

**BEFORE COMMISSIONERS APPOINTED
BY THE OTAGO REGIONAL COUNCIL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Otago Regional Policy Statement 2021 (Freshwater parts)

BY **BEEF + LAMB NEW ZEALAND LIMITED and DEER INDUSTRY
NEW ZEALAND**
Submitters

LEGAL SUBMISSIONS

**BEEF + LAMB NEW ZEALAND LIMITED and DEER INDUSTRY NEW ZEALAND
Submitters**

4 September 2023

Solicitor Acting:

CP Thomsen and CH Luisetti
Fletcher Vautier Moore Lawyers
PO Box 3029
Richmond 7050

Telephone: (03) 543 8301
Email: cthomsen@fvm.co.nz
cluisetti@fvm.co.nz

Counsel Instructed:

Dr R J Somerville KC
Barristers Chambers
PO Box 5117
Dunedin 9058

Telephone: (03) 4773488
Email: rjs@barristerschambers.co.nz

TABLE OF CONTENTS:

Introduction	2
Witnesses	3
Principal legal submissions	3
The role of a regional policy statement	4
The Port Otago case	5
Relevant principles of statutory interpretation and NPSFM	7
Interpretation of the concept of TMOTW in the NPSFM	8
Mandatory management process provisions in Part 3 Subpart 1 of the NPSFM that address TMOTW and integrated management	13
Communities and tangata whenua engagement	15
Te Mana o te Wai and integrated catchment management approach	16
Action plans in TMOTW processes and integrated catchment management	17
Adopting an integrated approach at a catchment level	18
Suggested changes to provisions in PORPS	20
NPSFM and NPSIB	21
Conclusion	24

Members of the Panel

Introduction

1. Beef + Lamb New Zealand Ltd (B+LNZ) is an industry-good body funded under the Commodity Levies Act 1990. Deer Industry New Zealand (DINZ) is a levy funded industry-body established by the Deer Industry New Zealand Regulations 2004 under the Primary Products Marketing Act 1953.
2. B+LNZ and DINZ are working closely with farmers and engaging with central and local government on significant resource management issues. They are also heavily involved in land and freshwater plan hearings throughout the country.¹
3. The changes sought by B+LNZ and DINZ to the Proposed Otago Regional Policy Statement (PORPS), to give effect to the National Policy Statement for Freshwater Management (NPSFM), would be relevant in other regions. They could also be utilised pursuant to the Natural and Built Environment Act 2023.
4. The use of land and freshwater to produce food and fibre from farming is a significant resource management issue for the Otago region. Sheep, beef, and deer farming occurs over a large land area in Otago. Rural farming communities in Otago generally identify with land and freshwater resources at a local level involving a catchment or sub-catchment of a lake, river or wetland. It is at that level they engage with the Otago Regional Council (ORC) in integrated management processes.
5. The evidence called by B+LNZ and DINZ confirms that in addition to the management processes required in statutory Resource Management Act 1991 (RMA) policy and planning instruments, Otago farmers are also actively engaged in the management of the use of land and freshwater within the catchment where they are farming, by applying voluntary and self-regulatory resource management approaches. These align with other RMA regulatory catchment management requirements such as the Resource Management (Freshwater Farm Plans) Regulations 2023.

¹ See paragraphs 4 and 9 of B+LNZ and DINZ's principal submission (0237) dated 3 September 2021.

6. Since the statements of evidence were filed in June, the Supreme Court's judgment in **Port Otago Ltd v Environmental Defence Society**² (Port Otago case) was delivered on the 24th of August 2023.
7. Recently the ORC has promoted resource management processes that it has introduced pursuant to the Local Government Act 2002 (LGA).³ These processes actively engage Otago communities and tangata whenua in integrated freshwater management processes in the catchments of waterbodies in the area of the Catlin's Freshwater Management Unit (FMU).
8. The National Policy Statement for Indigenous Biodiversity 2023 (NPSIB) was published on the 7th of July 2023.

Witnesses

9. Kate Scott will address the importance of integrated catchment management in Otago.
10. Emma Crutchley will address the freshwater management implications for her sheep, beef and arable farming operation, and for other farming operations in her area.
11. Claire Perkins will address the recommended amendments to the PORPS.

Principal Legal Submissions

12. We will address the implications of the **Port Otago** case when giving effect to the NPSFM in the PORPS.
13. We submit that the ORC has failed to interpret and apply correctly the objective of the NPSFM to ensure that the natural and physical resources of Otago are managed in a way that prioritises the three value laden obligations in cl 1.3(5), cl 2.1 and cl 3.2(2)(c) when implementing Te Mana o te Wai (TMOTW). The PORPS policies fail to implement sufficiently the second and third management obligations when giving effect to TMOTW. Policy LF-WAI-P1- Prioritisation in the PORPS needs to be amended.
14. We submit that because there is no policy framework in the PORPS that addresses freshwater visions at a catchment level, and there is no policy framework that facilitates integrated catchment groups at a local level, the PORPS does not reflect the current

² [2023] NZSC 112.

³ See ORC media release of 10-7-23 attached as Attachment A.

integrated resource management processes applied in Otago that involve active engagement by the ORC with local communities and tangata whenua. The recent policy developed by the ORC pursuant to the LGA, implements that approach.⁴ We submit that further important process policies need to be included in the PORPS to address the implementation of cl 3.2 TMOTW, and cl 3.5 Integrated management at catchment and sub-catchment levels.

15. Additional policies would allow for work to continue on changes to the Otago RPS to include long-term visions for catchments, an integrated catchment management framework, and the development of proposed catchment freshwater plans. We submit that these policy directions are not in conflict with the LGA processes.
16. Our submissions will support those of counsel for the farming submitters, addressing suggestions of Felicity Boyd arising from the definitions in the NPSFM and NPSIB.

The role of a regional policy statement

17. Our submissions focus on the management processes that the NPSFM, as a superior RMA instrument, directs the ORC to implement in the PORPS. The objective and policies in Part 2 of the NPSFM are management process directions.
18. The PORPS is the primary statutory instrument by which integrated management of the Otago region's resources is to be achieved.⁵ It is a significant document because of its impact upon other statutory instruments throughout the region. Merely repeating NPSFM provisions in the PORPS does not necessarily give lawful effect to them. The PORPS is saved in the Natural and Built Environment Act 2023.⁶

⁴ Catlins Integrated Catchment Group draft terms of reference is attached as Attachment B. This was approved by ORC on 28 June 2023.

⁵ **St Columba's Environmental House Group v Hawkes Bay Regional Council** [1994] NZRMA 560 (PT) at 566. The Planning Tribunal had already held that the regional policy statement is the heart of resource management in the region: **North Shore City Council v Auckland Regional Council** [1994] NZRMA 521 (PT).

⁶ Proposed regional policy statements have been included in the definition of 'RMA instrument' that can be found in Schedule 1 of the Natural and Built Environment Act 2023. This schedule contains transitional, savings and related provisions.

19. In **Wairoa River Canal Partnership v Auckland Regional Council**,⁷ when considering a proposed change to a regional policy statement, the Environment Court held that it was not necessary for every subsidiary planning document to parrot the words of superior documents or part 2 of the RMA. The Court said the real inquiry was whether the amended policy complied with ss 59, 60, 61, and 62 of the RMA.
20. We submit that the strong directions to regional councils contained in the mandatory implementation and National Objectives Framework (NOF) provisions of the NPSFM must be given lawful effect to in the PORPS in explicit and directive process policies.

The Port Otago case

21. ORC's legal submissions dated 28 August 2023 discuss the Supreme Court's recent judgment in the **Port Otago case**.
22. The Supreme Court considered the relationship between the policies in the New Zealand Coastal Policy Statement (NZCPS) and how such policies should be reflected in lower-order planning documents. The particular issue concerned the relationship between policy 9 of the NZCPS relating to ports (the NZCPS ports policy) and a number of other policies that require the adverse effects of activities to be avoided (the NZCPS avoidance policies).
23. The Supreme Court began its discussion on the issue with some comments on how the NZCPS should be interpreted and on the meaning of 'avoid' as used in the avoidance policies.
24. On the interpretation of the NZCPS, the Court said:

[60] The meaning to be accorded to the NZCPS should be ascertained from the text and in light of its purpose and its context. This means that close attention to the context within which the policies operate, or are intended to operate, and their purpose will be important in interpreting the policies. This includes the context of the instrument as a whole, including the objectives of the NZCPS, but also the wider context whereby the policies are considered against the background of the relevant circumstances in which they are intended to and will operate. National directives like the NZCPS are by their nature expressed as broad principles.

[61] The language in which the policies are expressed will nevertheless be significant, particularly in determining how directive they are intended to be and thus how much or how little flexibility a subordinate decision-maker might have.

⁷ **Wairoa River Canal Partnership v Auckland Regional Council** [2010] NZEnvC 309 at [9]-[13].

As this Court said in *King Salmon*, the various objectives and policies in the NZCPS have been expressed in different ways deliberately. Some give decision-makers more flexibility or are less prescriptive than others. Others are expressed in more specific and directive terms. These differences in expression matter.

[62] A policy might be expressed in such directive terms, for example, that a decision-maker has no choice but to follow it, assuming no other conflicting policy. As this Court said in *King Salmon*:

“... although a policy in a New Zealand coastal policy statement cannot be a ‘rule’ within the special definition in the RMA, it may nevertheless have the effect of what in ordinary speech would be a rule.

[63] *Conflicts between policies are likely to be rare if those policies are properly construed, even where they appear to be pulling in different directions. Any apparent conflict between policies may dissolve if “close attention is paid to the way in which the policies are expressed”. Those policies expressed in more directive terms will have greater weight than those allowing more flexibility. Where conflict between policies does exist the area of conflict should be kept as narrow as possible.*

[Emphasis added. Footnotes omitted]

25. In terms of the meaning of ‘avoid’ as used in the avoidance policies, the Court referred to its decision in *King Salmon* where it was said that the term ‘avoid’ has its ordinary meaning of ‘not allow’ or ‘prevent the occurrence of’, meaning that the policies at issue in that appeal provided ‘something in the nature of a bottom line’. The Court in *King Salmon* noted, however, that what was to be avoided, with regard to those policies was, in that case, the adverse effects on natural character and that prohibition of minor or transitory effects would not likely be necessary to preserve the natural character of coastal environments.⁸
26. The Supreme Court then referred to its judgment in **Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board** where it was said that the standard was protection from *material harm*.⁹ The Court went on to say:

[65] Although in a different context, the comments are nonetheless applicable to the NZCPS. It is clear from *Trans-Tasman* that the concepts of mitigation

⁸ Ibid, at [64].

⁹ **Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board** [2021] NZSC 127, [2021] 1 NZLR 801 at [252] per Glazebrook J, [292]-[293] per Williams J and [309]-[311] per Winkelmann CJ. *Trans-Tasman* concerned the assessment of applications for marine discharge consents under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012.

and remedy may serve to meet the 'avoid' standard by bringing the level of harm down so that material harm is avoided.

[66] In summary, the Court in *Trans-Tasman* said that decision-makers must either be satisfied there will be no material harm or alternatively be satisfied that conditions can be imposed that mean:

- (i) material harm will be avoided;
- (ii) any harm will be mitigated so that the harm is no longer material; or
- (iii) any harm will be remedied within a reasonable timeframe so that, taking into account the whole period harm subsists, overall the harm is not material.

27. Applied to the NPSFM, this means that the avoidance policies must be interpreted in light of what is sought to be protected including the relevant values and areas and, when considering any development, whether measures can be put in place to avoid material harm to those values and areas.¹⁰ The Court considered that policies in the NZCPS containing inherent value conflicts should be addressed using a structured analysis in the RPS and plan rather than applying an overall judgment approach.¹¹
28. These considerations may be relevant when considering policies 2.1(11) and (15) in the NPSFM. **Policy 11:** Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided. **Policy 15:** Communities are enabled to provide for their social, economic, and cultural well-being in a way that is consistent with this National Policy Statement (emphasis added).

Relevant principles of statutory interpretation and NPSFM

29. Legal submissions and evidence being considered by the Freshwater Panel hearing have addressed the interpretation of provisions in the NPSFM and how they should be given effect to in the PORPS.
30. Section 5 of the Legislation Act 1999 defines 'legislation' to mean 'the whole or a part of an act or any secondary legislation'. As a national policy statement is secondary legislation, determining the meaning of the provisions in the NPSFM is an exercise in statutory interpretation.

¹⁰ **Port Otago case**, at [68].

¹¹ At [78], [81] and [83].

31. When interpreting the management process provisions of the NPSFM, the relevant statutory interpretation principles are set out in Sections 10 and 11 of the Legislation Act 2019.
32. Section 10 of the Legislation Act 2019 states that the meaning of legislation must be ascertained from its text and in light of its purpose and context.¹² This section was referred to by the Supreme Court in the Port of Otago case.¹³
33. Section 11 of the Legislation Act 2019 explicitly provides as one of the principles of statutory interpretation that legislation ‘applies to circumstances as they arise’.¹⁴ In **Burrows and Carter Statute Law in New Zealand**, the author noted that the courts are anxious to give statutes an ambulatory or dynamic interpretation that keeps them up to date in the modern world.¹⁵ Section 11 supports this ambulatory approach.
34. Pursuant to clause 3.2(4) of the NPSFM the concept of TMOTW must also inform the interpretation of the NPSFM and the provisions required to be included in the PORPS.
35. Value judgements characterise the mandatory resource management processes contained in the NPSFM. The word ‘must’ is used 174 times, and the word ‘value’ 45 times in the NPSFM.

Interpretation of the concept of TMOTW in the NPSFM

1.3 Fundamental concept – Te Mana o te Wai

Concept

- (1) Te Mana o te Wai is a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri

¹² Section 10 of the Legislation Act 2019 replaced s 5 of the Interpretation Act 1999, which was repealed on 28 October 2021 by s 6 of the Legislation (Repeals and Amendments) Act 2019.

¹³ **Port Otago Case**, at [60].

¹⁴ Section 11 replaces s 6 of the Interpretation Act 1999. Section 6 was described by the Court of Appeal in **Fairfax v Ireton** [2009] NZCA 100, [2009] 3 NZLR 289 at 179] as a ‘re-expression in less metaphorical terms’ of the more colourful s 5(d) of the Acts Interpretation Act 1924, which expressed the principle as the ‘law shall be considered as always speaking’.

¹⁵ Ross Carter, **Burrows and Carter Statute Law in New Zealand** (6th ed, LexisNexis, Wellington, 2021) at 540. **Burrows and Carter** cites several examples where the courts have applied the ambulatory approach: at f.n. 91.

of the wai. Te Mana o te Wai is about restoring and preserving the balance between the water, the wider environment, and the community.

- (2) Te Mana o te Wai is relevant to all freshwater management and not just to the specific aspects of freshwater management referred to in this National Policy Statement. (Emphasis added)

36. The first two sentences in the concept are value-statements about the importance of protecting the health of freshwater for the protection of the wider environment and mauri of the wai.

37. Our submissions focus on the second sentence, and mandatory TMOTW implementation directions that manage restoring and preserving the balance between the water, the wider environment, and the community. The RMA defines 'environment'.

Environment includes-

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) all natural and physical resources; and
- (c) amenity values; and
- (d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters.¹⁶

38. A contextual interpretation of the NPSFM would suggest that the community, includes the rural community. The use of the word 'balance' denotes that TMOTW is a resource management process.

39. In *Re Otago Regional Council*¹⁷ the Environment Court considered the concept of Te Mana o te Wai:

'[31] The NPSFM 2014 (amended 2017) was closely considered by the Environment Court in *Aratiatia Livestock Ltd v Southland Regional Council* on appeal from decisions on the proposed Southland Land and Water Plan.

The court's observations in *Aratiatia Livestock Ltd* remain relevant and bear repeating here:

- (a) Te Mana o te Wai is not a Māori centric but a water centric approach.
- (b) While expressed in te reo Māori, Te Mana o te Wai benefits all New Zealanders.

¹⁶ Clause 1.4(2) of the NPSFM states: Terms defined in the Act and used in this National Policy Statement have the meanings in the Act, except as otherwise specified.

¹⁷ [2021] NZEnvC 164.

(c) Te Mana o te Wai is a concept that requires natural and physical resources be managed in a way that recognises that by protecting the health of freshwater, the health and well-being of the wider environment is also protected. This concept entails a fundamental shift in societal perspectives on sustainable management.’

Clause 1.3(5) incorporates the values in the NPSFM objective in cl 2.1.

(5) There is a hierarchy of obligations in Te Mana o te Wai that prioritises:

(a) first, the health and well-being of water bodies and freshwater ecosystems

(b) second, the health needs of people (such as drinking water)

(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future. (Emphasis added).

40. All the TMOTW obligations in sub-clause (5) must be met. The consideration of the first management priority does not remove the need to consider the second and third priorities in the mandatory resource management processes when implementing TMOTW in the PORPS.
41. Sub-clause 5 (a) involves a consideration of intrinsic values and sub-clauses (b) and (c) instrumental values.¹⁸
42. Establishing and utilising freshwater catchment groups comprising community and tangata whenua representatives can assist with addressing competing values.¹⁹
43. **Sub-clause 5(a)** This obligation in TMOTW prioritises the health and well-being of water bodies and freshwater ecosystems. The thrust of the first management priority is to protect and maintain the ecological integrity and capacity of a freshwater ecosystem. Biological diversity is intrinsic to the health and well-being of water bodies and freshwater ecosystems. The RMA defines ‘intrinsic values’, and ‘biodiversity’.

Intrinsic values, in relation to ecosystems, means those aspects of ecosystems and their constituent parts which have value in their own right, including-

- (a) their biological and genetic diversity; and

¹⁸ See Viktoria Kahui (2022): ‘Giving waterways groups a role in regional freshwater policy’ New Zealand Economic Papers, DOI: 10.1080/0779954.2022.2150277 for a useful high level academic article on this approach informed by ecological economics.

¹⁹ Ibid.

- (b) the essential characteristics that determine an ecosystem's integrity, form, functioning and resilience.

Biological diversity means the variability among living organisms, and the ecological complexes of which they are a part, including diversity within species, and of ecosystems.

Ecosystem health is a compulsory value set out in Appendix 1A of the NPSFM.

44. **Sub-clause 5(b)** The second obligation in TMOTW prioritises the health needs of people (such as drinking water). The provision should be given a purposive and contextual interpretation and application in the management processes that give effect to TMOTW. The health needs of people involve private and public health considerations.
45. In **Te Whānau A Kai Trust v Gisborne District Council**²⁰ the Environment Court described the obligations in broad terms.

[29] The later versions have placed an increasing emphasis on the fundamental concept of Te Mana o te Wai which, in a hierarchy of considerations, turns first to the health and well-being of water and water bodies, then to the health needs of the people and lastly to the provision of water for social, economic and cultural well-being.

46. Counsel for the ORC has proffered a very refined interpretation of the words in this management obligation. He interprets the words 'such as', by applying what he refers to as a plain reading. It qualifies the meaning of 'drinking water' and excludes from the second obligation, the contribution of food for the health needs of people who are judged by the ORC to be insufficiently connected to the freshwater ecosystem of a waterbody. This interpretation does not focus on the health needs of people, such as drinking water and food, but rather on the proximity of people to waterbodies and freshwater ecosystems when they ingest water or food. Mr Farrell reads into the provision the qualifying words 'direct' and 'indirect'.

²⁰ [2022] NZRMA 372.

47. The implications of the ORC's interpretation of sub-clause 5(b) is reflected in policy LF-Wai-P1- Prioritisation and LF-WAI-P4 – Giving effect to *Te Mana o te Wai*, recommended in the section 42A report.

LF-WAI-P1 – Prioritisation

In all decision-making affecting *fresh water* in Otago, prioritise:

- (1) first, the health and well-being of *water bodies* and *freshwater* ecosystems, (te hauora o te wai) and the contribution of this to the health and well-being of the *environment* (te hauora o te taiao), together with the exercise of mana whenua to uphold these.
- (2) second, the health needs of people, (te hauora o te tangata); interacting with *water* through ingestion (such as *drinking water* and consuming resources harvested from the water body) and immersive activities (such as harvesting resources and primary contact), and
- (3) third, the ability of people and communities to provide for their social economic, and cultural well-being, now and in the future.

LF-WAI-P4 – Giving effect to *Te Mana o te Wai*

All persons exercising functions and powers under this regional policy statement and all persons who use, develop or protect resources to which this regional policy statement applies must recognise that LF-WAI-O1, LF-WAI-P1, LF-WAI-P2 and LF-WAI-P3 are fundamental to upholding *Te Mana o te Wai*, and must be given effect to when making decisions affecting *freshwater*, including when interpreting and applying the provisions of the LF chapter.

48. We submit the words 'such as', and the example of drinking water, should not be interpreted to limit the emphasis given to all health needs of people as a second priority. Drinking water and food production are crucial for human health in a private and public health context. The suggestion that it is only food consumed by people interacting with a water body is very artificial. The extent of that interaction is unclear. The interpretation that the health needs of people outside that group can only to be considered under the third priority is not apparent, when that priority does not refer to the health needs of people and communities. The ORC's interpretation is a significant qualification of the words in sub-clause (5)(b) when considering them in the context of the ORC's management obligations in Part 3 of the NPSFM to give effect to TMOTW in the PORPS. This is particularly evident when addressing the matters in cl 3.2(2)(c).

49. The health needs of people involve human values. The considerations in cl 3.2(2)(c) and the NOF involve identifying values and setting environmental outcomes as objectives pursuant to clause 3.9(1) and (2) of the NPSFM.

3.9 Identifying values and setting environmental outcomes as objectives

- (1) The compulsory values listed in Appendix 1A apply to every FMU, and the requirements in this subpart relating to values apply to each of the 5 biophysical components of the value Ecosystem health.
- (2) A regional council may identify other values applying to an FMU or part of an FMU, and must in every case consider whether the values listed in Appendix 1B apply.

50. The definition of FMU is:

Freshwater management unit, or FMU, means all or any part of a water body or water bodies, and their related catchments, that a regional council determines under clause 3.8 is an appropriate unit for freshwater management and accounting purposes; and **part of an FMU** means any part of an FMU including, but not limited to, a specific site, river reach, water body, or part of a water body. (Emphasis added).

51. The second priority management obligation extends beyond the compulsory value to protect ecosystem health in Appendix 1A, to other values in Appendix 1B of the NPSFM. The production of food from farmed animals is referred to in: 8 Irrigation, cultivation, and production of food and beverages.
52. The direct or indirect interaction of people with a specific water body for their health needs is not found in the wording of the second obligation and is an inappropriate gloss on its meaning. Policy LF-WAI-P1-Prioritisation should be amended to refer to the health needs of people for water and food.
53. **Sub-clause (5)(c)** The third TMOTW obligation prioritises the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

Mandatory management process provisions in Part 3 Subpart 1 of the NPSFM that address TMOTW and integrated management

3.2 Te Mana o te Wai

- (1) Every regional council must engage with communities and tangata whenua to determine how Te Mana o te Wai applies to water bodies and freshwater ecosystems in the region.

- (2) Every regional council must give effect to Te Mana o te Wai, and in doing so must:
 - (a) actively involve tangata whenua in freshwater management (including decision-making processes), as required by clause 3.4; and
 - (b) engage with communities and tangata whenua to identify long-term visions, environmental outcomes, and other elements of the NOF; and
 - (c) apply the hierarchy of obligations as set out in clause 1.3(5):
 - (i) when developing long-term visions under apply the hierarchy of obligations clause 3.3; and
 - (ii) when implementing the NOF under subpart 2: and
 - (iii) when developing objectives, policies, methods, and criteria for any purpose under subpart 3 relating to natural inland wetlands, rivers, fish passage, primary contact sites, and water allocation; and
 - (d) enable the application of a diversity of systems of values and knowledge, such as mātauranga Māori, to the management of freshwater; and
 - (e) adopt an integrated approach, ki uta ki tai, to the management of freshwater (see clause 3.5) (Emphasis added).
- (3) Every regional council must include an objective in its regional policy statement that describes how the management of freshwater in the region will give effect to Te Mana o te Wai.
- (4) In addition to subclauses (1) to (3), Te Mana o te Wai must inform the interpretation of:
 - (a) this National Policy Statement; and
 - (b) the provisions required by this National Policy Statement to be included in regional policy statements and regional and district plans.

3.7 NOF process

- (1) At each step of the NOF process, every regional council must:
 - (a) engage with communities and tangata whenua; and
 - (b) apply the hierarchy of obligations set out in clause 1.3(5), as required by clause 3.2(2)(c) (Emphasis added)

Communities and tangata whenua engagement

54. Management processes requiring the ORC to engage with communities and tangata whenua are also found in clauses 3.2, 3.3, 3.5, 3.7 and 3.15.

55. In **Te Whānau A Kai Trust v Gisborne District Council**²¹, the Environment Court said:

[31] Part 3 of the NPSFM 2020 (the Implementation section), subpart 1, provides the actions required to give effect to Te Mana o te Wai. Engagement with communities and tangata whenua is at the forefront:

56. In the context of the NPSFM, the direction to engage with ‘communities and tangata whenua’ is not restricted to mere consultation or facilitation. The word ‘engage’ has different meanings depending on the purpose of the engagement process. One meaning of ‘engage’ is to ‘involve, commit (oneself) in an undertaking’.²² It will require active participation, involving the development of long-term visions, environmental outcomes, each step of the NOF process, and managing freshwater, and land use and development in a catchment in an integrated and sustainable way.

57. It should involve a more collaborative and partnership-based approach by the ORC when engaging with community groups and tangata whenua in the development and implementation of statutory land and freshwater planning instruments, and action plans addressing changes to the RPS and co-regulatory and self-regulatory processes at catchment and sub-catchment levels.²³ Effective community and tangata whenua engagement is crucial when developing and implementing action plans requiring immediate management steps to respond to degraded or degrading water.

58. The ORC public records disclose that it is currently establishing catchment groups comprising community and tangata whenua representatives to develop action plans to achieve integrated management of freshwater ecosystems and land uses. These

²¹ [2022] NZRMA 372.

²² Shorter Oxford English Dictionary (6th ed vol 1 Oxford University Press).

²³ Farm Environmental Management Plans adopt a risk management process approach. See para 9 *Aratiatia Livestock Limited v Southland Regional Council* [2022] NZEnvC 265.

involve active engagement with the community and tangata whenua rather than passive engagement.²⁴

59. An active engagement approach should involve process values such as participation, fairness, transparency, full disclosure, and tikanga.

Te Mana o te Wai and integrated catchment management approach²⁵

3.2 (2) Every regional council must give effect to Te Mana o te Wai, and in doing so must:

- (e) adopt an integrated approach, ki uta ki tai, to the management of freshwater (see clause 3.5) (Emphasis added).

3.5 Integrated management

- (1) Adopting an integrated approach, ki uta ki tai, as required by Te Mana o te Wai, requires that local authorities must:
- (a) recognise the interconnectedness of the whole environment, from the mountains and lakes, down the rivers to hāpua (lagoon), wahapū (estuaries) and to the sea; and
 - (b) recognise interactions between freshwater, land, water bodies, ecosystems, and receiving environments; and
 - (c) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems, and receiving environments; and
 - (d) encourage the co-ordination and sequencing of regional or urban growth.
- (2) Every regional council must make or change its regional policy statement to the extent needed to provide for the integrated management of the effects of:
- (a) the use and development of land on freshwater; and
 - (b) the use and development of land and freshwater on receiving environments.
- (3) In order to give effect to this National Policy Statement, local authorities that share jurisdiction over a catchment must co-operate in the

²⁴ See ORC 10-7-23 media release, shown in Attachment A.

²⁵ The word 'catchments' appears 124 times in the NPSFM. FMU is defined as a water body and its related catchment.

integrated management of the effects of land use and development on freshwater.

- (4) Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments. (Emphasis added).

Action plans in TMOTW processes and integrated catchment management

3.15 Preparing action plans²⁶

- (2) An action plan may describe both regulatory measures (such as proposals to amend regional policy statements and plans, and actions taken under the Biodiversity Act 1993 or other legislation) and non-regulatory measures (such as work plans and partnership arrangements with tangata whenua and community groups).

60. In addition to the matters included in cl 3.15 an action plan is also a very useful management approach for addressing risk management issues.

3.20 Responding to degradation.

- (1) If a regional council detects that an FMU or part of an FMU is degraded or degrading, it must, as soon as practicable, take action to halt or reverse the degradation (for example, by making or changing a regional plan, or preparing an action plan).
- (2) Any action taken in response to a deteriorating trend must be proportionate to the likelihood and magnitude of the trend, the risk of adverse effects on the environment, and the risk of not achieving target attribute states.
- (3) Every action plan prepared under this clause must include actions to identify the causes of the deterioration, methods to address those causes, and an evaluation of the effectiveness of the methods.

(Emphasis added)

61. There are also significant challenges when judging what is an acceptable level of risk from the impacts of existing and future land and freshwater uses on the health of freshwater ecosystems, and their resilience to climate change impacts on a catchment and sub-catchment scale. The words 'resilient' or 'resilience' are defined in the PORPS

²⁶ The words 'action plan' occur 10 times in the NPSFM.

as: 'means the capacity and ability to withstand or recover quickly from adverse conditions'.²⁷

62. In the case of maintaining ecosystem resilience, adaptive management is a well-known precautionary risk management approach that should include the participation of the rural community. Adaptive management is also the dominant resource management strategy for addressing risks including climate change impacts.²⁸
63. Action plans should involve active steps required to process phasing and implementation of actions in accordance with cl 3.7(2)(f).

Adopting an integrated approach at a catchment level

64. Clause 3.3(1) of the NPSFM states that regional councils must develop long-term visions for freshwater and include them as objectives in a regional policy statement. Clause 3.3(2) makes it clear that the long-term visions may be set at FMU, part of an FMU, or at a local catchment level.
65. Long-term visions have been developed for the notified PORPS, but they are at a FMU level. There is no policy framework addressing freshwater visions at a catchment level. Nor is there a policy framework that facilitates integrated catchment groups at a local level.
66. It is accepted that decisions on funding and allocation of resources are to be dealt with under the LGA and that the court cannot direct a local authority to include in a plan an obligation to resource parties with financial assistance.²⁹
67. The principal question is whether the LGA and the RMA have complementary or consistent processes in terms of facilitating integrated management at a catchment level.

²⁷ B+LNZ and DINZ's submissions filed in 2021, refer to the importance of the concept of resilience and how it should inform the management regime in the PORPS. See B+LNZ and DINZ's principal submission (0237) dated 3 September 2021 at [27(i)].

²⁸ See **Port Otago case** [67]. See proposed climate adaptation legislation as part of the RMA law reform package.

²⁹ **Te Whānau A Kai Trust v Gisborne District Council** [2022] NZRMA 372, upheld on appeal: **Te Whānau A Kai Trust v Gisborne District Council** [2022] NZHC 1462.

68. It is to be noted that, although a regional policy statement may not itself contain rules that prohibit, regulate or allow activities, it may contain policies and methods directed to a particular end or outcome, with those policies and methods to be given effect to through a regional or a district plan.³⁰ As the Full Court of the Court of Appeal said in **Auckland Regional Council v North Shore City Council**.³¹

It is obvious that in ordinary present-day speech a policy may be either flexible or inflexible, either broad or narrow. Honesty is said to be the best policy. Most people would prefer to take some discretion in implementing it, but if applied remorselessly it would not cease to be a policy. Counsel for the defendants are on unsound ground in suggesting that, in everyday New Zealand speech or in parliamentary drafting or in etymology, policy cannot include something highly specific. ...

69. Thus, a policy in a regional policy statement may have the effect of what in ordinary speech would be a rule. A policy framework that ensures integrated management at a local catchment level would be an example of such a policy.
70. The starting point is that all statutory enactments must be read and applied together insofar as they are not inconsistent. **Burrows and Carter Statute Law in New Zealand** offers the following guidance on the question of reconciling apparent inconsistencies:³²

Normally the courts will try to find a construction that reconciles the apparent inconsistency and allows the two provisions to stand together, ... The courts may be able to find that each provision deals with a separate matter, and thus they can coexist without inconsistency or even overlap.

[Footnote omitted]

71. That task is central to a purposive approach to statutory interpretation.
72. The correct approach to interpretation is to first attempt to give each statute its effect without creating conflict or inconsistency between the two. It is only in cases where

³⁰ RMA, ss 67(3)(a) and 75(3)(c).

³¹ **Auckland Regional Council v North Shore City Council** [1995] 3 NZLR 18 (CA) at 23, cited with approval by the Supreme Court in **Environmental Defence Society Inc v New Zealand King Salmon Company Ltd** [2014] NZSC 38, [2014] 1 NZLR 593 at [114].

³² **Burrows and Carter** at 613, cited with approval by the Court of Appeal in **Terranova Homes and Care Ltd v Faitala** [2013] NZCA 435, (2013) NZELR 489 at [26], with reference to the 4th ed at 441-442.

statutes are 'so inconsistent with, or repugnant to the other that the two are incapable of standing together' that it is necessary to decide which statute is to prevail.³³

73. In addition, it is a well-established principle of construction that Parliament intends to legislate in a way that produces a practicable and sensible result.³⁴ In other words, Parliament will not have intended an outcome that is inefficient or unworkable.
74. We submit that the long term and annual planning processes provided for in the LGA in terms of catchment management can be aligned with a freshwater planning policy framework in the PORPS that facilitates the management of freshwater, and land use and development in catchments in an integrated and sustainable way.

Suggested changes to provisions in PORPS

75. There needs to be a directive management process policy framework to address integrated catchment management. The directions in the NPSFM to the ORC are to engage with communities and tangata whenua to give effect to TMOTW in integrated management processes. This is not optional, it is an NPSFM requirement. If these processes are applied at a catchment level, they should not be left to the existing methods included in the PORPS. These are uninformed by a directive process policy framework addressing integrated catchment management. To replicate current integrated catchment approaches in Otago, the PORPS should direct that the ORC's engagement should occur through catchment management groups that include representatives of local communities and tangata whenua. The engagement process should involve action planning and regulatory and non-regulatory processes to give effect to TMOTW.
76. There is no reason why the ORC should not work with these groups to develop changes to the RPS in tandem with developing the provisions for a proposed freshwater plan. Action plans could play a significant part in that process management approach. The words 'active engagement' are not used in the TMOTW communities and tangata whenua process requirements in cl 3.2 of the NPSFM. However, that is what is happening in practice. Pursuant to cl 3.1(2)(a) the implementation measures can be more stringent than those set out in the NPSFM.

³³ **Stewart v Grey County Council** [1978] 2 NZLR 577 (CA) at 583.

³⁴ **Re Watercare Services Ltd** [2018] NZHC 294 at [64], citing **R v Salmond** [1992] 3 NZLR 8 (CA) at 13.

77. The suggested process provisions for inclusion are practicable, sensible and workable, and they reflect current practice. They meet the section 32 evaluation criteria. The recommended provisions will be tended by Claire Perkins in her supplementary statement of evidence.

NPSFM and NPSIB

78. Ms Boyd has identified what she considers to be a gap in the policy framework in the NPSFM and the NPSIB that can be addressed by amending the PORPS provisions to provide direction on managing wetlands that may not necessarily be natural inland wetlands as defined in the two NPSs.

79. The issue is whether there is, in fact, a gap in the policy framework or whether the NPSFM and the NPSIB are aligned and can be applied consistently in the PORPS.

80. National policy statements are to be given effect to through lower order planning documents (regional policy statements, regional plans and district plans) of regional and district councils.³⁵ Thus, the ORC must give effect to both the NPSFM and the NPSIB in its preparation of the PORPS.³⁶ The phrase 'give effect to' means to implement. As the Supreme Court has confirmed, it is a strong directive, creating a firm obligation on the part of those subject to it.³⁷

81. In **Re Otago Regional Council**, the Environment Court considered the relationship between different national policy statements in terms of the requirement in s 67(3) of the RMA that a regional plan must give effect to these documents.³⁸ The Court said that where there are two national policy statements, they are to be read together and reconciled under lower order planning documents.³⁹ We have addressed the relevant principles of statutory interpretation at [71] of our submissions.

³⁵ RMA, ss 55, 62(3), 67(3) and 75(3).

³⁶ RMA, s 62(3).

³⁷ **Environmental Defence Society Inc. v New Zealand King Salmon Company** [2014] NZSC 38, [2014] NZRMA 195 at [77].

³⁸ **Re Otago Regional Council** [2021] NZEnvC 164. The Court was dealing with the National Policy Statement for Freshwater Management 2020, the National Policy Statement for Urban Development 2020 and the National Policy Statement for Renewable Electricity Generation 2011.

³⁹ *Ibid*, at [369].

82. In the event of a conflict between the NPSFM and the NPSIB, cl 1.4(3) of the NPSIB makes it clear that the NPSFM prevails over the NPSIB.
83. In addition, it is a well-established principle of construction that Parliament intends to legislate in a way that produces a practicable and sensible result.⁴⁰ In other words, Parliament will not have intended an outcome that is inefficient or unworkable. This principle is important in this case when assessing the efficiency and effectiveness of the policies in terms of s 32(1)(b) of the RMA.
84. The NPSFM and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NESF) are the primary instruments through which wetlands are managed and protected.
85. The NPSFM's sole objective is set out at cl 2.1. It is implemented through policies, Policy 6 being that 'There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.' Part 3 of the NPSFM contains an implementation process – the Regional Council 'must' undertake certain actions, one of which is to include the policy set out at cl 3.22, which is to provide for and promote the restoration of natural inland wetlands.
86. It is noted that, as part of amendments in 2022, the definition of 'natural wetlands' in the NPSFM was refined and clarified. Prior to the 2022 amendments, the NPSFM used a subset of the RMA wetland definition⁴¹ to define 'natural wetlands':

Natural wetland means a wetland (as defined in the Act) that is not:

- (a) a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former natural wetland); or
- (b) a geothermal wetland; or
- (c) any area of improved pasture that, at the commencement date, is dominated by (that is more than 50% of) exotic pasture species and is subject to temporary rain-derived water pooling.

87. The reason for the amendment was because the drafting of the earlier NPSFM was not consistent with the original policy intent that pasture dominated wet areas were to be excluded from the definition. This is made clear in the Regulatory *Impact Statement*:

⁴⁰ **Re Watercare Services Ltd** [2018] NZHC 294 at [64], citing **R v Salmond** [1992] 3 NZLR 8 (CA) at 13.

⁴¹ The definition of 'wetland' in s 2 of the RMA is: 'permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.'

*Changes to wetland regulations (inland wetlands).*⁴² Page 1 of the *Regulatory Statement* identified the problem in the following way:

The definition of 'natural wetlands' in the National Policy Statement for Freshwater Management 2020 (NPSFM) is unclear and being interpreted inconsistently by councils. This is leading to significant costs and uncertainty for applicants for resource consents.; *and in some instances, more land is being classified and regulated as 'natural wetlands' than was intended, unnecessarily restricting some existing types of land use (primarily farming).*

[Emphasis added]

88. At page 10, the Regulatory Statement stated:

A consistent theme of feedback from various stakeholders is that the 'natural wetland' definition is unclear and is leading to confusion and discrepancies in the application of the NESF.

Part (c) of the definition was intended to exclude highly modified wetland landscapes currently used for pasture, so that these areas can continue to be used for farming. This recognises that applying the regulations within such wetlands and associated buffers (100m of a natural wetland) would be likely to have a prohibitive impact on farming activities in these areas.

One concern raised was that part (c) of the definition is problematic because of its multiple qualifiers; and as a result, it actually captures some modified wetlands dominated by exotic pasture that it was intended to exclude.

89. The 2022 amendment makes it clear that, in line with the original policy intent of the definition, pasture dominated wet areas are excluded from the definition.

90. Since the amendments took effect on 5 January 2023, regional councils 'must' include the updated wetland content set out in cl 3.22(1) of the NPSFM in their regional plans.

91. As directed by the NPSFM, the notified regional policy statement includes LF-FW-P9. Ms Boyd's evidence is, however, that in order to give effect to the NPSIB, a broader class of wetlands needs to be captured and that, therefore, changes need to be made to the definition of 'natural wetlands' and to policy LF-FW-P9 as notified.

⁴² It addressed changes to the NPSFM 2020 and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020.

92. We submit that greater weight should be given to the more specific and directly relevant NPSFM in determining the most appropriate provisions relating to natural inland wetlands.

Conclusion

93. We submit that when implementing TMOTW the use of strong directive management process policies in the PORPS provides for a structured approach for addressing value conflicts contained in the NPSFM provisions.
94. For many years integrated catchment management processes have been the predominant approach taken by the ORC for managing land and freshwater in Otago rural areas. There is no policy framework for implementing this approach in the PORPS to give effect to the NPSFM. We submit that a directive process policy LF-WAI-P3A-Integrated Catchment Management needs to be included in the PORPS to give effect to TMOTW and achieve integrated management of Otago's freshwater and land resources. This policy approach could be usefully utilised in other regions.

LF-WAI-P3A – Integrated Catchment Management

(1) When developing and implementing planning instruments to give effect to the objectives and policies in this policy statement through integrated management of land and freshwater, Otago Regional Council must actively engage with local communities and tangata whenua, at the rohe and catchment level,

(2) Provide for integrated management at a catchment level by supporting the establishment of Integrated Catchment Management Groups that incorporate Otago Regional Council with local community and tangata whenua representatives, and

(3) Progress and implement integrated management of catchments through the preparation of Catchment Action Plans by the Integrated Catchment Groups, in accordance with clause 3.15 of the NPSFM that:

(a) develop visions, identify values and environmental outcomes for Otago's catchments and the methods to achieve those outcomes, including as required by the NOF process,

(b) develop and implement actions that may be adapted over time with trigger points where additional regulatory and/or non-regulatory intervention is required,

- (c) *make recommendations on amendments that may be required to the provisions of this policy statement, including the visions and timeframes in the parent FMU, and any other changes necessary to achieve integrated catchment management pursuant to clauses 3.2(2) and 3.5(2) of the NPSFM*
- (d) *at a local catchment level, encourage community initiatives to maintain or improve the health and well-being of waterbodies and their freshwater ecosystems, to meet the health needs of people, and enable the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.”*

95. Kate Scott and Claire Perkins will also address the issues raised by the Panel at its hearing last week.

Dr Royden Somerville KC / Colleen Luisetti

Counsel for Beef + Lamb New Zealand Ltd and Deer Industry New Zealand

Attachment A

You are here: [Home](#) : [News and Events](#) : [News and Media Releases](#) :
Action Plan for Catlins eco-systems

Media release: Action Plan for Catlins eco-systems

Media Release - 10 July 2023

A community meeting is being held in Ōwaka next week at the Owaka Community Hall, seeking expressions of interest to form a Catlins Integrated Catchment Group (ICG).

The community meeting on 18 July is being hosted by the Integrated Catchment Management (ICM) Working Group – made up of community, mana whenua representatives and the Otago Regional Council.

“The Working Group is set up to look at ways to support engaged communities to develop and implement plans that address all elements of a catchment in an integrated way” says Cr Lloyd McCall, chair of the Working Group.

“Forming a Catlins Integrated Catchment Group is the first step in this process.”

The Catlins ICG aims to include a diversity of communities, age, gender and geographical representation.

“Ideally, the group will be mainly local people or those with connections to the Catlins, with wide ranges of experience and knowledge,” says Cr McCall.



Catlins River at Houipapa: Photo:ORC

That experience could be, for example in; farming, biodiversity, community networks, mātauraka Māori, environmental management and conservation, forestry, historic heritage, land and soil management or local tourism operations.

Catchment Action Plans

The Catlins ICG will be responsible for developing a Catchment Action Plan which outlines long-term goals, highlights the issues, identifies possible causes and details actions for addressing them. This plan will be the first of an intended nine Catchment Action Plans (CAPs) across Otago.

“ORC will support iwi and the community to co-develop these catchment action plans (CAPs) for their area.

Having iwi and the community at the core of the plans (CAP) development gives them a sense of ownership and responsibility for the plan” Cr McCall says.

A CAP is a long-term plan that builds on the work that iwi, communities and local government are already doing to protect and manage their place and serves as a focus for new actions and projects. These plans are built from the grassroots, working with mana whenua and community.

Catchment Action Plans are not only about freshwater, but also terrestrial, estuarine and marine ecosystems, land and soils, and human values, including livelihoods,

mahika kai and wāhi tūpuna.

“It’s important all these facets, are represented locally to help plan and implement actions to manage pressures on these eco-systems and to restore the values which are most important to communities,” says Cr McCall.

The CAP will be available online with a map for anyone to view and see what progress is being made as it is implemented.

Integrated Catchment Management

ORC, in partnership with iwi and the community, is developing an integrated catchment management (ICM) programme. ICM is a proven approach for enhancing and protecting ecosystems with a focus on working with communities, mana whenua and other stakeholders.

ICM is a whole-of-landscape approach that uses the catchment as the boundary. Managing the environment on a catchment scale looks at the landscape from the mountains or headwaters of the catchment down to the sea.

This aligns with the concept in Te Ao Māori of ki uta ki tai.

The underlying principle of ICM is based on a holistic, natural resource management philosophy which recognises that all the elements of an ecosystem, including the people, are connected.

This sort of approach is not new, as catchment management plans have been used throughout Otago for some time, often at a smaller scale and led by community groups.

ORC Chair Gretchen Robertson is proud of what Otago communities are achieving in their catchments.

She has a history in this field herself, having coordinated New Zealand’s first large scale ICM project, The TAIERI Trust, back in 2001, a community-driven project established as a national model.

“With both early pioneers and outstanding current community leaders, Otago is set for success as we collectively care for our outstanding waterways and catchments”.

“As local govt, iwi and community we all want to make a difference for Otago's outstanding waterways, biodiversity and coast, the ICM programme enables us to do that together.” Cr Robertson says.

“While ORC is there to support and facilitate, often with science, funding or technical advice, the bulk of the work will be planned and done by communities, iwi, landowners and stakeholders. Otago's communities have shown real national leadership in ICM for some time,” she says.

ICM reflects a 'Te Ao Māori' concept of inextricable connection between people and their environment, and between every element of our natural world - mountains to the sea, she says.

Where to next?

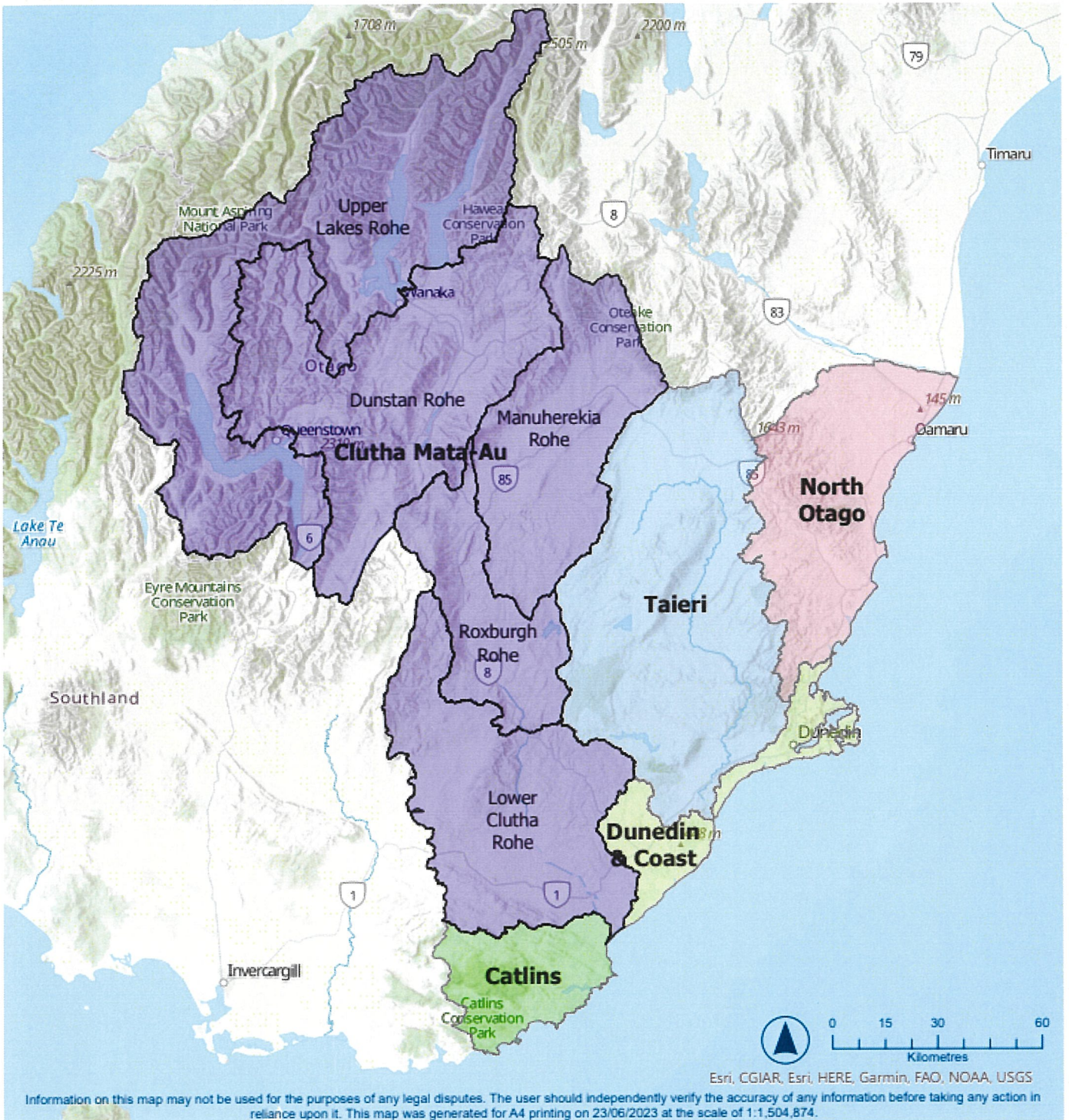
Expressions of interest to join the Catlins Integrated Catchment Group are due by 13 August, then appointments will be confirmed in September. Meetings and workshops can expect to start in October 2023. It is expected a Catchment Action Plan will be completed by September 2024.

Catlins community engagement

Community meeting 18 July: Owaka Community Centre, Ovenden Street, 1-3pm for presentations then 3-4pm for refreshments and a chance to chat OR attend 7.30-9:30 pm, webinar.

Please register your interest in attending either:

- [Meeting](#)
- [Webinar](#)



Boundaries of ORC’s Freshwater Management Units/rohe areas. ORC graphic

Page last edited 10 July 2023

Was this page useful? 😊 😐 😞

[Events »](#)

[News and Media Releases »](#)

[On Stream Newsletter »](#)

[Te Matapuna | The Source »](#)

[Waterlines Newsletter »](#)

[On Board with Orbus newsletter »](#)

ONLINE MAPS & DATA:



Contact us

 [Email us »](#)

 [Office locations »](#)

Quick Links

[About us »](#)

[Burn dry, breathe easy »](#)

[Bus alerts »](#)

[Catlins Integrated Catchment Group »](#)

[Dunedin buses »](#)

[Pollution Hotline »](#)

[Queenstown buses and ferries »](#)

[Toitū Te Hākapupu »](#)

Do it online

[Find It »](#)

[Pay It »](#)

[Apply For It »](#)

[Report It »](#)

Follow us



All rights reserved

[Privacy and Ts&Cs »](#)

Otago Regional Council © 2023

Attachment B

8.2. Integrated Catchment Management Catlins Integrated Catchment Group Terms of Reference

Prepared for:	Council
Report No.	OPS2307
Activity:	Governance Report
Author:	Anna Molloy, Principal Advisor Environmental Implementation; Libby Caldwell, Manager Environmental Implementation
Endorsed by:	Gavin Palmer, General Manager Operations
Date:	1 June 2023

PURPOSE

- [1] To provide an update to Council on the progress on the Integrated Catchment Management (ICM) Programme including seeking approval for a proposed Terms of Reference for the Catlins Integrated Catchment Group (ICG).

EXECUTIVE SUMMARY

- [2] The ICM Programme update encompasses:
- The ICM Working Group tasks – the working group provide valuable input to the development and evolution of the ICM Programme. Their work is on track.
 - Establishing the Catlins Integrated Catchment Group (ICG) – It is proposed that this is initiated through a community hui and call for expressions of interest. The ICG would operate as per a terms of reference.
 - Supporting catchment groups (sub FMU/rohe scale) with integrated catchment action planning – through additional resources from Ministry for Environment.
 - rollout of Catchment Action Plans across Otago – being developed.
- [3] An update on these is described in more detail below.
- [4] A Terms of Reference for the proposed Catlins ICG has been drafted and attached for endorsement and/or amendment by Council. This Terms of Reference documents the purpose of the CICG and its role in developing a CAP for the Catlins.

RECOMMENDATION

That the Council:

- Notes** this report.
- Approves** the proposed Terms of Reference for the Catlins Integrated Catchment Group.

BACKGROUND

- [5] Council has been supportive of an Integrated Catchment Management (ICM) approach since its first introduction in a Council workshop in October 2020. This support was formalised through the adoption of the Long-term Plan 2021-31 (LTP) in June 2021 which includes the performance measure: Lead the development, implementation, and review of integrated Catchment Plans (ICP) in collaboration with iwi and community.

- [6] Development of an ICM Programme has been underway since December 2021, including how Catchment Action Plans (CAPs) can be developed in collaboration with iwi and the community. The ICM Programme is based on developing one CAP for each FMU or rohe.
- [7] At the 10 August 2022 Strategy and Planning Committee, Committee members endorsed a series of recommendations regarding a path forward for designing and implementing an ICM Programme. This included:
- a. Endorsing the Catlins freshwater management unit (FMU) as the pilot for developing a CAP
 - b. Establishing an ICM Working Group (ICMWG) to oversee the development of CAPs and the ICM programme (initial tasks are outlined in Table 1 below).
- [8] At the 28 September 2022 Council meeting, Council endorsed the Terms of Reference for the ICMWG whose purpose is to establish the ‘groundwork’ upon which the pilot CAP will be developed, including who, how and what will be developed. The working group began meeting in February 2023. Members of the Working Group are:
- a. Cr Lloyd McCall – Chair
 - b. Cr Kate Wilson
 - c. Robyn Shanks – Catlins Coast Inc
 - d. Rachel Napier – Owaka Catchment Group
 - e. Simon O’Meara – Otago Catchment Community
 - f. Sandra McIntyre – Aukaha
 - g. Maria Bartlett – Te Ao Marama
 - h. ORC Manager Operations
 - i. ORC Manager Strategy
 - j. ORC Team Leader Land and Freshwater

DISCUSSION

ICM Working Group Tasks

- [9] An update on the activities of the ICM Working Group is provided in Table 1 below. The tasks are taken from those endorsed by the 10 August 2022 Strategy and Planning Committee.

Category	Task	Update	Next steps
ICM Working Group (ICM-WG)	Establish an ICM Working Group (ICM-WG)	There have been 6 (as of 27 June 2023) meetings of the ICMWG since the first meeting on 1 February 2023.	Continue monthly meetings
ICM-WG Tasks	Stocktake current and planned iwi, catchment and community group and ORC initiatives	A stocktake for the Catlins has been completed and shared with the ICM-WG for comment. This stocktake will form the basis of background information for the Catlins CAP.	Continue to build on the stocktake and map activities as required.
	Develop a community collaboration plan for ICM and CAP co-design	A presentation proposing the Conservation Standards (CS) as the co-design system was presented to the ICM-WG’s March meeting and endorsed by the working group. “Conservation Standards (Open Standards for the Practice of Conservation) is a proven approach in delivering outcomes and impacts, while navigating complex	Use Conservation Standards approach for co-design workshops for a CAP in the Catlins Pilot

	<p>processes and situations. Whilst it is called the Conservation Standards, it is an outcome planning framework which can be applied to improve cultural, social, economic, and environmental outcomes using existing tools and methodologies. This process facilitates integrated planning and can deliver on multiple wellbeing in a holistic way.”</p>	
<p>Develop detail around the community reference group concept, including terms of reference, appointment process and resourcing.</p>	<p>A discussion paper proposing setting up a collaborative group (Catlins Integrated Catchment Group or CICG) to co-develop the CAP was presented to the ICM-WG’s March meeting and endorsed. The Terms of Reference for the CICG were endorsed by the ICM-WG’s 1 May meeting. The appointment process will be via expressions of interest and recommendation back to Council for appointment. The Terms of Reference outline the diversity and range of experience being sought. Resourcing (including remuneration) for the ICG is being developed through the ELT.</p>	<p>Seek Council endorsement of the CICG Terms of Reference – refer to Attachment 1.</p>
<p>Develop a process for CAP development including:</p> <ul style="list-style-type: none"> i. at what point community collaboration (co-design) should begin ii. how to collate and incorporate relevant knowledge, data, activities, plans and strategies including citizen science, iii. a revised programme logic (if appropriate) as a conceptual basis and communication tool for CAP development, iv. a multi-criteria analysis framework for prioritising key actions within CAPs which can be tailored by each CAP collaboration group as required, 	<p>The CAP development process will involve the ICG and the use of Conservation Standards process outlined above. ICM Programme Systems (project management, spatial information and analysis, and reporting) are being developed. Specifically, to the sub points:</p> <ul style="list-style-type: none"> i. If Council endorses the CICG Terms of Reference, the CICG will be set up following the timeline outlined below ii. Relevant data and mapping is being collated (as well as the stocktake of activities). The CAP development approach will incorporate this knowledge (including mātauraka Māori as appropriate). iii. A revised programme logic is not necessary as the conservation standards approach (which is based on programme logic for achieving outcomes) and supporting project management tool provides a good basis for communicating the CAP concept. iv. Criteria and data to support 	<p>Continue to develop the CAP process, including spatial systems and analysis to support the development of Catlins Pilot CAP.</p>

	<p>prioritisation will continue to be developed and collated. The CS approach includes a level of prioritisation / targeting of activities. However, this can be complemented by best practice criteria for decision making once actions are determined.</p>	
<p>Develop a communications plan for ICM and CAPs based on the community collaboration plan and the CAP development process</p>	<p>A draft communications plan was presented to the ICM-WG's 1 May meeting. The key messages were discussed and endorsed with changes.</p>	<p>Incorporate the ICM-WG's comments and implement.</p>
<p>Begin implementation of the community collaboration plan and CAP development process where actions do not require further approval of Council.</p>	<p>If the CICG Terms of Reference are endorsed by Council, a timeframe for CAP development is outlined below</p>	<p>See timeframe below</p>

Establishing the Catlins ICG

- [10] The ICMWG's May 2023 meeting endorsed the Terms of Reference for the formation of the Catlins Integrated Catchment Group (CICG) as the appropriate collaborative platform for the CAP development. The Terms of Reference are at Attachment 1.
- [11] The proposed timeline for the Catlins ICG establishment and CAP Pilot is as follows:
 - a. 18 July 2023 – ICM Working Group to host a hui at Owaka to introduce ICM and the CAP co-development process and generate interest in joining the ICG.
 - b. July – August 2023 – open call for expressions of interest (EOIs) for membership on the Catlins ICG, and direct invitations to identified organisations.
 - c. August 2023 – collate and assess EOIs with ICM Working Group making recommendations to Council
 - d. September 2023 – Council appoint Catlins ICG members
 - e. October 2023 – First meeting of Catlins ICG held
 - f. October – September 2024 – Catlins ICG develops a CAP through facilitated workshops (note: this timeframe is an estimate, given this is a pilot it could take longer or less time).

Supporting Catchment Groups with ICM

- [12] Resources for the ICM Programme are increasing in 2023/24, including a Catchment Group Planner role funded from the Ministry for Environment (MfE) to support catchment groups to develop integrated catchment action plans.
- [13] The Catchment Group Planner enables ORC to facilitate development of CAPs at scale with groups who are interested. This will help groups and at the same time ensure a consistent approach to catchment action planning which makes it easier to align planning when the ICM Programme rolls out in FMUs / rohe.

- [14] This position has been recruited and starts in early July. Interest in support to develop a smaller scale CAP has already been received from the Lake Hawea Stakeholder Group.

CAP Rollout

- [15] Work is underway for establishing a schedule for rolling out CAPs across Otago. This work will come to Council via the Environmental Implementation Committee in August 2023.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [16] The ICM Programme is a significant new approach for ORC. It is implementing the commitment of Strategic Directions to deliver integrated environmental management through an ICM approach.
- [17] Consideration has been given to the timing of the Catlins hui and the proposed Land and Water Regional Plan consultation round 3. Both processes are operating in close collaboration and will ensure clear and consistent messaging is used to define the differences and links between them.

Financial Considerations

- [18] Any costs incurred in establishing and coordinating the ICM Working Group and the proposed Catlins ICG will be covered through the ICM Budget.

Significance and Engagement Considerations

- [19] Consideration of community and mana whenua information needs and availability for the hui and ongoing involvement in the ICG has been discussed through the ICM Working Group, which includes representative from Aukaha and Te Ao Marama.

Legislative and Risk Considerations

- [20] There are no legislative requirements that need to be considered at this stage.

Climate Change Considerations

- [21] There are no immediate climate change considerations for this work.

Communications Considerations

- [22] The ICM Team have been working in collaboration with ORC Communications Team for both the Communications Plan and the planning around the Catlins hui.
- [23] A communications plan has been drafted and is being implemented.

NEXT STEPS

- [24] If approved, the Terms of Reference will be used as the basis for establishing a Catlins ICG to co-design the Pilot CAP. This will start with a community hui on 18th July 2023.

ATTACHMENTS

1. Attachment 1 Catlins ICG Terms of Reference [8.2.1 - 5 pages]

CATLINS INTEGRATED CATCHMENT GROUP DRAFT TERMS OF REFERENCE

1. PURPOSE OF THE CATLINS INTEGRATED CATCHMENT GROUP

The Catlins Integrated Catchment Group (CICG) is being formed to collaboratively develop a Catchment Action Plan (CAP) for the Catlins Freshwater Management Unit (FMU). The Catlins FMU is shown in Figure 1.

The CICG will make effective recommendations to Council for endorsement. It is not a delegated decision-making body of the Council nor is it a committee under the Local Government Act 2002.

The formation of the CICG represents the ORC's commitment to working in partnership with iwi, the community and with stakeholders to co-design the CAPs. The primary focus of the CICG is to develop a CAP that builds on the strong foundation of work and engagement that is already happening in the Catlins and develop a vision that meets the aspirations of the Catlins community. The vision will be for the entire catchment (including the land, biodiversity, estuarine and marine habitats) and will therefore be broader than the freshwater vision in the Regional Policy Statement, but consistent with the RPS vision. The group will need an understanding of the environment, socio-economic values and the ability to incorporate the deep connections that mana whenua have to the land.

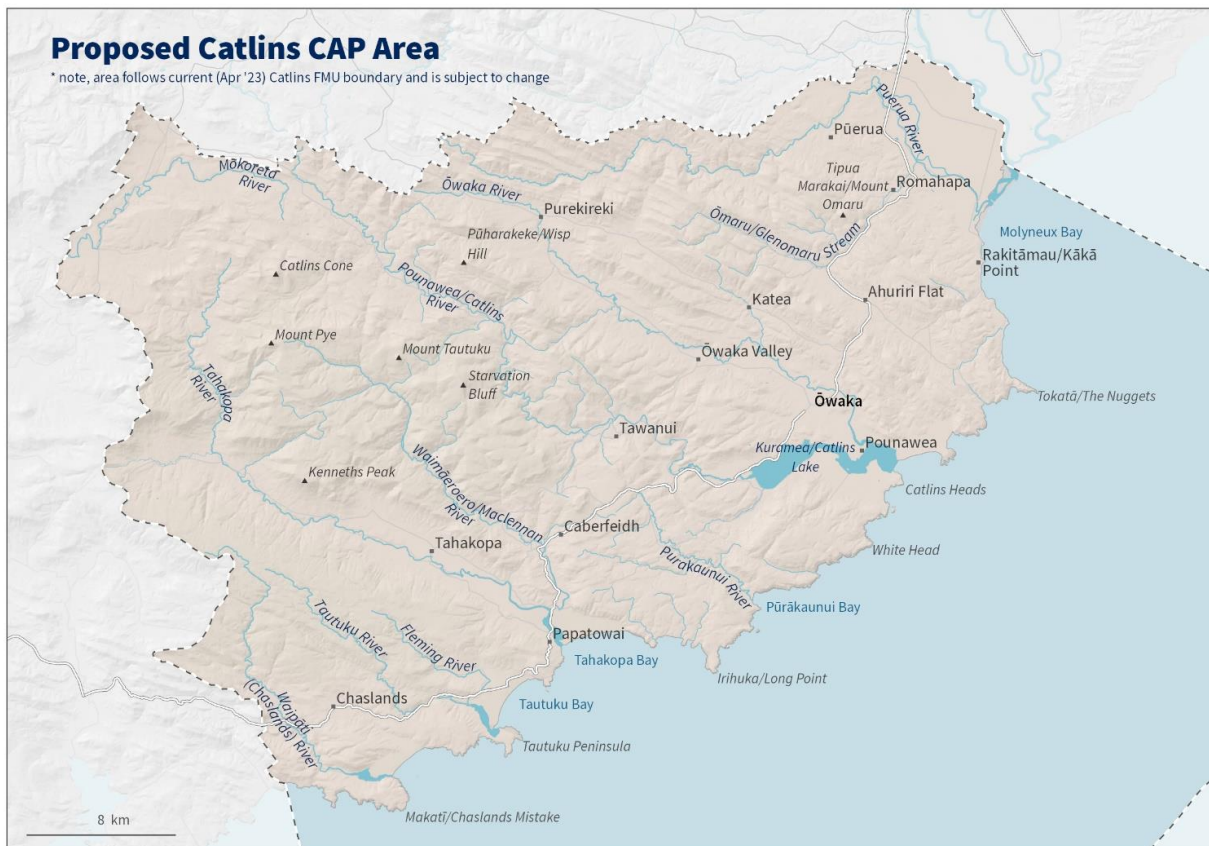


Figure 1. Proposed Catlins CAP Area

Document Version: 1.0
Draft date: 1 May 2023

2. WHAT IS A CATCHMENT ACTION PLAN?

A Catchment Action Plan (CAP) is a non-regulatory (or voluntary) plan for the management and conservation of an entire catchment(s). It consolidates and builds on actions that are already taking place in the catchment and can serve as a focus for new actions and projects. Although the catchment, or watershed, is the unit of area used to design a CAP, the actions described in the CAP can cover areas other than freshwater including terrestrial, estuarine, and marine ecosystems, land and soils, and human values (including mahika kai and wāhi tūpuna values). The CAP can also refer to regulatory (or mandatory) actions that may need to be taken to achieve environmental outcomes required by legislation (such as regional plans). The Catchment Action Plan must be consistent with the relevant statutory requirements.

Successful CAPs are designed by iwi, the community, and stakeholders for their place. They are supported in this work by the ORC, government, territorial authorities, and subject experts.

The CAP will need to be endorsed by Otago Regional Council but is not limited to matters covered by Council.

3. RESPONSIBILITIES OF THE CATLINS INTEGRATED CATCHMENT GROUP

The CICG is responsible for co-developing the CAP for the Catlins FMU. This work will include:

- Committing time and effort to attend and participate in monthly meetings (including 4-5 CAP co-design workshops) for the duration of the CICG.
- Coming to the meetings and workshops prepared, making sure to have studied all the background material provided.
- Bringing their knowledge and experience to the work.
- Being an ambassador for the CAP within the community or their organisation.

The CICG members are not responsible for organising or carrying out the actions suggested in the CAP. The CICG may continue into the implementation phase of the CAP, however this will be determined at the completion of the CAP.

4. MEMBERSHIP OF THE CATLINS INTEGRATED CATCHMENT GROUP

Members of the Catlins Integrated Catchment Group will consist of up to 15 members who will be appointed by the ORC, on recommendation of the ICM Working Group.

Composition of the CICG

The CICG is a Catlins-based group that aims to have a predominance of its participants “local or connected” to the Catlins.

Diversity

Furthermore, it will aim to include diversity in terms of:

- geographical representation of the region
- communities of interest
- age and gender.

Experience and knowledge for the CICG

Members of the CIGG will be sought on their experience, knowledge and understanding of issues and activities within the Catlins that allows them to contribute to the CAP co-design process.

CIGG will aim to cover a range of experience and knowledge including:

- Environmental management – conservation, restoration, rehabilitation, planning or legislation
- Biodiversity – flora and fauna species, populations, or communities within the Catlins
- Freshwater – hydrology, quality, aquatic species, processes
- Estuaries and/ or marine ecosystems – processes, species
- Land and soils management – health, productivity, rehabilitation, stabilisation
- Historic heritage
- Mātauraka Māori
- Community and networks in the Catlins area
- Socio-economic assessment or evaluation – e.g. social science, economics background
- Agricultural systems
- Forestry practices
- Tourism (relevant to the Catlins)
- Government processes and practices – local, regional and/ or national.

Note: the group will be able to call on technical expertise, so CIGG members do not need to be experts in all these areas.

Practical Criteria

Members of the CIGG will also be selected on their capability to contribute successfully to the CAP co-design process. They will be a person who is:

- Able to explain their views clearly and listens to other people
- Able to seek common ground and focus on solutions
- Able to commit to participate in monthly meetings (including 4-5 workshops)
- Constructive and practical
- Open to different viewpoints
- Able to consider and contribute to discussions.

Tangata Whenua

There are defined roles for tangata whenua on the CIGG to reflect the principles of the Treaty of Waitangi. Representation on the group will reflect connections to the Catlins. Representation for Papatipu Rūnaka and subsequent appointment of members will be determined by those Rūnaka with interests in the area. A representative of beneficial owners of Māori land may be appointed in addition to this.

Defined roles for tangata whenua does not preclude individuals who are tangata whenua being appointed in a non-defined role.

Government

There are also defined roles for ORC, as the facilitating organisation and regulatory authority and LINZ and DOC as significant government landowners in the Catlins.

5. GENERAL

Chairperson

A chairperson for the CIG will be appointed by CIG members at the first meeting. The Chairperson will be the primary spokesperson for the group including with the ICM-WG chairperson, the ORC's ICM staff and the media.

The role of the Chairperson is to:

- Motivate and lead the CIG to achieve its objectives and deliverables within the agreed timeframes
- Ensure a fair and equitable group process
- Foster an atmosphere of enquiry, respect, open-mindedness, and group learning
- Identify risks and work with the ORC's ICM staff to mitigate risks and issues as they arise in a timely and outcome focused manner
- Ensure the CIG members operate within the Terms of Reference.

Media

The group will determine who should speak to the media or what communications will be published. This process will be supported by the ORC's Communications Team.

Term of appointment to the CIG

The work will begin on appointment of members. At the conclusion of the development of the CAP, the Group will be asked to make a recommendation for ongoing implementation to the ORC. The ORC will determine if the CIG will continue with the implementation and coordination of the CAP.

Quorum

Ideally CIG participants can attend all meetings and workshops which will be organised to suit the majority of members. However, a quorum of minimum two-thirds members must be present (online or in person) to run a meeting / workshop.

Non-attendance and vacancies

If a CIG member or their alternate does not attend three meetings in a row, they may be replaced. If this occurs, or if there are other vacancies on the group, these will be referred to the ICM Working Group who will recommend appointments to the ORC as replacements.

Alternates and additional participants

If a participant who is representing an organisation or is chosen by iwi is unable to attend, they can send an alternate to ensure that this expertise is present in the room. If an alternate is being proposed, this should be advised as early as possible.

It may be appropriate for additional participants to be present for CAP development workshops. This can be decided by a consensus decision of the CIG. However, additional participants will not have decision making or voting rights.

Decision Making

Decisions will be made by consensus where possible. A vote can be called by the group where consensus is not reached. In the event of a tied vote, the matter will be further discussed until consensus can be reached.

Dispute Resolution

Disputes will be referred to the ICM Working Group for resolution.

6. CAP DEVELOPMENT WORKSHOPS

The CICG will be using an internationally recognised method for biodiversity and resource conservation project design and collaboration called Conservation Standards (CS). CS has been designed to tackle large, complex, and urgent environmental problems and places the community and principles of co-design at its heart. The CS co-design process takes place over 4-5 staged and facilitated full-day workshops where the community and experts collaborate to design their project. The CICG will be facilitated and supported by technical expertise from the ORC.

It is important that all members participate in all workshops wherever possible.

7. REMUNERATION GUIDELINES

To be confirmed.