormwater into a nearby reticulated system, and that the owner of the system needs to approve the discharge.</p>	<p>(2) requiring: <i>(b) all stormwater to be discharged into a reticulated system, where one is <u>practically made</u> available”</i></p>
<p>LF-FW-M7 – District plans</p>	<p>Support in part</p>	<p>Waka Kotahi supports Method LF-FW-M7 but is concerned by clause (2) which states that district plans must include provisions to avoid the adverse effects of activities on significant and outstanding values of outstanding water bodies.</p> <p>The word “avoid” is a strong directive and was interpreted in the <i>EDS v New Zealand King Salmon</i> Supreme Court case as meaning “not allowing” or “preventing the occurrence of”. This results in the method directing territorial authorities to prepare or amend district plans to include provisions that would not allow any adverse effects on the significant and outstanding values of outstanding water bodies.</p> <p>This is very restrictive for nationally significant infrastructure providers such as Waka Kotahi, who often have to undertake activities within outstanding water bodies that may create unavoidable adverse effects on significant or outstanding values</p>	<p>Amend Method LF-FW-M7 as follows:</p> <p><i>“Territorial authorities must prepare or amend and maintain their district plans no later than 31 December 2026 to:</i></p> <p>...</p> <p><i>(2) include provisions to avoid the adverse effects of activities on the significant and outstanding values of outstanding water bodies, <u>except for regionally and nationally significant infrastructure that have a functional or operational need to be located there.</u>”</i></p>

Provision	Support / Oppose	Submission / Reasons	Relief Sought
		(such as the new Beaumont Bridge in and over the Clutha River / Mata-Au). Waka Kotahi therefore requests flexibility within the method for nationally and regionally significant infrastructure.	