

# REGULATORY COMMITTEE AGENDA

## WEDNESDAY 21 MARCH 2018

Edinburgh Room, Municipal Chambers  
The Octagon, Dunedin, commencing at 9:00am

### Membership

Cr Bryan Scott *(Chairperson)*  
Cr Sam Neill *(Deputy Chairperson)*  
Cr Graeme Bell  
Cr Doug Brown  
Cr Michael Deaker  
Cr Carmen Hope  
Cr Trevor Kempton  
Cr Michael Laws  
Cr Ella Lawton  
Cr Andrew Noone  
Cr Gretchen Robertson  
Cr Stephen Woodhead

### Disclaimer

Please note that there is an embargo on agenda items until 8:30 am on Monday 19 March 2018. Reports and recommendations contained in this agenda are not to be considered as Council policy until adopted.

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## **1. APOLOGIES**

## **2. LEAVE OF ABSENCE**

## **3. ATTENDANCE**

## **4. CONFIRMATION OF AGENDA**

## **5. CONFLICT OF INTEREST**

Members are reminded of the need to stand aside from decision-making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

## **6. PUBLIC FORUM**

## **7. PRESENTATIONS**

## **8. CONFIRMATION OF MINUTES**

### **8.1. Minutes**

#### **Recommendation**

*That the minutes of the meeting held on 31 January 2018 be received and confirmed as a true and accurate record.*

#### **Attachments**

1. Minutes of the Regulatory Committee - 21 March 2018 **[8.1.1]**

## 9. ACTIONS

Status report on the resolutions of the Regulatory Committee.

| Report No.   | Meeting   | Resolution  | Status |
|--|-----------|---|--------|
| <b>11.3</b><br><b>Managing the use of coal for domestic heating in Otago and New Zealand (Technical Committee)</b> | 31/1/2018 | <i>That the matter of the ability to enforce the current Regional Air Plan AirZone 1 provisions be considered by the Regulatory Committee</i> |        |

### Attachments

Nil

## 10. MATTERS FOR COUNCIL DECISION

## 11. MATTERS FOR NOTING

### 11.1. Director's Report on Progress

**Prepared for:** Regulatory Committee  
**Activity:** Governance Report  
**Prepared by:** Scott MacLean, Director Environmental Monitoring and Operations  
**Date:** 26 February 2018

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#### 1. Précis

This report describes the Regulatory activity for the reporting period 11 January to 26 February 2018.

#### 2. Biosecurity

##### 2.1 Incursion response

The Otago Regional Council is a member of the National Biosecurity Capability Network (NBCN). The NBCN is a multi-agency, multi-sector network of trained biosecurity incursion responders. The Ministry for Primary Industries (MPI) is the lead agency responsible for incursion response.

Key biosecurity staff from the ORC attend regular national training exercises to ensure skills are maintained to enable a response at any time.

Staff are trained in a number of different roles such as Infected Place Managers, Movement Control, Tracing and Operations Management.

ORC staff are often deployed around New Zealand to respond to incursions. Recent examples include deployment to Auckland for the Queensland Fruit Fly incursion, Velvetleaf (deployed in Otago) and most recently, *Mycoplasma bovis* (deployment in Canterbury and Otago).

Incursion response is a crucial aspect of New Zealand's biosecurity system with Regional Councils and Unitary Authorities playing a vital role in the response delivery. Regional and Unitary Councils have long been involved in the establishment and maintenance of formal biosecurity education and training, training, and career pathways. Council staff are warranted under the Biosecurity Act and work predominantly under the Act during business-as-usual activities. Incursion response is a logical, necessary, and important extension of the work of our biosecurity unit.

##### 2.2 *Mycoplasma bovis*

The Ministry for Primary Industries is the lead agency for the *Mycoplasma bovis* response.

**The following information regarding *Mycoplasma bovis* is provided by MPI through regular stakeholder updates and fact sheets:**

*Mycoplasma bovis* is a bacterial disease which causes illness in cattle including mastitis, abortion, pneumonia, and arthritis. This illness is hard to treat and clear from an animal. Once infected, animals may carry and shed the bacterium for long periods

of time with no obvious signs of illness. This has animal welfare implications and can, if not managed, cause significant losses to dairy and cattle producers.

*Mycoplasma bovis* is a 'silent spreader', cattle may be infected but not ill. The disease mainly spreads between cows in close contact. Generally prolonged or repeated contact with infected animals is required for the disease to be transmitted. Calves may become infected through drinking un-pasteurised milk from infected cows. *Mycoplasma bovis* is spread off-farm mostly through movement of infected cattle. This disease is not spread across long distances on the wind or in water. Other animals are very unlikely to be infected by the disease. *Mycoplasma bovis* does NOT survive in the soil for a long period. (*Mycobacterium paratuberculosis* (Johnes disease) is reported to survive in soil for a long period). *Mycoplasma bovis* does not infect humans and is not a food-safety risk.

Australia has the disease and manages it. MPI and industry are working with Australian experts to build a picture of what this outbreak may mean for New Zealand.

*Mycoplasma bovis* is mainly spread between cattle in close contact. Generally, prolonged or repeated contact with infected animals is required for the disease to be transmitted. *Mycoplasma bovis* can be spread on any equipment used between farms. Because it causes mastitis, milking equipment is particularly important to clean and disinfect if the equipment is shared between properties or herds.

It may also be spread through contact with mud or dung from infected animals. Although it is very rare for it to infect animals other than cattle, they may possibly transfer disease from an infected animal, therefore it is important to keep infected cattle isolated from cattle and other species if possible. *Mycoplasma bovis* does not survive in soil for a long period. Properly made silage with a pH of 4.5 or below and wrapped correctly is not a risk for transmission of *Mycoplasma bovis*. Silage can be tested to ensure it has reached this standard. For adult cattle, spread through feed is not thought to be a risk. Feeding calves unpasteurised milk is a cause of spread in countries where this disease is established.

All ORC staff moving between farms as part of their routine work duties are following strict biosecurity decontamination and hygiene protocols, including decontamination of footwear and vehicles prior to farm entry.

### **2.3 Freshwater Biosecurity**

The two Check Clean Dry (CCD) advocates employed over the summer period have finished a successful campaign of engaging recreational water users in the Central Otago and Queenstown Lakes catchments. The key activity for the advocates was to spread the message of good freshwater biosecurity practices and to raise general awareness of the risks and issues associated with freshwater pests. Information about lake snow was included in this advocacy work. ORC biosecurity staff will continue to attend the major events such as Challenge Wanaka and the Motatapu event and set up decontamination stations for competitors as required.

The CCD advocates nationwide, surveyed water users seeking information on where the water users are from, the predominant use of the waterway, the frequency they use waterways and their knowledge on freshwater pests. Council will be advised of these results once they become available.

## **2.4 Rabbits – RHDV-1 K5**

- The Ministry for Primary Industries (MPI) has completed the technical appraisal and risk assessment for RHDV1 K5 under the ACVM Act, 1997.
- Approval has been granted under delegated authority from the Director General, Ministry for Primary Industries.
- Approval has been granted under the Biosecurity Act 1993 to import and distribute RHDV1 K5.
- This paves the way for the release of K5 through a nationally co-ordinated release strategy.
- Media releases as per the Communications plan have been released
- Pre-feeding at the selected locations has been completed
- The virus has been released

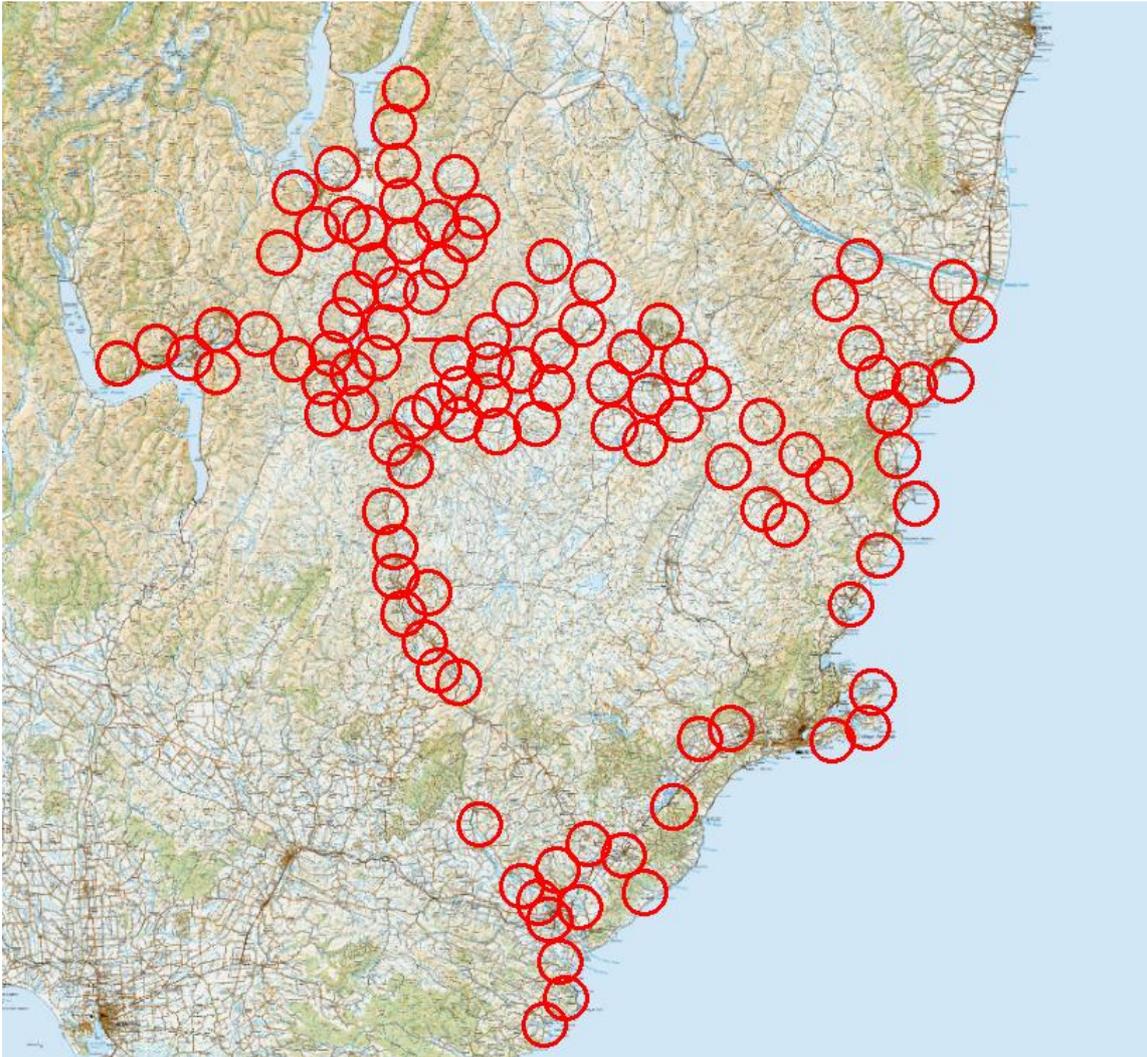
## **2.5 RHDV-1 K5 Operational roll-out**

The operational roll-out of the RHDV-1 K5 rabbit virus (K5) adheres to strict protocol. The protocol is to provide national consistency to ensure that the virus is appropriately managed and monitored in accordance with regulatory requirements and industry best practice guidance. The protocol will also assist to ensure that benefits of the release are maximised for landowners and land managers.

The protocol is supported by a National Release Strategy (NSR). The NSR includes detail on the planned release and monitoring programme for RHDV1 K5 and guidance to assist regional councils when preparing and spreading bait and undertaking pre and post release monitoring.

RHDV1 K5 is prepared as a sterile, cell free, lyophilised (freeze-dried) powder of purified virus particles, plus non-active media constituents. It is supplied in the form of a pink or cream-coloured wettable powder.

100 sites around Otago have been selected based on rabbit density and / or areas with high rabbit numbers that traditional control measures are challenging e.g. Moeraki. High altitude areas and other areas with low rabbit numbers have been excluded. The following figure depicts the general locations where the virus will be released.



K5 release locations Otago March 2018

- Operations will be targeted to rabbit prone areas or discrete areas where normal rabbit control methods are not possible or are very difficult to implement.
- At least two successful pre-feed applications of carrot bait will be applied within two weeks prior to use of the inoculated bait.
- The amount of inoculated bait laid in an area will reflect rabbit density and uptake rate of pre-feed baits.
- Up to 10kg of carrot bait will be applied at each site.
- All baits will be laid in trails or on fresh spits or scratch plough lines or around warrens by hand.
- Bait must be ground applied. It must not be applied using aerial methods.
- All RHDV1 K5 treated bait not consumed should be collected by the following morning after being laid and should be destroyed by deep burial.
- Treated bait will not be applied to crops or situations where livestock may have access to the bait. There is no real risk to stock from contact with bait or dead rabbits or other non-target species, however, bait may be trampled and become less efficacious.

Detailed records of each operation will be made. This will include:

- Location of release
- Date and time of pre-feed applications and application of inoculated bait
- Success of pre-feed e.g. proportion of bait consumed versus bait applied.
- Weather conditions prior to and during the release operation.

Landowners at all 100 sites in Otago have been kept informed of the release plans and have offered their full support throughout the rollout.

### **2.6 Wallaby activity**

Operational staff are arranging a meeting with staff from Environment Canterbury to discuss and confirm the joint five-year wallaby work programme. One of the key objectives of the plan was to explore ways to stem wallaby incursion from the north bank of the Waitaki River, to the south bank across dam and roading infrastructure.

It is hoped in time; novel wallaby deterrent technology will be developed that could be deployed at key sites. This is something that will be discussed with the infrastructure providers later this year.

Key representatives from regional council's and central government are collaborating on the wallaby issue from a national perspective. A working party has been formed examining the key problems and whether there are drivers for change in how the management and control of wallabies is undertaken on a national scale. Included in this work is the identification of research gaps and control technologies.

### **3. Compliance activity**

The priority area of focus for compliance activity this period has been auditing of water abstraction consents. Audits are prioritised predominantly by sites with minimum and residual flow requirements, sites where daily telemetry data showed abstraction occurring and where the ORC had received complaints about insufficient flows for downstream users.

Some issues noted during the site visits included:

- Instream works (to create ponds)
- Stream modifications (for intakes)
- Lack of adequate flow controls at race intakes
- Issues around the exercise of the PA rules for stock drinking water.

Where appropriate, recommendations for enforcement action for breaches of the Regional Plan: Water have been made.

The Regionally Significant Wetland inspection programme is progressing with eight comprehensive inspections undertaken this period. Staff look for a number of factors during inspections such as; stock damage, boundary encroachment and unauthorised mechanical disturbance.

#### **4. Environmental Risk Assessment programme**

Over 400 desktop property risk assessments have been completed as part of the ERA programme. Desktop assessments include looking at topography, catchment size, vegetation cover, land parcel size and land use type.

Tenders for the on-farm risk assessment pilot project are currently being assessed with a view to awarding a contract and commencing work in the coming weeks.

#### **5. Recommendation**

a) *That this report is received.*

**Endorsed by:** Scott MacLean  
**Director Environmental Monitoring & Operations**

## **11.2. Consents and Building Control**

**Prepared for:** Regulatory Committee  
**Activity:** Report on Resource Consent and Building Act Activity  
**Prepared by:** Marian Weaver, Resource Manager Procedures & Protocols  
**Date:** 26 February 2018

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### **1. Précis**

This report covers consents and building control progress for the period 11 January to 23 February 2018.

### **2. Consent Processing**

#### **2.1. Public Notification**

RM17.229 Peter Graham – to place a pontoon in, and occupy the CMA at Vauxhall. This is a proposal for a golf hole-in-one activity and is a joint process with the Dunedin City Council. At the close of submissions there were 18 submissions made to both Councils; 6 in support, 2 neutral and 10 opposing. The hearing was on 19 February and the Hearing Panel has requested further information of the applicant. The information is expected at the end of March.

#### **2.2. Limited Notification**

There are seven applications under limited notification that are being processed at present.

#### **2.3. Objections**

There are two applications where costs have been objected to. Correspondence with the objectors is underway. If hearings are required, this will be set up.

#### **2.4. Appeals**

##### **2.4.1. RM17084 Kyeburn**

Application for deemed permit replacements went to a hearing on 23 June 2017. The consents were granted and have been appealed by Otago Fish and Game. Kati Huirapa Runaka ki Puketeraki and Te Runanga o Otakou have joined the proceedings as interested parties under s274 of the RMA. Court assisted mediation on 20 October 2017 resulted in the mediation being suspended while the parties consider options. Reporting back was required by 22 December 2017, and this date has been extended to 16 March 2018.

### 3. Consent Statistics

**Table 1. Consents Statistics Summary**

| Reporting Period            | Lodged     |            |                      | Rejected | Decision Given |            |                      |
|-----------------------------|------------|------------|----------------------|----------|----------------|------------|----------------------|
|                             | Consents   | Variations |                      |          | Consents       | Variations |                      |
|                             |            | Regular    | Water reporting date |          |                | Regular    | Water reporting date |
| <b>2016/2017 Year Total</b> | <b>385</b> | <b>63</b>  | <b>14</b>            | <b>0</b> | <b>373</b>     | <b>70</b>  | <b>13</b>            |
| 1/7 to 14/7 2017            | 12         | 3          | 0                    | 0        | 12             | 8          | 0                    |
| 17/7 to 25/8 2017           | 42         | 23         | 1                    | 0        | 46             | 11         | 1                    |
| 25/8 to 29/9 2017           | 38         | 10         | 2                    | 0        | 33             | 16         | 2                    |
| 29/9 to 10/11 2017          | 62         | 6          | 1                    | 0        | 50             | 6          | 0                    |
| 3/11/17-11/01/2018          | 63         | 9          | 5                    | 0        | 64             | 6          | 5                    |
| 12/01- 23/02 2018           | 55         | 3          | 0                    | 1        | 49             | 9          | 0                    |
| <b>2017/2018 YTD</b>        | <b>272</b> | <b>54</b>  | <b>9</b>             | <b>1</b> | <b>254</b>     | <b>56</b>  | <b>8</b>             |

All decisions on consents were given within RMA allowed timeframes. A graph showing consent numbers since the enactment of the RMA is shown in Appendix 2.

### 4. Deemed Permit Replacement.

See separate report on agenda.

### 5. Consent Administration

**Table 2. Consent Administration Statistics**

| Reporting Period        | Transfers Received | Transfers Issued | S417 Certs Received | S417 Certs Issued |
|-------------------------|--------------------|------------------|---------------------|-------------------|
| <b>2016/2017 Totals</b> | <b>263</b>         | <b>242</b>       | <b>9</b>            | <b>12</b>         |
| 1/7 to 14/7 2017        | 4                  | 4                | 0                   | 0                 |
| 17/7 to 25/8 2017       | 22                 | 20               | 2                   | 0                 |
| 25/8 to 29/9 2017       | 24                 | 20               | 0                   | 2                 |
| 29/9 to 10/11 2017      | 26                 | 26               | 0                   | 1                 |
| 13/11/17-11/01/18       | 27                 | 31               | 0                   | 1                 |
| 12/01- 23/02 2018       | 32                 | 30               | 2                   | 0                 |
| <b>2017/2018 YTD</b>    | <b>103</b>         | <b>103</b>       | <b>2</b>            | <b>4</b>          |

### 6. Building Consent Authority (BCA) Administration

**Table 3: Building Act Statistics**

|                         | Building Permits |          | Certificate of Acceptance |          | Code Compliance Certificate |          |
|-------------------------|------------------|----------|---------------------------|----------|-----------------------------|----------|
|                         | Received         | Issued   | Received                  | Issued   | Received                    | Issued   |
| <b>2016/2017 Totals</b> | <b>3</b>         | <b>3</b> | <b>2</b>                  | <b>2</b> | <b>3</b>                    | <b>2</b> |
| 1/7 to 14/7 2017        | 0                | 0        | 1                         | 0        | 0                           | 0        |
| 17/7 to 25/8 2017       | 0                | 0        | 0                         | 1        | 1                           | 0        |
| 25/8 to 29/9 2017       | 0                | 0        | 0                         | 0        | 0                           | 0        |
| 29/9 to 10/11 2017      | 0                | 0        | 0                         | 0        | 0                           | 0        |
| 13/11/17-11/01/2018     | 2                | 0        | 0                         | 0        | 0                           | 1        |
| 12/01- 23/02 2018       | 0                | 0        | 0                         | 0        | 0                           | 0        |
| <b>2017/2018 YTD</b>    | <b>2</b>         | <b>0</b> | <b>1</b>                  | <b>1</b> | <b>1</b>                    | <b>1</b> |

## 7. Public Enquiries

356 enquiries were received during the 6-week reporting period. Details are set out in Appendix 1 to this report.

**Table 4. Public Enquiries Statistics**

| Period                   | Number of Enquiries |
|--------------------------|---------------------|
| <b>2016/2017 Year</b>    | <b>2581</b>         |
| 1/7 to 14/7 2017         | 97                  |
| 17/7 to 25/8 2017        | 273                 |
| 25/8 to 29/9 2017        | 277                 |
| 29/9 to 10/11 2017       | 217                 |
| 13/11/2017-11/01/2017    | 354                 |
| 12/01- 23/02 2018        | 356                 |
| <b>2017/18 Total YTD</b> | <b>1574</b>         |

## 8. Recommendation

*That this report is noted.*

**Endorsed by:** Tanya Winter  
**Director Policy, Planning & Resource Management**

## Appendix 1 Public Enquiries

### Resource Consent Public Enquiry Report

For period from 12 January 2018 to 23 February 2018

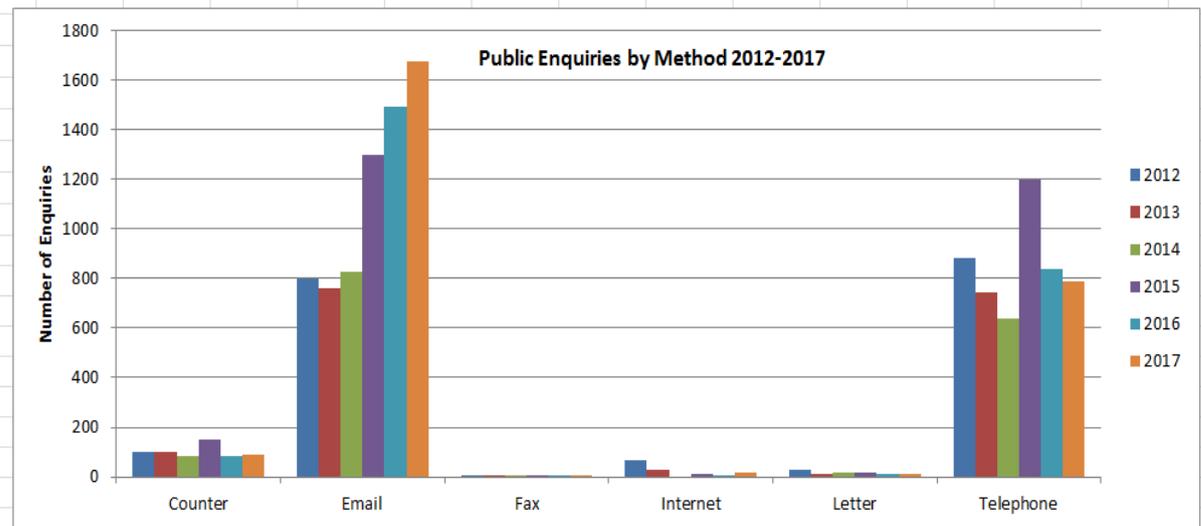
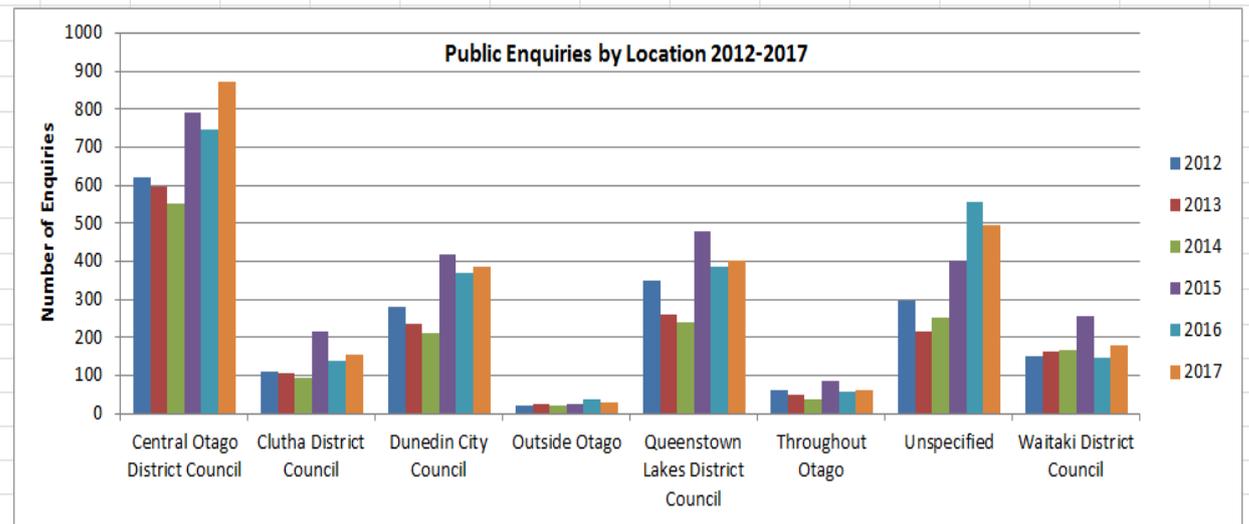
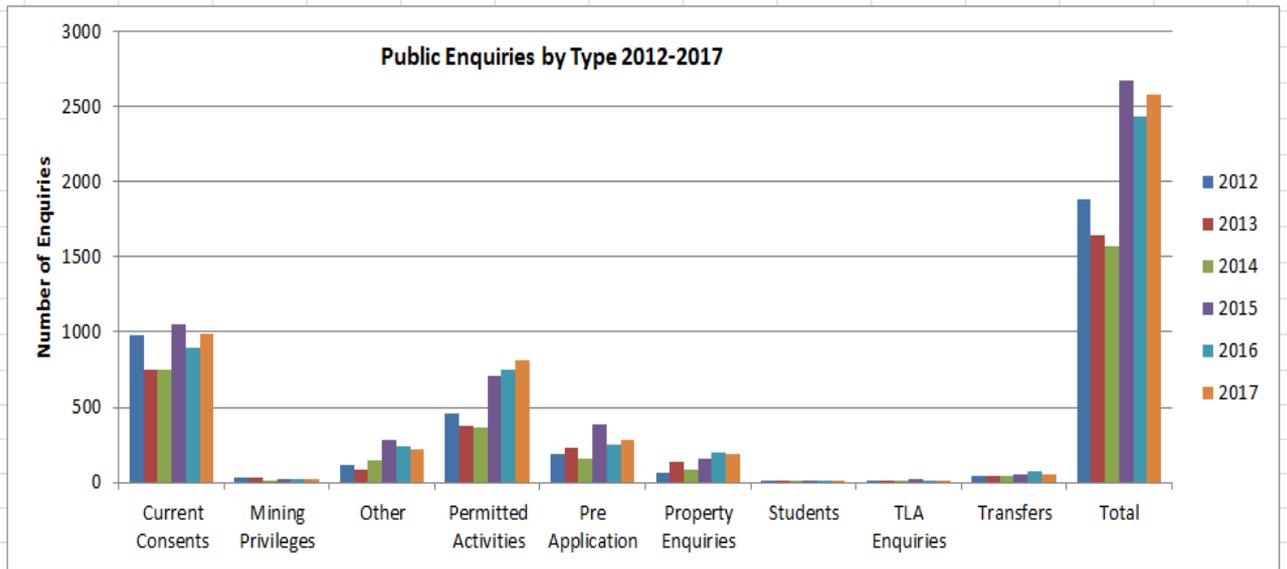
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**Total Number of Enquiries** **356**

| <b>Enquiry Type</b>  | <b>No.</b> | <b>% of Total</b> |
|----------------------|------------|-------------------|
| Current Consents     | 136        | 38.2 %            |
| Mining Privileges    | 1          | 0.3 %             |
| Other                | 26         | 7.3 %             |
| Permitted Activities | 98         | 27.5 %            |
| Pre-application      | 60         | 16.9 %            |
| Property Enquiries   | 20         | 5.6 %             |
| TLA Enquiries        | 3          | 0.8 %             |
| Transfers            | 12         | 3.4 %             |

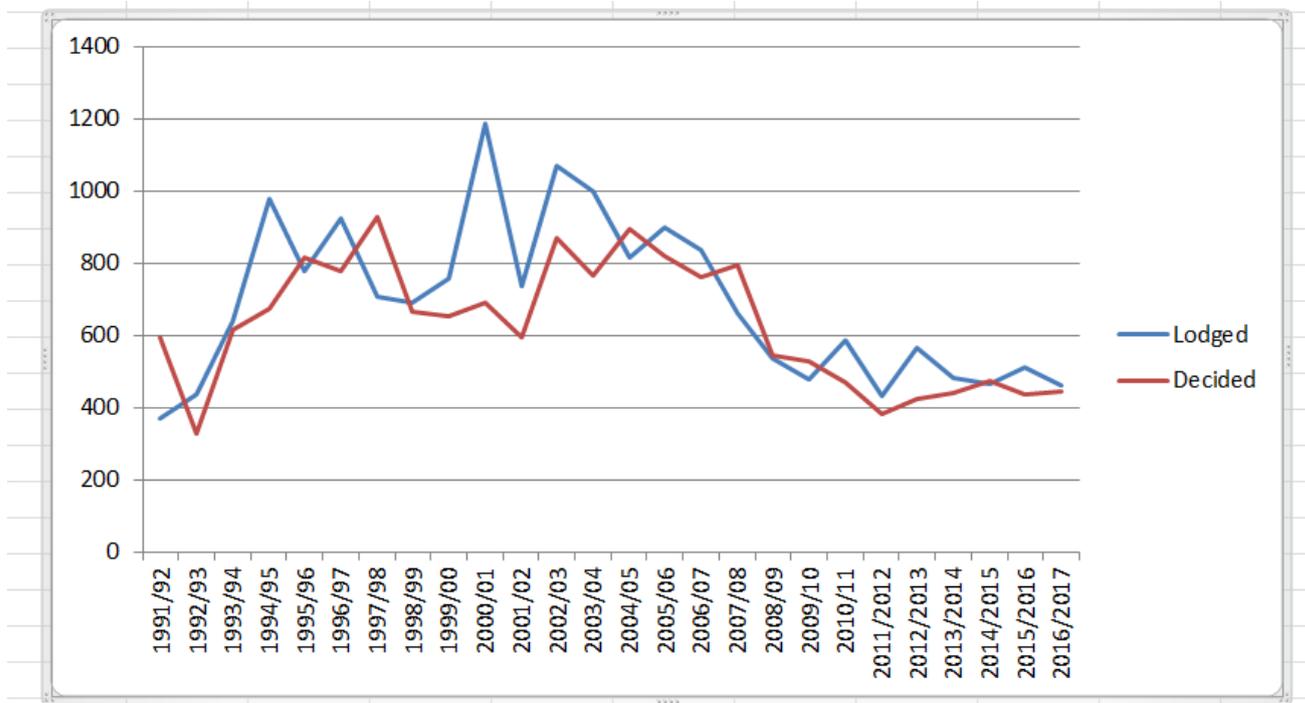
| <b>Enquiry Location</b>           | <b>No.</b> | <b>% of Total</b> |
|-----------------------------------|------------|-------------------|
| Central Otago District Council    | 126        | 35.4 %            |
| Clutha District Council           | 36         | 10.1 %            |
| Dunedin City Council              | 55         | 15.4 %            |
| Outside Otago                     | 1          | 0.3 %             |
| Queenstown Lakes District Council | 64         | 18 %              |
| Throughout Otago                  | 14         | 3.9 %             |
| Unspecified                       | 36         | 10.1 %            |
| Waitaki District Council          | 24         | 6.7 %             |

| <b>Enquiry Method</b> | <b>No.</b> | <b>% of Total</b> |
|-----------------------|------------|-------------------|
| Counter               | 20         | 5.6 %             |
| Email                 | 203        | 57 %              |
| Internet              | 7          | 2 %               |
| Letter                | 2          | 0.6 %             |
| Telephone             | 124        | 34.8 %            |



## Appendix 2

Graph Showing Summary of Consents Applied for and Decided



Consents Lodged and Decided - 91/92 to 16/17

Since Accela which is our current database was introduced in August 2010, 38 application sites involving 226 consents were publicly notified. 90 of these were for 3 of the Oceana Gold mine extensions.

### 11.3. Report on Deemed Water Permit Replacement

**Prepared for:** Regulatory Committee  
**Activity:** Water and Deemed Permit Renewal pre 2021  
**Prepared by:** Marian Weaver, Resource Manager Procedures & Protocols  
**Date:** 23 February 2018

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#### 1. Précis

The Water Plan promotes the replacement of deemed permits and other water permits that expire in 2021, to be held by water management groups. This project implements the Plan policies and this report notes progress.

#### 2. Promotion of Group Formation

A prime focus of the project is to meet with clusters of deemed permit holders based on catchments, in order to outline the steps required for deemed permit replacement and encouragement to form water management groups.

The following meetings with groups have been held or are scheduled:

| <b>Scheduled meetings</b>                           |                 |
|---|-----------------|
| <b>Manorburn</b>                                    | <b>13 March</b> |
| <b>Lowburn</b>                                      | <b>14 March</b> |
| <b>Amisfield/Parkburn</b>                           | <b>15 March</b> |
| <b>Lower Manorburn</b>                              | <b>20 March</b> |
| <b>Keogh Creek</b>                                  | <b>22 March</b> |
| <b>Gibbston (Camp Creek)</b>                        | <b>23 March</b> |
| <b>Teviot (Coal Creek)</b>                          | <b>28 March</b> |
| <b>Strath Taieri</b>                                | <b>2 April</b>  |
| <b>Styx</b>   | <b>3 April</b>  |
| <b>Mid Taieri tribs</b>                             | <b>4 April</b>  |
| <b>Northburn tribs</b>                              | <b>5 April</b>  |
| <b>Gibbston (GIC)</b>                               | <b>9 April</b>  |
| <b>Conroys/Fraser</b>                               | <b>10 April</b> |
| <b>Arrow tribs</b>                                  | <b>11 April</b> |
| <b>Cardrona</b>                                     | <b>12 April</b> |
| <b>Teviot – north</b>                               | <b>1 May</b>    |
| <b>Teviot – south</b>                               | <b>2 May</b>    |
| <b>Upper Clutha (Lake Hawea &amp; Wanaka tribs)</b> | <b>3 May</b>    |

### 3. Other Activity

A sub Project to fill gaps in the website Fish & Flow portal has been started. In this project electric fishing in specified streams will be undertaken, and the information placed on the portal and also used in ORC's State of the Environment Reporting. Requests for Proposals went out to suitably qualified parties in December and the process for arranging a contract for the work is being organised. The work will be completed in autumn.

Staff are presenting information on deemed permit replacement to the Otago Law Society in Dunedin on 8 March, and at the Irrigation NZ conference in Alexandra mid-April.

### 4. Progress on Objectives & Targets

#### 4.1 Performance Measure 1:

Water taken under deemed permits are replaced by resource permits (water permits) by 2021, less any permits cancelled or surrendered.

#### 4.2 Performance Target 2:

50% of the volume of water taken in Otago under consents is being managed by groups at 1 October 2021; 50% of water permits are managed through groups or water allocation committees.

All deemed permits are replaced or have applications lodged by 31 March 2021.

#### 4.3 Progress on Objectives:

For reporting purposes, a "group" includes existing irrigation companies and Territorial Authorities.

**Table 1. Allocated Surface Water**

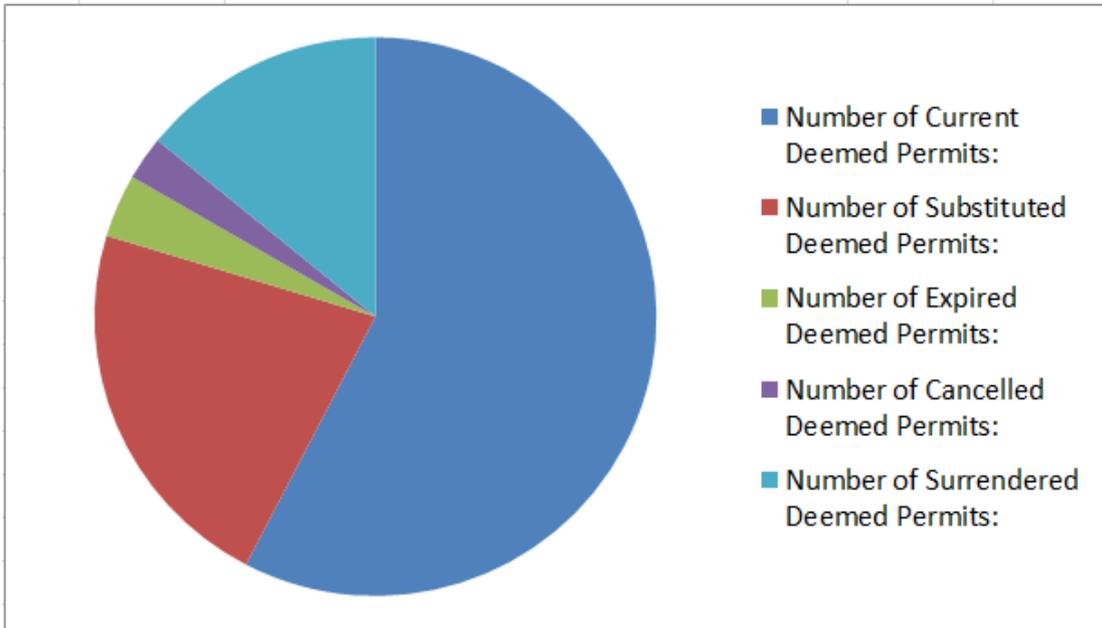
|                    | <b>Total</b> | <b>Groups</b> | <b>TLA</b> | <b>Other</b> | <b>% Held by Groups &amp; TLAs</b> |
|--------------------|--------------|---------------|------------|--------------|------------------------------------|
| <b>l/sec</b>       | 322154       | 69508         | 5685       | 346961       | 23.3%                              |
| <b>No. Permits</b> | 1152         | 131           | 71         | 950          | 17.5%                              |

No change since last report.

Including the impact of the water measuring regulations, (some cancellations and surrenders and consent replacement) the number of deemed surface water permits is slowly decreasing. In April 2014 there were 458, and on 26 February 2018 there were 368 deemed permits remaining.

In recent months there have been very few applications to replace deemed permits. However, we are aware that consultants are working with deemed permit holders in the Taieri and Manuherikia catchments for the purposes of forming water management groups and deemed permit replacement.

A graph showing the changing status of deemed permits is set out below. This information is from records held since 2010:



|  |            |
|--|------------|
| <b>Total Number of Deemed Permits:</b>       | <b>637</b> |
| <b>Number of Current Deemed Permits:</b>     | 368        |
| <b>Number of Substituted Deemed Permits:</b> | 141        |
| <b>Number of Expired Deemed Permits:</b>     | 23         |
| <b>Number of Cancelled Deemed Permits:</b>   | 16         |
| <b>Number of Surrendered Deemed Permits:</b> | 89         |

## 5. Recommendation

*That the report is noted.*

**Endorsed by:** Tanya Winter  
**Director Policy, Planning & Resource Management**

## 11.4. Enforcement Process

**Prepared for:** Regulatory Committee  
**Activity:** Environmental - Investigations and Enforcement Action  
**Prepared by:** Peter Kelliher, Legal Counsel  
**Date:** 20 February 2018

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### 1. Précis

The Otago Regional Council (“Council”) is a regulator under various statutes with responsibilities for enforcement, including prosecution. This report sets out the process to be followed in assessing a file for prosecution, and how the prosecution decision is to be made.

### 2. Objectives of the Councils prosecution activity

1. The Council enforces a number of enactments, and as such the objectives of particular prosecutions may vary depending on the purpose of those enactments.
2. There are some general objectives in undertaking prosecution activity that apply across all the Council’s prosecutions. These general objectives should be read in conjunction with specific objectives relating to prosecutions under specific enactments.
3. The general objectives that apply across all prosecutions taken by the Council are to:
  - a. Ensure that appropriate and proportionate enforcement action is taken in response to breaches of the law;
  - b. Ensure, where appropriate, there is adequate deterrence and denunciation of offending;
  - c. Ensure appropriate charges are laid under the appropriate legislation;
  - d. Promote fair trial processes;
  - e. Act rationally, impartially, fairly and in accordance with the Solicitor-General’s Prosecution Guidelines; and
  - f. Underpin the Council’s compliance objectives.
4. Some specific objectives that apply to particular prosecution action taken by the Council include:
  - a. In relation to prosecutions brought under the Resource Management Act 1991:
    - i. Hold those who commit offences accountable;
    - ii. To punish where appropriate; and
    - iii. To protect or restore the environment.

### ***Process for assessment of a file for prosecution***

5. The Environmental Services unit at the Council is responsible for investigating offences.
6. Investigations are carried out by warranted enforcement officers.
7. For a file to be considered for prosecution, a full investigation must be undertaken by an enforcement officer. If offending is detected, the file is to be referred to the Enforcement Decision Group (“EDG”). When doing so, the enforcement officer

prepares a memorandum which includes a recommendation of what enforcement action be considered.

8. Every memorandum is individually assessed by the EDG. The EDG is responsible for approving the appropriate level of formal enforcement action.
9. If the event or incident warrants consideration for prosecution, the EDG (including Council's Chief Executive) meet to discuss the matter. The file is reviewed for evidential sufficiency and the public interest considerations are assessed.
10. Only the Chief Executive has the delegated authority to commence a prosecution.
11. All files authorised for prosecution by the Chief Executive are externally reviewed by instructed Counsel before charges are filed.

#### *Evidential sufficiency*

12. When assessing evidential sufficiency, Council must apply the test in the Solicitor-General's Prosecution Guidelines, namely that the admissible evidence is sufficient to provide a reasonable prospect of conviction.

#### *Public interest*

13. If there is sufficient admissible evidence, then it must be considered whether a prosecution is required in the public interest.
14. Consideration of public interest will include any relevant factors in the Solicitor-General's Prosecution Guidelines.

#### *Prosecution decision making*

15. The Solicitor-General's Prosecution Guidelines emphasise that prosecution decisions must be free from political influence. The independence of the prosecutor is described as "*the universally central tenet of a prosecution system under the rule of law in a democratic society*"<sup>1</sup>.
16. Decisions must be made independently and be free from any undue or improper pressure.
17. If the test in the Solicitor-General's Prosecution Guidelines is not met, a decision of "no prosecution" must be taken.
18. If the prosecution does not meet the evidential standard for prosecution, the EDG may direct the enforcement officer to continue the investigation.

#### Additional consultation for particular types of prosecutions

19. For investigations into offences against the Building Act 2004, the EDG may seek expert advice from Council's Director Engineering Hazards and Science before approving a prosecution.

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<sup>1</sup> Advice from Auditor-General provides that "*councillors should not be involved either in decisions to prosecute or to investigate or hear grievances about cases*".

20. For investigations into offences against the Biosecurity Act 1993 and the Maritime Transport Act 1994, the EDG may seek expert advice from Council's Director Environmental Monitoring and Operations before approving a prosecution.

**3. Recommendation**

- a) *That the report be noted*

**Endorsed by:** Scott MacLean  
**Director Environmental Monitoring & Operations**

**Attachments**

Nil

## 11.5. Enforcement Reporting

**Prepared for:** Regulatory Committee  
**Activity:** Environmental - Investigations and Enforcement Action  
**Prepared by:** Peter Kelliher, Legal Counsel  
**Date:** 20 February 2018

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### 1. Background

The Otago Regional Council has statutory powers of enforcement across various statutes including (but not limited to) the Resource Management Act 1991, the Local Government Act 2002, the Biosecurity Act 1993 and the Building Act 2004.

To ensure Councillors remain informed about the exercise of the Council's enforcement powers, a process is proposed that will guide, assist and standardise staff reporting of enforcement matters to Councillors.

### 2. Process

#### *Regulatory Committee*

- A. Staff shall report (to the Regulatory Committee) the total number of legal proceedings authorised, infringements and other forms of enforcement action that have been undertaken by the Council during the reporting period. The report shall not include the names of the parties who are the subject of the enforcement action.
- a. Comment –
    - i. Disclosing the names of the parties charged (or to be charged) would contravene Crown Law's "Media Protocol for Prosecutors". Council is required to comply with the Protocol.
    - ii. The persons charged may seek an order suppressing their name and other details; doing so is undermined by prior publication.

#### *Reporting to Councillors*

- B. Once charges have been filed in court, staff shall advise Councillors of the name of the parties charged and the offence, but no more than that.
- a. Comment –
    - i. This enables Councillors to be aware of the fact of a prosecution, and should Councillors be contacted they will be able to avoid involvement, and any perception or allegation of political interference.
- C. Once a prosecution matter is complete, staff shall report to Councillors, by email, the name of the defendant(s) and the outcome imposed by the Court. Whilst any reporting will be completed or made in a timely manner, if media are present in court, the sentencing details may already be in the public domain prior to Councillors receiving advice from staff.

#### *Councillor and Staff Obligations – Public Comment*

- D. Subject to clause G, Councillors and staff should refrain from making comment about any particular prosecution case before the courts (or its circumstances).
- a. Comment –
    - i. Public comment may contravene Crown Law's "Media Protocol for Prosecutors";
    - ii. The defendants may seek an order suppressing their name and other details.

- iii. Public comment may prejudice a fair trial, particularly where a defendant has the right to elect trial by jury. Anything that prejudices a fair trial may be a contempt of court. For all Resource Management Act 1991 charges, there is a right to elect trial by jury.
- E. Councillors and staff must not disclose the identity of a defendant until that defendant has appeared in court.
  - a. Comment –
    - i. Disclosure would contravene Crown Law’s “Media Protocol for Prosecutors”; and
    - ii. The parties may seek an order suppressing their name and other details.
- F. Councillors and staff must not provide personal opinions about to a particular case before the courts or about the outcome of a particular case.
  - a. Comment –
    - i. Disclosure would contravene Crown Law’s “Media Protocol for Prosecutors”; and
    - ii. Public comment may prejudice a fair trial (if the matter is still before the courts); and
    - iii. Criticism of decisions may be contempt of court and damages the public’s trust in the legal system.
- G. Once charges have been filed in court, the Council may make the following public statements (where applicable) advising<sup>1</sup>:
  - a. The nature of the charges;
  - b. Once the defendant has appeared in court, the name, age and residence (town, city or region only) of the defendant (subject always to name suppression);
  - c. Date and location of next appearance;
  - d. Guidance on the type of hearing – first or second appearance etc.;
  - e. Names of the Council’s and the defendant’s lawyer;
  - f. Information about what happened procedurally with the case e.g. whether the prosecution has been discontinued, charges reduced etc;
  - g. If relevant, confirmation that advice has been sought from Crown Law / Crown Solicitor.
- H. With the exception of the above, it is inappropriate for a prosecuting authority to publicly discuss charges. Such discussion may prejudice a fair trial, particularly where a defendant has the right to elect a trial by jury.
- I. Prosecution outcomes are generally reported through the media. In the event Council elects to provide additional comment, care must be taken to ensure such comments comply with Crown Law’s Media Protocol for Prosecutors.

*Diversion*

- J. Diversion is a lawful way to exercise prosecutorial discretion instead of full prosecution through the court system. Diversion is an alternative to processing some offences and/or offenders through the courts. Diversion enables eligible offenders to complete certain activities and conditions within a given timeframe to

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<sup>1</sup> Source “Media Protocol for Prosecutors”

avoid both a full prosecution and to avoid a conviction. This means that judicial time is able to be reserved for more serious offences and offenders.

- K. The name and details of the diverted party are not reported. If a request for information is received from someone other than the individual who has received diversion, the request may be refused under section 6(a) of the Local Government Official Information and Meetings Act 1987.

### **3. Fines**

- A. Council's practice for prosecutions of individual and corporations is to offset any fine received against the cost of bringing the prosecution. Any shortfall of funds is met by the Otago ratepayers.
- B. From 1 July 2016 to 8 February 2018, Council has invested \$693,695 (mostly internal costs but includes legal and expert costs) in responding, investigating and enforcing non-compliance with regional plans, resource consents, Resource Management Act 1991, Local Government Act 2002, Land Drainage Act 1908 and the Building Act 2004. This figure includes investigations which either did not progress further or resulted in a lesser level of enforcement action (i.e. infringement notices, formal warnings, directions etc.).
- C. For the same period, the Council received \$385,836 in fines (either through the courts or from infringement fees) and \$17,926 in cost recovery. This results in a shortfall of \$289,933 which is funded by the Otago ratepayers.
- D. The quantum of legal costs recoverable from a prosecution is provided in the Costs in Criminal Cases Act 1967 and the Costs in Criminal Cases Regulations 1987. The maximum fee payable is as follows:
  - a. For conducting a prosecution or defence in a case, including all matters and proceedings connected with or incidental to the case—for each half day or part half day occupied in court - \$226;
  - b. Where for any reason the charge is withdrawn or is dismissed without a trial, or where the defendant pleads guilty—for each half day or part half day occupied in court - \$113.
- E. Investigation costs may be recovered in the following ways:
  - a. Under section 36 of the Resource Management Act 1991 in relation to resource consents only; and
  - b. Through an enforcement order under section 314(1)(d) of the Resource Management Act 1991. Such orders have not previously been sought by Council.
    - i. Comment:
      - 1. For matters which have been dealt with by way infringement notice, abatement notice, formal warning etc., generally the cost to obtain such an order from the Environment Court<sup>1</sup> would exceed the cost of the investigation;
      - 2. The Court, in sentencing, takes into account any award on costs when setting an appropriate fine. This ensures that both fines and costs add up to a globally appropriate penalty. The Court

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<sup>1</sup> Section 318 of the Resource Management Act 1991 requires that before deciding an enforcement order the Environment Court shall hear the applicant and hear the person against whom the order is brought (if that party wishes to be heard).

is therefore required to assess what is an appropriate penalty in total and then have regard to any award by way of costs before imposing a fine. There is therefore a relationship / nexus between any costs and any fine awarded.

3. Historically, Council sought to recover investigation costs from offenders but changed its focus from cost recovery to the fine<sup>1</sup> awarded. This change in focus may have arisen due to the practice of defendants insuring against such cost awards which reduced the level of deterrence. Police do not recover costs in conducting criminal investigations or prosecuting offences.
- F. There have been instances where prosecuting Councils and defendant Councils have agreed the fine be applied to an environmental project, but this practice is not universal.
- G. There have also been judicial decisions in which the court has expressed the view that some proportion of the fine be directed for the benefit of an environmental project or organisation at the prosecuting Council's discretion.
- H. Neither approach is binding on the Council, any prosecuting authority may wish to use any fines recovered to offset its prosecution costs or for relevant environmental projects.

[1] Source Crown Law "Media Protocol for Prosecutors"

[2] Section 318 of the Resource Management Act 1991 requires that before deciding an enforcement order the Environment Court shall hear the applicant and hear the person against whom the order is brought (if that party wishes to be heard).

[3] Where a local authority files a charge and there is a conviction with the Court imposing a fine, then the fine is paid to the local authority (section 342 of the Resource Management Act 1991). This excludes a deduction of 10% which is credited to the Crown Bank account.

#### **4. Recommendation**

- a) *That this report be noted.*

**Endorsed by:** Scott MacLean  
**Director Environmental Monitoring & Operations**

#### **Attachments**

Nil

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<sup>1</sup> Where a local authority files a charge and there is a conviction with the Court imposing a fine, then the fine is paid to the local authority (section 342 of the Resource Management Act 1991). This excludes a deduction of 10% which is credited to the Crown Bank account.

## 11.6. Enforcement Activities from 11 January 2018 to 23 February 2018

**Prepared for:** Regulatory Committee  
**Activity:** Environmental - Investigations and Enforcement Action  
**Prepared by:** Peter Kelliher, Legal Counsel  
**Date:** 23 February 2018

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### 1. Précis

This report details Resource Management Act 1991, Biosecurity Act 1993 and Building Act 2004 enforcement activities undertaken by the Otago Regional Council during the period 11 January 2018 to 23 February 2018.

### 2. Resource Management Act 1991

#### a) Complaint Response

Table 1. Infringement Notices

| Details   | Period –<br>11 January 2018 to<br>23 February 2018 | Total – from<br>1 July 2017 |
|---|--|-----------------------------|
| Disturbing the bed of a river - pugging   | 0  | 1                           |
| Disturbing the bed of a river –<br>mechanical excavation                                | 0  | 4                           |
| Discharge of contaminants to land in a<br>manner where it may enter water -<br>sediment | 1  | 1                           |
| TOTAL   | 1  | 6                           |

Table 2. Authorised Legal Proceedings

| Details   | Period –<br>11 January 2018 to<br>23 February 2018 | Total – from<br>1 July 2017 |
|---|--|-----------------------------|
| Disturbing the bed of a river –<br>mechanical excavation                                  | 0  | 1                           |
| Discharge of contaminants to land in a<br>manner where it may enter water -<br>sediment   | 1  | 2                           |
| Discharge of contaminants to land in a<br>manner where it may enter water -<br>wastewater | 2  | 2                           |
| TOTAL   | 3  | 5                           |

Table 3. Abatement Notices

| Details   | Period –<br>11 January 2018 to<br>23 February 2018 | Total – from<br>1 July 2017 |
|---|--|-----------------------------|
| To cease discharging a contaminant in<br>breach of a regional rule - sediment | 0  | 1                           |
| To cease discharging contaminants in<br>breach of a regional rule - sawdust   | 1  | 1                           |
| TOTAL   | 1  | 2                           |

#### b) Inspections

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Table 4. Infringement Notices

| <b>Details</b>  | <b>Period –<br/>11 January 2018 to<br/>23 February 2018</b> | <b>Total – from<br/>1 July 2017</b> |
|---|---|-------------------------------------|
| Discharge of contaminants to land in breach of a regional rule - effluent | 1   | 1                                   |
| <b>TOTAL</b>  | <b>1</b>  | <b>1</b>                            |

### **3. Recommendation**

- a) That this report be noted.

**Endorsed by:** Scott MacLean  
**Director Environmental Monitoring & Operations**

### **Attachments**

Nil

## 11.7. The working Relationship between Regional Councils and Department of Conservation

**Prepared for:** Regulatory Committee  
**Activity:** Governance Report  
**Prepared by:** Scott MacLean, Director Environmental Monitoring & Operations  
**Date:** 7 March 2018

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The importance of the relationship between Regional Councils and the Department of Conservation (DOC) at a national level was recognised, however discussions between DOC and the Regional Council's Bio-managers Special Interest Group (Bio-managers) highlighted the differing levels of working relationship that existed nationally.

It was agreed that closer collaboration and partnerships across the over-lapping roles of biodiversity, biosecurity and conservation management would likely lead to better outcomes for the environment and the community. A small working party of senior managers from DOC and senior regional council managers was formed to progress a piece of work to better formalise the relationship, to commit to working together more effectively and bring national consistency in how this important relationship is managed.

The working party identified several guiding principles and objectives that underpin the ongoing relationship. The objectives identified include:

- Aligning priorities, strategies and planning where roles and work programmes over-lap or would benefit from closer collaboration
- Develop and implement joint work programmes as standard practice for managing collaborative projects at both national and regional levels. An example of this is support of the Predator Free 2050 movement
- Improving biodiversity outcomes at specific sites. Examples of this may be site-led programmes identified and strengthened through Regional Pest Management Plans
- Deliver benefits to ratepayers and taxpayers through the avoidance of litigation

Broadly speaking, the principles that would be applied to help achieve the objectives include:

- Open and transparent communication – a “no surprises” approach
- Commitment to work cooperatively on matters of common interest through the establishment and maintenance of a positive relationship
- Recognising the statutory functions, commercial drivers, regulatory powers and duties of each of the organisations
- Respecting the individual mandate of each party and their individual roles and responsibilities
- Proactively managing any conflict that may arise

The working party agreed that a simple and concise Memorandum of Understanding (MOU) would be the best way to capture the agreed guiding principles and objectives at a national level. The draft MOU was progressed through the Regional Chief Executives group (RCEO's) and the Director General Department of Conservation. The MOU was endorsed and signed off by the Chair of RCEO's and the DG Department of Conservation late last year.

The working party continues to meet and is in the process of developing an implementation plan which will seek to identify annual collaborative opportunities. Those opportunities will inform an agreed annual work programme.

The implementation plan and annual work programme will be reported back to Council upon development. Outcomes and progress will also be reported at the end of each year.

A copy of the memorandum of Understanding is attached to this item.

**1. Recommendation**

*That this report is received.*

**Endorsed by:** Scott MacLean  
**Director Environmental Monitoring & Operations**

**Attachments**

1. MoU from DoC [11.7.1]

## **12. NOTICES OF MOTION**

## **12. CLOSURE**