

Proposed Plan Change 6AA To the Regional Plan: Water for Otago

Section 42A Report

Report dated 11 December 2019

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Abbreviations

ORC	Otago Regional Council
NPSFM	National Policy Statement for Freshwater Management 2014 (amended 2017)
PC6A	Plan Change 6A (Water Quality) to the Regional Plan: Water for Otago
PC6AA	Proposed Plan Change 6AA
PORPS	Partially operative Regional Policy Statement for Otago
PRPS	Proposed RPS – Decisions version
RPS	Regional Policy Statement for Otago 1998
RMA	Resource Management Act 1991
Water Plan	Regional Plan: Water for Otago
Waste Plan	Regional Plan: Waste for Otago

Executive Summary

Both the Ministry for the Environment (MfE) and Otago Regional Council (ORC) have announced significant changes to freshwater management in the coming years, namely:

- MfE’s “Action for Healthy Waterways” package; and
- The Full Review of the Regional Plan: Water for Otago (Water Plan) to give effect to the National Policy Statement for Freshwater Management 2014 (amended 2017) (NPSFM).

Plan Change 6AA seeks to ensure the efficient and effective transition between the current discharge management framework, and the framework that will be developed in the coming months/years.

It therefore proposes to postpone the date at which rules controlling discharge contaminant concentration thresholds (Schedule 16) and nitrogen leaching (Overseer) (hereafter referred to as discharge contaminant concentration and nitrogen leaching rules) come into force, from 1 April 2020 to April 2026. This proposal is driven by:

- The possible upsurge in consent applications, for discharges in breach of these rules; which is seen as inefficient at a time where a new freshwater management framework is being prepared.
- The significant issues with the implementation of the discharge contaminant concentration and nitrogen leaching rules.

ORC is also concerned that the consenting of activities under the discharge contaminant concentration and nitrogen leaching rules will likely undermine the effectiveness of the revised rule framework to be developed as part of the full review of the Water Plan and could limit the ORC’s ability to give effect to the objectives of the NPSFM.

It is recommended that Plan Change 6AA remains as notified and the commencement date of the discharge contaminant concentration and nitrogen leaching rules be extended to 1 April 2026. This will allow time to develop a more robust water management framework that implements and gives full effect to the NPSFM. It is expected that the full review of the Water Plan will be completed, and new planning provisions will be operative, before 1 April 2026.

One option that the Hearing Commissioner may like to consider is whether the regulatory backstop date of 1 April 2026 should be brought forward to a date in 2025. Since Plan change 6AA was notified Minister Parker, under section 24A of the RMA, has made three recommendations to ORC to ensure it has a fit for purpose planning regime that is compliant with all legislative requirements. In approving the Minister’s three recommendations, the Council formally noted that the new comprehensive Water and Land Plan will be operative by December 2025.¹

In recognition of the current issues with the Water Plan’s discharge rules, the ORC is preparing a plan change (“Omnibus” Plan Change) which intends to strengthen some of the provisions that seek to control and manage discharges, and that are anticipated to have a positive effect on water quality. (although noting that the Omnibus plan change is still under development, and its full scope is yet to be determined). The omnibus plan change will be notified by 31 March 2020.

¹ See Council Decision – 27 November 2019 (<https://www.orc.govt.nz/media/7611/extraordinary-council-meeting-27112019-final.pdf>)

Introduction

The ORC prepared Proposed Plan Change 6AA to the Water Plan. Plan Change 6AA proposes to postpone the date at which rules on discharge contaminant concentration and on nitrogen leaching come into force, from 1 April 2020 to 1 April 2026 (the date by which a fully revised Water and Land Plan for Otago is expected to be operative).

The purpose of this report

This report is prepared under s42A of the RMA and identifies the matters raised in submissions, makes recommendations to the Hearing Commissioner and gives reasons for those recommendations. It also discusses the eligibility of Fraser McRae's further submission under Schedule 1 Section 8 of the RMA. Matters beyond the scope of this plan change are not discussed in this report.

Notification process

The proposed plan change was publicly notified on 5 October 2019 and the period for making submissions closed on 4 November 2019. A total of 20 submissions were received. Nineteen of these submissions were lodged within the statutory time frame specified, by 5pm on 4 November 2019. The 20th submission was received late. Under delegated authority ORC has waived the time limit for this submission.

The Summary of Decisions Requested was notified on 9 November 2019, with the period for making further submissions closing on 22 November 2019. There were 3 further submissions received. All further submissions were received within statutory timeframes. The Summary of Decision Requested notes that several submissions are considered to be out of scope (Carl Cleaver, Wise Response Society). The eligibility of one of the further submissions (from Fraser McRae) is also noted as uncertain. The Hearing Commissioner will need to determine whether the submissions points summarised as out of scope are in fact not "on" the plan change, and whether Mr McRae's further submission is eligible.

Background and context

Planning context

In 2014, ORC made a new set of rules for managing discharges from land uses (predominately rural land uses) operative. Those rules consisted of a set of prohibited activity rules (Rules 12.C.0.1 to 12.C.0.3) to avoid objectionable discharges and manage the highest risk farm practices (effluent management, silage and composting, land disturbance); and catch-all permitted activity rules, which allow all rural discharges on a set of conditions including their effects on the receiving water's colour and visual clarity, on flooding and erosion risks, and on regionally significant wetlands (Rules 12.C.1.1 to 12.C.1.2). From 1 April 2020, those permitted activity rules are to be complemented by additional rules on:

- Discharges' concentration in nitrate-nitrite nitrogen (NNN), dissolved reactive phosphorus (DRP), ammoniacal nitrogen and Escherichia coli (Schedule 16 contaminant concentration thresholds) (Rule 12.C.1.1A); and
- Nitrogen leaching from any property, as estimated using Overseer (Rule 12.C.1.3).

This suite of rules and related policies was expected to achieve the Water Plan's water quality objectives to:

- Maintain or enhance water quality (Objectives 7.A.1 and 9.3.3);
- Enable discharges while maintaining the values of surface water bodies, including Kai Tahu values (Objective 7.A.2) and
- Have individuals and communities manage their discharges and their effects on water quality (Objectives 7.A.3);
- Achieve, by 31 March 2025, compliance with numerical "limits" or "objectives"² in terms of concentration in nitrate-nitrite-nitrogen, dissolved reactive phosphorus, ammoniacal nitrogen, Escherichia coli and turbidity (Schedule 15). Those numerical objectives were derived from guidelines for ecosystem health and primary contact recreation.

ORC now considers that the discharge contaminant concentration and nitrogen leaching rules are ambiguous, unenforceable and uncertain³. ORC therefore proposes to extend the commencement date of those rules to 1 April 2026, in order to:

- Allow time to develop a more robust water management framework that gives full effect to the National Policy Statement for Freshwater Management 2014 (amended 2017) (NPSFM).
- Avoid issuing resource consents which could undermine the effectiveness of the revised rule framework to be developed in the near future.

² Although the Water Plan refers to Schedule 15's water quality outcomes as "limits", they will be referred to as "objectives" in this report, as they are more akin to freshwater objectives than limits, in the NPSFM terminology.

³ See Section 32 Evaluation Report to Proposed Plan Change 6AA

Statutory Framework for preparation of regional plans under the RMA

Regional councils must prepare and change any regional plans in accordance with its function under section 30 of the RMA.⁴ The preparation of, or changes to, regional plans must be developed in accordance with:

- Schedule 1 of the RMA.⁵
- The provisions of Part 2 of the RMA.⁶
- National policy statements, the New Zealand coastal policy statement, a national planning standard, and any regulations.⁷
- Its obligation to have prepared and have particular regard to an evaluation report prepared in accordance with section 32 of the RMA.⁸

When preparing or changing any regional plan, a regional council:

- Shall have regard to strategies and management plans prepared under other Acts that have a bearing on the resource management issues of the region.⁹
- Shall have regard for the extent that consistency is required with the regional policy statements and regional plans or proposed regional policy statements and proposed plans of adjacent regional councils.¹⁰
- Must take into account any relevant planning document recognised by an iwi authority (if lodged with the council) that has a bearing on the resource management issues of the region.¹¹
- Must not have regard to trade competition.¹²

The contents of regional plans must:

- State the objectives for the region, the policies to implement the objectives, and the rules (if any) to implement the policies.¹³
- Give effect to any national policy statement, New Zealand coastal policy statement, national planning standard, and any regional policy statement.¹⁴
- Not be inconsistent with a water conservation order or any other regional plan for the region.¹⁵
- Record how a natural resource has been allocated under section 30(1)(fa) or (fb) and (4), if the council has done so.¹⁶

⁴ RMA, s66(1)(a).

⁵ RMA, s65(5).

⁶ RMA, s66(1)(b)

⁷ RMA, s66(1)(ea) and (f).

⁸ RMA, s66(1)(e).

⁹ RMA, s66(2)(c)(i)

¹⁰ RMA, s66(2)(d).

¹¹ RMA, s66(2A).

¹² RMA, s66(3).

¹³ RMA, s67(1).

¹⁴ RMA, s67(3).

¹⁵ RMA, s67(4).

¹⁶ RMA, s67(5).

The contents of regional plans may state:¹⁷

- The issues, methods, and principal reasons for adopting the policies and methods in the plan.
- Anticipated environmental results, efficiency and effectiveness monitoring procedures, and processes for dealing with issues.
- Information to be included with resource consent applications.
- Any other information required for fulfilling the regional council's functions, powers and duties under the RMA.

The policy statements of particular relevance to Plan Change 6AA are:

- NPSFM.
- Partially operative Regional Policy Statement for Otago.
- Proposed RPS – Decisions version.
- Regional Policy Statement for Otago 1998.

To the extent provisions within these policy statements are relevant to assessment of Plan Change 6AA, these matters are addressed further below.

Response to submissions

Scope of submissions

Before recommending any amendments to Plan Change 6AA, the Hearing Commissioner must consider whether there is scope to make such amendments. In doing so, the Hearing Commissioner must consider whether:

- submissions received are “on” Plan Change 6AA; and
- any amendments are within the scope of a submission such that the Hearing Commissioner has jurisdiction to recommend the amendments.

Submissions “on” Plan Change 6AA

Clause 6(1) of Schedule 1 to the RMA provides that when a plan change is publicly notified under clause 5 of Schedule 1, the Council and any person may make a submission “on” the plan change.

Submissions on a plan change must be in the prescribed form. The form requires a submitter to give details of the specific provisions of the plan change that the submission relates to, and to give precise details of the decision which the submitter seeks from the local authority.¹⁸

Submissions must be “on” Plan Change 6AA,¹⁹ and if a submission is not “on” Plan Change 6AA, then the Hearing Commissioner does not have jurisdiction to consider it.

¹⁷ RMA, s67(2).

¹⁸ RMA, Sch 1, cl 6(5). See Form 5 in the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

¹⁹ Resource Management Act 1991, Sch 1, cl 6(1).

The Courts have endorsed a bipartite approach when considering whether a submission is “on” a plan change. First, the submission must reasonably fall within the ambit of the plan change by addressing a change to the status quo advanced by the proposed plan change. Secondly, the Hearing Commissioner should consider whether there is a real risk that persons potentially affected by the changes sought in a submission have been denied an effective opportunity to participate in the plan change process.²⁰

If the effect of regarding a submission as being “on” a plan change would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, that will be a “powerful consideration” against finding that the submission was truly “on” the plan change.²¹

The Summary of Decision Requested notes that two submissions are out of scope (Carl Cleaver, Wise Response Society). The Hearing Commissioner will need to determine whether the submissions points summarised as out of scope are in fact not “on” the plan change.

Amendments within scope of a submission

When considering whether to recommend any amendments to Plan Change 6AA, the Hearing Commissioner must be satisfied that any such amendments are within the scope of submissions.

Case law has established that for an amendment to be considered within the scope of a submission, the amendment must be fairly and reasonably within the general scope of:²²

- an original submission; or
- the plan change as notified; or
- somewhere in between.

The question of whether an amendment goes beyond what is reasonably and fairly raised in submissions will usually be a question of degree, to be judged by the terms of the plan change and the content of submissions. This should be approached in a realistic workable fashion rather than from the perspective of legal nicety, with consideration of the whole relief package detailed in submissions.²³

Further, the courts have recognised that councils need scope to deal with the realities of the situation and a legalistic interpretation that a council can only accept or reject relief sought in any given submission is unreal.²⁴ Approaching such amendments in a precautionary manner, to ensure that people are not denied an opportunity to effectively respond to additional changes in the plan change process, has also been endorsed by the courts.²⁵

²⁰ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 at [90], endorsing the approach of William Young J in *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

²¹ *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003 at [66].

²² *Re Vivid Holdings Ltd* (1999) 5 ELRNZ 264 at [19].

²³ *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59 at [58]-[60].

²⁴ *Albany North Landowners v Auckland Council* [2016] NZHC 138 at [107], citing *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145 (HC) at 170.

²⁵ *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNZ 59 at [58]-[60]; *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290 at [82].

Incidental or consequential amendments

Changes that are considered to be incidental to, consequential upon, or directly connected to the plan change are also considered to be within scope.²⁶

An amendment can be anywhere on the line between the plan change and the submission. Consequential changes can flow downwards from whatever point on the first line is chosen, for example, a submission may only be on an objective or policy, but there may be methods or rules which are then incompatible with the new objective or policy in the proposed plan change as revised²⁷, which would also require an amendment, as a consequential change.

Further, amendments required for clarity and refinement of detail are allowed on the basis that such amendments are considered to be minor and un-prejudicial.²⁸

Further Submissions

Further submissions on Plan Change 6AA are limited to matters in support of or opposition to an original submission.²⁹ Further submissions cannot be used to extend the scope of an original submission.

I have requested a legal opinion from Wynn Williams on the eligibility of Fraser McRae to make a further submission, and whether that submission is within scope of an original submission. This legal opinion is attached as **Annexure A**.

I have relied on the legal opinion of Wynn Williams and consider the following matters should be taken into account by the Hearing Commissioner when deciding whether Mr McRae's further submission meets the criteria set out in clause 8 of Schedule 1 of the RMA:

- It is unclear whether Mr McRae meets the criteria in clause 8(1)(a), being a "person representing a relevant aspect of the public interest". The plain and ordinary meaning of the words in clause 8(1)(a), and the caselaw considering that phrase (albeit in a different context) suggest that, for a person to have standing under subclause (1)(a) to make a further submission, that person arguably needs to represent a wider group of persons with an interest in the Plan Change.
- Mr McRae does not meet the criteria in clause 8(1)(b) or 8(1)(c).
- The original submission by Wise Response Society is noted as outside the scope of the Plan Change in the Summary of Decisions Requested and therefore cannot be relied upon by Mr McRae for his further submission.
- Mr McRae's submission and decisions requested go beyond the matters submitted on by the Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest and Bird) in its original submission. A further submission can only be in support or opposition of a matter in an original submission. Mr McRae's first decision requested (that the Plan Change be deleted) is a matter

²⁶ *Well Smart Holding (NZQN) Limited v Queenstown Lakes District Council* [2015] NZEnvC 214 at [16].

²⁷ *Campbell v Christchurch City Council* [2002] NZRMA 332 (EnvC) at [20].

²⁸ *Oyster Bay Developments Limited v Marlborough District Council* EnvC C081/2009, 22 September 2009 at [42].

²⁹ RMA, Sch 1, cl 8(2).

addressed in the original submission of Forest and Bird. His second and third decision requested are outside the scope of Forest and Bird's submission.

Submissions on Plan Change 6AA

Plan Change 6AA was notified on 5 October 2019. Twenty submissions and three further submissions were received (as noted above nineteen of these submissions were lodged within the statutory time frame specified, with the 20th submission was received late. Under delegated authority, ORC has waived the time limit for this submission).

Ten submissions are in support of the plan change; nine in opposition; and one is neutral. All three further submissions support submissions that oppose the plan change. Most of the submitters' concerns relate to the risk of water quality degrading as a result of plan change 6AA, because of a management gap it creates in the rural discharge rule framework (Section 12.C in the Water Plan).

As a result of those concerns, submitters who have opposed the proposed plan change either asked for:

- The plan change to be withdrawn;
- The proposed implementation date to be brought forward, so any management gap is minimised; or
- The Water Plan's discharge policy framework to be strengthened, to better manage the transition between the Water Plan's operative provisions and the second-generation plan.

To address submitters' concerns, this report examines:

- How Plan Change 6AA manages the transition between water quality management framework;
- The possible impact of Plan Change 6AA on water quality; and
- How Plan Change 6AA fits within the current planning framework.

Transition between water quality management frameworks

Both the Ministry of the Environment and ORC have announced significant changes to freshwater management regulations in the coming years. The possible scope and extent of nation-wide changes were confirmed in the “Action for Healthy Waterways” discussion documents released by the Ministry for the Environment in September 2019. The table below lays out what changes can be expected and by when.

Table 1: Expected regulatory reforms

REGULATORY CHANGE	FORESEEABLE CHANGES	POSSIBLE DATE
<i>National</i>		
Changes to the National Policy Statement for Freshwater Management	May include: <ul style="list-style-type: none"> ▪ Clarifying <i>Te Mana o Te Wai</i> ▪ Prioritising objectives ▪ Extending the National Objective Framework to new numerical attributes ▪ Clarifying methods by which achieving objectives for each attributes ▪ Setting expectations for the management of wetlands, streams and fish habitat 	Uncertain
New National Environmental Standards for Freshwater	May include: <ul style="list-style-type: none"> ▪ Land use rules for livestock control ▪ Land use rules on rural land use intensification ▪ Requirements to develop farm management plans 	Uncertain
New Stock Exclusion Section 360 Regulations	National requirements for stock exclusions from water bodies.	Uncertain
<i>Regional</i> ³⁰		
“Omnibus” Plan Change	Includes: <ul style="list-style-type: none"> ▪ Revised discharge and water quality policies ▪ Stronger effluent management rules ▪ Rules/Policies to promote good farm management practices May include: Stock access to water bodies	Notified by 31 March 2020
Regional Policy Statement	New RPS which: <ul style="list-style-type: none"> ▪ Includes a specific chapter on freshwater and land management ▪ Gives effect to the National Policy Statement for Freshwater Management; the National Policy Statement on Urban Development Capacity; and any other relevant national direction ▪ Implements the National Planning Standards 	Notified in November 2020 Expected to be operative in 2022
Full review of the Regional Plan: Water for Otago	New water and land management framework which: <ul style="list-style-type: none"> ▪ Integrates management of land and water at the scale of the region’s freshwater management units ▪ Gives full effect to the National Policy Statement for Freshwater Management 	Notified by December 2023 Expected to be operative by 31 December 2025

³⁰ See Council Decision – 27 November 2019 (<https://www.orc.govt.nz/media/7611/extraordinary-council-meeting-27112019-final.pdf>)

Plan Change 6AA seeks to achieve an efficient transition towards a new management framework, by avoiding the upsurge of applications for resource consent for the breach of Schedule 16 discharge contaminant concentration thresholds and Overseer nitrogen leaching limits. Resource consents may undermine the effectiveness of a new planning framework, as consents remain valid for the whole extent of their duration (which is established during the consenting process, and cannot exceed 35 years), irrespective of the plan changes that may occur during that duration.

Reducing consenting costs when regulatory changes of such a scale are expected is supported by some submitters (*Waitaki Irrigators Collective Ltd, Ravensdown Ltd, Horticulture New Zealand; Dunedin City Council*), while other submitters seek more evidence on the expected number of consent applications for breaches of the Schedule 16 thresholds or Overseer rule (*Marc Schallenberg, Guardians of Lake Wanaka and Guardians of Lake Hawea, Forest and Bird*).

Estimating the number of consents likely to be generated by the present rule framework is difficult as ORC does not have information on compliance with these two requirements. The number of consent applications ORC will receive depends on:

- The number of farms which meet the relevant conditions;
- Incentives of seeking a consent: farmers who need financing or who are considering selling their farms are more likely to apply for a consent.

The forthcoming regulatory changes may add new consenting requirements for land uses, and/or clarify and strengthen consenting requirements for discharges. As a result of those changes, ORC may decide to review consents that breach the Schedule 16 thresholds or Overseer nitrogen leaching limits. Irrespective of the number of consents granted, reviewing consents shortly after they were granted is inefficient and costly, while not reviewing them could undermine the effectiveness of a new management framework.

In all cases, should new land use consents be required either as a result of the new National Environmental Standards for Freshwater or one of the plan changes mentioned above, discharge consent holders may have to apply for new land use consents shortly after getting discharge consents to manage the effects of their land use practices on water quality.

Having Schedule 16 thresholds and the Overseer rule come into effect so soon before or after significant regulatory changes results in inefficiencies and unnecessary costs, which should be avoided providing it does not aggravate the risk of water quality degradation.

The possible impact of Plan Change 6AA on water quality

The impact of postponing the commencement date of the Schedule 16 thresholds and Overseer nitrogen leaching rule on water quality is submitters' main concern (*Joy Green, Mel Hollis, Peter A. George, Carl Cleaver, Sydney Mann, Forest and Bird, Wise Response, Ballance, Guardians of Lake Wanaka and Guardians of Lake Hawea, Forest and Bird, Marc Schallenberg*).

In their view:

- The longer transition time will provide more opportunity for uncontrolled rural land use intensification and the continuation of bad management practices;

- Plan Change 6AA could reduce momentum in the completion of nutrient budgets; and
- Plan Change 6AA could undermine the efforts some Otago farmers have put into complying with the Schedule 16 discharge contaminant concentration thresholds and OVERSEER nitrogen leaching limits.

Marc Schallenberg, Fish and Game, Guardians of Lake Wanaka and Guardians of Lake Hawea, and Wise Response Society point out that reliance on a future management framework which has not been developed yet does not provide any assurance that the management gaps Plan Change 6AA creates will be satisfactorily addressed.

On the other hand, many submitters acknowledge the issues with implementing the Schedule 16 thresholds and the Overseer nitrogen leaching rule (*Ravensdown, Horticulture New Zealand, Marc Schallenberg, Guardians of Lake Wanaka and Guardians of Lake Hawea, Waitaki Irrigators Collective Ltd, Federated Farmers, Dairy Holdings Ltd, Randall Aspinall, Dairy NZ*).

In assessing the possible impact of Plan Change 6AA, the following must be considered:

- What activities and land use changes account for water quality degradation in Otago, and what foreseeable trends are; and
- Whether the discharge contaminant concentration and nitrogen leaching rules play a significant role in managing those activities and land use changes.

Human-induced water pollution is generally driven by land uses and industrial or other point source discharges (including municipal wastewater and urban stormwater) Rural activities dominate large portions of Otago’s landscape, and account for much of the water pollution in the region. The degradation of water quality in parts of the region in the last two decades is generally attributed to rural land use intensification, the expansion of rural land uses, and the growth of dairying^{31, 32}. To meet the Water Plan’s objectives for water quality, ORC anticipates that that additionally regulatory intervention is needed on the following matters:

- Effluent management, both by ensuring appropriate on-farm infrastructure, and adequate management practices;
- Inappropriate farm management practices arising, for example, from:
 - Stock access to waterways
 - Cultivation methods
 - Location and management of intensive grazing areas;
- Leaching from silage, offal pits and farm landfills;
- Further land use intensification, including in the high country.

Although ORC holds little data over land use and land use intensification, there are some signals that land use intensification may be continuing in the region: Statistics New Zealand reports a significant increase in beef cattle number (+12.8%) and in dairy cows, heifers in milk and calves (+9.2%) in Otago between 2017-2018 in its agricultural production statistics (2018)³³. ORC also continues to receive enquiries for dairy conversions which are permitted activities, albeit some ancillary activities (e.g. water takes for dairy shed supply) require resource consent.

³¹ State of the Environment Surface Water Quality in Otago 2006-2017

³² R.W. McDowell, R.M. Monaghan, R.W. Muirhead “Water quality of the Pomahaka River catchment: scope for improvement” (2011) – Report for Otago Regional Council

³³ <https://www.stats.govt.nz/information-releases/agricultural-production-statistics-june-2018-final>

The Water Plan's and Waste Plan's provisions manage those activities through a broad suite of provisions:

- Rules 12.C.0.1, 12.C.0.2 (Water Plan) and Rules 7.6.5, 7.6.8, and 7.6.14 (Waste Plan) seek to prevent objectionable effects from the high-risk activities that are effluent management, offal pits, silage and farm landfills;
- Rule 12.C.0.3 and 12.C.1.1 set conditions over sediment run-off resulting from all land disturbance activities, including cultivation and grazing;
- Rules 13.5.1.8A and 13.5.1.8B manage stock access to waterways.

The discharge contaminant concentration and nitrogen leaching rules are intended to complement the rules above by controlling nutrient input and nutrient discharges to water and discharges to land in circumstances where the contaminant may enter water.

The Schedule 16 discharge contaminant concentration thresholds apply to drainage water and overland flows in dry conditions (as indicated by the fact that the thresholds only apply at low flows). In effect, and because overland flows are unlikely in dry conditions, the discharge contaminant concentration thresholds specifically target drainage water and irrigation run-off. To actively ensure compliance with Schedule 16 thresholds, land managers would likely need to:

- Locate the drains and water bodies on their farms;
- Identify dry-weather overland flows resulting from their farm operations
- Implement a sampling programme to inform management decisions, and keep track of their environmental results; and
- Keep records of the sampling data and environmental management decisions.

The actual importance of Schedule 16 thresholds in preventing inappropriate farm management practices is doubtful for the following reasons:

- The run-off of sediment from land disturbance (including cultivation and grazing) is more likely after rain events; i.e. at higher flows;
- The thresholds do not apply to any discharge resulting from stock accessing waterways;
- The application of effluent over drains, or onto wet soils, which has been established as a major contributor of drainage water contamination on dry days in the Pomahaka catchment³⁴, is prohibited under rule 12.C.0.2; and
- Transition towards efficient irrigation is driven by the Water Plan provisions for the taking and use of water.

There are other rules and conditions in the plan, as shown in the table below which also directly control the matters being regulated in Schedule 16:

³⁴ R.W. McDowell, R.M. Monaghan, R.W. Muirhead "Water quality of the Pomahaka River catchment: scope for improvement" (2011) – Report for Otago Regional Council

Table 2: Management of Schedule 16’s target contaminants

SCHEDULE 16 TARGET CONTAMINANT	RELEVANT REGIONAL RULE
Nitrite Nitrate Nitrogen	Rule 12.C.1.1A (Schedule 16 thresholds) Rule 12.C.1.3 (Overseer nitrogen leaching limits)
Dissolved Reactive Phosphorus (DRP)	Rule 12.C.1.1A (Schedule 16 thresholds) and Sediment management: Rule 12.C.0.3; Rule 12.C.1.1 [DRP tends to bind to sediment: appropriate sediment controls lowers the risk of high concentrations in DRP]
Ammoniacal nitrogen	Rule 12.C.1.1A (Schedule 16 thresholds) and Effluent management: Rules 12.C.0.1 and 12.C.0.2 [Animal effluent is the principal source of ammoniacal nitrogen when referring to rural land uses]
Escherichia coli	Rule 12.C.1.1A (Schedule 16 thresholds) and Sediment management: Rule 12.C.0.3; Rule 12.C.1.1 [E.Coli tends to bind to sediment: appropriate sediment controls lowers the risk of high concentrations in E.Coli]

The Overseer nitrogen leaching rule is also a generic rule which seeks to capture the overall effect of land management on water quality, at a property scale; and which seeks to promote the development of farm nutrient plans. Unlike the Schedule 16 discharge contaminant concentration thresholds, this rule limits land use intensification (via discharge rules) to what is deemed appropriate in the receiving environment. It is also the only permitted activity rule which sets conditions addressing the effect of rural land uses on groundwater quality.

In summary, postponing the commencement date of the discharge contaminant concentration and nitrogen leaching rules will postpone direct controls on nitrogen losses and other contaminant concentrations coming into force, however the Plan rules do still require record keeping of data relating to nitrogen losses via Overseer that will remain unchanged by Plan Change 6AA.³⁵

During the period between 1 April 2020 and when any new regulatory framework comes into force (or by 1 April 2026 as a backstop) there will be no direct regulatory drivers targeting the following:

- The active monitoring and management of the effects of a farming operation on water quality;
- The appropriate management of nutrient inputs and leachate from a farm;
- Limiting land use intensification to what is appropriate in the receiving environment (noting that water allocation plays a part in managing land use intensification).

In the context of the Plan, the Overseer nitrogen leaching rule:

- plays an important part in controlling land use intensification by controlling nitrogen losses;

³⁵ Rule 12.C.1.3(b)(ii)

- drives the completion of nutrient budgets and controls fertiliser use (via controls on nitrogen losses, which are important aspects of farm management; and
- manages the effects of nitrogen on groundwater quality.

In contrast, there are significant overlaps between the Schedule 16 thresholds and other rules in the plan. Postponing the applicability of Schedule 16 will however remove a driver for farmers to actively monitor their drainage water and irrigation runoff.

However, the matters above need to be considered within the context of the Plan as a whole. Most relevantly, there are significant challenges with the interpretation and implementation of the discharge contaminant concentration and nitrogen leaching rules. Those are outlined in the paragraphs below.

Schedule 16

Rule 12.C.1.1A sets up a very complex framework for determining when and where Schedule 16 discharge contaminant concentration thresholds apply. For example, thresholds apply at different compliance points depending on whether the discharge is to a lake, river or wetland; to a drain; or to a water race. Implementing Schedule 16 requires a clear distinction between a drain, a river or a water race. In practice, such determination can be challenging: is a swale a river? How does one distinguish between a heavily modified stream and a drain? Despite the publication of a “what is a river” fact sheet³⁶ that provides general principles on how to determine whether a water course is a river, the ORC has not set a system in place for the consistent and transparent qualification of water courses. Without a comprehensive record of farm drains, ORC compliance officers must fully rely on their observations and judgment on the day of their inspection, at the risk of missing compliance points, and providing inconsistent advice to land managers from one visit to another.

Schedule 16 specifically targets dry-weather discharges (i.e. discharges of drainage water and irrigation run-off). This assumes that flows at the representative flow monitoring sites reflect the weather and soil conditions of the whole area the site covers. ORC officers have reported instances where local conditions are at odds with the flow conditions at their representative flow sites. In such instances, Schedule 16 could apply to rainwater run-offs land managers have little control over.

Those issues, along with localised challenges (e.g. the application of discharge contaminant concentration thresholds in areas of tidal influence) have fuelled uncertainty over how to assess and ensure compliance with contaminant concentration thresholds; and have undoubtedly been a barrier in the active monitoring and discharge management required by Schedule 16 thresholds.

ORC’s response to those challenges has been slow: the regional council has not provided guidance to land managers on how to best develop a plan for compliance with Schedule 16, there has not been a consistent programme to assist farmers with identifying compliance points on their farms; and ORC has not provided advice or guidance to farmers on what farm management practices would likely assist them in reducing the impact of their operations on water quality.

³⁶ <https://www.orc.govt.nz/media/4408/what-is-a-river.pdf>

Similarly, ORC has not conducted specific investigations to assess the appropriateness of the thresholds in the plan; and the ability for farmers to meet those thresholds.

Some time is needed for ORC to either better prepare the implementation of Schedule 16, or develop alternative controls, if that is more in line with the coming regulatory changes.

Overseer

The use of Overseer as a basis for managing nutrient diffuse discharge is not unique to Otago; although different approaches have been adopted by the various regional councils. In this context, Freeman & al (2016)³⁷ have developed guidance over how to make the best use of Overseer in plans.

They especially recommend that, where regional plans use nutrient discharge thresholds against which compliance is measured and reported using Overseer, regional councils should:

- Have a clear method to deal with version changes; and
- Define period(s) of time over which the Overseer modelling must be undertaken – generally a minimum of a rolling average of three to five years.

Rule 12.C.1.3 of the Water Plan does not implement any of these recommendations:

- The rule refers to Overseer Version 6, which was the version at the time Rule 12.C.1.3 was notified. The model has been updated four times since then, and the current version is Overseer 6.3.0. Version changes can alter farm estimates significantly without changes to the actual nitrogen leaching: a permitted discharge may then become restricted discretionary or discretionary, solely because of a model version change (and vice versa).
- The rule does not specify a period of time over which the Overseer estimate must be run. This leaves the interpretation of the rule open.

In those circumstances, the nitrogen leaching rule is overly uncertain, and unsuitable as a permitted activity rule in its current wording. There is also uncertainty in the rule given it seeks to control discharge of nitrogen which may result in it entering groundwater (given the difficulties in proving this in a permitted activity rule).

Consenting

The consenting of discharges in breach of the discharge contaminant concentration and nitrogen leaching rules (once those provisions come into effect) is guided by the policies in sections 7B and 7D of the Water Plan. Most of these policies justify the overall structure of discharge rules; and few are directly relevant for the consenting of discharges.

The latter policies provide the following guidance:

- Discharge consents should seek to achieve Schedule 15 freshwater objectives and targets (Policy 7.B.1) outside any mixing zone, which may be determined based on the matters for consideration listed in Policy 7.B.6;
- Discharges to land (instead of to water) and discharges; discharges which result from discharge management innovation should be encouraged (Policies 7.B.1. and 7.B.8);

³⁷ Freeman, M, Robson, M, Lilburne L, McCallum-Clark, M, Cooke, A, & McNae, D. (2016) Using OVERSEER in regulation - technical resources and guidance for the appropriate and consistent use of OVERSEER by regional councils, August 2016. Report prepared by Freeman Environmental Ltd for the OVERSEER Guidance Project Board.

- Discharges from short-term activities with short-term adverse effects should be allowed (Policy 7.B.3); while objectionable discharges should be avoided (Policy 7.B.2)
- Consents should not exceed two years for discharges resulting from a short-term activity; or 5 years for a discharge in breach of Schedule 16 thresholds or Overseer nitrogen leaching limits, when this discharge was not previously consented³⁸ (Policy 7.D.4).

Other policies list matters the consent authority should have regard to when considering discharge consent application (Policies 7.B.4 and 7.D.5). Beyond broad and general matters (e.g. the effects, including cumulative effects, of the discharge on water quality and the receiving water's values), the consent authority must have regard to "the discharge management system used or proposed to be used" and "any staged timeframe and any environmental management plans to achieve compliance with [permitted activity rules] or [reduce] environmental adverse effects" (Policy 7.D.5).

Since discharge provisions were made operative, ORC has provided little guidance to land managers over what would be expected as part of the consenting processes, in terms of information, but also what conditions would be considered (e.g. would consents set conditions on discharge contaminant concentrations or Overseer nitrogen leaching estimates; or would they set requirements on land practices?).

All the implementation challenges described above will likely undermine the effectiveness of the discharge contaminant concentration and nitrogen leaching rules in achieving good environmental outcomes.

Therefore, while Plan Change 6AA creates a gap in how the effects of rural discharges on water quality are managed, the Plan Change is unlikely to significantly undermine the effectiveness of the Water Plan's provisions in managing water quality given the identified issues with implementation.

Plan Change 6AA within the regulatory context

The s32 Evaluation Report outlines the regulatory framework in which Plan Change 6AA is being developed. *Forest and Bird, Fish and Game and Marc Schallenberg* are concerned that Plan Change 6AA does not give effect to the NPS-FM 2014 (amended 2017), the Proposed RPS, Operative RPS, and the Water Plan's objectives, primarily because the plan change aggravates the risk of water quality degradation and could therefore negatively affect ecosystem health.

Overall, the NPS-FM, proposed RPS, operative RPS, and Water Plan all seek to maintain or enhance water quality, especially for ecosystem health and contact recreation (Objectives A1 and A2 (NPSFM), Policy 3.1.1 (PRPS), Objective 7.A.1 (Water Plan)). The Water Plan sets more specific water quality objectives and targets for surface water bodies in Schedule 15, which should all be met by 31 March 2025.

Should Plan Change 6AA be adopted as proposed, ORC would rely on the rules which have been in effect since 2014 to achieve the Plan's water quality objectives and targets. It is premature to assess the effectiveness of these rules conclusively based on ORC's State of the Environment monitoring. However, at the time the current water quality objectives and targets were developed, the discharge

³⁸ This is a simplification of the scope of restricted discretionary rule 12.C.2.3

contaminant concentration and nitrogen leaching rules were relied upon to achieve the region's water quality objectives and targets. It is uncertain that the discharge provisions that have been in effect since 2014 will achieve the water quality objectives and targets for the region by 2025.

While Plan Change 6AA delays the implementation of the discharge contaminant concentration and nitrogen leaching rules, it provides a backstop by ensuring that the rules remain in the Plan and therefore should other regulatory changes not proceed, there will still be a route for the Plans objectives to be met (albeit that there is some uncertainty in how the discharge contaminant concentration and nitrogen leaching rules will achieve this given the implementation and effectiveness issues identified above and whether this will occur within the Schedule 15 timeframes).

Further, while the NPS, proposed RPS and operative RPS all seek to maintain or enhance water quality, there are objectives and policies within these documents that are relevant to Plan Change 6AA and the Council's desire to postpone the implementation of certain rules until a comprehensive review of the Plan is undertaken.

In particular, in relation to the NPS, Policy E1 specifically recognises that regional councils can give effect to the NPSFM under a staged implementation programme. The Council has notified a staged implementation programme which requires it to notify necessary changes to give effect to the NPS by 2025. The delay of the specific rules under Plan Change 6AA coming into effect will not prevent the Council from giving effect to the NPSFM within the timeframes prescribed in the NPSFM.

Plan Change 6AA also gives effect to the integrated management objectives and policies in the partially operative RPS 2019. As it will provide the Council with an opportunity to put in place rules that comprehensively address other matters relevant to water quality such as:

- Effluent management, both by ensuring appropriate on-farm infrastructure, and adequate management practices;
 - Inappropriate farm management practices;
 - Leaching from silage, offal pits and farm landfills;
 - Further land use intensification, including in the high country;
- in an integrated way to ensure that the objectives and policies of the NPS and RPS are given effect to.

Otago's new Water and Land Plan will be notified by December 2023 and is expected to be operative by 31 December 2025. The Water and Land Plan will give full effect to the NPSFM and introduce a comprehensive rule framework that regulates discharges from land uses. Any new rules in a proposed plan (or as part of the plan change) that protect or relate to water will have immediate legal effect.³⁹ This means any new activity commenced following the notification of these rules will need to comply with the new rules. However, any lawfully established activity that could have been carried without a resource consent before the new rules were notified can continue until the new rules become operative.⁴⁰ While Plan Change 6AA will ensure that the Schedule 16 thresholds and the OVERSEER nitrogen leaching rule provide a backstop discharge rule framework, it is intended that the new Water and Land Plan be operative before the relevant rules take effect.

³⁹ RMA, s86B(3).

⁴⁰ RMA, s20A.

In order to address some of the current issues with the Water Plan's discharge rules in the interim period, the ORC is preparing the "Omnibus" Plan Change which will introduce provisions, including rules, that manage the effects of rural land uses on water quality. This plan change will be notified by 31 March 2020.

Several submitters seek that if Plan Change 6AA is not withdrawn then the commencement date of the rules is brought forward to an alternative date, for example 1 April 2021 or 1 April 2023 (*Joy Green, Mel Hollis*).

However, any earlier commencement date still poses a risk that a large number of discharges would still need to be consented in 2021 or 2023 if the necessary changes to the planning framework are not in place, and operative, by 1 April 2021 or 2023. Consenting discharges under the rules will also undermine the effectiveness of the revised rule framework to be developed as part of the full review of the Water Plan and could limit the ORC's ability to give effect to the objectives of the NPSFM. Further, the significant implementation issues with the Schedule 16 thresholds and the OVERSEER nitrogen leaching rule will unlikely be comprehensively addressed before a full review of the Water Plan is completed, and new planning provisions will be operative.

In summary, any earlier date would negate most of the benefits of undertaking Plan Change 6AA. As noted above, the 1 April 2026 has been proposed as it is expected that the full review of the Water Plan will be completed, and new planning provisions will be operative, before 1 April 2026.

Other matters

Marc Schallenberg and *Wise Response Society* wish that Plan Change 6AA introduced stronger discharge rules and policies. The preparation of a new plan change to strengthen relevant provisions takes time and there is no way that these could be operative by 1 April 2020 (to fully replace the rules subject to Plan Change 6AA).

Recommendation

In postponing the implementation date of two rules that raise significant implementation issues, Plan Change 6AA offers a pragmatic solution to managing the transition towards new a water management framework.

Plan Change 6AA will result in the commencement date of Schedule 16 discharge contaminant concentration thresholds and Overseer nitrogen leaching limit being extended to 1 April 2026. This will allow time to develop a more robust water management framework that gives full effect to the NPSFM and avoid issuing resource consents which could undermine the effectiveness of the revised rule framework to be developed in the near future. The 1 April 2026 commencement date proposed in Plan Change 6AA corresponds to the date by which a second-generation plan is expected to be operative.

One option that the Hearing Commissioner may like to consider is whether the regulatory backstop date of 1 April 2026 should be brought forward to a date in 2025. Since Plan change 6AA was notified,

Minister Parker, under section 24A of the RMA, has made three recommendations to ORC to ensure it has a fit for purpose planning regime that is compliant with all legislative requirements. In approving the Minister’s three recommendations, the Council formally noted that the new comprehensive Water and Land Plan will be operative by December 2025.⁴¹

In recognition of the current issues with the Water Plan’s discharge rules, the ORC is preparing a plan change (“Omnibus” Plan Change) that is intended to strengthen some of the provisions that seek to control and manage discharges, and that are anticipated to have a positive effect on water quality. This plan change will be notified by 31 March 2020.

Recommendation:

That Plan Change 6AA remains as notified and the commencement date of Schedule 16 discharge contaminant concentration thresholds and Overseer nitrogen leaching limit be extended to 1 April 2026.

⁴¹ See Council Decision – 27 November 2019 (<https://www.orc.govt.nz/media/7611/extraordinary-council-meeting-27112019-final.pdf>)

Annexure A

MEMORANDUM

Date: 10 December 2019
To: Section 42A reporting officer for Plan Change 6AA
From: Kate Woods

ELIGIBILITY OF FRASER MCRAE'S FURTHER SUBMISSION ON PLAN CHANGE 6AA TO THE OTAGO WATER PLAN

1. We have been asked to assess the eligibility of Fraser McRae's further submission on Plan Change 6AA to the Otago Water Plan (**Plan Change**).¹
2. Clause 8 of Schedule 1 of the Resource Management Act (**RMA**) provides that certain persons may make further submissions on a plan change:
 - (1) The following persons may make a further submission, in the prescribed form, on a proposed policy statement or plan to the relevant local authority:
 - (a) any person representing a relevant aspect of the public interest; and
 - (b) any person that has an interest in the proposed policy statement or plan greater than the interest that the general public has; and
 - (c) the local authority itself.
 - ...
 - (2) A further submission given under subclause (1) or (1A) must be limited to a matter in support of or in opposition to the relevant submission made under clause 6 or 6A.
3. Accordingly, to determine Mr McRae's eligibility and the validity of his further submission, we must consider two matters:
 - a. Whether Mr McRae falls within one of the categories of persons set out in subclause (1); and
 - b. Whether his further submission is limited to a matter in support of or opposition to an original submission.

Does Mr McRae fall within one of the categories of persons set out in subclause (1)?

4. Subclause (1) provides that the following persons may make a further submission on the Plan Change:
 - a. any person representing a relevant aspect of the public interest; and
 - b. any person that has an interest in the proposed policy statement or plan greater than the interest that the general public has; and
 - c. the local authority itself.

¹ Further submission number 1003.

Subclause (1)(a)

5. We are not aware of any caselaw that provides commentary on what constitutes a person representing a relevant aspect of the public interest for the purposes of clause 8 of Schedule 1. We note however, that an almost identical phrase was previously used in section 274 of the RMA, and section 2(3)(d) of the Town and Country Planning Act 1977. Given this lack of direct caselaw, we refer to the judicial commentary on the phrase as it was used in these other provisions.
6. In *Weymouth v Manukau City Council*², the Court found that persons who represent some relevant aspect of the public interest are not themselves directly affected in their own personal right, but they have the right to represent the public interest. That does not mean the public interest generally; it can mean some sectional public interest. In this case, the judge went on to find that the public interest was represented by a nearby association of residents and ratepayers, a local environmental society, and the district Maori Council. The overall effect of the decision was one of recognising that representation of some relevant public interest aspect was a concept not to be approached or construed narrowly.³
7. In *McLellan v Whangarei District*⁴, the Planning Tribunal held that to prove standing the appellant needed to show that she stood for some relevant aspect of the public interest by reason of some office or pursuit, or that she was appreciably affected by the proposal in some way different from the general public.⁵
8. In *Woolworths New Zealand Limited v Napier City Council & anor*⁶, Woolworths was interested in upholding the scheme's integrity in the public interest and it was held that the company had standing to appeal as a body that stood to be affected in a manner greater than or different from the public generally.⁷
9. Further to this caselaw, "represent" is (relevantly) defined as:⁸

be entitled or appointed to act or speak for ... act as a substitute for (someone)
10. We consider that the plain and ordinary meaning of the words suggests that, for a person to have standing under subclause (1)(a) to make a further submission, that person arguably needs to represent a wider group of persons with an interest in the Plan Change. This interpretation appears to be supported by the caselaw set out above.
11. Mr McRae asserts that he represents a relevant aspect of public interest by virtue of his previously held role in the preparation of policy relating to both water quality management and the impacts of land use on that water quality, and the fact that his further submission addresses provisions relating to water quality management and the effects of land use on water quality.

² *Weymouth Residents and Ratepayers Association v Manukau City Council* [1985] NZPT 266.

³ *Royal Forest & Bird Protection Society of NZ Inc v Western Bay of Plenty District Council* (1997) 3 ELRNZ 385.

⁴ *McLellan v Whangarei District* [1991] NZPT 233.

⁵ *Royal Forest & Bird Protection Society of NZ Inc v Western Bay of Plenty District Council* (1997) 3 ELRNZ 385.

⁶ *Woolworths New Zealand Limited v Napier City Council & anor* HC, Auckland Registry, AP No. 211/90.

⁷ *Royal Forest & Bird Protection Society of NZ Inc v Western Bay of Plenty District Council* (1997) 3 ELRNZ 385.

⁸ Angus Stevenson and Maurice Waite *Concise Oxford English Dictionary* (12th ed, Oxford University Press, New York, 2011).

12. We consider it likely, on the basis that Mr McRae does not identify any wider group that he represents, that his further submission does not fall within the criteria set out in clause 8(1)(a).
13. While Mr McRae asserts that he has standing as a further submitter by virtue of clause 8(1)(a), as we have found that he likely does not, for completeness we also address subclauses (1)(b) and (1)(c).

Subclause (1)(b)

14. Caselaw provides that for a person to have an interest greater in the plan change than the interest that the general public has, that interest “must be one of some advantage or disadvantage”, such as an interest arising from a right in property directly affected, and which is not remote.⁹ “Remote” is used in the legal, as opposed to the geographical, sense.¹⁰
15. Further, the Courts have held that:¹¹

The circumstances for the court’s consideration are not restricted solely to property rights and neither are they closed or prescribed.¹² Where individuals are clearly disadvantaged, a group representing those individuals can be treated as similarly disadvantaged.¹³ On the other hand, the fact that a community group or entity is representative of a subset of the general public on issues of concern to them does not automatically qualify it as having an interest “greater than the interest that the general public has”. What is required is that the group or entity can establish that it has some advantage or disadvantage that it not too remote.¹⁴ The relationship between the claimed interest and consequent effect of the proceedings on the interest is relevant. Interest (e.g. ‘advantage or disadvantage’) must be direct and not just emotional or intellectual interest.¹⁵ Where a group or entity has an interest different from (as in greater than) that of the general public and specific when compared to that of the general public, that may give the group a sufficiently qualifying interest.¹⁶
16. As set out above, Mr McRae asserts that he represents a relevant aspect of public interest by virtue of his previously held role in the preparation of policy relating to both water quality management and the impacts of land use on that water quality, and the fact that his further submission addresses provisions relating to water quality management and the effects of land use on water quality.
17. We do not consider that addresses whether or not the requirements for subclause (1)(b) have been met (i.e. whether he has an interest greater than the general public amounting to some advantage or disadvantage that is not too remote). Based on his

⁹ *Purification Technologies Limited v Taupo District Council* [1995] NZRMA 197 at 204; cited in *Wallace Group Limited v Auckland Council* [2017] NZEnvC 106 at [23].

¹⁰ *Powerco Limited v Thames-Coromandel District Council* [2017] NZEnvC 67 at [28].

¹¹ *Aratiatia Livestock Limited & Ors v Southland Regional Council* [2018] NZEnvC 218.

¹² *Meadow 3 Limited v Queenstown Lakes District Council* C001/08.

¹³ *Sandspit Yacht Club Marine Society Incorporated v Auckland Council* [2011] NZRMA 300 at [18]; also in *Lindsay v Dunedin City Council* [2013] NZEnvC 8 at [20], an aspiring s274 party had a better relationship with the potential advantages or disbenefit of the proceedings because at least five of its members were property owners residing near or in the street.

¹⁴ *Mangawhai Heads Holdings Limited v Kaipara District Council* [2011] NZEnvC 203 at [13].

¹⁵ *Wallace Group v Auckland Council* [2017] NZEnvC 106 at [25]; *Remarkables Park Ltd v Queenstown Lakes District Council* C26/2005.

¹⁶ *Trustees of the Neville Crawford Family Trust v Far North District Council* [2013] NZEnvC 141 at [12]. For completeness, see also this court’s other recent Queenstown Lakes proposed District Plan decisions: [2018] NZEnvC 145; [2018] NZEnvC 190.

previous role alone, we do not consider that this amounts to an interest greater than the public generally, however, there may be some other factor that we are not aware of that means he has an interest greater than the public generally.

Subclause (1)(c)

18. Mr McRae is not submitting on behalf of the local authority therefore subclause (1)(c) does not apply.

Is Mr McRae's further submission is limited to a matter in support of or opposition to an original submission?

19. Further submissions are limited to matters in support of or opposition to an original submission, and therefore cannot be used to extend the scope of an original submission.¹⁷
20. Mr McRae's further submission is made in support of the original submissions of the Wise Response Society and the Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest and Bird**).
21. We refer to the Summary of Decisions Requested, which notes that the submission by the Wise Response Society is beyond the scope of Plan Change 6AA. Accordingly, that submission is not a valid submission and cannot be the basis for a further submission.
22. In his further submission, Mr McRae requests three decisions:
- a. Delete Plan Change 6AA entirely;
 - b. Initiate variation to Plan Change 6A to include most recent version of OVERSEER; and
 - c. Seek Environment Court consent to change catchment/river to fresh water management unit within Plan Change 6A tables and schedules as necessary to comply with NPSFWM relating to implementation of FWMU provisions.
23. Of those, only the first is a matter addressed in Forest and Bird's original submission. Accordingly, the second and third decision requested is outside the scope available to Mr McRae in his further submission.

Conclusion

24. The plain and ordinary meaning of the words in clause 8(1)(a), and caselaw considering that phrase (albeit in a different context) suggest that, for a person to have standing under subclause (1)(a) to make a further submission, that person arguably needs to represent a wider group of persons with an interest in the Plan Change.
25. We consider it likely, on the basis that Mr McRae does not identify any wider group that he represents, that his further submission does not fall within the criteria set out in clause 8(1)(a).
26. Notwithstanding this, of the decisions Mr McRae has requested, only the first (that the Plan Change be deleted) is a matter which has been raised in the original submission which he supports (and which is "on" the scope of the Plan Change).¹⁸

¹⁷ Resource Management Act 1991, Sch 1, cl 8(2).

¹⁸ Noting that the submission by Wise Response Society is outside the scope of the Plan Change.

The other decisions requested do not support or oppose a valid original submission as per clause 8(2) under schedule 1 of the RMA.