

## **CHAPTER 5 – RECOMMENDATIONS ON OTHER PLAN CHANGE MATTERS**

### **5.1 Providing for capture of contaminated water**

To meet the notified contaminant discharge limits in Schedule 16, some people will need to contain and treat discharges. “Capture dams” are one method of doing this.

We considered the submissions presented on “capture dams” and are of the opinion that no change is needed. The reuse of capture dam water is already adequately provided for in the Water Plan.

#### **5.1.1 Recommendations**

(a) Make no amendment to the plan change to address “capture dams”.

#### **5.1.2 Reasons**

The installation and use of capture dams comprise several activities: the building of the structure, the damming of water, the take of water and the discharge of water or contaminant to water, or to land in circumstances which may result in that contaminant entering water.

- **The building of the dam**

The building of a dam outside of the bed of a lake or river is not controlled by the Water Plan. It can be carried out as-of-right if consistent with the provisions on structures in district plans and the Building Act 2004.

Rule 13.2.1.3 of the Water Plan permits the erection of small dams in or on the bed of lakes and rivers. The erection of larger dams on the bed of a lake or a river is discretionary.

The erection of any dam in the Waitaki catchment needs a consent, as required by the Waitaki Catchment Water Allocation Regional Plan.

- **The damming of water**

Rule 12.3.2.1 of the Water Plan permits small scale damming of water where the upstream catchment is less than 50 hectare, the reservoir is less than 3 metres deep and 20,000 cubic metres in volume. Restrictions on the damming of water in the Water Plan do not apply to water that has lawfully been taken for use, and is still under the authorisation for that use.

The damming of water in the Waitaki catchment needs a consent, as required by the Waitaki Catchment Water Allocation Regional Plan.

The authorisation for any diversion of water that occurs along with the damming activity is also under Rule 12.3.2.1.

- **The taking of water**

The taking of water from an “artificial lake” resulting from the damming of water is a permitted activity, providing that damming meets the conditions of Rule 12.3.2.1, and the take is authorised by the owner of the dam.

Section 12.1.2 of the Water Plan permits other taking of water, with restrictions on the volume taken. The taking or diversion of water for the purpose of land drainage is permitted without volume restriction (Rules 12.1.2.6 and 12.3.2.2).

Any other taking of water needs a consent. The taking of water from a lake, when the water has been delivered to this lake for the purpose of this taking, is a controlled activity. All consents are granted with conditions controlling the quantity that can be sustainably taken.

- **Discharges of water or contaminant from a dam**

Discharges from a capture dam are recommended if the discharge does not enter a lake, river, wetland, or a drain or race flowing to a lake, river or wetland. If the discharge enters such water, then the discharge must meet the conditions of amended Rule 12.C.1.1 to be permitted. Where a water body is artificial and specifically provided as part of a contaminant discharge treatment system, e.g. it is a sediment settling pond or a polishing wetland, it is the discharge from the system that is required to meet that rule when it enters the water specified in the rule.

Discharges of contaminants to land are permitted, unless the discharge is from an industrial or trade premises, or is discretionary under the Waste Plan.

## **5.2 Simplification and streamlining**

The notified plan change removed the introduction, issues, explanations, principal reasons for adopting, cross-referencing, anticipated environmental results and some methods and information requirements in those parts of the Water Plan affected by this plan change. This was been done to streamline the Plan in line with the amended RMA (2005).

Submitters raised concerns regarding the removal of these provisions.

We considered the submissions and recommend a limited reinstatement of one method.

## 5.2.1 Recommendations

- (a) Delete the introduction, issues, explanations, principal reasons for adopting, cross-referencing and anticipated environmental results, Method 15.5.1.2 and Information Requirement 16.3.3 as notified, in order to simplify the Water Plan.
- (b) Reinstate an amended version of Method 15.5.1.1, in order to clarify the intent of the plan change:

~~15.5.1.1 The Otago Regional Council will encourage and assist agricultural, recreational and industry groups to prepare codes of practice and environmental management systems for various land use activities, in order to reduce adverse effects on water.~~

15.5.1.1 The Otago Regional Council will encourage and supports the development and use of ~~assist agricultural, recreational and industry groups to prepare~~ codes of practice and environmental management systems that for various ~~land use activities, in order to~~ reduce adverse effects on water resources.

## 5.2.2 Reasons

### ▪ Consistency with the RMA Amendment Act 2005

In August 2005, Section 67(1) RMA was amended to require a regional plan contain only objectives, policies and rules. Other provisions, such as issues and explanations, became optional under Section 67(2).

### ▪ Creating a user-friendly plan

It is easier to read and use the Water Plan if the regulatory and consent guiding provisions are self-explanatory.

### ▪ Providing guidance through supporting information

ORC will continue to produce a range of supporting documents, including the SOE reports, brochures and guidelines on using the Water Plan and website material.

Information requirements for consent applications can be found on ORC consent application forms.

### ▪ Continuing cooperation with industry groups

The reinstatement of amended Method 15.5.1.1 emphasises that ORC will continue to work with industry groups and organisations on the development and use of codes of practice and environmental management systems that reduce adverse effects on water

resources. Such interaction will encourage consistency between industry codes of practice and the water quality objectives promoted in the Water Plan.

### **5.3 Compliance, enforcement and education**

ORC promotes continued monitoring and education to support the plan change to drive changes in land management practices which will maintain or improve water quality in Otago.

We considered the submissions received and recommend that an education and compliance strategy is described outside the Water Plan.

#### **5.3.1 Recommendations**

(a) Make no amendment to the plan change on matters of compliance, enforcement or education.

#### **5.3.2 Reasons**

- **Self monitoring**

There is no need to prescribe in a regulatory plan, how landholders or managers should monitor contaminant discharges to water from their land. Guidelines on procedures will be included in other, non-statutory documents, such as information brochures and guides. These will be distributed via the website, or by hard copy, and will be updated regularly without the need to go through the statutory plan change process. Real-time information on representative river flows will be made available on the Water Info website.

- **Catchment education**

ORC undertakes a range of catchment-based education programmes, aimed at assisting land managers to better understand the effects of their activities on water quality. The programmes include sharing information on sampling and monitoring practices, interpretation of data and guidance for land managers on changes that may be required on their properties. ORC also undertakes research and monitoring to identify the high-risk areas and activities in Otago, as well as the practices that help reduce adverse effects of land uses on water quality.

- **Compliance monitoring and enforcement**

ORC may undertake compliance monitoring at any time, and it is inappropriate to constrain its statutory responsibility in any way. Therefore the compliance and enforcement strategy is not set out within the Water Plan. The budget and targets for this function are set through the annual planning process under the Local Government Act 2002.

Those parts of the permitted activity Rules 12.C.1.1 (Schedule 16 contaminants) and 12.C.1.3 (nitrogen loading) which take effect from 2020 can only be enforced from that time. Until 2020, such monitoring may be used for education purposes, but not for compliance or enforcement purposes.

We recommend that ORC establish an oversight group. Compliance and enforcement activities undertaken are reported to ORC's Regulatory Committee and in the Annual Report.

## **5.4 Consent notification**

The RMA Amendment Act 2009 repealed Sections 93 and 94(1) RMA relating to notification of a consent application and introduced Sections 95 and 95F. The plan change provided an opportunity to update those clauses.

Various submitters raised the concern that the notification clause proposed under the notified plan change would have an impact on participation in the consent decision-making process.

### **5.4.1 Recommendations**

- (a) Adopt the wording of the notification clause as included in notified Rules 12.C.2.1, 12.C.2.2 and 13.3.2.1.
- (b) Make consequential amendments in order to include the notification provisions in new restricted discretionary activity Rules 12.C.2.1, 12.C.2.2 and 12.C.2.3 and amended Rules 13.1.2.1, 13.2.2.1 and 13.3.2.1.

### **5.4.2 Reasons**

#### **▪ Coverage by the matters of discretion**

The notification clause attached to the restricted discretionary rules in sections 12.C, 13.1, 13.2 and 13.3 states that the consent authority is precluded from giving public notification of an application. It is appropriate for activities covered by these restricted discretionary rules to be considered without full public notification, because their effects are sufficiently covered through the amended matters of discretion. However, the notification clause attached to the restricted discretionary rules in sections 12.C, 13.1, 13.2 and 13.3 does not preclude limited notification. This will ensure that those directly affected by a proposal still have opportunity to have input to consent decision making processes.

- **Ability to notify where special circumstances exist or where activities may affect the wider public**

Regardless of the notification clause in the restricted discretionary rules, a consent authority may publicly notify an application under Section 95A(4) of the RMA, if it decided special circumstances exist in relation to the application.

Discharges that may have effects extending far beyond the immediate discharge area, such as discharges of water from one catchment to another or discharges that cause flooding or erosion, will be given discretionary activity status. For these discharges limited notification is not appropriate because there should be adequate opportunities for public input to assess broader environmental, social, cultural or economic impacts on the wider community. Therefore, the consent authority is not precluded from giving public notification for activities considered under the rules in section 12.C.3.

- **Consistency**

While amendments to RMA notification provisions made in 2009 do not affect an operative plan's non-notification and non-service clauses, the plan change provides an opportunity to amend the notification clause, in a manner that better reflects amendments to the RMA and provides for ongoing and consistent administration of the Plan.

## **5.5 Minor and consequential amendments**

The plan change proposes a number of minor and consequential changes, including changes to the table of contents, page numbering, and headers and footers.

We considered the submissions and recommend that all minor and consequential amendments resulting from the recommendations set out in this report be made.

### **5.5.1 Recommendations**

- (a) Make any consequential amendments necessary in order to give effect to proposed or recommended changes.
- (b) Amend the text in the note box at the bottom of the introduction in order to explain the relationship between Chapter 7 with other parts of the Water Plan and change the location of the text:

~~Note: The provisions in this chapter are in addition to those in Chapter 5, which seek to maintain or enhance the natural and human use values supported by lakes, and rivers and wetlands.~~

The provisions in this chapter are in addition to those in Chapter 5, which seek to maintain or enhance the natural and human use values supported by lakes,

and rivers and wetlands; and those included in Chapter 9, which contain policies on groundwater quality.

### **5.5.2 Reasons**

- **Minor change to the note box at the start of Chapter 7**

Stating the interconnection between the chapters of the Water Plan as the introduction will make these connections more obvious to plan users.

- **Other minor and consequential amendments**

Clause 10(2) of Schedule 1 RMA provides for any necessary consequential alterations.