

## 10.1. General Manager's Report on Progress

**Prepared for:** Policy Committee  
**Report No.** PPRM1891  
**Activity:** Governance Report  
**Author:** Anita Dawe, Acting Manager Policy  
**Endorsed by:** Andrew Newman, Acting General Manager Policy, Science & Strategy  
**Date:** 24 May 2019

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### PURPOSE

- [1] This report contributes toward the following Strategic Priorities from the Long-Term Plan 2018 -2028:
- Maintain and enhance the natural environment
  - Resilient communities that are engaged and connected to the Otago Regional Council
  - Future focused – readiness for change, proactive approach and risk focused

### EXECUTIVE SUMMARY

- [2] The General Manager's Report focuses on emerging issues and these are presented at the front of the report. Some issues raised may be in their infancy, such as Central Government legislative changes that are signalled, and some will be a policy/planning project update that don't yet warrant a separate report.

### STAFF RECOMMENDATION

*That the Council:*

- 1) **Receives** this report.

### BACKGROUND

#### Emerging Issues

- [3] Section 24A Investigation – Peter Skelton

Given the proposed dates for undertaking this work - being concentrated in late June through early July - a cross-Council team has been formed to prepare information which we believe will be relevant to the review which is focused on the Arrow, Cardrona and Manuherikia Catchments plan changes and deemed permits transition. This team includes members from the policy and planning, science, and consents teams including, where appropriate, external advisors. The process will be led on behalf of the CEO by Andrew Newman and Peter Winder.

We have added to the internal ORC team's capability by contracting Peter Constantine to assist Tom de Pelsemaeker in project managing the plan changes for Arrow, Cardrona and Manuherikia. Peter has in excess of 30 years of plan making and plan writing and recently acted as a Principle Planning advisor for Environment Canterbury for a 6-year period. He is well known to key parties including Kai Tahu.

In the consents area we have contracted Stephen Daysh of Mitchell Daysh to take a lead role in managing “deemed permit” consent applications.

For legal advice both across the plan change process and deemed permit consent process we will be using the legal firm Wynn Williams.

### **Responses to external policies, plans etc**

[4] We are anticipating several proposals to come out of Central Government over the coming months, predominantly around fresh water. These will be responded to as required and it is likely that staff will need Councillor workshops to gauge feedback and concern, prior to submitting. This has been an unusually busy year for engaging in central and local government processes, and that engagement is reflected in the budget over expenditure. It is worth noting however that all costs associated with the engagement fall to this cost code, even though the work may be on behalf of other teams within Council.

### **Dunedin City Council District Plan Review (2GP) Decisions**

[5] As previously advised, ORC is a party to numerous appeals lodged against the 2GP and is still waiting on mediation dates to be set by the Court. The appeal topics range from natural hazards, urban development, heritage, and mining/quarrying.

### **Proposed Regional Policy Statement**

[6] As previously reported to Council, the Environment Court issued a procedural decision on 15 March 2019 which found that *prima facie* the proposed Otago Regional Policy Statement does not achieve the purpose of the Resource Management Act 1991. The ORC has appealed this ruling and concurrently offered alternative wording for some provisions that may allay the Environment Court’s concerns. All parties interested in the ORC’s proposed changes have now responded. It appears that the parties support pursuing mediation on the proposed changes, in the hope that a high court hearing can be avoided. A date for mediation is yet to be confirmed.

[7] The High Court hearing on the Port topic has been set down for 5 and 6 June 2019. A date for the two other High Court Hearings - on the Mining and Biodiversity offsetting topics, and the procedural decision – are yet to be confirmed.

### **Biodiversity**

#### *Council’s biodiversity and biosecurity work programme*

[8] The following work is underway on biodiversity/biosecurity:

- Wildlands Limited led, by Dr Kelvin Lloyd, was the successful tenderer for the Biodiversity Mapping Project. Work has started to create GIS layers on actual and potential vegetation, and fresh water and coastal/marine ecosystems work

has started, with delivery expected by March 2020. The mapping will inform ecosystem priorities for active management across the region. It will assist with work in the freshwater, land management, and coastal areas.

- The Biodiversity Action Plan has been refined and is subject to a separate report in this agenda.
- An integrated framework is under development for ORC's biodiversity and biosecurity activities, which will inform business case options for the next Long-Term Plan.

### **Environment Court Hearing Plan Change 5A (Lindis: Integrated Water Management)**

- [9] After reconvening in January this year, all appeal parties have now lodged their closing submissions with the Environment Court.
- [10] The Environment Court has not yet released its decision on the Plan Change.

### **Manuherekia, Arrow and Cardrona (MAC) Catchments**

- [11] Community Reference Group (CRG)  
Alec Neill has been appointed as the independent chair of the CRG. Alec Neill has a long history with RMA issues having worked across political, legal and Board of Inquiry processes. He is familiar with complex plan change processes, community engagement, plan making and the legal processes post notification.

Proposed parties to the CRG have been approached in person by Andrew Newman including the abstractors, Fish and Game, CODC, Central Otago Environment Society, Forest & Bird. To date there is good support for this initiative, and it is proposed to have the first meeting in early- to mid-July. It is likely we'll need to focus on the interactions with Peter Skelton first.

- [12] The Technical Advisory Group (TAG), established to ensure the delivery of the technical research needed to develop a Plan Change proposal for the Manuherekia catchment, met for the first time on 14th May 2019. The TAG is comprised of technical experts employed by Kai Tahu/Aukaha, the Department of Conservation, Manuherekia water users, Otago Fish and Game Council and the Otago Regional Council. The TAG is expected to reconvene in June 2019 for a second meeting.
- [13] NIWA is continuing to work on the development of TopNet/CHES, a hydrological model for the Manuherekia catchment, while also updating the hydrology for the Arrow and Cardrona Catchments to include the flow data and water take data for the most recent irrigation season (1 October 2018 – 1 May 2019). This hydrological information will inform other technical work, including habitat modelling and social and economic impact assessments.
- [14] ORC staff organised community workshops on Monday 27th May in Arrowtown on 27<sup>th</sup> May and Wanaka on 28th May 2019. These workshops were part of the consultation process required under the National Objectives Framework of the National Policy Statement for Freshwater Management. The purpose of the workshops was to identify and confirm with the local community and any interested parties the values supported

by the surface water and groundwater resources of the Arrow and Cardrona catchments and Wanaka and Wakatipu basins. This input will inform an updated policy framework for managing water in these areas.

### **Mediation on the Queenstown Lakes Proposed District Plan**

- [15] Stage II decisions on the proposed Queenstown Lakes District Plan are now out, with appeals being lodged. ORC is considering whether any involvement is warranted.
- [16] Stage I appeals are largely resolved, with one substantive matter around Significant Natural Areas, and some consideration of the hazards and utilities provisions still being considered.

### **Full review of Regional Plan: Water for Otago**

- [17] A detailed project plan for the full review of the Regional Plan: Water for Otago is being developed. It will be shared with councillors upon completion.
- [18] The issues which need to be addressed before 2025 will be addressed through a plan change to be notified in 2020. The development of this plan change is being outsourced to an external provider. A request for proposals is currently under development.

### **ORC Regulatory Response Process Overview**

- [19] In 2018, a request was made to the Chief Executive to provide Councillors with an understanding of how decisions are made around when ORC submits on an external proposal, either a Central Government proposal, a plan change to a neighbouring territorial plan, or a resource consent application.
- [20] This overview covers the legislation that authorises and directs implementation of a local authority's regulatory responsibilities and how this relates to ORC's internal process for considering and making responses.
- [21] The Local Government Act 2002 (the Act) requires<sup>1</sup> of a local authority the following:
- *A local authority should ensure that the role of democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community; and*
  - *A local authority should ensure that the governance structures and processes are effective, open, and transparent; and*
  - *A local authority should ensure that, so far as is practicable, responsibility and processes for decision-making in relations to regulatory responsibilities is separated from responsibility and processes for decision-making for non-regulatory responsibilities; and*

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<sup>1</sup> section 39 "Governance principles"

- *A local authority should ensure that the relationship between elected members and management of the local authority is effective and understood.*

In addition, the Act also:

- Requires all councils to separate policy setting from operational functions as far as possible; and
- Explicitly gives the Chief Executive responsibility for implementation of policy through operational processes. To enable these processes, council staff are delegated powers and functions of the Council under section 34A of the Resource Management Act. The role of staff includes making assessments, recommendations, and decisions in line with policy set by Council.

[22] Appended to this report is our process for considering a response on regulatory matters. The purpose of this guide is to provide an easy to follow summary of the process.

[23] In this process, when a response is not required, and it is as important to record why that is the case, to ensure consistency and transparency in future.

[24] Authority for determining the majority of ORC's responses is provided within staff delegations including the following:

<b>Section (of RMA)</b>	<b>Description of Function</b>	<b>Delegated to</b>
S44, S46A	Make a submission on a proposed National Policy Statement, National Environmental Standard, NZ Coastal Policy Statement or amendment	GM Policy, Science and Strategy (GMPSS) or CE
S96	Make submission to another consent authority in respect of a consent application	GMPSS or GM Operations or CE
1st Schedule, Clause 6 and 8	Make a submission and further submissions on a district planning document of a territorial authority.	GMPSS, CE

[25] The process for deciding whether to comment on applications focuses on the ORC's functions under s30 of the Resource Management Act. A copy of section 30 is appended to this document. Typically, most matters considered for a response relate to assessment of s30 issues against operative policies and plans of council that staff are responsible for implementing. In short, they are made advocating an existing, and Council approved, policy position and are operational decisions rather than Governance decisions.

[26] The obvious area where Governance direction is required is when new legislation or policy is being proposed, often by Central Government, or when the policy direction

conflicts with ORC's existing position. In these instances, where time allows, staff would facilitate a workshop to understand the direction for any submission. Where time does not allow, then draft submissions would be provided to the Chief Executive and/or Chairman to endorse. In these circumstances, a copy of the final submission would be provided to Councillors.

- [27] Further, to address concerns around ensuring awareness of proposals, staff have committed to copying such applications to Councillors, in particular those that may attract interest from the media or public scrutiny.

## Appendix 1: Regulatory Responses

### 1.1 National Plans, Policies, Strategies

The following were received over the period to 17 May 2019:

Agency	Number	Document
<p><b>Ministry Housing and Urban Development:</b></p> <p><b>Healthy Homes Standards</b> (Residential Tenancies (Healthy Homes Standards) Regulations 2019)</p>	<p>1</p>	<p>These standards become law on 1 July 2019 with staggered compliance timeframes for varying rental property types. The standards set minimum requirements for:</p> <ul style="list-style-type: none"> <li>• <a href="#">Heating</a></li> <li>• <a href="#">Insulation</a></li> <li>• <a href="#">Ventilation</a></li> <li>• <a href="#">Moisture ingress and drainage</a></li> <li>• <a href="#">Draught-stopping</a></li> </ul> <p>These standards are relevant to ORC's 'Clean Heat, Clean Air' programme. In tandem with upgrading solid fuel burners, these standards may further assist tenanted properties to be warmer, healthier and more energy efficient. A flow on effect from these outcomes is a contribution to improving air quality.</p>
<p><b>Ministry for the Environment:</b></p> <p><b>Proposed changes to the NZ Emissions Trading Scheme (ETS)</b></p>	<p>1</p>	<p>On 16 May the MfE released the second part of its decisions on improvements to the NZ ETS which cover:</p> <ul style="list-style-type: none"> <li>• improved rates of compliance within the NZ ETS</li> <li>• making the scheme more transparent to participants and the public</li> <li>• preparing for robust and transparent NZ ETS auctions</li> <li>• transitioning from the fixed price option to the cost containment reserve</li> <li>• enabling a potential price floor in future</li> <li>• establishing a separate market governance work programme.</li> </ul> <p>The market place for buying and selling emissions will be via an auction framework, and the Government wishes to align the supply of units available to emitters under the scheme with NZ ETS emission reduction targets, including those in the Zero Carbon Bill.</p>

		ORCs submission on the Zero Carbon Bill supported the bill but requested that any management of emission targets be carefully considered before implementation. The Government will undertake further work to develop regulations for the auction framework, as well as market governance, – which appears consistent with ORC’s request.
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The following responses were made over the period to 17 May 2019:

Proposal	Response Type	Issues
None		

## 1.2 Territorial Authority District Plan Changes and Reviews

The following summarises the current situation regarding changes and reviews of District Plans:

District or City	Change or review	Current situation
<b>DCC</b>	2GP: District Plan Review	ORC is preparing for mediation as a s274 party to a number of appeals. Staff have begun pre mediation discussions with DCC to confirm which of ORC’s are appropriate for mediation.
<b>CODC</b>	Review pending  PC13 (River Terrace)	ORC staff understand the earliest the plan review will commence is 2 <sup>nd</sup> half of 2019.  The CODC Recommending Report has been released, recommending the plan change be declined. The hearing is set for mid-June.
<b>QLDC</b>	District Plan Review	Stage 1 of 4: Notified: 12 Feb 2016  Stage 1 decisions released 7 May 2018.  Stage 2 notified 23 November 2017.  Submissions closed 23 February 2018 and decisions were released earlier this month.  For stage one, ORC has been involved in mediation on a number of topics it either appealed or because it joined other appeals.



		For Stage two it is not considered necessary for ORC to appeal the decision. Staff have been reviewing appeals and may join any which directly relate to ORC interests.
<b>WDC</b>	Review pending	Stage 1: Initial consultation underway Proposed Notification: ORC is still awaiting an update from WDC.
<b>CDC</b>	Notification of Plan Change 41A – variation to Milton Industrial Zone	ORC has reviewed the notified variation to Plan Change 41 which seeks to implement a structure plan for this 300ha area of industrial zoned land.  ORC staff visited the site last year to assist the applicant understand any issues from ORC’s perspective and/or activities that would require ORC approval. The upshot of that visit was that certain activities to develop the land will require consent under ORC’s water plan and Flood Protection Management Bylaw. This new notification appeared consistent to all previous information ORC has received therefore ORC did not submit on it but did provide comment confirming previous staff advice.

### 1.3 Territorial Authority and Regional Council Resource Consent Applications

The following were received over the period to 17 May 2019:

Agency	Number	Document
CODC	2	Resource Consent applications
QLDC	2	Resource Consent applications

No other responses were made, nor proposals received over the period to 17 May 2019.

**ATTACHMENTS**

1. s 30 for GM report **[10.1.1]**
2. diagram for G Ms May 19 report **[10.1.2]**