

# Proposed Plan Change 6AA to the Regional Plan: Water for Otago

## Decisions of Council

Otago Regional Council resolved to adopt the recommendations of the Hearing Committee on Proposed Plan Change 6AA at its meeting on Wednesday 29 January 2020, as follows:

### Resolution

*That the Council:*

- 1) **Receives** this report.
- 2) **Adopts** the Recommendations of the Hearing Commissioner to the Otago Regional Council that it:
  - a. Approves and adopts Plan Change 6AA to the Regional Plan: Water for Otago as notified; without amendment; and
  - b. Rejects or accepts the submissions and further submissions as set out in Appendix 1 to the Recommendations report (Attachment 1 to this Report) for the reasons set out the body of the Recommendation Report and the Summary Reasons set out in Appendix 1.
- 3) **Resolves** to publicly notify its decisions on Proposed Plan Change 6AA to the operative Regional Plan: Water for Otago on Saturday 8 February 2020, in accordance with clause 10(4)(b) of Schedule 1 of the Resource Management Act 1991.
- 4) **Serves** on every person who made a submission on the proposed plan change, a copy of the public notice and a statement of the time within which an appeal may be lodged, in accordance with clause 11(1) of Schedule 1 of the Resource Management Act 1991.
- 5) **Makes** available for public inspection, a copy of its decision on proposed Plan Change 6AA to the operative Regional Plan: Water for Otago at all its offices and all public libraries in the region, pursuant to clause 11(3) of Schedule 1 of the Resource Management Act 1991.

Moved: Cr Kevin Malcolm

Seconded: Cr Forbes

CARRIED

All references to the recommendations of the Hearing Commissioner must now be read as being the decisions of Council in the following report.



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## 1. Appointment

[01] The Otago Regional Council (Council or ORC), acting under s34A of the Resource Management Act 1991 (RMA), appointed Robert van Voorthuysen<sup>1</sup> to conduct a hearing into Plan Change 6AA (PC6AA) to the Regional Plan: Water for Otago (Water Plan).

## 2. Description of Proposal

[02] PC6AA is a very simple plan change that proposes to postpone the date at which certain Water Plan rules controlling discharge contaminant concentrations and rules on nitrogen leaching come into force from 1 April 2020 to 1 April 2026. The Water Plan provisions affected are:

- Policy 7.D.2
- Rule 12.C.1.1
- Rule 12.C.1.1A
- Rule 12.C.1.3
- Schedule 16A

[03] The rationale for the plan change is equally simple. Legal advice received by the ORC indicates that the provisions (and particularly the rules) listed above are uncertain, unenforceable and ambiguous. Having considered the rules myself I concur with that advice.

[04] I also note that view was shared by many of the submitters<sup>2</sup> on PC6AA and also by Professor Peter Skelton in his recent investigation of freshwater management at the ORC. Interestingly, even submitters who opposed PC6AA seemed to acknowledge the problems with Rules 12.C.1.1A and Schedule 16A.

[05] For example, in his original submission<sup>3</sup> Dr Mark Schallenberg<sup>4</sup> referred to “*a fundamentally flawed WPC6A*”. In his tabled evidence<sup>5</sup> he stated “... *the design of Water Plan Change 6A is at odds with most other freshwater planning approaches and, in my opinion, it includes some serious flaws. In particular, various aspects of the Plan Change appeared to me to be difficult, if not impossible, to effectively implement.*” The Guardians of Lake Wanaka and Lake Hawea,<sup>6</sup> referring to the PC6AA Section 32 Report, stated “*We agree with parts of this statement referring to ambiguous, unenforceable and uncertain rules ...*”.

<sup>1</sup> Commissioner van Voorthuysen is an experienced independent commissioner, having sat on over 285 hearings throughout New Zealand since 1998. He has qualifications in natural resources engineering and public policy and was a full member of the New Zealand Planning Institute (NZPI) from 1998 to 2016

<sup>2</sup> Including Federated Farmers, Guardians of Lake Wanaka and Guardians of Lake Hawea, Ravensdown, Horticulture NZ, Dr Mark Schallenberg, Waitaki Irrigators Collective, Dairy Holdings Limited and DairyNZ.

<sup>3</sup> Submission, first paragraph under the heading “Feedback on proposed changes”, page 1

<sup>4</sup> Dr Schallenberg is a very experienced freshwater scientist and is currently a member of the Freshwater Leaders Group and the Freshwater Science and Technical Advisory Group

<sup>5</sup> Oral submission on ORC proposed Plan Change 6AA, paragraph 2

<sup>6</sup> Submission paragraph 3.1

[06] In his report to the Minister for the Environment Professor Skelton<sup>7</sup> stated:

*“Because the discharge provisions are defective and, in particular, because they rely on an Overseer version that no longer exists, the Council is proposing to extend the date when these provisions take effect to April 2026 by Plan Change 6AA. .... Plan Change 6AA is necessary now because the water quality rules due to come into effect on 1 April 2020 are recognised to be defective.”*

[07] Amending the date at which the rules effectively commence will provide time for the ORC to undertake a complete review of the existing Water Plan that gives effect to the National Policy Statement for Freshwater Management 2014 (amended 2017) (NPSFM)<sup>8</sup> and the Otago Regional Policy Statement.<sup>9</sup> It will enable the above listed rules to be replaced with others that do not share the same deficiencies as the current ones.

[08] In that regard I note that ORC is preparing an ‘Omnibus Plan Change’ which will introduce provisions, including rules, to manage the effects of rural land uses on water quality. That plan change is intended to be notified by 31 March 2020. ORC is also intending to notify a new Water and Land Plan by December 2023 that will be NPSFM compliant.

### **3. Notification and Submissions**

[09] PC6AA was publicly notified on 5 October 2019. Twenty initial and three further submissions were received and they were briefly summarised in the Section 42A Report.<sup>10</sup> I adopt that summary, but do not repeat it here for the sake of brevity. I record that I read all the submissions and further submissions in full.

### **4. Process Issues**

#### **4.1 Pre-circulation of material**

[10] The s42A Report was pre-circulated on 11 December 2019 in conformance with a procedural Minute that I issued. No evidence from submitters appearing at the hearing was received for pre-circulation and my procedural Minute did not require that given the compressed timeframe between the receipt of the s42A Report and the hearing.

#### **4.2 Wise Response Society submission**

[11] The Wise Response Society lodged a submission seeking by way of relief what they called “Option 4” which they described as “*Update Overseer, remove requirement for Resource*”

<sup>7</sup> Investigation of Freshwater Management and Allocation Functions at Otago Regional Council, Report to the Minister for the Environment by Professor Peter Skelton, 1 October 2019, page 33

<sup>8</sup> As well as the final version of the NPSFM 2019 that was published for consultation as part of Government’s ‘Action for Healthy Waterways’ initiative.

<sup>9</sup> I understand that the Otago Regional Policy Statement is in a state of flux as there is the Regional Policy Statement for Otago 1998: partially operative as of 14 January 2019 (with revoked provisions) and the Partially Operative Otago Regional Policy Statement 2019.

<sup>10</sup> Page 11.

*Consent, shift the compliance test from measured discharge concentrations to assessed nutrient input budget and modelled leaching values, require full calculated compliance by 2025 and ORC to actively facilitate catchment groups in achieving compliance.”*

- [12] Unfortunately, the Wise Response Society relief is not within the scope of PC6AA. I therefore have no jurisdiction to grant the relief sought and I must recommend the rejection of the submission. In making that finding I note that the s42A Report comprehensively addressed the case law on ‘scope’ (namely whether a submission is “on” a plan change or not) and I adopt that part of the s42A Report without repeating it here. Suffice to say the Wise Response submission did not seek specific relief relating to the primary purpose of PC6AA which is to change the implementation date of certain Water Plan provisions from 1 April 2020 to 1 April 2026.
- [13] Acknowledging<sup>11</sup> a possible ‘scope’ issue with their original submission, representatives of Wise Response (Sir Alan Mark and Dugald McTavish) appeared at the hearing to speak to their two Further Submissions lodged in support of the original submissions of Forest and Bird and Dr Marc Schallenberg. They were of the view that it was important to “... *retain maintain momentum with water users and keep faith with and the respect of the general public so that future plans are taken seriously*”. I acknowledge that sensible sentiment, but note it does not overcome the flaws with the PC6A provisions identified by the ORC and submitters.

#### **4.3 Carl Cleaver submission**

- [14] Carl Cleaver lodged a submission seeking that Rule 12.C.1.1 be amended to be a prohibited activity. This is also not a submission “on” PC6AA (PC6AA did not alter the status-quo consent category of Rule 12.C.1.1) and so I therefore have no jurisdiction to grant the relief sought and I must also recommend the rejection of Mr Cleaver’s submission.

#### **4.4 Further submitter McRae**

- [15] An individual named Fraser McRae lodged a further submission supporting the original submission of the Wise Response Society and Forest and Bird. The eligibility to be a further submitter is set out in RMA Schedule 1 Part 1 clause 8(1). I do not repeat that clause in its entirety here but note that Mr McRae would not qualify under clauses 8(1)(b) or 8(1)(c). The question to be addressed is does Mr McRae qualify under clause 8(1)(a) which reads:
- (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
- [16] I allowed Mr McRae to appear at the hearing so that I might explore with him why he thought he qualified under clause 8(1)(a). In answer to my questions he advised that he was appearing as an individual lay person and was not representing any existing association, organisation, agency or group of persons with a direct interest in PC6AA. Nor does he hold any office in any relevant association, organisation or agency.

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<sup>11</sup> Proposed Plan Change 6AA Wise Response Society Oral Submission to the Otago Regional Council, Dunedin, 19 December 2019, paragraph 3.

- [17] Mr McRae advised that he was instead representing the “PC6A Mediation Collective”, which was in his words the group of appellants on PC6A who attended Environment Court mediation on that plan change. However, that was not and is not a formal organisation and in any event it no longer exists. I am not persuaded that representing the so called “PC6A Mediation Collective” qualifies as a valid aspect of the public interest. Importantly, in making that finding I note that all of the parties who were present at PC6A mediation were presumably able to submit on PC6AA in their own right and I understand that some did so.
- [18] Mr McRae is now retired but was formerly employed by the ORC in a policy role and appeared to be very supportive of retaining the Water Plan provisions that PC6AA addresses. However, in my view that does not confer upon him a status of “*representing a relevant aspect of the public interest*” and instead reflects his personal interest in, and obvious strong support for, those provisions.
- [19] I find that Mr McRae does not meet the requirements of RMA Schedule 1 Part 1 clause 8(1) and so his further submission is not valid.

#### **4.5 Section 32AA RMA**

- [20] In compliance with section 32 and clause 5 of Schedule 1 of the RMA, the ORC prepared and publicly notified an evaluation report for PC6AA (the Section 32 Report).<sup>12</sup> The Section 32 Report provides a fulsome yet reasonably concise description of the relevant Water Plan provisions, the problems with them, the alternative remedies considered and the reasons for opting for the Water Plan amendments promulgated by PC6AA.
- [21] I recommend readers of this Recommendation Report also read the PC6AA Section 32 Report.
- [22] Section 32AA of the RMA requires a further evaluation of any changes made to PC6AA after the initial Section 32 evaluation report is completed. The further evaluation can be the subject of a separate report or it can be referred to in the decision-making record. If it is referred to in the decision-making record it should contain sufficient detail to demonstrate that a further evaluation has been duly undertaken.
- [23] As will be evident at the conclusion of this Recommendation Report, I have not recommended any changes to PC6AA as notified. Consequently, a section 32AA further evaluation report is not required. Nevertheless, in keeping with the spirit of the second option in RMA section 32AA(1)(d), I include in this report an assessment of the issues raised by submitters.

#### **4.6 Section 42A Report**

- [24] A Section 42A Report was prepared by ORC staff member Tom Pelsemaeker. At the conclusion of the hearing Mr Pelsemaeker did not recommend any amendments to his original Section 42A Report or his recommendations therein.

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<sup>12</sup> Proposed Plan Change 6AA To the Regional Plan: Water for Otago, Section 32 Evaluation Report, Consideration of alternatives, benefits and costs, Otago Regional Council, 5 October 2019.



## 5. Hearing

- [25] A hearing was held in Dunedin on Wednesday 18 December and Thursday 19 December 2019. I closed the Hearing at 5pm on Thursday 19 December 2019 having satisfied myself that I did not require any further information from any party.
- [26] I have not attempted to summarise the statements made and evidence presented by submitters appearing at the hearing.<sup>13</sup> Copies of any written material tabled are held by the ORC. I took my own notes of verbal statements and answers to my questions. I record that I have had regard to all the matters raised by submitters, both in their original and further submissions and in their evidence provided to me at the hearing.

## 6. Higher Order Statutory Instruments

- [27] Section 66 of the RMA sets out matters that PC6AA must be prepared in accordance with and s67(3) lists superior instruments that PC6AA must give effect to. In this case the only directly relevant superior instruments are the NPSFM and the Otago RPS.
- [28] However, as PC6AA seeks to amend the date by which the listed rules need to be complied with and does not alter the substance of those rules (or the preceding Policy 7.D.2), I consider that the only relevant provisions in the superior instruments are those which might address the timing of when nutrient and indicator bacteria<sup>14</sup> diffuse runoff management rules should be promulgated or have an effect on resource users.
- [29] With regard to the NPSFM the following provisions are potentially relevant, noting that while Policy A5 and A6 deal with contact recreation water quality, the compliance dates in Policy A6 have past (March and December 2018) and so are not relevant here:
- *Improvements in freshwater quality may take generations depending on the characteristics of each freshwater management unit.*<sup>15</sup>
  - *There is an interim target of 80% of these rivers and lakes to be safe for primary contact by 2030.*<sup>16</sup>
  - *Setting enforceable quality and quantity limits is a key purpose of this national policy statement. This is a fundamental step to achieving environmental outcomes and creating the necessary incentives to use fresh water efficiently, while providing certainty for investment.*<sup>17</sup>

<sup>13</sup> Federated Farmers, Guardians of Lake Wanaka and Lake Hawea, Waitaki Irrigators Collective, Marc Schallenberg, Forest and Bird protection Society NZ, Wise Response Society and Dairy NZ.

<sup>14</sup> Schedule 16A includes nitrate-nitrogen, dissolved reactive phosphorous, ammoniacal nitrogen and *Escherichia coli*

<sup>15</sup> Preamble

<sup>16</sup> Preamble

<sup>17</sup> Preamble

- *Every regional council is to implement the policy as promptly as is reasonable in the circumstances, and so it is fully completed by no later than 31 December 2025.*<sup>18</sup>
- *A regional council may extend the date in Policy E1(b) to 31 December 2030 if it considers that:*
  - i meeting that date would result in lower quality planning; or*
  - ii it would be impracticable for it to complete implementation of a policy by that date*<sup>19</sup>

[30] Policy CA2 describes how freshwater objectives are to be set. Policy CA2(f)(vi) requires ORC to consider “*the timeframes required for achieving the freshwater objectives, including the ability of regional councils to set long timeframes for achieving targets*”.

[31] Viewing the above NPSFM provisions holistically, the overall scheme is that improvements in water quality may take a very long time to achieve in practice, but water quality limits should be in place as soon as is reasonable in the circumstances but by 2030 at the latest. Importantly, those limits must be certain and enforceable and care should be taken to avoid “*lower quality planning*”.

[32] In that regard, and as noted earlier, I understand that ORC’s Progressive Implementation Programme states that in early 2020 ORC will notify a plan change (called the ‘Omnibus Plan Change’) to strengthen the Water Plan’s discharge rules, supported by a non-regulatory framework. It is uncertain how long it will take to progress that plan change through the RMA First Schedule process, but it could realistically take several years. ORC previously anticipated that a new Water Plan would be in place before 1 April 2026 and it would introduce a more certain and robust water management framework to manage discharges from land use.<sup>20</sup> This has been overtaken by recent Ministerial directions issued under section 24A of the RMA requiring that by December 2023 the ORC notifies a new Water and Land Plan for Otago that includes region-wide objectives, strategic policies, region-wide activity policies, and provisions for each Freshwater Management Unit, covering all the catchments within the region.

[33] In my view the NPSFM supports the intent of PC6AA to avoid the circumstance ORC finds itself in, namely the problematic implementation of rules that are “*uncertain, unenforceable and ambiguous*” because not doing so would result in “*lower quality planning*”.

[34] With regard to the RPS, the s42A Report notes that the proposed and operative RPS both seek to maintain or enhance water quality, especially for ecosystem health and contact recreation. While there is a slight risk that PC6AA will result in water quality not being maintained (should diffuse discharges from rural land use increase) that risk is relatively short lived given the ORC’s intention to introduce the ‘Omnibus Plan Change’ in 2020 (containing revised discharge and water quality policies, stronger effluent management rules and provisions to promote good farm management practices) and a fully reviewed Water Plan by December 2023.

<sup>18</sup> Policy E1(b)

<sup>19</sup> Policy E1(ba)

<sup>20</sup> ORC Report PPRM1902 dated 25 September, paragraph 12.

## 7. Matters raised in Submissions

- [35] I need not discuss the submissions in support of PC6AA because they agree with propositions contained in the PC6AA section 32 Report and the delaying of the implementation date for the affected Water Plan provisions from 1 April 2020 to 1 April 2026. I have already noted many submitters' agreement that Rules 12.C.1.1A and Schedule 16A are "*ambiguous, unenforceable and uncertain*". Added to that is the fact that Rule 12.C.1.1 refers to a version of Overseer that is no longer available. Overseer is now only available online and the current version is called "Overseer FM".
- [36] Additionally, I find that the Water Plan's Schedule 16A is ambiguous to the extent that it would more than likely be incapable of application. The reason being that while it contains numerical 'thresholds' for nitrate-nitrogen, dissolved reactive phosphorous, ammoniacal nitrogen and *E.coli*, unlike other plans<sup>21</sup> that use similar values, it is totally silent on the application of those values. For example, it does not state if the values are medians, averages or 95<sup>th</sup> percentiles. Nor does it state a monitoring period that should be used such as two or five years. Taken on its face the application of Schedule 16A could result in a land use activity being permitted on one day, requiring a consent the next day and then bouncing back to being permitted on another day. Other plans avoid this problem by referencing similar numerical values to "*the median of monitoring results obtained over a period of 1 year*" or "*the 95th percentile of monitoring results obtained over a period of 1 year*" for example.<sup>22</sup> I note that is also the approach taken in the Water Plan's Schedule 15 which states, for example, "*... the limits .... are achieved when 80% of samples collected at a site, over a rolling 5-year period, meet or are better than the limits in Schedule 15*".
- [37] Interestingly, submitter representatives were unsure what the Schedule 16A numbers meant. Some thought they were instantaneous limits<sup>23</sup> and some simply did not know, because either they were not technically qualified<sup>24</sup> or were not overly familiar with the Schedule.<sup>25</sup> In my mind this lends weight towards a finding that Schedule 16A is unworkable.
- [38] From the original submissions and the evidence presented at the hearing, it appears that the main issue of concern to submitters in opposition is fear of a regulatory void or vacuum between now and the promulgation of replacement rules in either 2020 or 2023. The s42A Report addressed that concern noting that other rules in the Water Plan already address high-risk rural activities including effluent management, offal pits, silage pits and farm landfills; other rules set conditions over sediment run-off resulting from land disturbance activities, including cultivation and grazing; and yet other rules manage stock access to waterbodies.

<sup>21</sup> For example, the Canterbury Land and Water Regional Plan and the Hawke's Bay Regional Resource Management Plan (Tukituki Catchment).

<sup>22</sup> Hawke's Bay Regional Resource Management Plan Table 5.9.1B: Surface Water Quality Limits, Targets<sup>25</sup> and Indicators for the Tukituki River Catchment – Zone Specific.

<sup>23</sup> Marc Schallenberg.

<sup>24</sup> Sue Maturin for Forest and Bird, Charlotte Wright for Dairy NZ.

<sup>25</sup> Don Robertson, Guardians of Lakes Wanaka and Hawea.

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- [39] So, while it is true that there might be a delay to the implementation of rules controlling the diffuse discharge (or leaching) of the four Water Plan Schedule 16A contaminants to groundwater or surface water, there will not be a total absence of regulatory controls on farming activities. Coupled with that I understand that the ORC will continue to encourage Overseer based nutrient budgeting and the production of farm environment plans.
- [40] On that latter matter I asked Federated Farmers to describe the non-regulatory actions currently being undertaken by farmers in the region with regard to water quality. Mr Sycamore (Federated Farmers Senior Policy Advisor) stated that a range of fruitful non-regulatory actions were currently underway including “a dozen or more” catchment management groups, the preparation of farm environment plans, and the undertaking of Overseer based nutrient budgeting. He was of the view that there was not an absence of ‘on the ground’ actions aimed at maintaining or enhancing water quality in the rural parts of the region.
- [41] In a similar vein, the Waitaki Irrigators Collective representative (Fraser McKenzie, Independent Chairperson) advised that the Collective spanned around 85,000ha of farmland in the ORC and Environment Canterbury regions. The farms under the Collective all had farm environment plans which were often required under either the irrigation scheme water supply agreements or water take consents (predominantly granted by Environment Canterbury). In many cases council endorsed templates produced by Beef and Lamb or Dairy NZ were used for that purpose. Good management practices routinely required under those FEMPs included fencing waterbodies, efficient irrigation practices, nutrient management and the undertaking of Overseer annual nutrient budgets and nutrient loss calculations.
- [42] Forest and Bird (Sue Maturin) was complementary of farmer initiated ‘on the ground’ activities that she was aware of including the creation of wetlands at the base of swales and tile drainage systems; fenced setbacks from streams and riparian planting therein; and in some cases, stocking rate reductions.
- [43] Reinforcing the views of other submitters as outlined above, at the hearing Dairy NZ<sup>26</sup> (Charlotte Wright, a senior policy advisor) advised:
- “Given the planned Omnibus notification date of March 2020 and the immediate effect of these rules, the regulatory gap issues should be alleviated. In the interim, Dairy NZ, Fonterra, catchment groups, Otago Regional Council and others will continue to drive adoption of Good Management Principles through discussion groups, Farm Environment Plans and targeted advice.”*
- [44] I find that the weight of evidence before me is that despite the problems with the Water Plan provisions that PC6AA seeks to address, ‘on the ground’ actions addressing diffuse runoff from farming activities are occurring now in Otago. There was no probative

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<sup>26</sup> Evidence of Charlotte Wright for Dairy NZ Limited, 17 December 2019, paragraph 3.4.

evidence presented that those ‘on the ground’ actions would cease should PC6AA be adopted, particularly in light of Government’s recently announced freshwater regulatory initiatives under its ‘Action for Healthy Waterways’ programme.

- [45] Some submitters sought that the 1 April 2020 date addressed by PC6AA be amended instead to 2022 or 2023. For example, the Guardians of Lake Wanaka and Lake Hawea suggested that a new ‘Water and Land Plan’ could be made operative in two years. However, when I questioned Mr Robertson (the Guardians’ spokesperson) about that he quite responsibly admitted that he had not been “*strongly or deeply involved*” with regional water and land plan development processes before and his suggestion of a two year plan development timeframe was probably based on “*some naive assumptions*” about plan development timeframes.
- [46] In my view it would be speculative to assume that replacement Water Plan provisions will be made operative by either 2022 or 2023 and therefore it is simply too risky to adopt those earlier dates.
- [47] The ORC considers that a further incentive behind PC6AA is to alleviate the concern that farmers in the region may apply for resource consents in advance of 1 April 2020 to avoid having to achieve the largely unachievable nutrient discharge limits imposed by the current rules. Compounding that undesirable situation, the Council considers that the discharge policies in the Water Plan are vague and do not provide much guidance over when such consents should be granted and under what conditions.
- [48] Some submitters questioned the number of unnecessary consents that might be required in the absence of PC6AA.<sup>27</sup> The s42A author referred to a possible ‘upsurge’ in consent applications but was not able to provide an estimate of likely numbers. Interestingly though, I note that Professor Skelton’s report identified that ORC might be receiving 450 water take applications (replacing deemed water permits and RMA water take consents) in the next 18 months. While unrelated to PC6AA, that alone will provide a formidable challenge to ORC’s consent processing capacity.
- [49] At the hearing, Dairy NZ provided uncontested evidence<sup>28</sup> that it was “*highly likely*” that the rules addressed by PC6AA could result in 480 dairy farms in Otago having to apply for resource consents given the significant implementation challenges with both the nitrogen loss rules and Schedule 16A. I agree with Ms Wright when she said that could result in significant resourcing issues and the possibility of “*... farmers being left in limbo without a clear plan for managing environmental risks on farm whilst their consent is processed.*”
- [50] In conclusion I find that the reasons for opposing PC6AA expressed by the submitters in opposition do not outweigh the benefits of avoiding land users having to imminently comply with rules that nearly all parties seem to agree are “*ambiguous, unenforceable and uncertain*”.

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<sup>27</sup> Including Forest and Bird.

<sup>28</sup> Ibid, paragraph 3.1

[51] For completeness, I note that the s42A author suggested<sup>29</sup> that I should consider a possible alternative PC6AA date of December 2025 given the recent Ministerial directions to the ORC. Notwithstanding the streamlined water plan development processes contained in the current RMA Amendment Bill, I do not consider recommending a date of December 2025 to be a prudent course of action given the lengthy amount of time that regional plan development processes can take. If replacement water quality regional plan provisions do become operative before 1 April 2026 then the 1 April 2026 date resulting from PC6AA will be redundant in any case.

## **8. Part 2 Assessment**

[52] I have not separately referred to Part 2 matters as PC6AA does not amend any of the objectives and policies of the Water Plan, other than for amending the date in Policy 7.D.2.

## **9. Recommendation to ORC**

[53] I have considered and deliberated on PC6AA; the submissions and further submissions lodged; and the reports, evidence and submissions made and given prior to and at the hearing. I have sought to comply with all applicable provisions of the RMA. The relevant matters I have considered are set out in the main body of this Recommendation Report.

[54] I recommend to the Otago Regional Council that:

- a) it approves and adopts Plan Change 6AA to the Regional Plan: Water for Otago as notified without amendment;
- b) rejects or accepts the submissions and further submissions as set out in Appendix 1 for the reasons set out in the Section 42A Report, the body of this Recommendation Report and the Summary Reasons I set out in Appendix 1.



Rob van Voorthuysen

Dated: 23 December 2019

<sup>29</sup> Dairy NZ supported a revised date of 31 December 2025. Evidence of Charlotte Wright, paragraph 2.2.



## Appendix 1 Recommendations on Submissions

In addition to the 20 primary submissions the Otago Regional Council received two valid further submissions in support of, or opposition to, a primary submission. I recommend that those Further Submissions are accepted or rejected according to my recommendations for accepting or rejecting the corresponding primary submissions. The Summary Reasons in the Table below should be read in conjunction with the fuller reasons set out in the body of this Report.

No.	Submitter name	Recommendation	Summary Reasons
1 8	Joy Green Guardians and Lake Wanaka & Guardians of Lake Hawea	Reject	Rule 12.C.1.1A and Schedule 16A in particular are ambiguous, unenforceable and uncertain and adequate time is required to enable the ORC to develop a robust and workable alternative framework. Amending the implementation date of the offending provisions to either 1 April 2022 or 1 April 2023 might not provide sufficient time for that to occur.
3 4 7 15 17	Mel Hollis Peter George Sydney Mann Royal Forest and Bird Protection Society NZ Otago Fish and Game	Reject	Rule 12.C.1.1A and Schedule 16A in particular are ambiguous, unenforceable and uncertain and adequate time is required to enable the ORC to develop a robust and workable alternative framework. Not amending the provisions in accordance with PC6AA as notified (namely retaining the 1 April 2020 implementation date) will likely result in numerous resource consents requiring to be lodged and the deficiencies in the offending Water Plan provisions will in all likelihood make the processing of those applications costly, confusing and potentially ultimately unnecessary once amended Water Plan provisions are promulgated.
5 19	Carl Cleaver Wise Response Incorporated Society	Reject	These are not submissions “on” PC6AA and so there is no scope to consider the relief sought. See also Sections 4.2 and 4.3 of this Report.
13	Marc Schallenberg	Reject	Option 1 as presented in the PC6AA Section 32 Report is unworkable as Rule 12.C.1.1A and Schedule 16A in particular are ambiguous, unenforceable and uncertain.
2 6 9	Craig Werner Federated Farmers of New Zealand Ravensdown Limited	Accept	Rule 12.C.1.1A and Schedule 16A in particular are ambiguous, unenforceable and uncertain and adequate time is required to enable the ORC to develop a robust and workable alternative framework that gives effect to the superior instruments. Amending the implementation date of the offending provisions to 1 April 2026 and thereby delaying

No.	Submitter name	Recommendation	Summary Reasons
10	Horticulture New Zealand		the unavoidable, yet in practice unachievable, legal requirement to comply with them will better enable that to occur.
11	Balance Agri-Nutrients		
12	Dunedin City Council		
14	Waitaki Irrigators Collective Limited		
16	Dairy Holdings Limited		
17	Randall Aspinall, Mt Aspiring Station		
20	Dairy NZ		