

Proposed Plan Change 2 (Regionally Significant Wetlands)

**to the
Regional Plan: Water for Otago**

**Officer's Report on
Decisions Requested**

Abbreviations

GIS	Geographical Information System
Inventory	Boggy Treasures, Otago's Wetland Inventory
FENZ	Freshwater Ecosystems of New Zealand, geo-database
mASL	Metres above sea level
Plan	Regional Plan: Water for Otago
Proposed plan change / plan change 2	Proposed Plan Change 2 (Regionally Significant Wetlands) to the Regional Plan: Water for Otago
RSW	Regionally Significant Wetlands
RMA	Resource Management Act 1991
Section 32 report	The report assessing alternatives, benefits and costs for proposed plan change 2 to the Water Plan as required by Section 32 of the RMA
Note: use of section/Section:	
section	A reference to another section in this report. A reference to a section of the Water Plan.
Section	A Section of the RMA.

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Introduction

The Otago Regional Council (ORC) has prepared Plan Change 2 (Regionally Significant Wetlands) to the Regional Plan: Water for Otago (the Plan). Proposed Plan Change 2 builds on existing provisions for Regional Significant Wetlands by:

- Protecting more wetlands that are regionally significant
- Strengthening protection for Regionally Significant Wetlands
- Making provisions easier to read and understand
- Providing better wetland information.

Notification process

Plan Change 2 was publicly notified in the Otago Daily Times on Saturday 2 July 2011 and submissions closed on Friday 29 July 2011. A total of 49 submissions were received (2 of which were received after the formal submission period).

The *Summary of Decisions Requested*, which requested further submissions, was notified on Saturday 10 September 2011, with further submissions closing on Friday 23 September 2011. There were 9 further submissions received.

The purpose of this report

This report evaluates decisions requested by submitters and further submitters, and makes recommendations to the Hearing Committee. Provisions with amendments that did not receive submissions are not discussed, so these amendments should be approved without change.

This report only shows recommended changes to the text of Plan Change 2 as notified, with strikethrough and underline.

Documents referred to in this report

This report should be read in conjunction with the following documents:

- Proposed Plan Change 2 (Regionally Significant Wetlands) to the Regional Plan: Water for Otago (2 July 2011).
- Summary of Decisions Requested (23 November 2011).

Reasoning for Plan Change 2, and consideration of alternatives, benefits and costs, is detailed in:

- Section 32 Report – Summary of alternatives, benefits and costs (2 July 2011).

Chapter 1: Regionally Significant Wetlands and values

The focus of Chapter 1 is Otago's Regionally Significant Wetland (RSW) values, which are at the core of the proposed plan change. It discusses RSW values, the wetlands which contain at least one RSW value, and where information is held on these values.

1.1. Regionally Significant Wetland values

Policies 10.4.1, 10.4.3

Plan Change 2 reference: R006, (page 8), R140 (page 119), R011 (pages 10-11), R151 (Wetland Inventory)

Summary of Decisions Requested: R006, R140, R011 (55-57), R151 (pages 138-139)

1.1.1. Overview

Operative Policy 10.4.1 identifies six "Type A" values of Otago's wetlands, which are significant and irreplaceable, and likely to be lost by wetland modification. Operative Policy 10.4.3 identifies three "Type B" values, which are significant because of the contribution they make to the habitat, natural character and hydrological value of the region's water resources. Wetlands with "Type A" and "Type B" values are listed in Schedule 9.

Plan Change 2 proposes to consolidate all RSW values into a single suite under Policy 10.4.1.

Eight submitters commented on this proposal. Two submitters support amendment of Policy 10.4.1 and removal of Policy 10.4.3. Six submitters request amendment to Policy 10.4.1 with regard to the following matters:

- A1 – Habitat for nationally or internationally rare or threatened species or communities
- A6 – Wetland which is highly valued by Kai Tahu for mahika kai and other waahi taoka
- A7 – High diversity of indigenous flora and fauna
- A8 – Regionally significant habitat for waterfowl
- Networks, patterns and corridors of wetlands
- Values present to qualify as a RSW

1.1.2. Discussion

A1- Habitat for nationally or internationally rare or threatened species or communities

Amending value A1 to make reference to regionally, as well as nationally or internationally, rare or threatened species or communities, would be problematic in a number of ways.

There are difficulties with the implementation of a value that is generalised to include regional importance as well as national importance. The Department of Conservation keeps records of rare or threatened species or communities. However, in most cases the threat status of these species or communities is seen within a national context. In contrast, regional rarity or threat is not well-documented. Also, nationally common or unthreatened species of community may not be present in a particular region for good reason. For example, while a bird may be rare in Otago because its natural range is elsewhere, its presence (or absence) in Otago may not be significant or important. Provision of regional recognition would result in some wetlands receiving undue protection.

If a wetland qualifies as a RSW through meeting another value, the presence of regionally important species can be noted in the Inventory description of the wetland (see section 1.3).

A6 – Wetland which is highly valued by Kai Tahu for mahika kai and other waahi taoka

The Plan recognises that all Otago water bodies are important in terms of Kai Tahu cultural and spiritual beliefs, values and uses. In the management of activities involving any water body Kai Tahu cultural and spiritual beliefs, values and uses are already provided for by Policy 5.4.2 of the Plan, and where these are of specific importance they are identified in Schedule 1D. Any other customary activity of Kai Tahu is covered by Policy 5.4.3. Both of these policies give priority to avoiding adverse effects on Kai Tahu values. However, the wording of value A6 constrains the values to mahika kai or other waahi taoka. It is considered appropriate to widen this value to include *Kai Tahu cultural and spiritual beliefs, values and uses*, to encompass all matters that are highly valued by Kai Tahu.

A7 – High diversity of indigenous flora and fauna and A8 – Regionally significant habitat for waterfowl

Value A7 is high diversity of indigenous flora and fauna, and value A8 is regionally significant habitat for waterfowl. While there may be overlap between all of the RSW values, none of them, including A7 and A8 are fully duplicated by other values. Therefore, they are retained as separate RSW values.

A8 – Regionally significant habitat for waterfowl

Amending value A8 to make reference to habitat of indigenous waterfowl only is appropriate. With the exception of trout and salmon, Part 2 of the RMA does not make specific reference to or provision for the habitat of introduced fauna, such as gamebirds. Part 2 of the RMA does make specific reference to, and encourage provision for, the habitat of indigenous fauna and of trout and salmon.

The provisions for indigenous waterfowl habitat will also provide for gamebirds, because sites with a significant range of indigenous waterfowl are commonly shared with introduced species. Waterfowl are also recognised among the natural and human use values listed in Schedule 1A of the Plan. Accordingly, it is appropriate to amend this value to address habitat for indigenous waterfowl.

Networks, patterns and corridors of wetlands

Geographically clustered wetlands are often connected by water bodies that moderate the effects of habitat fragmentation and act as vital corridors for species movement. An individual wetland's importance within a wider network of wetlands could be considered under values A1, A2, and A8, which discuss habitat.

Where these corridor areas do not classify as wetlands with one or more RSW values, they are not eligible for protection under the RSW rules and policy framework.

However, other provisions in the Plan help safeguard connections between wetlands and bordering ecosystems, without constraining the ability of District Plans to manage the effects of land-based activities on wetlands. Furthermore, the Regional Plan: Coast for Otago provides protection for adjoining coastal water bodies that link closely located but individually mapped estuarine wetlands. An example of this is provided in section 3.2 of this report. Wetlands connected in some way could also be identified as a Wetland Management Area (see section 1.2).

Values present to qualify as a RSW

Amending Policy 10.4.1 to state "RSW values of Otago's wetlands include one or more of the following:" is not necessary, as the introduction to Schedule 9 states that the wetlands in the Schedule contain one or more RSW value (see section 3.1).

1.1.3. Recommendations

a) Amend value A6 in Policy 10.4.1 as follows:

A6	Wetland which is highly valued by Kai Tahu for <u>cultural and spiritual beliefs, values and uses, including waahi taoka and mahika kai</u> or other waahi taoka.
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b) Amend value A8 in Policy 10.4.1 as follows:

A8	Regionally significant habitat for <u>of indigenous</u> waterfowl.
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c) Delete Policy 10.4.3 as proposed.

Reasons

- Regional rarity is not well-documented, and the absence of some species from a region may not be of concern.
- Kai Tahu may highly value wetlands for more than just mahika kai or waahi taoka.
- While some values overlap, none of them are fully duplicated by other values.
- There is no requirement under the RMA to specifically protect gamebird habitat.
- Protection of habitat of indigenous species also provides habitat for introduced species. Specific values recognised in the Plan (in Schedule 1A and through RSWs), assist to protect the habitats that support introduced waterfowl populations.
- Other provisions in the Water and Coast Plans assist with safeguarding the connectedness between wetlands and bordering ecosystems, without constraining the ability of District Plans to manage the effects of land-based activities on wetlands.
- The introduction to Schedule 9 states that the wetlands in that Schedule contain one or more RSW value.

1.2. What is a Regionally Significant Wetland?

Policies 10.4.1A, 10.4.1B, 10.4.2

Plan Change 2 reference: R007 and R008 (page 9) and R139 (page 119)

Summary of Decisions Requested: pages 50–54

1.2.1. Overview

Policy 10.4.1A defines what makes a wetland regionally significant. Policy 10.4.1B states that wetlands which have one or more RSW values are listed in Schedule 9 and mapped in the Plan.

Thirteen submitters commented on Policy 10.4.1A. Two submitters support the provisions of Policy 10.4.1A, and eleven submitters request decisions relating to the definition of a RSW, on the following topics:

- Wetland Management Areas
- Wetland margins, dry areas and areas of human use
- Delineating aquatic areas from wetland areas

- Wetlands higher than 800 metres above sea level
- Style and location of Policy 10.4.1A and 10.4.1B

1.2.2. Discussion

Wetland Management Areas

Some wetland areas (below 800m ASL) with RSW values have not been accurately mapped in Schedule 9, particularly where there are local clusters of small wetlands. In this situation, "Wetland Management Areas" have been mapped: areas of wetlands collectively containing RSWs, as well as the permanently dry areas of land that surround them.

Policy 10.4.1A establishes only the wetland within the Wetland Management Area as regionally significant. However, two sets of rules must be considered for proposed or existing activities within the mapped areas of a Wetland Management Area:

- the rules applying to activities taking place within a RSW; and
- the rules applying to activities located outside the RSW, but the effects of which could potentially impact on the RSW values within the Wetland Management Area.

Efforts have been made to limit both the number of Wetland Management Areas in proposed Schedule 9, and the land a Wetland Management Area covers. However, Schedule 9 contains 16 such areas, most of which are inland saline wetland areas which, due to their small size and ephemeral nature, are difficult to delineate.

The Plan provides little guidance on what constitutes a Wetland Management Area, so a new definition in the glossary addresses this. In addition, the introduction to Schedule 9, and reference made to Schedule 9 in Policy 10.4.1B, should be amended to recognise Wetland Management Areas (see section 3.1 also).

Wetland margins, dry areas and areas of human use

A wetland "includes 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" (Section 2, RMA). Plan Change 2 seeks to further protect wetlands that contain at least one RSW value. This means that intermittently wet areas are included, even where these areas are known to support human use values (e.g. irrigation, infrastructure). Where wetland margins support RSW values they are included in the mapped RSW area, and where situated above 800 m ASL they are addressed by the plan as RSWs.

Plan provisions apply regardless of land ownership (including Crown Land), and in addition to other legislation (e.g. the Reserves Act 1977).

Permanently dry areas have generally not been included in the mapped extents of RSWs. Exceptions are:

- Wetland Management Areas – where it has not been possible or practical to accurately identify and map these permanently dry areas (see discussion above).
- Railway corridors, roads, and raised building platforms for networks infrastructure within mapped Schedule 9 areas.

Permanently dry areas included within the mapped extent of a Wetland Management Area are subject to the same rules as other dry land. Where dry areas with lawfully established uses and structures are included in the mapped extent of a RSW, the proposed rules and policies will protect

activities and provide for the continued use and the regular maintenance of structures, as long as their scale, nature and impact on any RSW value remain unchanged. These provisions are discussed further in Chapter 2: Protection of wetlands – policies and rules.

Delineating aquatic areas from wetland areas

Wetlands are often characterised by the variability of their hydrological qualities. Changing physical and ecological conditions can cause the wetland hydrology and the values supported by it to change over time. A permanent or more clearly pronounced delineation between aquatic areas and wetland areas would not recognise the dynamic hydrology of water bodies and wetlands, and the strong interdependencies between these environments.

Wetlands higher than 800 metres above sea level

Wetlands higher than 800m ASL have regional significance due to their inherent high degree of naturalness (value A4) and the hydrological services they provide either individually or cumulatively for the Otago region (value A9).

These wetlands are not individually mapped as comprehensive mapping and assessment would be costly and impractical due to their typical small size, large number, and inaccessibility. A precautionary approach to the management of these wetlands is proposed, requiring a thorough assessment prior to any development that may potentially impact a RSW value.

The 800m ASL minimum elevation criteria reflects land-use patterns that change at this altitude. The limited accessibility and the prevailing climatic, topographical and geological conditions often act as a barrier to residential activity, intensive farming and other productive land-uses. Therefore, comprehensive protection of all wetlands higher than 800m ASL is cost effective for the wider community and incurs limited opportunity cost for individual landholders.

Wetlands above 800m ASL are protected in the same way as other RSWs (see Chapter 2:).

Style and placement of Policies 10.4.1A and 10.4.1B

The concepts in Policies 10.4.1A and 10.4.1B are integral to the policy and rule framework. They were intended to clarify what a RSW is and where they are mapped. The framework would be weakened if these policies were removed and replaced by a footnote, explanatory note, or, in the case of Policy 10.4.1A, an entry into the glossary.

The glossary contains a proposed definition for “Regionally Significant Wetland”, which references back to Policy 10.4.1A. However, it would be more useful to provide a definition of “Regionally Significant Wetland” in the glossary.

Further, it is appropriate to amend Policies 10.4.1A and 10.4.1B as notified to focus on achieving an environmental outcome. This is discussed further under section 2.2.

1.2.3. Recommendations

a) Insert a new entry into the Glossary as follows:

Wetland Management Area

An area mapped in Schedule 9 that contains more than one Regionally Significant Wetland, and surrounding areas of permanently dry land.

b) Amend the title and introduction to Schedule 9 (as also recommended in section 3.1) as follows:

Schedule 9: Schedule of identified Regionally Significant Wetlands and Wetland Management Areas
This schedule lists Otago's identified Regionally Significant Wetlands and Wetland Management Areas. An identified Regionally Significant Wetland or Wetland Management Area is one that has been mapped in Maps F1-F68 and contains one or more Regionally Significant Wetland values. (see Chapter 10). ~~Schedule 9 is not exhaustive.~~

c) Delete Policy 10.4.1A and Policy 10.4.1B, and amend Policy 10.4.2 (as also recommended in section 2.2) as follows :

~~10.4.1A A Regionally Significant Wetland is:~~
~~(a) A wetland identified in Schedule 9 (that is not a wetland management area); or~~
~~(b) A wetland physically within a wetland management area listed in Schedule 9; or~~
~~(c) A wetland higher than 800 metres above sea level.~~

~~10.4.1B Schedule 9 lists those Regionally Significant Wetlands that are mapped in Maps F1-F68 and contain one or more regionally significant wetland values.~~

10.4.2 ~~Priority will be given to the avoidance of adverse effects of activities on Regionally Significant Wetlands and values. Remedying or mitigating adverse effects will be considered only where those effects cannot be avoided.~~
Give priority to avoiding adverse effects on regionally significant wetland values, and any wetland that is:
(a) Listed in Schedule 9 and mapped in Maps F1-F68; or
(b) Within a wetland management area listed in Schedule 9 and mapped in Maps F1-F68;
or
(c) Higher than 800 metres above sea level.

d) Amend the Glossary entry for Regionally Significant Wetland as follows:

Regionally Significant Wetland
(a) A wetland listed in Schedule 9; or
(b) A wetland within a Wetland Management Area listed in Schedule 9; or
(c) A wetland higher than 800 metres above sea level.
(See Policy 10.4.1A)

Reasons

- "Wetland Management Area" is a term used in the Plan, and does not have a common meaning.
- Changes to the Introduction to Schedule 9 improve its clarity.
- Schedule 9 contains both RSWs and Wetland Management Areas.
- The RMA definition of wetland includes "Intermittently wet areas". Such areas may have either RSW values, or contribute to them.
- Pronounced delineation between aquatic and wetland areas would not recognise the dynamic hydrology and strong interdependencies between these environments.

- Protection of all wetlands higher than 800m ASL is cost effective for the wider community and incurs limited opportunity costs for individual landholders.
- Policies should be written as an action, that will achieve an environmental outcome.
- Merging policies 10.4.1A, 10.4.1B and 10.4.2 results in a clear policy (see section 2.2).
- The introduction to Schedule 9 should state that the wetlands in the Schedule contain one or more RSW value.
- A definition of RSW in the glossary will assist use of the plan.

1.3. Wetland values information

Schedule 9, Inventory, 10.4.1, 10.4.1B, 10.4.6

Plan Change 2 reference: R006 (page 8-9), R008 (page 9), R014 (pages 12-13), R140 (page 27), R151 (page 90-112) and R400 (pages 90-112)

Summary of Decisions Requested: pages R006, R008, R140, (pages 53-57), R014, R151, R400, (pages 135-140)

1.3.1. Overview

The operative Plan lists RSWs and identified Type A and Type B values in Schedule 9. Plan Change 2 proposes that information about specific RSW values is deleted from the Plan and held instead in a separate, non-regulatory, on-line Inventory of wetlands (*Boggy Treasures, Otago's Wetland Inventory*). The Inventory will be freely accessible by all, and can be updated at any time without the formality of a plan change process.

Ten submitters have commented on the proposal to include wetland values information in the non-regulatory wetlands Inventory. Six submitters have requested decisions relating to wetland-specific information on the following topics:

- Removal of wetland values information from Schedule 9.
- Amendments to the Policies of Chapter 10 regarding the inclusion of wetlands information in Schedule 9.
- Amendments to the plan provisions regarding the regular updating of values information.
- Type of information to be included in the Inventory.

Three submitters support this approach, and the intent to provide better, regularly updated wetland information, in the Inventory.

1.3.2. Discussion

Removal of wetland values information from Schedule 9

The protection of wetlands through the operative Plan relies on having accurate RSW value information in Schedule 9. Information on RSWs and values in the operative Schedule 9 is known to be out-of-date, and can only be updated by plan change.

The rules in the proposed plan change have been amended to recognise any RSW value that may exist for that wetland, not just those listed in Schedule 9.

Updating of wetlands values information in Schedule 9.

The Inventory can be regularly updated as values information becomes available, without the need to use the formal plan change process. There is no need to include an explicit requirement in the Plan to keep the values information up-to-date. It is not intended to restrict who can provide

wetlands information for the Inventory, as long as the information is relevant and the source identified, so that it can be tested.

The ORC will monitor the region's RSWs. The Inventory will be updated accordingly and ORC will provide State of the Environment reports from time to time, which are available to the public.

Type of information to be included in the Wetland Inventory

The focus of the Inventory is provision of information related to RSW values identified within a scheduled wetland. However, it is not limited to RSW values, and may contain any other relevant information, such as:

- Wetland photographs
- The management and environmental health of the wetland
- Activities and infrastructure that are part of the wetland environment.
- Factors that may influence wetland values, e.g. weed invasions or land instability.

The wide range of information in the Inventory will assist consent applicants with the preparation of comprehensive Assessments of Environmental Effects (AEE), as well as consent decision makers who may consider anything relevant to determining consent applications under Section 104(1)(c). However, it should be noted that the ORC does not guarantee the RSW information presented in the Inventory is either complete or up-to-date. It is the responsibility of those relying on the Inventory to ensure all RSW values are accurately identified and assessed when submitting a consent proposal relating to these wetlands.

The scope of the Inventory can be extended beyond those wetlands classified as regionally significant, and it is therefore an important tool for identifying wetlands worth assessing for future inclusion in Schedule 9 (see section 3.3).

1.3.3. Recommendations

- a) Delete the RSW values from Schedule 9, as proposed, and place that information in a non-regulatory, on-line Inventory.

Reasons

- The policies and rules focus on all RSW values, not just those listed in Schedule 9 for that wetland.
- An on-line Inventory, which is not part of the Plan, can be updated quickly and without the formality of a plan change.
- The Inventory is not limited to RSWs listed in Schedule 9, and can hold information on any Otago wetland, including those worth assessing for future inclusion in Schedule 9.
- Values information held in the Inventory can be tested through the consenting process.

Chapter 2: Protection of wetlands - policies and rules

Chapter 2 addresses the proposed objective for wetlands, and the policies and rules that provide protection of RSWs and RSW values. It covers protections over a wide range of activities, from the take and use of water, to discharges and land uses.

2.1 Maintain or enhance wetlands

Objective 10.3.1, Glossary

Plan Change 2 reference: R005 (page 8), R158 (page 119)

Summary of Decisions Requested: R005 (pages 58-59), R158 (page 142)

2.1.1. Overview

Objective 10.3.1 provides for the maintenance or enhancement of Otago's wetlands, and their values and services.

One submitter supports the objective, while four submitters request decisions on the following matters:

- Covering only RSW
- Specifying values and services
- Maintenance and enhancement of wetlands

2.1.2. Overview

Covering only RSWs

Section 6(a) of the RMA identifies the preservation of the natural character of wetlands and their margins, and the protection of these from inappropriate subdivision, use and development as a matter of national importance. Objective A2 of the National Policy Statement for Freshwater Management 2011 requires the overall quality of fresh water to be improved, while protecting the significant values of wetlands, amongst other matters.

Accordingly, narrowing the focus to only RSWs is not appropriate as the RMA promotes the protection of all wetlands.

Specifying values and services

Objective 10.3.1 provides for all values and services associated with wetlands. Specifying values or services such as Kai Tahu beliefs and uses, natural character, or biodiversity, runs the risk of omitting important values or services, or inadvertently prioritising them.

Important values and services are provided for throughout the Plan. For example Policies 5.4.2, 5.4.3 and Schedule 1D address important Kai Tahu cultural and spiritual beliefs, values and uses.

Objective 10.3.1 refers to "services" rather than "ecosystem services". Although "ecosystem services" is a commonly used phrase, the broader concept of "services" enables all wetland services to be maintained or enhanced (e.g. buffering of floods).

There is scope within Objective 10.3.1 to specifically address the issue of cumulative wetland loss. The Section 32 Report identifies cumulative effects of wetland loss as requiring a future plan change, because the issue is highly complex and requires further work.

Maintenance or enhancement of wetlands

Objective 10.3.1 aims to maintain *or* enhance wetlands and their values and services. To change this to maintain *and* enhance is not appropriate as it suggests ambiguity in the context of managing a specific wetland to enhance that wetland or its values. Using the word “or” rather than “and” gives flexibility to maintain or enhance each wetland, or wetlands overall, as appropriate.

2.1.3. Recommendations

a) Amend Objective 10.3.1 as follows:

Otago’s wetlands, and their individual and collective values and services, will be maintained or enhanced for present and future generations.

Reasons

- The RMA promotes the protection of all wetlands and not just RSWs.
- Specifying values or services risks the omission or prioritisation of one value or service over another.
- The broader concept of “services” enables all wetland services to be maintained or enhanced, and not just those relating to ecosystems.
- The collective values of non-significant wetlands should be explicitly recognised.
- Allowing “maintain *or* enhance wetlands” allows appropriate wetland management.

2.2 Priority on avoiding adverse effects

Policy 10.4.2

Plan Change 2 reference: R009 (page 9) R153 (pages 5-14), R155 (pages 57-71), R156 (pages 15-55), R161 (General wetland protection)

Summary of Decisions Requested: R009, R153 (pages 59-65), R155, R161 (pages 103-111), R156 (pages 87-91)

2.2.1 Overview

Policy 10.4.2 proposes giving priority to avoiding adverse effects on RSWs and values, over remedying or mitigating the effects. This is similar to the operative Plan provision.

Six submitters requested decisions relating to this matter (either directly on proposed Policy 10.4.2, or on the policies or rules generally). Four submitters support the preference of avoidance where possible. One submitter suggests narrowing the term “values” to “regionally significant values”.

2.2.2 Discussion

Priority on avoiding adverse effects

Giving priority to avoidance of adverse effects gives a clear message to those intending to undertake activities that may have an impact on RSWs.

Avoiding, remedying, or mitigating are options to manage adverse effects, as set out in Section 5 of the RMA. The ORC can choose to give priority to avoiding effects on RSWs, due to their importance and vulnerability, rather than remedying or mitigating.

Giving priority to avoidance also recognises that only 10% of wetlands remain nationally and that preservation of the natural character of wetlands is a matter of national importance (Section 6 RMA).

The rule framework reflects the priority given to avoiding adverse effects and is discussed further in section 2.3 and 2.4.

Avoiding effects on values

Policy 10.4.2 as proposed could be read as giving priority to the avoidance of adverse effects on all wetland values, rather than just RSW values. This was not intended and so it is appropriate to change any ambiguous wording.

2.2.3 Recommendations

a) Amend Policy 10.4.2 as follows: (as also recommended in section 1.2)

~~Priority will be given to the avoidance of adverse effects of activities on Regionally Significant Wetlands and values. Remedying or mitigating adverse effects will be considered only where those effects cannot be avoided.~~

Give priority to avoiding adverse effects on regionally significant wetland values, and any wetland that is:

(a) Listed in Schedule 9 and mapped in Maps F1–F68; or

(b) Within a wetland management area listed in Schedule 9 and mapped in Maps F1–F68; or

(c) Higher than 800 metres above sea level.

Reasons

- The ORC can give priority to avoidance over remedying or mitigating adverse effects.
- Wetlands are of national importance therefore adverse effects should be avoided.
- The avoidance of adverse effects should relate to RSW values rather than all wetland values.
- Merging policies 10.4.1A, 10.4.1B and 10.4.2 results in a clear policy that assists the use of the plan (see section 1.2).

2.3 General permissions, controls, and discretions

Rules for permitted, controlled and restricted discretionary activities in Chapters 12 and 13

Plan Change 2 reference: R 26, 27, 28, 29, 37, 48, 49, 50, 53, 63, 64, 65, 66, 72, 73, 74, 75, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 156 (pages 15-55), R103, 108, 110, 111, 114, 118, 119, 155 (pages 57-71) 153 (pages 5-14), 162 (generic permitted activities, pages 15- 71)

Summary of Decisions Requested: R026-092, R156 (pages 67-91), R101-119, R155 (pages 93-99, 103-108), R153 (pages 61-65), R162 (pages 111-113)

2.3.1 Overview

Plan Change 2 proposes that activities with minimal effect are permitted, those likely to have some adverse effect are controlled, restricted discretionary or discretionary activities, and those likely to do lasting damage are non-complying activities. There are two main types of generic condition:

1. A generic condition for permitted activities "*There is no change to the water level or hydrological function, or no damage to the flora, fauna or its habitat, in or on any Regionally Significant Wetland*".
2. A generic control or discretion for controlled or restricted discretionary activities: "*Any effect on any RSW or on any RSW value*".

Seven submitters commented on the rule cascade. One submitter supports the addition of the generic permission throughout the Plan, and six submitters request decisions on:

- Generic permitted activity condition – purpose and extent
- Generic permitted activity condition – flora and fauna
- Generic permitted activity condition - certainty, monitoring and compliance
- Conditions, controls and discretions

2.3.2 Discussion

Generic permitted activity condition - purpose and extent of provision

The proposed permitted activity condition addresses the risk for permanent negative impact on a RSW:

"There is no change to the water level or hydrological function, or no damage to the flora, fauna or its habitat, in or on any Regionally Significant Wetland" .

It has not been applied to permitted activities for which the adverse effects on RSWs would be no more than minor (such as the erection of a fence, pipe, line or cable over a RSW - proposed Rule 13.2.1.1).

Activities that meet this condition are permitted (subject to meeting the other relevant conditions) and accordingly, development or land use with no more than minor effects will not be restricted.

Where an activity will adversely affect a RSW, consent is required so effects can be fully assessed, and avoided, remedied or mitigated.

Generic permitted activity condition - flora and fauna

The above proposed permitted condition refers to "*no damage to the flora, fauna or its habitat, in or on any Regionally Significant Wetland*".

There are activities that do not adversely affect RSWs or their values and can ultimately benefit wetlands e.g. spraying for the removal of exotic plant pests (Rule 12.7.1.3).

The proposed condition could be limited to damage on 'New Zealand native flora' rather than any flora or habitat. Habitat is addressed through the other elements of the condition. This change is unlikely to result in loss of protection for RSW and RSW values, and is in line with the rule on vegetation removal (Rule 13.7). The same limit has not been applied to fauna due to the importance of some introduced species, such as game birds.

The recommended re-wording means that insertion of the word "and" in the condition between "flora" and "fauna" is not necessary.

Generic permitted activity condition - certainty, monitoring and compliance

Rules must be certain in order to be understandable, achievable and enforceable. The proposed permitted activity condition removes the uncertainty of the terms "no adverse effects", or "alteration in the water level of". Although some breaches of this permitted activity condition may be more difficult to verify, the increased certainty means the rule is understandable, functional, and useful in protecting RSWs.

ORC will continue to respond to breaches of the condition brought to their attention. Independent assessment of changes to RSWs is not required.

ORC will be undertaking monitoring of the region's RSWs and their values as part of the State of the Environment monitoring process. Over time, such monitoring identifies any incremental change to RSWs, and this information is used to inform plan making in the future.

Conditions, controls and discretions

Controls and discretions in the rules, "Any effect on any RSW or on any RSW value", are written broadly to pick up effects on RSWs and their values. Removal of "adverse" from the restricted discretionary condition allows for the consideration of both positive and negative effects of activities on RSWs.

The natural character of wetlands and their margins, and effects on biological diversity and ecological values are covered by the permitted activity condition (above) and the matters listed in the controlled or restricted discretionary rules. Effects on natural character are addressed specifically in most rules, dependent on the activity being undertaken.

2.3.3 Recommendations

- a) Amend the generic permitted activity condition which applies to rules 12.1.2.4, 12.1.2.5, 12.1.2.6; 12.2.2.5, 12.2.2.6, 12.3.2.1, 12.3.2.2, 12.3.2.3, 12.5.1.1, 12.7.1.2, 12.7.1.3, 12.7.1.4, 12.8.1.1, 12.8.1.2, 12.8.1.3, 12.8.1.5, 12.9.1.1, 12.9.1.2, 12.10.1.1, 12.11.2.1, 12.11.2.2, 12.11.2.3, 13.4.1.1, 13.5.1.1, 13.5.1.3 and 13.5.1.8 as follows:

There is no change to the water level or hydrological function, or no damage to the fauna, or the New Zealand native flora, fauna or its habitat, in or on any Regionally Significant Wetland; and

- b) Adopt the generic control and discretion "Any effect on any RSW or any RSW value" which applies to rules 12.1.3.1, 12.1.4.8, 12.2.2A.1, 12.2.3.4, 12.3.3.1, 12.4.2.1, 12.5.2.1, 12.8.2.1, 12.9.2.1, 12.10.2.1, 13.2.2.1, 13.3.2.1, 13.4.2.1 and 13.5.2.1 as proposed.

Reasons

- The generic permitted activity condition is consistent with sustainable management under Section 5 of the RMA.
- Damaging exotic plants is unlikely to adversely affect RSWs and RSW values, and in some cases will enhance them.
- "Habitat" is provided for by the remaining permitted activity conditions.
- The generic permitted activity condition has sufficient certainty and is understandable, functional, and useful in protecting RSWs.
- Positive effects of activities on RSWs should be taken into account in consenting.
- The broad nature of the conditions, controls and discretions in the rules provides protection for RSWs and RSW values.

2.4 Taking, damming and diverting water

Rules 12.1.1A.1 – 12.3.5.2

Plan Change 2 reference: R022, 026, 027, 028, (pages 16-18) R063, R064, R066 (pages 37-39), R045 (page 28), R156 (pages 15-55), R060 (page 36)

Summary of Decisions Requested: R022-028 (pages 65-69), R063 – 066 (pages 75-78), R045 (pages 70-71), R156 (pages 87-91), R060 (pages 73-75)

2.4.1 Overview

The proposed plan change provides that certain activities that may cause significant adverse effects to RSWs, are non-complying activities. These include most water takes and diversions from a RSW, and damming or diversion that affects the water level of a RSW.

However, some takes, damming or diversions are permitted, providing the conditions specified are met. If they are not, consent is required.

Four submitters support specific rules or the rules generally.

Seven submitters request changes on the following topics:

- Activity status and level of protection
- Where the rules apply
- New provisions requested

2.4.2 Discussion

Activity status and level of protection

The proposed objective and policies give priority to avoiding adverse effects.

The permitted rules cover takes from outside RSWs, as well as from within RSWs for domestic or animal drinking water takes, and takes from artificial lakes. The rules are structured by exempting the permitted activity rules from the non-complying rules (e.g. "except as provided for by Rules 12.1.1.1 to 12.1.2.3"). For permitted activities, the condition "*no change in the water level or hydrological function*" is considered appropriate to protect the hydrological aspects of RSWs from activities occurring outside of the wetland.

A non-complying consent application can only be granted if either the activity's adverse effects are minor, or if the activity is not contrary to the Plan's objectives and policies (Section 104D of the RMA). This activity status provides greater certainty and a higher level of protection for RSWs as it clearly signals that consent may not be granted for activities that adversely affect RSWs.

Where the rules apply

It is appropriate to clarify that the non-complying activity status restricts activities that are within a RSW. This creates a clear, workable rule framework as the RSW has a definable boundary.

If an activity occurring some distance away has an adverse effect on a RSW, then it is likely that a resource consent would be required. The generic permitted activity condition covers this and consent conditions could be imposed to address effects on the RSW or its values (see section 2.3). Such effects are a matter for consideration at consent time.

New provisions requested

Additional wording requested to these rules, to give effect to new policies requested elsewhere, is not supported (see section 0).

However, it is appropriate to simplify the wording of Rule 12.3.1A.1, relating to damming or diversion of water.

2.4.3 Recommendations

c) Amend Rule 12.1.1A.1 as follows:

Unless covered by Rules 12.1.1.1, 12.1.1.2, 12.1.2.1 and 12.1.2.3, the taking and use of surface water from within any Regionally Significant Wetland is a **non-complying activity**.

d) Amend Rule 12.2.1A.1 as follows:

Unless covered by Rules 12.2.1.1, 12.2.1.2, 12.2.2.1 and 12.2.2.3, the taking of groundwater from within any Regionally Significant Wetland is a **non-complying activity**.

e) Amend Rule 12.3.1A.1 as follows:

Unless covered by Rules 12.3.1.1 to 12.3.1.4, and 12.3.3.1(i);
(i) ~~The the damming or diversion of water from or~~ the damming or diversion of water within any Regionally Significant Wetland, ~~or~~
(ii) ~~The damming or diversion of water that affects the water level of any Regionally Significant Wetland,~~
is a **non-complying activity**.

Reasons

- The non-complying activity status indicates a stronger level of protection for RSWs.
- The changes clarify that the non-complying activity provisions apply within the RSW.
- The wording for the damming or diversion non-complying activity rule is simplified.

- Consenting processes enable assessment of the effect of activities on RSWs and RSW values, including for those activities beyond the RSW.

2.5 Drainage and drain maintenance

Rules 12.1.1A.1, 12.1.2.6, 12.2.1A.1, 12.3.1A.1, 12.3.2.2, and 13.5.3.2

Plan Change 2 reference: R022, 28 (pages 16-18), R045 (page 28), R060, 64 (pages 36-37), R120 (page 68), R148 (Funding), R157 (Drain maintenance)

Summary of Decisions Requested: R022, 28, 45, 60, 64 (pages 65-76), R120 (page 99), R148 (pages 136-137), R157 (109-110)

2.5.1 Overview

Draining water from a wetland may involve the taking and/or diversion of water, and an alteration of the wetland (digging of the drain, or physically clearing it). The plan change proposes that both new drains and drain maintenance in a RSW are treated the same, requiring consent as a non-complying activity for the taking and/or diversion of water (Rules 12.1.1A.1, 12.2.1A.1, 12.3.1A.1) and consent for any alteration of the wetland as a discretionary activity (Rule 13.5.3.2).

One submitter agrees that new drains should require consent for the taking and/or diversion of water and for alteration of a RSW. Four submitters request that drain maintenance be either a permitted or controlled activity.

2.5.2 Discussion

Drainage is a major threat to all wetlands, including RSWs, as when water is drained it is likely to cause irreversible damage, or even wetland loss.

Consenting new drains and drain maintenance means effects on RSWs and their values can be assessed, and avoided if possible.

In the past, drains have been allowed to be maintained without consent. This has resulted in damage to or loss of some wetlands, as it is hard to prove whether new drains have been dug, or if drains are being dug deeper than before.

Drain maintenance that has been undertaken regularly for some time is unlikely to have a more than minor effect on a RSW and its values, so could be granted consent.

As an application for consent may need to be declined on occasion, it would be inappropriate to make all drain maintenance a controlled activity.

Note that section 2.4 addresses the taking or diversion of water, and section 2.3 addresses the generic permitted activity condition in Rules 12.1.2.6 and 12.3.2.2 (which address takes, diversions or damming outside of a RSW, for land drainage).

2.5.3 Recommendations

- Amend Rules 12.1.1A.1, 12.2.1A.1 and 12.3.1A.1 as proposed in section 2.4.3.
- Amend Rules 12.1.2.6 and 12.3.2.2 as proposed in section 2.3.3.
- Adopt Rule 13.5.3.2 as proposed.

Reasons

- Drainage is a threat to RSWs and RSW values.
- There is a lack of information on the number and extent of existing drains in RSWs.
- Drainage activities that have minor effects on RSWs and their values could be granted consent.

2.6 Discharges

Rules in 12.4 to 2.11

Plan Change 2 reference: R076, R077, R078, R079, R081, R082, R083, R084 (pages 44-49), R156 (pages 15-55)

Summary of Decisions Requested: R076-084 (pages 80-84), R156 (pages 87-91)

2.6.1 Overview

Plan Change 2 proposes amendments to a large number of discharge rules in order to better protect RSWs.

Two submitters support specific rules, or the rules generally.

Seven submitters request decisions on the following topics:

- Permitting discharges to RSWs
- Enhancement work hampered by biocides Rule (Rules in 12.7.1)
- Collected agricultural waste rules (Rules 12.8.1.2 and 12.8.1.3)

Note that Plan discharge rules are currently being reviewed and a forthcoming plan change will focus on rural diffuse water quality.

2.6.2 Discussion

Permitting discharges to RSWs

Some operative permitted discharge rules are conditional upon the discharge not being to a wetland listed in Schedule 9.

In some cases this will be replaced with a condition requiring no change to the water level, hydrological function nor any damage to flora or fauna in or on any RSW (including discharges from drilling and bore testing – Rules 12.9.1.1 and 12.9.1.2; from vessels – Rule 12.10.1.1; and of water or tracer dye – Rule 12.11.2.2) (see also section 2.3).

In other cases requiring consent for discharges directly into a RSW allows for an assessment of effects on a case by case basis (including for discharges from reticulated stormwater - Rule 12.4.1.1; and of agricultural waste and fertiliser – Rules 12.8.1.1 to 12.8.1.3, Rule 12.8.1.5). Some of the farm-related rules contain an existing condition that also restricts discharges within 50 metres from a surface water body. Where existing farm discharge practices have no affect on the RSW or RSW values, no problem should arise for consenting. There should be no exceptions to such provisions for individual properties.

It is noted that wetlands by their very nature can handle discharges, and wetlands may be constructed to help treat certain discharges. Accordingly, some discharges to RSWs may be permitted so long as they don't change the water level or hydrological function, nor damage the flora or fauna. Addition of this generic permitted activity condition (see section 2.3) has increased

protection for a number of rules (including for discharge of drainage water - Rule 12.5.1.1; of herbicides - Rule 12.7.1.3; pesticides – Rule 12.7.1.4; animal dip material – Rule 12.8.1.1; from animal waste collection systems – Rules 12.8.1.2 and 12.8.1.3; and of water - Rules 12.11.2.1 and 12.11.2.3).

Enhancement work hampered by biocide rules

Rules in 12.7.1 continue to permit use of biocides for controlling animal and plant pests. With the exception of biocides for aquatic plant control, this permission is conditional upon there being no change to water level, hydrological function nor damage to flora or fauna in or on any RSW. Note that section 2.3 recommends amendment of this generic permitted activity condition to make exotic weed control easier.

Weed spraying operations to restore RSWs should not result in over-spray or spray drift affecting non target species. Extra care needs to be taken to avoid this, and if avoidance of such damage is not possible, resource consent must be applied for.

2.6.3 Recommendations

- a) Amend Rules 12.5.1.1, 12.7.1.2, 12.7.1.3, 12.7.1.4, 12.8.1.1, 12.8.1.2, 12.8.1.3, 12.8.1.5, 12.9.1.1, 12.9.1.2, 12.10.1.1, 12.11.2.1, 12.11.2.2, and 12.11.2.3 as proposed in section 2.3.3.
- b) Adopt Rules 12.4.1.1 and 12.7.1.1 as proposed in 5.2.3.
- c) Adopt Rules 12.4.2.1, 12.5.2.1, 12.8.2.1, 12.9.2.1 and 12.10.2.1 as proposed

Reasons

- Wetlands by their very nature can treat certain discharges.
- For some discharges, assessment on a case by case basis is required to understand the effects of the discharge on RSWs and RSW values.
- The amendments provide appropriate protection to RSWs and RSW values.
- Damaging exotic plants is unlikely to adversely affect RSWs and RSW values, and in some cases will enhance them.
- Rules on discharges will be addressed through a forthcoming plan change on rural diffuse water quality.

2.7 Structures in Regionally Significant Wetlands

Rules 13.2.1.1 – 13.2.3.1

Plan Change 2 reference: R096-107 (pages 58-62) R155 (page 57-71), R162 (Generic permitted activity conditions for wetlands protection)

Summary of Decisions Requested: R096-107 (pages 92-95) R155, 162 (pages 103-113)

2.7.1 Overview

Chapter 13 sets out the rules relating to activities on the beds of lakes and rivers. Sections 13.1 – 13.4 of Chapter 13 of the Plan contain rules that control the use, construction, alteration, and removal of structures on the beds of lakes and rivers. Plan Change 2 proposes to extend the scope of the rules controlling such activities to include RSWs.

Five submitters supported for changes to particular rules in Chapter 13, while a sixth submitter supports all the proposed changes to the Chapter 13 rules.

Six submitters request changes to the rules relating to structures on the following topics:

- Jurisdictional overlap between Regional and District Plans
- Effects base of regional rules
- Structures in any wetland
- Bridges, boardwalks, culverts
- Fences, pipes, lines and cables
- Maimai, whitebait stands or eel traps
- Maintenance of structures
- Other wording issues

2.7.2 Discussion

Jurisdictional overlap between regional and district plans

The proposed plan change extends the scope of some of the rules about structures to RSWs, including to areas defined as “land” within the wetland. Therefore some wetlands may also be governed by land use controls in a District Plan as well as in the Water Plan.

Regional rules may have a stronger effect than district rules on land use. For example, Section 10 of the RMA provides for certain existing uses to continue even though they may contravene a district rule. In contrast, where an existing activity contravenes a regional rule, consent must be applied for within 6 months of the rule becoming operative (Section 20A of the RMA).

Generally, ORC tries to avoid issues arising from jurisdictional overlap by making the least possible use of land use controls in the Plan. However, there are still some circumstances where it is important to protect RSWs and RSW values through the Plan.

Note that the Regional Policy Statement sets out responsibilities within the region, especially where local and regional government functions overlap, as is the case with wetlands.

Effects base of regional rules

Plan Change 2 does not propose explicit design criteria, such as setback distances that regulate the erection or placement of structures in areas adjacent to a RSW. Rather, the proposed new rules in Chapter 12 set a performance standard for structures or land-uses located near a RSW by requiring these structures, or the activities associated with them, to avoid any change to the wetland’s water level, hydrological function or any damage to the wetland’s flora or fauna.

This effect-based approach is less prescriptive than a purely activity-based or design-based approach and provides people with the flexibility to identify and implement effective measures to avoid any adverse impact on RSW values arising from land-uses or structures located in close proximity of a RSW.

Structures in any wetland

The erection and placement of a structure within any wetland, regardless of its significance, can have an adverse effect on this environment and the values it supports. Similarly, digging of wetlands for pipe, line and cable placements can cause damage to the wetland.

In order for the Plan to regulate any activity the area upon which rules controlling activities such as the establishment or construction of structures apply must be mapped or otherwise be unambiguously identified, for clarity and certainty. However, it is beyond the scope of the plan change to extend the provisions for structure provisions to any wetland.

Bridges, boardwalks, culverts

The proposed plan change provides for the erection or placement of bridges, boardwalks and culverts in RSWs as a permitted activity where the upstream catchment is small (Rule 13.2.1.7). Otherwise this activity is a restricted discretionary activity under Rule 13.2.2.1.

Structures such as bridges and boardwalks are usually constructed over a wetland and often have a modest physical footprint and limited impact on water flows in wetlands. In some cases, culverts may cause water flows to slow down, thereby reducing the risks associated with the drainage of wetlands. For these reasons, bridges, boardwalks and culverts are generally considered to have a minimal impact on RSWs or on the values they support.

Where the effects of the placement of these structures within a RSW on local ecology and wetland values could be more significant, other rules within the operative Plan allow Council to assess the impacts through the consenting process. For example, where culverts effectively result in the damming or diversion of water, the provisions of Section 12.3 apply. In other cases, these structures facilitate other activities and land-uses for which Council requires a resource consent if it occurs within a RSW. For example, where a bridge is part of road or railway and is within a RSW, the construction of this road or railway requires consent under Section 13.5, which relates to the alteration of RSWs.

Fences, pipes, lines and cables

Proposed Rules 13.2.1.1 and 13.2.1.2 allow for the placement of all types of pipes, lines or cables over, on or under a RSW provided specific permitted activity conditions are met. However, where pipes have an effect on the ecology of a wetland or on any of the RSW values, either through the drainage of the wetland or through discharges into the wetland, the Chapter 12 provisions must be considered. These provisions are adequate to ensure that pipes placed on, over or under a RSW will not result in any effect on the wetland or RSW values.

For example, construction of a tile drain within a RSW triggers the need for resource consent for a water take or diversion, even though the construction activity itself is a permitted activity subject to conditions under the proposed plan change.

Proposed provision 13.2.1.1(d) does not permit any cable, structure, cable, line or fence attached to an existing lawfully established structure over the bed of a lake, river and RSW to extend below the underside of this existing structure. The intent of this provision is to not restrict the flow path of water when in flood. Amendment to allow pipes, lines or cables to extend below the underside of a

structure, as long as this structure is not within two metres of the 1% probability flood limit, does not necessarily prevent cables, pipes, lines or fences from being placed within the flow path of a water body and could create a hazard to public health and safety.

It is not appropriate to amend proposed permitted activity condition 13.2.1.1(f) to state that fences, pipes, lines or cables should not interfere with established navigation routes, as this could allow for structures to be placed in locations where they do pose an obstacle to the safe and efficient navigation on water bodies. Navigation routes on water bodies may change with fluctuating water level and flow conditions, or with moving river channels.

Maimai, whitebait stands or eel traps

Proposed rules 13.2.1.5 and 13.2.1.6 permit the erection of maimais, whitebait stand or eel traps. There are conditions listed which include restrictions on the size of these structures, and their proximity to other structures. These conditions do not cover the “dry portion” of the wetland and the rules proposed unconditionally permit these structures to be erected in the “dry portion” of a RSW.

Although the risk of adverse effect on RSWs and RSW values is considered low from placement of such structures, it is less confusing and makes Plan administration easier to treat the wet and dry parts of the RSW in the same way.

Given the limited scale of maimai and the fact that these structures are unlikely to have an adverse effect on a RSW or on any RSW value, there is no need to require these structures to be temporary or to be removed.

Maintenance of structures

The intent of permitted activity conditions 13.2.1.1(h) and 13.2.1.2(c) is to prevent poorly maintained fences, pipes, lines or cables causing damage to people or their properties, as well as to prevent decaying or faulty fences, pipes, lines or cables from having an adverse effect on the RSW or any RSW values.

Amending permitted activity conditions 13.2.1.1(h) and 13.2.1.2(c) to state that a pipe, line or cable only needs to be maintained in good repair such that it does not present a hazard to persons or their property is insufficient to protect RSWs or RSW values from environmental hazards caused by badly maintained structures (e.g. leaking pipes).

Other wording issues

Amending Rule 13.3.1.2 (a) to state that can be replaced or reconstructed in approximately the same location as the original structure is considered inappropriate as the term “approximately” provides little certainty to plan users as to where structures can be relocated to or in what location they can be reconstructed without triggering the need for resource consent.

Further, any change to the location of a structure in a RSW, even a small one, has the potential to have an adverse effect on that wetland or any of the RSW values it supports.

2.7.3 Recommendations

- a) Adopt Rules 13.2.1.1, 13.2.1.2, 13.2.1.4, 13.2.1.7, 13.2.1.8, and 13.2.3.1 as proposed.
- b) Adopt Rule 13.2.2.1 as proposed in section 5.2.3.
- c) Amend Rule 13.2.1.5 as follows:

- 13.2.1.5 The erection or placement of any maimai that is fixed in, on or under the bed of any lake or river, or any Regionally Significant Wetland is a **permitted** activity, providing that ~~for the bed of any lake or river:~~
- (a) The structure does not exceed 10 square metres in area; and
 - (b) The structure is open piled; and
 - (c) The structure is at least 90 metres from any adjacent maimai; and
 - (d) The site is left tidy following the erection or placement.

d) Amend Rule 13.2.1.6 as follows:

- 13.2.1.6 The erection or placement of any whitebait stand or eel trap that is fixed in, on or under the bed of any lake or river, or any Regionally Significant Wetland is a **permitted** activity, providing that ~~for the bed of any lake or river:~~
- (a) The structure is open piled; and
 - (b) The structure does not exceed three square metres in area; and
 - (c) The dimension of the structure perpendicular to the flow of water is no more than 10 percent of the width of the bed of the lake or river, or no more than three metres, whichever is the lesser; and
 - (d) The structure is at least 20 metres from any neighbouring structure, flood gate, confluence or culvert located within the bed of a lake or river; and
 - (e) In the case of a whitebait stand, the structure is erected or placed in or on the bed of the Clutha River/Mata-Au, or its branches; and
 - (f) The site is left tidy following the erection or placement.

Reasons

- Regional and district rules protect wetlands in different ways.
- There are a limited number of regional rules controlling land use, which reduces possible duplication between the Plan and any District Plan.
- The plan change does not address the erection and placement of structures in non-regionally significant wetlands.
- The proposed provisions are intended to avoid any adverse impact on RSW values arising from these activities or structures.
- Structures, such as bridges, boardwalks, culverts and pipes, tend to have minimal impact on RSWs or RSW values. Where an effect is likely, other rules within Chapter 12 and 13 allow ORC to consider these impacts.
- Permitted activity conditions ensure that structures don't have an effect on the RSW or RSW values, obstruct the movement of people, or threaten human safety, property or the environment.
- Provisions for maimai, whitebait stands and eel traps are simplified to cover both wet and dry parts of the RSW.

2.8 Alteration of Regionally Significant Wetlands

Rules 13.5.1.1 – 13.5.3.2

Plan Change 2 reference: R116-118, 120 (page 66-68), R155 (pages 57-71), R162(Generic permitted activity condition for wetlands protection)

Summary of Decisions Requested: R116-118, 120 (pages 97-99), R155 (pages 103-108), R162 (pages 111-113)

2.8.1 Overview

Chapter 13 contains rules that regulate the disturbance and reclamation of the bed of any lake and river and the deposition of substances in, on or under the bed of any lake and river. Plan Change 2 proposes to extend these controls over RSWs.

Three submitters support all the changes to these rules. Three other submitters support specific changes to the rules in section 13.5.

Seven submitters comment on specific rules relating to the disturbance and reclamation of RSWs and the deposition of substances in, on or under any RSW, with six of these requesting amendments on the following topics:

- Clarification of terminology
- Livestock disturbance
- Earthworks disturbance and sediment control

Note that Plan rules relating to alteration of the bed of a lake or river are currently being reviewed and a forthcoming plan change will focus on rural diffuse water quality.

2.8.2 Discussion

Clarification of terminology

The terms “conspicuous” and “damage” are used in the RMA, and the word “conspicuous” is also used in the Plan. Sections 70 and 107 of the RMA state that there shall be no “conspicuous changes in colour or visual clarity” following the discharge of contaminants, but no definition of either term.

Substances which alter water quality may also affect RSWs or the values they support. Ministry for the Environment guidelines provide help interpreting the term “conspicuous”.¹

Section 13 of the RMA states that activities in the beds of lakes and rivers should not damage, destroy or disturb the habitats of plants (indigenous and exotic) and animals. Although the RMA does not define “damage”, this term is commonly defined as a “physical injury impairing value or usefulness”.²

Accordingly, the conditions in Rule 13.5.1.8 (b), (c) and (d) are robust enough and set thresholds in the Plan that are consistent with those in the RMA.

Livestock disturbance

NIWA undertook a review of literature on the effects of livestock grazing in wetlands. Their review suggests that livestock grazing can offer conservation value in a wetland environment, but that overgrazing can have a profound impact on wetland ecology and the values supported by a

¹ Ministry for the Environment (1994) *Water Quality Guidelines No. 2: Guidelines for the Management of Water Colour and Clarity*. Wellington, Ministry for the Environment.

² The New Shorter Oxford English Dictionary, Fourth Edition, Oxford University Press, 1993.

wetland.³ Cattle grazing can prevent succession to woody vegetation and assist with keeping invasive weed species under control. Sheep grazing can assist with maintaining a short turf that provides for native vegetation species diversity.

Accordingly, Rule 13.5.1.8 provides for livestock access to RSWs, providing they do not have adverse impact on RSW values (also see section 2.3.2).

Earthworks disturbance and sediment control

Alteration of a RSW by earthworks or other activities associated with the construction, removal or alteration of structures, the clearance of debris and alluvium, and reinstatement and maintenance of water intakes can have an adverse impact on local ecology and wetland values. These activities often result in the mobilisation and release of sediments, which can have adverse effects on soil structure and water quality of a wetland.

Permitted activity Rule 13.5.1.1(f) protects the values supported by riverine or lacustrine environments by requiring all reasonable steps be taken to avoid or minimise sediment release when undertaking these activities. There is no need to amend condition (f) to make reference to RSWs as Plan Change 2 proposes to add condition (i) which effectively protects all the RSW values that could be adversely impacted by sediment mobilisation or release.

The practice of humping and hollowing of wetlands can also have a detrimental impact on wetland values.⁴ These artificially raised earth bunds can allow some plant species to establish more easily. However, plant species that are not adapted to survival in wet soils are less likely to suit a wetland environment. Other effects on RSW values from humping and hollowing include:

- Increased risk of erosion and sediment transport.
- Changes to the wetlands hydrological values (e.g. changes to the water table and flow regime, reduced water storage capability and accelerated drainage capacity causing significant downstream effects)
- Changes to habitat values, causing a reduction in biodiversity.

Similarly, disturbances associated with creating ponds for wildlife may have, even with the best intentions, inadvertent consequences in terms of changing wetland hydrological patterns, including potential local draining. Accordingly, the consent process helps ensure such works do not have collateral adverse effect.

2.8.3 Recommendations

a) Amend Rules 13.5.1.1, 13.5.1.3 and 13.5.1.8 as proposed in section 2.3.3.

Reasons

- Section 13.5 uses terminology that is commonly used in the Plan or the RMA. This ensures consistency between different statutory documents and will provide greater clarity for plan users.

³ Niwa (2004) *Effects of Livestock Grazing on Wetlands – Literature Review*.

⁴ Opus International Consultants (2004) *Review of Humping and Hollowing on the West Coast*. Report prepared for the West Coast Regional Council.

- Rule 13.5.1.8 provides for the protection of RSW, as well as for livestock grazing, provided this will not affect any RSW value.
- Proposed condition (i) of Rule 13.5.1.1 effectively protects the RSW values against the threat of sediment mobilisation and transport, any other adverse effects arising from activities such as construction, clearance of debris and maintenance of water intakes.
- Pond creation and humping and hollowing modify RSWs and can have adverse effect on RSW values.

2.9 Introduction and removal of vegetation in Regionally Significant Wetlands

Rules 13.6.1.1 – 13.7.3.1

Plan Change 2 reference: R121 -126 (pages 69-71) R155 (pages 57-71), R156 (pages 15-55), R161 (Protection general), R162 (Generic permitted activity condition for wetlands protection)

Summary of Decisions Requested: R121-126 (pages 99- 103), R155 (pages 103-108), R156 (pages 87-91), R161, 162 (pages 110-113)

2.9.1 Overview

Sections 13.6 and 13.7 contain rules that control the introduction, planting and removal of vegetation on lake or river beds. Plan Change 2 proposes to extend controls over these activities to include RSWs.

Three submitters support these general changes. Five other submitters express support for specific changes.

Six submitters request various amendments to these rules with regard to the following matters:

- Prohibiting the introduction of pest plants
- Removal of exotic and indigenous plant material
- Removal of vegetation to protect infrastructure
- Use of best practice for plant removal
- New rule for haymaking adjacent to Upper Taieri Scroll Plain and Ida Valley Kettle Holes
- Planting of river margins
- Introduction and removal of plant species in all wetlands
- Eco-sourcing

2.9.2 Discussion

Prohibiting the introduction of pest plants

Proposed Rule 13.6.1.1 lists those plant species prohibited to be introduced or planted in a RSW. It does not list every pest plant in Otago. However, under the proposed plan change, the introduction of any other non-native plant not listed under Rule 13.6.1.1 is a discretionary activity. This activity status provides RSWs with a sufficient level of protection against the introduction or planting of invasive plant species.

Removal of exotic and indigenous plant material

Plan Change 2 proposes the removal of indigenous plant material from a RSW as a discretionary activity, to discourage the removal of native plants. There is no need for this to be a non-complying activity as the discretionary activity status provides sufficient protection for native vegetation. In some circumstances weed control within RSWs may damage smaller stands of indigenous

vegetation, and making the removal of indigenous plant species a non-complying activity could further constrain management efforts.

Removal of exotic plant material from a RSW is proposed as a permitted activity under Rule 13.7.1.1, subject to conditions. These conditions are not onerous; they minimise the adverse effects associated with the removal of plant material on RSWs and RSW values. Accordingly, removal of invasive plant species, such as crack willow or alder, is permitted. The permitted activity conditions address likely effects, so there is no reason to create an additional hurdle to plant pest removal from RSWs by requiring consent, even as a controlled activity.

Lagarosiphon removal from RSWs is an exception. The plan change proposes such work to be a controlled activity under Rule 13.7.2.1, with control over the methods used to minimise the risk of wetland disturbance and further distribution of this invasive plant.

There would be little or no benefit in adding other exotic pest plants to the list of pest plant species in Rule 13.7.2.1, as this would not change the permission granted under 13.7.1.2 (as Rule 13.7.2.1 is subject to Rules 13.7.1.1 and 13.7.1.2).

New rule for haymaking adjacent to Upper Taieri Scroll Plain and Ida Valley Kettle Holes

RSWs are typically too wet or flood-prone to be suitable for growing hay. Notwithstanding, the proposed rules do not prohibit plant harvesting operations from RSWs. The permitted activity conditions of proposed Rule 13.7.1.2 enable removal of exotic plant material (which includes haymaking) provided it is carried out with minimal impact on the RSW and RSW values. However, the introduction or replanting of exotic plant species within a RSW (which includes most grass species for hay) requires consent under Rule 13.6.3.1 as a discretionary activity.

In accordance with Section 9 of the RMA, land-based uses (such as haymaking on the 'dry' part of a wetland) are allowed as of right unless there is a regional rule or rule in a District Plan contravening the use. The regional rules in Chapter 14 of the Plan address activities taking place outside the bed of a lake, river or RSW: the only relevant rules apply to drilling, and the construction of bores and defences against water.

Introduction of a new permitted activity rule to enable haymaking within an expanded Upper Taieri Scroll Plain and the Ida Valley Kettle Holes moves beyond the scope of the proposed plan change.

Removal of vegetation to protect infrastructure

Proposed rules under sections 13.6 and 13.8 of Plan Change 2 do not need to explicitly address the trimming and removal of vegetation in RSWs for the purpose of protecting the use and structural integrity of infrastructure such as roads, electricity pylons and power lines. They are unlikely to cause problems as these structures are often located on permanently dry areas of a wetland or wetland management area that are less suited as a habitat for native wetland vegetation. Exotic plants (except Lagarosiphon) can be removed or trimmed under the permitted activity rules provided the conditions are met.

Few issues are expected to arise from the trimming of vegetation underneath pylons or power lines as wetland vegetation is typically low growing and does not usually pose a threat to the continued and safe use of pylons or power lines.

Use of best practice methods for plant removal

The purpose of Rule 13.7.1.2 conditions (b) and (c) is to avoid mobilising sediment or altering the RSW in the course of removal or clearance of plant material. A minor word change to (b) could clarify the provision.

Rule 13.7.1.2 (b) could be amended to state “*All reasonable steps are taken to minimise the effects on any Regionally Significant Wetland Value*”. This amendment would widen the focus of the condition from sediment control only to take into consideration the effects on any RSW value listed under Policy 10.4.1. The amendment will encourage the utilisation of methods for the removal or clearance of vegetation that minimise the effects on any of these values, without the need to include the requirement to use best practice methods.

Similarly Rule 13.6.2.0 (a) and Rule 13.7.2.1 (aa) could be amended to state that “*All reasonable steps are taken to minimise the effects on any Regionally Significant Wetland Value*”, further improving the consistency between the plan provisions.

Planting of river margins

ORC supports the principle of providing guidance on selection of plant species suitable to a river margin environment, consistent with Policy 10.4.6. However, the proposed plan change relates to the management of RSWs rather than to river margins. Adding a new Schedule to the Plan listing plant species suitable for planting in river margins would be beyond the scope of Plan Change 2 and would increase the complexity of the Plan. Further, the Plan is being streamlined and simplified (see section 5.1) and such material is no longer being included in the Plan.

Note that ORC has published a booklet that provides information on the planting of wetlands and riparian margins and also includes a list of plant species recommended for different environments.⁵

Introduction and removal of plant species in all wetlands

The introduction or careless removal of pest plants can have an adverse effect on any wetland environment and its values. However, extending the proposed rules on planting and plant removal to all wetlands goes beyond the scope of this plan change. Note that Objective 10.3.1 and Policy 10.4.6 promote the management, maintenance and enhancement of all wetlands and their values.

Eco-sourcing

ORC supports the principle of eco-sourcing plants and considers that none of the Plan Change 2 provisions restrict the eco-sourcing of plants. However, there may be situations where there are practical constraints to the local sourcing of seeds or seedlings from native plants species (e.g. restoration of degraded wetlands). It is more appropriate to promote the principle of eco-sourcing through education and information provision (Policy 10.4.6), rather than by being too restrictive through the use of rules.

2.9.3 Recommendations

- a) Adopt Rules 13.6.1.1, 13.6.3.1, and 13.7.3.1 as proposed.
- b) Amend Rule 13.6.2.0 as follows:

⁵ Otago Regional Council (2005) *Environmental Considerations for Clean Streams – A guide to managing waterways in Otago*.

- 13.6.2.0 The introduction or planting of any New Zealand native plant to any Regionally Significant Wetland, is a **permitted** activity providing:
- (a) All reasonable steps are taken to minimise the ~~release of sediment to the wetland during the introduction or planting; and there is no conspicuous change in the colour or visual clarity of the water body effects on any Regionally Significant Wetland or on any regionally significant wetland value;~~ and
 - (b) The introduction or planting does not cause any flooding or erosion; and
 - (c) The wetland alteration is limited to that which is necessary for the introduction or planting of the plant material.

c) Amend Rule 13.7.1.2 as follows:

- 13.7.1.2 The removal or clearance of plant material exotic to New Zealand from any Regionally Significant Wetland, is a **permitted** activity providing:
- (a) The plant is not Lagarosiphon (*Lagarosiphon major*) in Lake Wanaka or Lake Dunstan; and
 - (b) All reasonable steps are taken to minimise the ~~release of sediment to the wetland during the removal or clearance effects on any Regionally Significant Wetland or on any regionally significant wetland value;~~ and
 - (c) The wetland alteration is limited to that which is necessary for the removal or clearance of the plant material.

d) Amend Rule 13.7.2.1 as follows:

- 13.7.2.1 Except as provided for by Rules 13.7.1.1 and 13.7.1.2, physical removal of material of any of the following plants:
- (i) Lagarosiphon *Lagarosiphon major*; or
 - (ii) Eel Grass *Vallisneria spiralis*; or
 - (iii) Egeria *Egeria densa*; or
 - (iv) Hornwort *Ceratophyllum demersum*; or
 - (v) Hydrilla *Hydrilla verticillata*; or
 - (vi) Sagittaria *Sagittaria graminea ssp platyphylla*; or
 - (vii) Spartina *Spartina anglica*; or
 - (viii) Salvinia *Salvinia molesta*; or
 - (ix) Water Hyacinth *Eichhornia crassipes*; or
 - (x) Water Lettuce *Pistia stratiotes*,
- from the bed of any lake or river, or from any Regionally Significant Wetland, is a **controlled** activity.

In granting any resource consent for the removal of material of the above identified plants in terms of this rule, the Otago Regional Council will restrict the exercise of its control to the following:

- (a) The method of removal; and
- (aa) ~~Any disturbance of~~ The effects on any Regionally Significant Wetland or on any

regionally significant wetland value; and

- (b) The duration of the resource consent; and
- (c) The information and monitoring requirements; and
- (d) Any bond; and
- (e) The review of conditions of the resource consent.

Reasons

- Regulating the introduction and removal of plant species in non-regionally significant wetlands moves beyond the scope of the proposed plan change.
- It is more appropriate to promote eco-sourcing of plants for wetland re-vegetation than set a rule.
- The Plan is being streamlined and simplified, and information such as lists of plant species suitable for planting along river margins are better suited to separate educational brochures.
- The discretionary activity status for the removal of indigenous plants provides sufficient protection for native vegetation.
- The proposed rules provide for the removal and harvesting of plants (except Lagarosiphon) from RSWs as a permitted activity provided conditions are met. Any new rule for hay making moves beyond the scope of the proposed plan change.
- There is no need for specific provisions that address the trimming of vegetation around lawfully established structures in a RSW and underneath pylon and power lines located over a RSW.
- The addition of more pest plants to lists in Rules 13.6.1.1 and 13.7.2.1 would not improve protection for RSW values and could hamper conservation and weed management efforts.
- Amending permitted activity Rules 13.7.1.2 (b), 13.6.2.0 (a) and 13.7.2.1 (aa) will encourage the utilisation of methods for the removal or clearance of vegetation that minimise the effects on any values and will further improve the consistency between the proposed plan provisions.

2.10 Further wetland protection

Relates to all provisions

Plan Change 2 reference: R026, 27, 28 (pages 17-18), R037, 48, 49, 50, 53, 66, 72, 73, 74, 75, 80, 81, 82, 84, 85, 86, 87, 88, 89, 90, 91, 92, 101, 103, 108, 111, 114, 118, 119, 123 (pages 24- 69), R155 (pages 57-71)

Summary of Decisions Requested: pages 67-110

2.10.1 Overview

One submitter requests further policies and rules to protect RSWs and other wetlands. Changes requested on the following matters:

- Ecological criteria
- Addition of further wetlands to Schedule 9
- Protection of unscheduled significant wetlands
- Protection of wetlands of lesser significance

2.10.2 Discussion

Ecological criteria

Request is made for a new policy for assessing wetlands that are not in Schedule 9 but may have significant values. The ecological criteria proposed differ from the RSW values (see section 1.1) and the request moves beyond the scope of the proposed plan change.

Addition of further wetlands to Schedule 9

Request is made for a policy setting out how wetlands will be added to Schedule 9.

The plan change process must be used to add any new wetland that supports at least one RSW value to Schedule 9. There is no need to include such a process policy in the Plan.

Protection of unscheduled significant wetlands

Until such time as a plan change is undertaken to add any new RSW to the Plan, information about the wetlands and its RSW values may be included in the Inventory and can be considered for any relevant resource consent application as the generic control/discretion "any effect on ... any regionally significant wetland value..." applies (see section 2.3).

Protection of wetlands of lesser significance

The Section 32 Report for the proposed plan change recognises the need for a further plan change relating to cumulative effects.

Otherwise, sufficient protection is available for wetlands given provisions in the RMA, the Regional Policy Statement (especially Statement Policy 6.5.7 regarding management of the natural character of water body margins) and Plan Policy 5.4.2, a key policy that underpins the planning framework for water bodies that are not necessarily significant wetlands.

2.10.3 Recommendations

a) Make no amendment to the proposed plan change relating to these requests.

Reasons

- The proposed policy relating to other wetlands of significance is beyond the scope of the plan change.
- There is no need for a process policy on adding further wetlands to Schedule 9.
- The proposed plan change strengthens provisions for RSW values.
- A future plan change will address cumulative effects relating to wetlands. Otherwise, the Regional Policy Statement and Plan provide sufficient protection for non-regionally significant wetlands.
- The Inventory can hold any relevant information about wetlands, and may include wetlands that are not identified in Schedule 9.

2.11 Established activities and human uses

Applies to all provisions

Plan Change 2 reference: R007, R139 (page 9), R144 (General opposition), R153 (pages 5-14), R155 (page 57-71), R156 (pages 15-55), R161 (Protection General), R199 (Water Plan Maps F1-F68)

Summary of Decisions Requested: R007, 139 (pages 50-53), R144 (pages 143-144), R153 (pages 61-65), R155 (pages 103-108), R156 (pages 87-91), R161 (110-111), R199 (pages 119-120)

2.11.1 Overview

A theme running through submissions on the RSW protections proposed concerns established activities and various human uses.

The Plan recognises lawfully established uses through Policy 5.4.3. Plan Change 2 proposes to clarify provisions on the maintenance or enhancement of wetland values.

Fourteen submitters want increased recognition of particular human activities, either opposing the plan change, or requesting change in the objective, policies and rules. Submitters request decisions on the following topics:

- Nga Runanga's association with ancestral lands and waters
- Existing activities and established infrastructure
- Consider positive effects of existing activities; Land transport, RMA Sections 9/13
- Provide for land management, human activities and uses, and their change
- Financial implications
- Specific activities: Ski-fields, Waipori Hydro Scheme
- Wetlands existing in ski-fields
- Snowmaking on ski-fields
- National Policy Statement for Renewable Energy Generation.

2.11.2 Discussion

Nga Runanga's association with ancestral lands and waters.

A number of provisions in both the Plan and the proposed plan change specifically recognise and protect Kai Tahu's interests in Otago's wetlands.

Objective 10.3.1 takes an inclusive approach by requiring that Otago's wetlands and all the values associated with them will be maintained or enhanced, and the proposed plan change adds further value to operative Policy 5.4.2. In particular:

- Amendment to value A6 in Policy 10.4.1 (recommended under section 1.1) provides better recognition of wetlands highly valued by Kai Tahu in terms of beliefs, values and uses, including waahi taoka and mahika kai as RSW values.
- Amendment to Policy 10.4.2 (recommended under sections 1.2 and 2.2) and the proposed rules ensures that value A6 is considered for most resource consent for activities relating to water or the beds of lakes or rivers.
- The proposed plan change no longer restricts the list of wetlands highly valued by Kai Tahu to those identified specifically for that value in Schedule 9.
- The Inventory may be updated at any time with new information on value A6. There is no need to undertake a plan change to incorporate such information.

Existing activities and established infrastructure

As discussed in section 0 of this report, the proposed plan change continues to provide for the use of lawfully established structures and their repair, maintenance, extension, alteration, replacement or reconstruction as conditional permitted activities, provided there is no change to the scale, nature or function of the structure. Network infrastructure providers may continue to use their utility networks and undertake routine maintenance.

Where new activities or changes to established uses and structures are likely to have an effect on RSWs or RSW values, the Plan provides for a consent option. The consent decision maker can consider benefits and positive effects of the proposed activity, including the benefits to be derived from the use and development of renewable energy (Section 7(i) of the RMA).

Various provisions for the taking, diverting or damming of water are discussed in section 2.4. For any consented dam, such as the Lower Manorburn Dam, the new consent may address effects on RSWs or RSW values. Some existing takes of water from RSWs, previously permitted under the Plan, may now require consent.

Consider positive effects of existing activities; land transport

Existing activities and established infrastructure are discussed above in this section and in section 0. The focus of the proposed plan change is on control of the effects of new or changed land use activities on RSWs and RSW values. There is no need to exclude significant structures like road or railway formations from maps, and their existence would normally be noted in the Inventory. In most cases, however, the map will not include areas that are not wetland. Structures themselves are unlikely to have RSW values.

Policy 5.4.3 addresses the sustainability of existing activities and uses involving surface water, groundwater or the bed or margin of any lake or river. It recognises lawfully established activities and provides an expectation that they may not be adversely affected by new activities.

New activities, or a change to the scale or nature of an existing activity, should be assessed for their effect on RSWs and RSW values. Where consent is applied for an existing activity, the value of existing investment is considered. Under RMA Sections 9 and 13(2), any use can be carried out as of right if it does not contravene any rule.

Provide for land management, human activities and uses, and their change

The Plan provides for control of the effects of human activities and uses to the extent necessary to sustain the natural and human use values of water bodies. It does not prevent activities (whether existing or new) that have no more than minor adverse effects on RSW values. Where there is risk of adverse effect, the proposed plan change requires evaluation on a case-by-case basis and with regard to the merits of the proposal.

The proposed changes are justified because of the importance of RSWs and RSW values for the long-term wellbeing of Otago's community and the sustainability of the region's natural resources.

Financial implications

Implementation of the proposed plan change may generate increased costs for some people, including consenting or opportunity costs. However, these costs are considered acceptable in light of the importance of RSWs and RSW values for the long term wellbeing of Otago's community and the sustainability of the region's natural resources.

Specific activity zones: Ski-fields, Waipori Hydro Scheme

The Plan does not provide for Ski Area Sub Zones or other specific commercial activity zones. The focus of the Plan is on management of the water resource, rather than land use management in the way of a District Plan, where land use zoning is a key control mechanism. Plan provisions are generally effects-based, and apply across the whole of Otago. Permitted activity conditions are based on having no more than minor adverse effect, not on the nature or status of the land use.

Wetlands existing in ski-fields

No reason has been provided as to why any RSW in Ski Area Sub Zones should be exempt from the general proposed plan change provisions.

An assessment of any new ski-field (or change in scale of an existing ski-field) should address matters such as preservation of the natural character of an area from inappropriate development, as required under Section 6(a) of the RMA. It is also important to assess the effects on the RSWs and RSW values, as for any other activity in Otago that affects an RSW.

Snowmaking on ski-fields

The discharge of water for snowmaking is already permitted, unless that water contains a hazardous substance, or does not meet the existing Plan's permitted activity for water discharge in the 12.11.2 rules.

If permitted activity conditions are not met, then resource consent is required as a full discretionary activity. The consenting process enables positive effects to be considered. Full discretion is appropriate as it is difficult to foresee all likely effects of such a discharge.

Giving effect to the National Policy Statement for Renewable Energy Generation

While the focus of the proposed plan change is on protecting RSWs, regard has been given to the National Policy Statement for Renewable Energy Generation and other National Environmental Standards as they relate to RSWs. Provision is made for the continued use and maintenance of

structures, and the rules generally only restrict activities that affect RSWs or RSW values. These are the region's significant wetlands and priority should be given to avoiding adverse effect on them alongside all Part 2 RMA matters.

2.11.3 Recommendations

a) Make no amendment to the proposed plan change relating to these requests.

Reasons

- Kai Tahu's association with ancestral waters and wetlands is better addressed by amending Value A6 in Policy 10.4.1.
- It is intended that established activities and human uses that have no more than minor adverse effects on RSW values will not be constrained, because the wetland and any past effects will be in equilibrium.
- Any new or changed activity will need consideration to ensure no adverse effects occur to RSW values.
- More stringent restrictions and associated costs are acceptable given the importance of sustaining Otago's remaining RSW values.
- The Plan is activity-neutral and generally does not zone land for specific activities such as ski-fields.
- Effects on RSWs and RSW values need to be considered for any activity, including ski-fields and snowmaking.
- The Inventory can identify structures in a wetland.
- The proposed plan change gives effect to relevant National Policy Statements and National Environmental Standards.

2.12 Financial contributions

Policies 10.4.2A, 10.4.4, Introduction to Chapter 17, Provision 17.2.8

Plan Change 2 reference: R010 (page 10), 165 (all rule relating to financial contributions)

Summary of Decisions Requested: pages 113-116

2.12.1 Overview

The operative Plan provides for financial contributions in relation to wetlands in Chapter 10 (Wetlands) and Chapter 17 (Financial Contributions). Plan Change 2 proposes to delete Policy 10.4.4 and Provision 17.2.8, add new Policy 10.4.2A and amend the introduction to Chapter 17.

Three submitters support the financial contribution provisions, while one requests deletion of Policy 10.4.2A and all associated provisions.

Five submitters request decisions regarding these provisions and make generally useful suggestions, on the following topics:

- Not offsetting effects that are no more than minor
- Effects that are not directly unavoidable, and for necessary activities
- Iwi involvement in decisions
- Restoration or rehabilitation

- Guidelines for requiring financial contributions
- Deletion of financial contributions

2.12.2 Discussion

Not offsetting effects that are no more than minor

Plan Change 2 does not alter the approach of the operative Plan, which is to enable ORC to use financial contributions in limited circumstances. It does not constrain the consent decision maker by identifying the “minor” effects threshold. For example, works or services may be required through resource consent conditions, instead of a financial contribution.

Effects that are not directly unavoidable, and for necessary activities

While the proposed plan change focuses on avoiding damage to RSWs and RSW values, there may be situations where there is no alternative but to carry out an activity that affects a RSW. However, where achievable, all adverse effects should be offset. Offsets may occur elsewhere, rather than the place where the values will be lost. However, there needs to be a reasonable relationship between where the adverse effect occurs and where it is offset.

Iwi involvement in decisions

Nga runanga have requested involvement in consent applications where financial contributions may be required. Financial contributions are unlikely to be used much; only one consent in the past 10 years has required any financial contribution. It is likely that such an application would be notified, and Nga runanga would have the opportunity to submit. Where the wetland is highly valued by Kai Tahu (see Policy 10.4.1, value A6 discussed under section 1.1), they will have significant input into the consent process.

Amending Policy 10.4.2A to include an agreement by Nga runanga and other stakeholders before a financial contribution can be applied is unnecessary, and ultra-vires as a decision on a consent can only be made by those delegated RMA decision-making powers.

Restoration or rehabilitation

Creation or reinstatement of wetlands will frequently involve restoration or rehabilitation, but it may occur at another location from the site of the unavoidably lost RSW values, as restoration or rehabilitation is not always physically possible. This achieves Objective 10.3.1 in that wetland services would be maintained for present and future generations.

There are no clear benefits in replacing the words “improve, create or reinstate”, with “restore or rehabilitate”. Should a financial contribution be required, it may be used to create new wetland, rather than restore or rehabilitate an existing one.

Guidelines for requiring financial contributions

As financial contributions have rarely been used by ORC, there is limited value in preparing more detailed guidelines. Policy 10.4.2A and section 17.1 of the Plan provide sufficient guidance for the consenting process. The nature and effects of the proposed activity are better considered on a case-by-case basis.

Deletion of financial contributions

Section 108(2)(a) of the RMA enables a consent authority to require a financial contribution to be made as part of consent approval, provided it is in accordance with the purposes specified in the

Plan. The Plan already contains such provisions, and there may be situations where avoidance, remedy or mitigation are simply not possible. Policy 10.4.2A enables financial contributions to create, reinstate or improve wetland values elsewhere in such circumstances.

It is difficult to predict with certainty the viability of any offsetting, which depends on how a financial contribution is applied, but that cannot be estimated until a particular resource consent application is received. In section 17.1, paragraphs 5, 6 and 9 give the necessary guidance.

It is unclear how the submitter views Policy 10.4.2A to be inconsistent with Part 2 of the RMA, or the National Policy Statement for Freshwater Management 2011. The policy is considered by the ORC to be consistent with these instruments. Further, the Regional Policy Statement for Otago endorses the use of financial contributions.

2.12.3 Recommendations

- a) Delete Policy 10.4.4 and Provision 17.2.8 as proposed.
- b) Adopt Policy 10.4.2A, and the Introduction to Chapter 17 as proposed.

Reasons

- ORC should retain the ability to use financial contributions in limited circumstances.
- Kai Tahu have the opportunity to become involved in consent applications where financial contributions may be made, through the existing consent process, in particular where value A6 is involved.
- In some situations new wetlands may be created.
- Policy 10.4.2A is consistent with Part 2 of the RMA, and the National Policy Statement for Freshwater Management 2011.

Chapter 3: Schedules and Maps

Chapter 3 addresses those decisions requested by submitters that relate to the list of RSWs in Schedule 9 and the maps, F1-F68. It also covers how further wetlands could be added to the Schedule.

3.1 Schedule 9: Schedule of identified Regionally Significant Wetlands

Schedule 9

Plan Change 2 reference: R007 (page 9), R139 (page 119), R200 (page 83-89)

Summary of Decisions Requested: R007, 139 (pages 50-53), R200 (pages 117-119)

3.1.1. Overview

Schedule 9 lists all of Otago's identified RSWs. These wetlands have one or more RSW values and are mapped in Maps F1- F68. Plan Change 2 proposes removal of two inaccurately mapped wetlands above 800m ASL, and adds 70 wetlands previously included in Schedule 10, and 24 newly identified wetlands with RSW values.

Five submitters made general comments on the changes to Schedule 9, and four submitters support the addition of new and current Schedule 10 wetlands into Schedule 9.

One submitter requests decisions on Schedule 9 regarding:

- Lack of robustness in the process of identifying and classifying RSWs; and
- Extent of Schedule 9.

3.1.2. Discussion

Lack of robustness in the process of identifying and classifying RSWs

The list of RSWs in Schedule 9 was generated from key informants, stakeholders and the wetlands listed in the operative Plan. Some newly identified wetlands were included based on information from organisations such as the Department of Conservation, and Boffa Miskell (2006).⁶ In 2008, Landcare Research was contracted to assess and map Schedule 9 and Schedule 10 wetlands, as well as 9 of the 24 newly identified wetlands, using aerial and satellite photography and emerging new assessment techniques (FENZ).⁷ This work was confirmed for about 2/3rds of these wetlands by helicopter.

The remaining newly identified wetlands, mainly to the west of Wanaka, were assessed by the ORC as containing value A9: Significant hydrological values including maintaining water quality or low flows, or reducing flood flows, and were mapped from aerial photography.

⁶ Fish and Game New Zealand (2010) Comments on the Consultative Draft Proposed Plan Change 2 (Regionally Significant Wetlands) to the Regional Plan: Water for Otago.

Department of Conservation (2010) Comments on the Consultative Draft Proposed Plan Change 2 (Regionally Significant Wetlands) to the Regional Plan: Water for Otago.

Boffa Miskell (2006) *North Bank Tunnel Concept. Water Consents. Wetland Assessment*. Prepared for Meridian Energy Limited.

⁷ Ausseil, A.G., Newsome, P., Johnson, P. (2008) *Wetland Mapping in the Otago Region*. Landcare Research Contract Report prepared for the Otago Regional Council.

Affected landowners were invited to meet with the ORC in March and April 2009. These meetings were attended by 85 people. The Consultation Draft of Plan Change 2 was released in June 2010, and four public meetings were held to discuss the proposal. A total of 99 people attended these meetings and comments were received from about 100 people and organisations.

In response to the matters raised through preliminary consultation and the public meetings, 113 field visits were carried out by ORC staff to check the mapped wetland areas, and WildLand Consultants Ltd were contracted to assess the values of four wetlands.

This is considered to be a sufficiently robust process for identification of RSWs and RSW values.

Extent of Schedule 9

Schedule 9 does not list all wetlands with RSW values. It only contains mapped RSWs and Wetland Management Areas with identified RSW values. It contains few wetlands above 800m ASL, though all of these have regional significance and are protected in the same way as identified RSWs. Generally, wetlands above 800 m ASL are relatively small, but cumulatively significant.

The formal plan change process allows new wetlands that contain at least one RSW value to be added to Schedule 9. There is no need to state this in the Plan.

It is appropriate to clarify what RSWs are listed in Schedule 9, as the proposed wording is not clear (see also section 1.2).

3.1.3. Recommendations

a) Amend the introduction to Schedule 9 as recommended in section 1.2.3.

Reasons

- Schedule 9 contains both RSWs and Wetland Management Areas.
- Changes improve the clarity of the Introduction to Schedule 9.

3.2 Specific Schedule 9 Wetlands

Schedule 9

Plan Change 2 reference: R200-399 (pages 84-89)

Summary of Decisions Requested: pages 117-134

3.2.1 Overview

Thirty submitters comment on the inclusion of specific wetlands in Schedule 9 and their mapped extents. Twenty three submitters request changes to individual wetlands regarding:

- Mapped RSW boundaries
- Removal of Kemp Road Lagoon from Schedule 9
- Removal of Lower Manorburn Dam Margins from Schedule 9
- Removal of Shotover River Confluence Swamp from Schedule 9
- Removal of Trig Q Ephemeral Pond from Schedule 9
- Removal of Te Hua Taki Wetland from Schedule 9
- Name change – Lower Coutts Gully Swamp
- Establish management zones for RSWs that hold important human use values
- Managing several wetlands as one complex

Seven submitters expressed support for the scheduling of specific wetlands and the changes made to their mapped extent.

3.2.2 Discussion

Mapped RSW boundaries

Various submissions were received with requests to review and/or amend the mapped extent or the boundaries of various wetlands.

As discussed in section 3.1, the boundaries were initially identified using aerial and satellite photography, information sourced from geo-databases, and helicopter site visits. Since the mid-2009 meetings with affected landowners, ORC staff have checked the boundaries of the following 11 wetlands which are subject to submission:

- Akatore Creek Swamp
- Cross Eden Creek Marsh Complex
- Diamond Lake Wetland
- Lake Reid Wetland
- Lake Tuakitoto Wetland
- Lower Coutts Gully Swamp
- Stirling Marsh Complex
- Tahakopa Marsh Complex
- Three Stones Fen Complex
- Upper Taieri Wetlands Complex
- Waipori/Waihola Wetland Complex.

An ecologist from Wildland Consultants also undertook a site visit to the Cross Eden Marsh Complex.⁸

In most cases the data gathered through these site visits is sufficient to determine the actual wetland boundaries, and no further site visit is required. However site visits are to be made by ORC staff to check the boundaries of the following wetlands which are subject to submission:

- Akatore Creek Swamp
- Pleasant River Estuary
- Waipori/Waihola Wetland Complex
- Chapman Road Inland Saline Wetland

Wildland Consultants have been contracted to assess the existence of any RSW value, and the extent of the following wetlands which are subject to submission:

- Lower Manorburn Dam Margins
- Trig Q Ephemeral Pond
- Te Hua Taki wetland
- Stirling Marsh Complex

⁸ Wildland Consultants (2011) *Ecological evaluation of wetlands in South Otago and Central Otago*. Report prepared for Otago Regional Council.

- Diamond Lake Wetland
- Lake Reid Wetland
- Shotover River Confluence Swamp

Some wetlands are receiving a second site visit, and these visits will be completed by the end of 2011. Relevant submitters will be provided with this information and have the opportunity to speak to the Hearing Committee in early 2012.

The submitter recommending boundary adjustment to Flat Top Hill Ephemeral Wetlands should provide further information as there is insufficient evidence to recommend boundary amendment.

Boundary adjustments were also requested for Big Boggy Swamp, Dingle Lagoon, Glenorchy Lagoon Wetland and Makarora Flat Swamp Complex. No site visits are required as the requested amendments reflect cadastral boundaries, rather than the boundaries of the actual wetland areas. RSWs have not been mapped to cadastral boundaries (see section 1.2).

Removal of Kemp Road Lagoon from Schedule 9

Kemp Road Lagoon is already in Schedule 9 of the Plan. It was identified in 1997 by Montgomery Watson as a wetland with regionally significant waterfowl and wader habitat.⁹ The Landcare Research report (2008) identified this wetland as a wetland with a high degree of naturalness (Type A4-value) and a wetland scarce in Otago in terms of its ecological or physical character (Type A5-value).

Given that different assessments have pointed at a variety of RSW values present, the removal of this wetland from Schedule 9 is considered inappropriate.

Removal of Trig Q Ephemeral Pond, Shotover River Confluence Swamp, Te Hua Taki Wetland and Lower Manor Burn Margins from Schedule 9

Trig Q Ephemeral Pond is already in Schedule 9 of the Plan. It was identified in 1997 by Montgomery Watson as a wetland that provides habitat for nationally or internationally rare or threatened species or communities (Type A1-value).

The Shotover River Confluence Swamp (formerly identified in Schedule 10) and Te Hua Taki Wetland (newly identified) are included in Schedule 9 based on ecological reports prepared by Natural Solutions for Nature Ltd for Ladies Mile Partnership Ltd (2010)¹⁰ and by Boffa Miskell (2006) for Meridian Energy.

The Lower Manor Burn Margins (formerly identified in Schedule 10) is included in Schedule 9 based on the information from Landcare Research, which found one value (Type A5-value).

It is appropriate to undertake further ecological assessments of these wetlands to update ORC's value information, and confirm or ascertain the presence of RSW values within these wetlands. The ORC has commissioned an ecologist from Wildland Consultants to undertake these assessments and map the boundaries of these wetlands. These site visits will be completed by the end of 2011, and relevant submitters will be provided with this information and have the opportunity to speak to the Hearing Committee in early 2012.

⁹ Montgomery Watson (NZ) Ltd (1997) *Inventory of Otago Wetlands and Preliminary Assessment of Their Values*. Report prepared for the Otago Regional Council.

¹⁰ Natural Solutions for Nature Ltd. (2010) *Ecological Assessment and Recommendations for Enhancement. Shotover Country, Stalker Road, Queenstown*. Report prepared for Ladies Mile Partnership.

Name change – Lower Coutts Gully Swamp

ORC received a request for changing the name of “Lower Coutts Gully Swamp” to “Coutts Gully Wetland”, as the wetland is better known by this name in the local community.

Typically wetlands are named to indicate a wetland’s geographical location and to identify a relevant wetland type or class. Other considerations include the local wetland name and the need to avoid confusion between geographically closely located wetlands or wetlands with similar names.

Removal of the word “Lower” is appropriate as this is the local name. However, “swamp” provides more detail about the wetland’s class and its likely hydrological characteristics, vegetation type and land form, and so should be retained.

Establish Management Zones for wetlands that hold important human use values;

For a discussion about the establishment of Management Zones for wetlands that hold important human use values, such as Loch Luella Fen Complex and Loch Loudon Fen Complex, see section 2.11.

Managing several wetlands as one complex

Some wetlands that are clustered within a confined area have been mapped separately. Examples include wetlands around the Waikouaiti River Estuary, such as the Waikouaiti River Estuary Wetland Complex, Ellison Saltmarsh and McLachlan Road Marsh, or the wetlands near the Mouth of the Tahakopa River.

Section 1.2 of this report addresses what a RSW is, which determines how it is mapped. Further, the Regional Plan: Coast for Otago regulates those wetlands which are within the coastal marine area. The map shown in Figure 1 below shows the Waikouaiti River Estuary with the mapped extent of the Coastal Protection Zone from the Regional Plan: Coast (red overlay) and the Waikouaiti River Estuary Wetland Complex, Ellison Saltmarsh and McLachlan Road Marsh as proposed in Plan Change 2 (blue). The protection provided by the Regional Plan: Coast and Plan Change 2 allow for the integrated management of the Waikouaiti River Estuary. Consequently, there is no need to extend the mapped boundaries of neighbouring wetlands or amalgamate them into a single wetland complex.

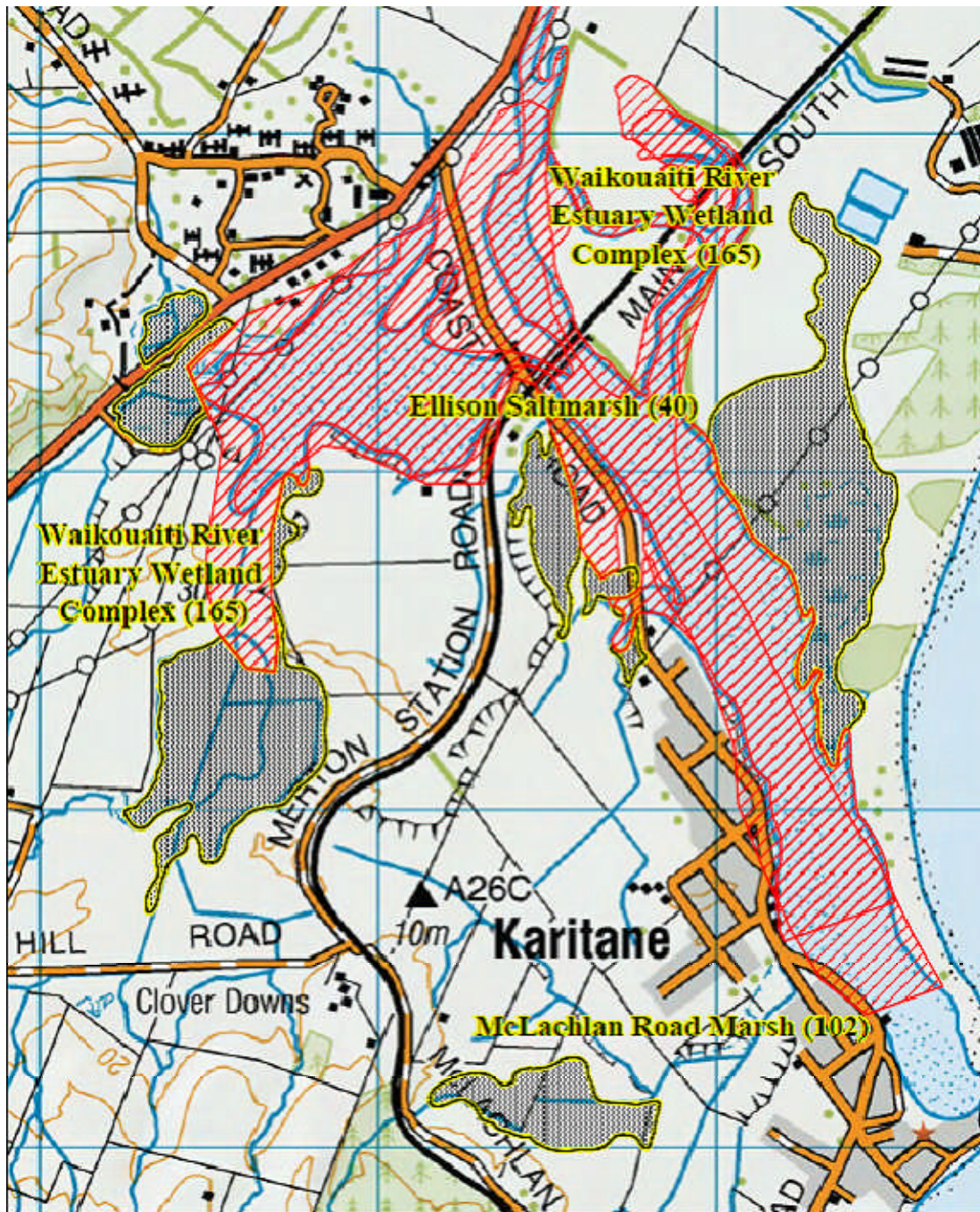


Figure 1 – Map showing the Coastal Protection Zone within the Waikouaiti River Estuary (Red overlay) and the nearby RSWs (Blue overlay)

3.2.3 Recommendations

- a) Remap wetland boundaries if recommended by specialist assessment:
 - <Wetland name>
- b) Adopt all other wetland boundaries as shown on Maps F1 – F68.
- c) Include Kemp Road Lagoon in Schedule 9, as proposed.

- d) Should specialist assessment indicate the presence of RSW values, then include the following wetlands into Schedule 9:
- <Wetland name>
- e) Change the name of “Lower Coutts Gully Swamp” to “Coutts Gully Swamp” in Schedule 9, and on Map F46.

Reasons

- Specialist assessment is required to confirm the extent of specified wetlands, and the RSW values they contain.
- The hydrological characteristics, vegetation type and land form of the wetland at Coutts Gully is swamp.

3.3 Inclusion of further wetlands in Schedule 9

Schedule 9

Plan Change 2 reference: R200 (page 84-89)

Summary of Decisions Requested: page 117-134

3.3.1 Overview

To be included in Schedule 9, a wetland must contain at least one RSW value.

Four submitters request inclusion of further wetlands in Schedule 9.

3.3.2 Discussion

The wetlands recommended for inclusion are:

- Tavora Head (Bobby’s Head)
- Silver Peak Swamp
- Waipahi River Swamp
- Daphne Tarwood Peat Dome
- Ida Valley Kettle Holes

There is insufficient evidence available to establish if the Tavora Head (Bobby’s Head) wetland, Silver Peak Swamp, Waipahi River Swamp and Daphne Tarwood Peat Dome contain RSW values and/or where these values may be found. Submitters recommending these wetlands for inclusion in Schedule 9 should provide further information with evidence of the presence and location of RSW values within these wetlands. If RSW values are present, the wetland or part of it will become eligible for inclusion into Schedule 9.

A submitter contends that the wetland complex, known as the Ida Valley Kettle Holes, supports RSW values A2 (critical indigenous habitat), A5 (scarcity), and A8 (waterfowl habitat). The area covered by the Ida Valley kettle Holes is very large and extends across multiple private properties, as can be seen on the aerial photograph in Figure 2. Further information from a qualified ecologist is required to determine whether it contains any RSW values and where these may be located.

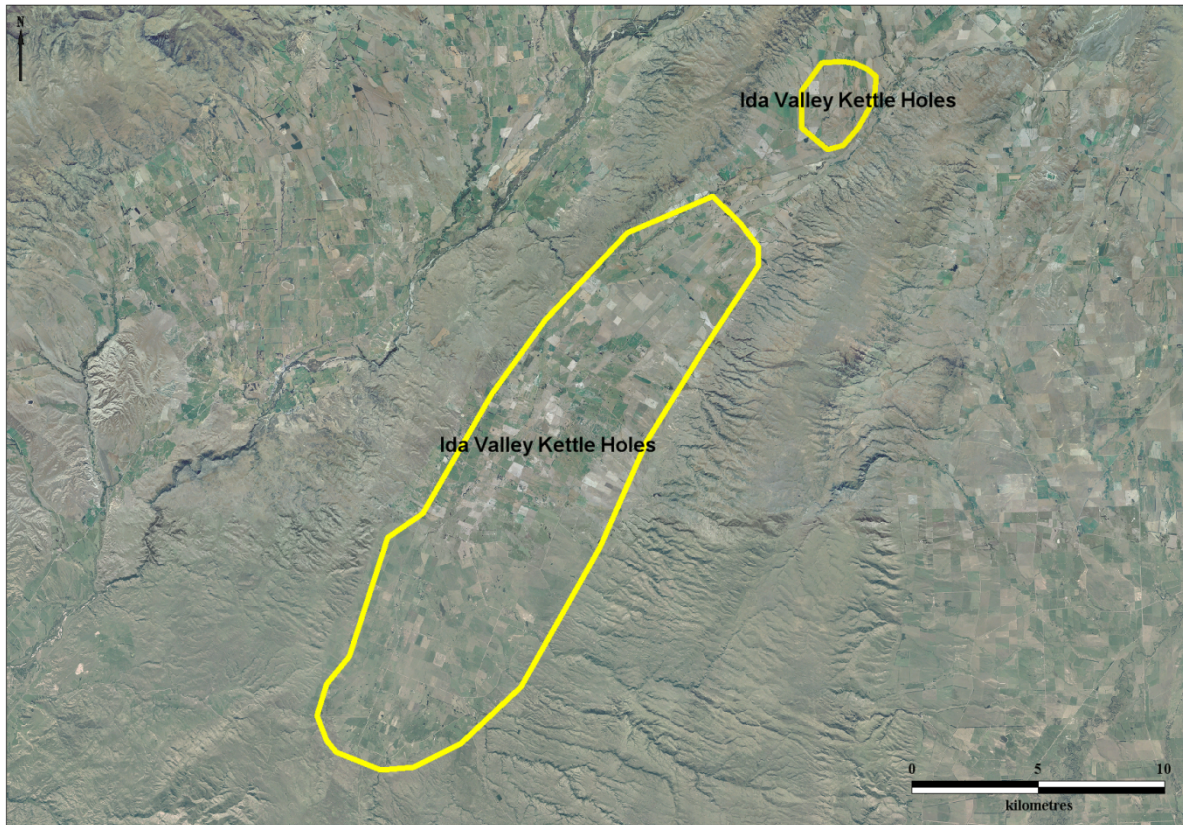


Figure 2 – Aerial photograph of the Ida Valley, with the areas occupied by the Ida Valley Kettle Holes shown within the yellow lines.

Where a wetland has high value for Kai Tahu, but is not already proposed in Schedule 9, it can be included in Schedule 9 through a plan change in future. In the interim, any information on the wetland, including its value for Kai Tahu, can be recorded in the inventory, where it will be available to the public and can be considered in a consent application.

3.3.3 Recommendations

a) Should specialist assessment indicate the presence of RSW values, then include the following wetlands into Schedule 9, and map them accordingly:

- <Wetland name>

Reasons

- Any wetland which is identified to contain at least one RSW value should be included in Schedule 9 and mapped accordingly.
- Further wetlands considered to have RSW values must be assessed and can only be added to Schedule 9 through the plan change process.

3.4 Schedule 10 and non-Regionally Significant Wetlands

Schedule 10

Plan Change 2 reference: R600 (pages 115-118)

Summary of Decisions Requested: pages 120-121

3.4.1 Overview

Schedule 10 and all references to it are removed from the Plan. The wetlands listed in it have been assessed, and those with RSW values are included in Schedule 9.

One submitter supports the removal of Schedule 10, while three submitters request decisions on the proposed removal of Schedule 10, and the protection provided for wetlands not included in Schedule 9.

3.4.2 Discussion

Retention of Schedule 10

Plan Change 2 deletes Schedule 10, which listed a number of wetlands which were thought to be significant but had not been assessed for RSW values in 2004 when the Plan was made operative. It was introduced into the Plan through the appeal process. At that time, ORC committed to undertake an assessment and amend the Plan accordingly. There is no merit in reinstating Schedule 10 as it is now redundant. The wetlands in it have been assessed and where they contain RSW values, accurately mapped. (Also see section 0)

The Inventory can include information on non-regionally significant wetlands (see section 1.3).

The need for a separate plan change to address the cumulative effects of wetland loss is recognised in the Section 32 report for Plan Change 2.

3.4.3 Recommendations

a) Delete Schedule 10, and all references to it, as proposed.

Reasons

- The wetlands listed in Schedule 10 which contain RSW values are now included in Schedule 9.
- A separate plan change is needed to address the cumulative effects of wetland loss.
- A separate plan change is needed to include any wetland in the Plan that is not already identified in this proposed plan change.

3.5 Map quality

Maps F1 – F68

Plan Change 2 reference: R199 (Water Plan Maps F1-F68)

Summary of Decisions Requested: page 119-120

3.5.1 Overview

Maps must be accurate and sufficiently certain for landowners and ORC alike to understand how and where Plan provisions apply. Plan Change 2 uses the same format of maps for the delineation and location of RSWs as used elsewhere in the Plan, but refines the boundaries of these wetlands through a combination of aerial and Landsat satellite imagery analysis, expert opinion and on-the-ground visits.

Six submitters make general comment on the mapping of the Schedule 9 RSWs. Three submitters support the more accurate mapping of Schedule 9 wetlands. Three submitters request maps with a higher level of detail.

3.5.2 Discussion

Use of maps with a higher level of detail

The RSW maps were developed in a format that is consistent with the maps in the Plan. Such consistency makes the Plan user-friendly and allows for easy comparison between maps from different series within the Plan. In most cases, the format of the maps used in the Plan provides for sufficient detail to locate boundaries in relation to features such as waterways, roads and railways, while also displaying local topography.

The maps are produced digitally and can be accurately layered alongside GIS data on features such as property boundaries and roads. Such information is able to be shared with other GIS users, e.g. land surveyors and ecologists.

Plan users and the wider public can also retrieve additional information indicating the location and extent of the mapped wetlands from the Inventory. The Inventory contains location maps, aerial photographs delineating the extent of the wetlands, and information that will further assist with localising the wetland and its boundaries. However, the maps and information included in the Inventory are for information purposes only, do not form part of the Plan and do not have any legal status. Therefore, Inventory information should only be used as an indication, rather than an affirmation of the wetlands exact location and boundaries.

3.5.3 Recommendations

a) Retain the map format as proposed.

Reasons

- Maps are presented as a topographical background to help the reader locate the wetland easily.
- Plan maps are technically accurate and GIS data is able to be exchanged with other GIS users.
- Supporting information, such as aerial photographs, can be found in the Inventory.

Chapter 4: Promotion and funding

This chapter addresses non-regulatory methods that could be utilised to maintain or enhance Otago's RSWs.

4.1 Promotion of wetlands

Policy 10.4.6

Plan Change 2 reference: R014 (page 12-13)

Summary of Decisions Requested: page 135-136

4.1.1. Overview

Policy 10.4.6 promotes the conservation, creation and enhancement of wetlands and their values through a variety of listed methods. Plan Change 2 adds wetland monitoring and providing wetland information to the list of methods.

Three submitters generally support the policy. Four submitters request for amendments relating to:

- Wetland creation
- Provision of information
- Ecosystem services
- Using more than one method
- Minor policy wording amendments

4.1.2. Discussion

Wetland creation

The objective for wetlands is to maintain and enhance Otago's wetlands, and their individual and collective values (see section 2.1). Accordingly, the methods listed are appropriate for both existing and new wetlands, regardless of scale, because of the resulting environmental and social benefits. To change the promotional focus from "*conservation, creation, reinstatement*" to "*maintenance and conservation*" would not meet the Plan's objective.

Provision of information

The online Inventory makes available specific RSW information held by ORC, including that formerly in Schedule 9. As discussed in sections 1.3 and 3.1, it may also include information on other wetlands. The ORC also makes available information on topics such as wetland management and pest control, and would consider providing other information as required. This is a general promotional policy, and there is no need to constrain it by giving specific examples.

Ecosystem services

Policy 10.4.6(e) is "*providing information on wetlands and their values*". The word "values" has a wider meaning than RSW values, and includes ecosystem services. Use of a broad term, rather than a narrower term such as "ecosystem services", is considered more effective in promoting all of Otago's wetlands.

Using more than one method

The use of the word “or” at the end of (d) and “or” within (d) does not preclude taking all or any of the other different methods simultaneously in order to promote wetland values.

Ecological corridors

A cluster of wetlands can be important in maintaining ecological corridors and feeding sites for waterfowl and in moderating the effects of habitat fragmentation. Policy 10.4.6 is broad enough to protect this function. The policy is all encompassing and explicit provision for ecological corridors is not necessary (also see section 1.1 and 3.2).

4.1.3. Recommendations

a) Adopt Policy 10.4.6 as proposed.

Reason

- Policy 10.4.6 as proposed states ORC’s general wetland promotion philosophy and does not need to go into more detail.

4.2 Funding and assistance

Proposed Plan Change reference: R148 (Funding)

Summary of Decisions Requested: page 136-137

4.2.1 Overview

Six submitters discuss the need for financial support, compensation, and assistance with weed control.

4.2.2 Discussion

The proposed changes to the wetland policy and rule framework are necessary in order to better protect Otago’s remaining RSWs. The rules provide for a range of permitted activities, or the option of applying for consent.

Plan Change 2 may result in opportunity costs, and costs associated with consenting for property owners. However, the RMA (Section 85) states property owners have no automatic right to compensation if their property interests are affected. Any discount on consent fees or other financial relief could be addressed through the annual plan process under the Local Government Act 2002.

4.2.3 Recommendations

a) Make no amendment to the Plan regarding funding.

Reason

- Funding and financial relief is addressed through the Annual Plan process.

Chapter 5: General

This chapter addresses the proposed removal of certain Plan provisions for streamlining and simplifying. It also makes recommendations on minor and consequential changes, general support and opposition, and the adoption of the Plan Change 2.

5.1 RMA streamlining and simplifying

Chapters 10, 15 and 16

Plan Change 2 reference: R001 (page 6), R150 (RMA streamlining and simplifying), R153 (pages 5-14), R159, R164 (pages 73-76)

Summary of Decisions Requested: R001 (page 58), R150 (page 141), R153 (pages 61-65), R159 (page 55), R164 (pages 137-138)

5.1.1. Overview

Plan Change 2 aims to simplify the plan and make it easier to use by removing non-mandatory provisions from Chapters 10, 15 and 16. This streamlining is allowed by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

Five submitters wish to see these provisions retained, or seek amendments to these provisions. Their comments were on the following topics:

- Simplifying Chapter 10 (Wetlands)
- Simplifying Chapter 15 (Methods other than rules)
- Simplifying Chapter 16 (Information requirements)

One submitter supports the removal of these provisions provided that no important details are lost.

5.1.2. Discussion

Simplifying Chapter 10 (Wetlands)

Chapter 10 sets up the policy framework specifically relating to wetlands. Plan Change 2 removes the introduction, issues, explanations, principal reasons for adopting, anticipated environmental results and cross-references to objectives and policies from Chapter 10. Amendments to the objective and policies ensure any important details within the deleted text are retained, and clarifies the role of wetlands in Otago's social, cultural, economic and natural environment, the threats to their existence, and the goals ORC has set to better protect these areas.

Objective 10.3.1 specifically addresses the issue of cumulative wetland loss (see section 2.1).

Other information that describes the different types of wetlands, the values and services they support, and the benefits that arise from the sustainable management of the region's wetlands can be held in separate documents outside the Plan, such as the online Inventory (see sections 3.1 and 4.1).

Introduction statements on the importance of wetlands are immaterial to the consenting process, and there is no need to discuss connection with the marine environment, nor specific potential threats such as tide gates. Note that activities such as tide gates, which have or risk adverse effects on RSW values, require consent under Plan Change 2.

The chapter is now shorter, and it is easier to identify relevant policies when assessing consent applications.

Simplifying Chapter 15 (Methods other than Rules)

Plan Change 2 proposes removal of Method 15.4.3, which relates to promoting the protection of wetlands, lakes and rivers and their values, commencing a process to remove Chapter 15 (Methods Other Than Rules) from the Plan. Education and information are important for the sustainable management of Otago's wetlands. This is recognised in Policy 10.4.6 which is retained, and covers the matters outlined in Method 15.4.3.

ORC's financial commitment to such work is made through the annual planning process under the Local Government Act 2002.

Simplifying Chapter 16 (Information Requirements)

Plan Change 2 proposes removal of Information Requirements 16.3.11 and 16.3.12, which identify the specific RSW information requirements for consent applications. This change also commences the process of removing information requirements from the Plan. They are no longer required and the details will be provided in a non-statutory document – either as explanatory pamphlets or in the resource consent application form.

Information requirements for a consent application related to high altitude wetlands are treated the same as any other information requirement.

5.1.3. Recommendations

- a) Delete the introduction, issues, explanations, principal reasons for adopting, anticipated environmental results and cross-references from Chapter 10 as proposed.
- b) Delete Method 15.4.3, and Information Requirements 16.3.11 and 16.3.12 as proposed.

Reasons

- Removing these provisions will simplify the Plan, and remove ambiguity.
- The online Inventory will provide the public with better, up-to-date and responsive information about RSWs, including information on threats to values if held by ORC.
- Provision of education and information will continue, but ORC financial commitments are managed through Local Government Act 2002 processes.
- Details of the information required for consent applicants are in the consent application form and do not need to be repeated in the Water Plan.

5.2 Minor and consequential changes

Relates to various plan provisions

Plan Change 2 reference: R143 (page 123), 157 (Drain maintenance)

Summary of Decisions Requested: R143 (pages 141-142), R157 (pages 109-110)

5.2.1 Overview

Plan Change 2 proposes a number of minor and consequential changes, including changes to the numbering of the wetlands, the Plan's title page, page numbering, and headers and footers.

Nine submitters request a number of minor additional changes be made:

- Consequential amendments that stem from the relief sought by submitters
- Consent notification

5.2.2 Discussion

Consequential amendments that stem from the relief sought by submitters

The decision of ORC on requests of submitters may include any consequential alterations arising out of submissions, and any other relevant matters it considered relating to matters raised in submissions as provided for in Clause 10(2) in the First Schedule of the RMA.

Consent notification

Rules 12.1.3.1, 12.1.4.8, 12.2.2A.1, 12.2.3.4, 12.5.2.1, 12.8.2.1, 12.9.2.1, 12.10.2, 13.2.2.1, 13.3.2.1, 13.4.2.1, 13.5.2.1, and 13.7.2.1 provide that consent applications may be considered without notification or service on affected parties, as formerly provided for by Sections 93 and 94(1) of the RMA. These sections were repealed in 2009 and replaced by Sections 95 to 95F. While the amendments to the RMA do not affect an operative plan's non-notification and non-service clauses, the plan change provides an opportunity to update those clauses.

All the relevant rules are controlled or restricted discretionary (discretionary or non-complying rules are not affected), and the effects of activities are covered through the matters of control or discretion. Therefore it is appropriate that consents for these activities to be considered without notification, and for notification to be precluded in the relevant rules.

5.2.3 Recommendations

- Make any consequential amendments necessary to give effect to proposed or recommended changes.
- Correct the non-notification and non-service clauses of Rules 12.1.3.1, 12.2.2A.1, 12.2.3.4, 12.5.2.1, 12.8.2.1, 12.9.2.1, 12.10.2.1, 13.2.2.1, 13.3.2.1, 13.4.2.1, and 13.7.2.1 as shown below:

~~Applications may be considered without notification under Section 93 and without service under Section 94(1) of the Resource Management Act on persons who, in the opinion of the consent authority, may be adversely affected by the activity.~~

The Consent Authority is precluded from giving public notification and limited notification of an application for a resource consent under this rule

c) Correct the non-notification and non-service clause of Rule 12.1.4.8, as follows:

(a) ~~For Applications for resource consent to which this Rule applies, to take and use water from a river, the Consent Authority is precluded from giving public notification and limited notification may be considered without notification under Section 93 and without service under Section 94(1) of the Resource Management Act on persons who, in the opinion of the consent authority, may be adversely affected by the activity, if the application is to take and use water from:~~

- (i) A river for which a minimum flow has been set by or under this Plan; or
- (ii) A river for which it is not necessary for the Council to consider whether, if consent is granted, the taking should be subject to a condition requiring a residual flow to remain in the river at the point of take, or a condition requiring other provision for native fish, other than a condition requiring fish screening.

Other applications for resource consent to take and use water from a river may be considered without notification ~~as allowed by the Resource Management Act under Section 93 of the Resource Management Act in those circumstances in which the Act allows applications to be considered on a non-notified basis.~~

(b) ~~For Applications for resource consent to which this rule applies, to take and use water from a water body other than a river, the Consent Authority is precluded from giving public notification and limited notification may be considered without notification under Section 93 and without service under Section 94(1) of the Resource Management Act on persons who, in the opinion of the consent authority, may be adversely affected by the activity.~~

d) Correct the non-notification and non-service clause of Rule 13.5.2.1 as follows:

Except in the case of extraction from the wet bed of a lake or river, or within a RSW, ~~the Consent Authority is precluded from giving public notification and limited notification of an application for a resource consent under this rule. applications may be considered without notification under Section 93 and without service under Section 94(1) of the Resource Management Act on persons who, in the opinion of the consent authority, may be adversely affected by the activity.~~

Reason

- The correction reflects amendments to the RMA, and provides for ongoing and consistent administration of the Plan.

5.3 General Support and Opposition

Plan Change 2 reference: R144 (General opposition), R145 (General support), R155 (pages 57-71), R156 (pages 15-55)

Summary of Decisions Requested: R144, 145 (pages 143-144), R155 (pages 103-108), R156 (pages 87-91)

5.3.1 Overview

Fourteen submitters generally support Plan Change 2. Seven submitters gave the following reasons for their support:

- Improved identification and mapping of wetlands
- Stronger protection for RSWs
- The Plan's recognition of the values and services of wetlands
- ORC's support for wetland enhancement
- Clear, concise and consistent restructuring of rules

One submitter generally opposes Plan Change 2 due to ambiguity of the proposed provisions, and three submitters oppose Plan Change 2 should their specific requests not be met.

5.3.2 Discussion

Ambiguity of the proposed provisions

The wording of Plan Change 2 objective and policies seeks to provide for more clarity and internal consistency. The submitter did not provide detail of the provisions considered ambiguous.

5.3.3 Recommendations

- a) Adopt the plan change as proposed, subject to the recommended amendments in this report, and any consequential changes required to give it effect.

Reason

- Plan Change 2 builds on existing provisions in the Plan for RSWs by providing better protection, and making provisions easier to read and understand.

Chapter 6: Matters beyond the scope

This chapter evaluates submissions received considered beyond the scope of Plan Change 2.

6.1. Matters beyond the scope of Plan Change 2

Plan Change 2 reference: R152

Summary of Decisions Requested: pages 147 – 148

6.1.1. Overview

Seven submitters requested decisions considered beyond the scope of Plan Change 2, relating to:

- Grazing of ORC lease land, and maintenance of ORC drains.
- Controlling Reed Sweetgrass in the Taieri Plains, and adding it to the Pest Management Strategy for Otago 2009.
- Including a statement on the importance of wetlands in every consent.
- Establishing a "register of interested people to be notified of all consent applications".
- Establishing a process that would inform interested parties of any new activity (permitted or consented) in or near the catchment of a RSW.
- Gaining commitment from ORC for addressing cumulative effects in the future.
- Placing hydrological information on ORC's website, including the level of Lake Mahinerangi.
- Adding criteria to Schedule 1, applicable to all wetland areas, on the value of existing land transport networks.

6.1.2. Discussion

These submissions seek relief beyond the scope of Plan Change 2. The purpose of Plan Change 2 is to build on existing provisions for RSWs by providing better protection, and making provisions easier to read and understand. Giving consideration to any of these matters would require a variation to the plan change, or a new plan change, to ensure persons potentially affected by these matters are consulted and heard.

6.1.3. Recommendations

a) Reject the submissions.

Reason

- These requests relate to matters which are outside of the scope of Plan Change 2.