

25 July 2025

Ministry for the Environment  
**Wellington**

via Email: [ndprogramme@mfe.govt.nz](mailto:ndprogramme@mfe.govt.nz)

## **Otago Regional Council Submission on the proposal for freshwater national direction (Package 3)**

### **Introduction**

1. Otago Regional Council (ORC) welcomes the opportunity to provide feedback on the proposed changes to the national direction for freshwater management.
2. This submission reflects the views of ORC Councillors and is informed by ORC's practical experience in the management of freshwater, and its knowledge of diverse land uses and the views gathered through engagement with the Otago community and stakeholders on recent policy projects within the region.
3. ORC supports many proposed changes and considers there are opportunities to refine aspects of these proposals, so they are more effective at delivering on the government's original intent to better reflect the interests of all water users.
4. ORC's submission has two parts: key messages that apply to all aspects of the proposals for changing the national direction for freshwater management, and feedback on the proposed changes to national instruments and regulations.

### **Key messages**

#### **Need for enduring solutions**

5. The pace of national direction and regulation reform, particularly for freshwater management, has been significant in the last two decades. Since the first National Policy Statement for Freshwater Management (NPS-FM) was introduced in 2011, there have been three large overhauls of this instrument (2014, 2017 and 2020) with various smaller, but often significant amendments in between. These successive reforms have put considerable financial strain on councils and ratepayers and have disrupted planned or ongoing initiatives.
6. ORC acknowledges that national direction needs to adapt to changing situations but considers that effective implementation of the proposals will depend on the support for solutions that have political buy-in across party boundaries.

7. Without broad political support for the proposals, there is a risk that future governments will reverse this reform, undermining the commitment of communities, industries, agencies and local authorities to plan their future and buy into actions that achieve the desired outcomes.
8. Providing for enduring solutions requires prioritising long-term benefits over short-term ones. Setting ambitious but achievable and affordable long-term goals will give certainty for councils, industries and communities to invest wisely over time.

#### **Catchment-scale collaboration and integrated regulatory and non-regulatory responses**

9. Successful freshwater management and the delivery of wider community outcomes often works best at the catchment scale, applying local solutions to address local issues or capitalise on local opportunities. The current reform process provides an opportunity to design the national system in a way that enables regional councils to better support community-driven, catchment-scale initiatives and promotes collaboration between local authorities, tangata whenua, communities and stakeholders, including relevant agencies and industries.
10. While freshwater remains a central concern, it must be addressed within a broader framework of integrated management of natural and physical resources at catchment scale. Issues such as freshwater health, land-use, biodiversity, natural hazards and climate change all need to be addressed in a holistic manner to achieve enduring outcomes. Therefore, ORC considers that it is important that the concepts of integrated and holistic whole of catchment management (ki uta ki tai) remain strongly embedded within the framework of the future national direction framework.
11. Effective solutions for addressing complex resource management issues often rely on a joined-up approach that includes both regulatory and non-regulatory responses, developed through engagement with mana whenua and local communities. To date, the national direction for freshwater management has been focused on providing direction on the content and process for developing regulatory responses. However, a framework that focuses too heavily on regulation and compliance with legal standards could discourage innovation and risks losing buy-in from landowners and resource users. It could also result in spending time and money that would be better spent on achieving on-the-ground change. We recommend a national direction framework that streamlines regulatory processes while incentivising and enabling communities to protect and restore water bodies through practical projects and voluntary action.

#### **Simplicity and certainty**

12. ORC considers that the new national direction should set clear and simple direction that is more specific than the RMA and use unambiguous terms and concepts. This will support its effective and cost-efficient implementation.

#### **Supporting evidence-based decision making**

13. Future national direction should be a driver of positive change without alienating stakeholders and landholders by setting unreasonable goals. To achieve this, the framework

must ensure that the environmental outcomes set are realistic and time-bound, and any decisions made to achieve these are based on robust technical information.

### **Enabling quick and cost-effective implementation**

14. The use of Schedule 1 of the RMA for developing or changing plans often results in time-consuming and costly processes. ORC requests that the replacement NPS-FM, where appropriate, directs that regional plans are updated using the process set out in section 55 of the RMA, without using the process in Schedule 1. This will ensure quick, cost-effective and consistent implementation of the new national direction.

## **Feedback on the proposed changes to national instruments and regulations**

### **NPS-FM Objectives**

*Clarity is needed when trade-offs are involved*

15. When competing objectives are in play, ORC considers that national direction should guide decision-makers on how to weight them. The revised NPS-FM objectives should set a clear and simple direction that signals which outcomes are to be prioritised and under what circumstances, rather than leaving decision-makers to balance conflicting priorities without direction. Without this direction, implementing the new NPSFM will result in costly and time-consuming litigation and delay on the ground actions that improve water quality and quantity.

*Avoid duplicating the RMA's purpose in the NPS-FM objectives*

16. ORC considers that the proposed drafting for the new objectives relies too much on the language and constructs used in section 5 of the RMA, and that there is no added value in restating the RMA's purpose within new NPS-FM objectives.<sup>1</sup> Instead, the objectives in the new national direction should provide practical and clear direction that adds greater specificity to the existing legislative framework.

*The objective to maintain or improve freshwater should be more explicit*

17. ORC supports the inclusion of an objective within the new national direction that articulates the principle of maintaining water quality where it is currently good and improving water quality in degraded water bodies. The current drafting of this proposed objective is ambiguous and could be read that all waterbodies must be improved (even if they are already high-quality) or conversely that waterbodies could be maintained (even if they are highly degraded). ORC considers that the final wording of this proposed NPS-FM objective should

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<sup>1</sup> The proposed new objective will direct councils to ...*safeguard the life-supporting capacity of freshwater and the health of people and communities while enabling communities to provide for their social cultural and economic well-being*. This proposed objective uses similar concepts and language as RMA section 5, which states:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while ... safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and ...*

more clearly articulate this principle to guide regional planning and decision-making effectively.

*The objective framework should support nuanced, catchment-based responses*

18. Each catchment faces unique challenges and opportunities. The objective framework should allow for regional variation in how outcomes are delivered, reflecting local knowledge and science, local community, cultural and environmental values, and local environmental pressures and issues.

*Transitional support is necessary*

19. ORC supports the inclusion of an objective that recognises the need for transitional pathways for phased implementation of freshwater objectives. These transitional periods are critical for allowing communities and industry time to adapt and for necessary infrastructure or system changes to occur.

### **Rebalancing Te Mana o te Wai**

*Te Mana o te Wai as a concept*

20. ORC does not have a consensus view on whether Te Mana o te Wai should be retained as the fundamental concept underpinning national direction for freshwater. The two main considerations are that the current implementation of this concept through the hierarchy of obligations in the NPS-FM 2020 is problematic, as it offers insufficient flexibility in decision-making, and conversely that the underlying premise that the health of waterbodies underlies the health of people, communities and the economy is sound and should be maintained.
21. As a Council, we agree that the revised NPS-FM framework, regardless of whether it continues to be based on the fundamental concept of Te Mana o te Wai, must:
  - provide clarity and certainty for councils to implement, and for people and communities to plan for action or changes required
  - support people and communities to get on with projects aimed at improving the health of freshwater and the environment
  - require that water quality is maintained or improved
  - allow for the delivery of effective and enduring outcomes in an efficient manner
  - be focussed on establishing the right incentives, rather than focussing on compliance
  - drive evidence-based outcome-setting and decision-making
  - set clear and achievable time frames
  - avoid lengthy, complex and costly balancing exercises.

### **National Objectives Framework (NOF)**

*The NOF is too rigid and must allow for local variation*

22. ORC considers that the process requirements in the National Objectives Framework (NOF) are overly prescriptive, while other aspects of the NOF fail to consider the realities of local

conditions.<sup>2</sup> ORC submits that providing greater flexibility within the NOF in terms of the process for developing plans and allowing more flexibility around the setting of targets, is essential for cost-effective and locally appropriate freshwater planning.

*National bottom lines must be realistic and achievable*

23. ORC continues to support the identification of values and the setting of environmental outcomes and targets as an important foundation for regional freshwater planning and management but considers that the NOF should ensure these targets are both ambitious and realistic.
24. Technical work undertaken by ORC suggests that in some catchments, even under natural conditions, it may not be possible to meet the national bottom lines prescribed by the NOF in the NPS-FM 2020. This undermines the trust of communities, landholders and applicants in both national direction and ORC's plan development and consenting processes. The future national direction framework should empower Councils to set appropriate, achievable targets, particularly where historical modification with long-term impacts or natural conditions mean targets or national bottom lines are unattainable.

*Support simplifying and prioritising key attributes*

25. ORC supports streamlining the NOF by:
  - reducing the number of attributes required to be monitored and providing flexibility for councils to focus on the most relevant ones at the catchment scale; and
  - providing regional councils with the flexibility to set target states for only the most relevant attributes within a catchment.
26. This would enable greater implementation of the NOF, while allowing greater focus on coordinating efforts to achieve those outcomes that matter most in each catchment.
27. ORC further considers that a national direction framework with a narrow focus on achieving long term bottom lines could risk the bottom lines becoming a target. To avoid this, the framework of the future NPS-FM should include national bottom lines, but focus on incentivising communities to strive for continuous improvement in achieving freshwater health.

*Opportunities for greater integration of action plans in the NOF*

28. ORC supports the concept in the current NPS-FM, which allows for freshwater outcomes to be achieved through a combination of regulatory tools (i.e. plans) and non-regulatory tools (i.e. action plans). ORC sees action plans as a tool to foster community support and collaboration for the achievement of healthy freshwater, as they allow for:
  - integrated responses across multiple domains (freshwater, coast, land) and topics (biodiversity, pest management, natural and cultural heritage);
  - building on voluntary actions and ongoing community initiatives; and

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<sup>2</sup> An example of an aspect of the NOF that fails to appropriately consider realities of local conditions is Tables 14 and 15 for Macroinvertebrates in Appendix 2B of the NPS-FM 2020. These tables are problematic as no streams in Otago, even pristine ones, are able to achieve the A band.

- adaptive management and greater agility.
29. Action plans could be used more effectively and implemented more efficiently if:
- the process for developing action plans was better integrated within the NOF framework – allowing these plans to be developed alongside regulatory plans; and
  - the focus of action plans was to be more flexible – widened from currently only managing a very specific set of attributes to being able to manage catchments in a more integrated and holistic manner.

### **Enabling Commercial Vegetable Growing**

#### *Support for national direction on food production*

30. ORC recognises that commercial vegetable growing, as well as other food and fibre production, is a matter of national relevance and supports approaches that seek to enable land uses that positively contribute to food security for the domestic market, and community and socio-economic resilience in general.
31. ORC recommends widening the focus of the proposed national direction for commercial vegetable growing and applying a more holistic view of domestic food production and food security in a changing climate by:
- encompassing other essential food production (e.g. grains, meat, dairy);
  - encompassing new and emerging technologies and production systems, such as hydroponic vegetable growing; and
  - considering the broader spectrum of resources needed to support food production (e.g. productive land, access to water).

#### *Support for Freshwater Farm Plans to manage effects*

32. ORC supports a national standard for vegetable growing / food production that adequately manages the potential environmental impacts of these activities on freshwater, as long as it provides regional councils with flexibility to set bespoke rules that consider local conditions. We also consider that any national or regional rule framework should allow for the use of Freshwater Farm Plans as a tool for managing environmental effects from vegetable growing and food and fibre production more generally. These offer a flexible, practical mechanism for ensuring that environmental outcomes are met without imposing blanket restrictions on landholders and should be able to be used as an alternative to consents.

### **Water Storage and Security**

#### *Need for clear direction on water security is not well addressed in the proposal*

33. Access to reliable water supply is an important resource management issue in large parts of Otago. ORC welcomes the growing recognition of this matter at the national level. However, the current proposal does not clearly articulate the matters the government seeks to address under the banner “water security”. The proposal to include a new objective or policy in the NPS-FM to address the issue of water security does not include sufficient detail to evaluate its merits. ORC is concerned that the only solution put forward to address this issue is to facilitate off-stream storage, when water security requires a more strategic and integrated approach.

34. While ORC acknowledges that a national standard that enables small-scale off-stream storage can generate tangible benefits for individual landowners, we recognise that it is not always possible to establish off-stream storage, nor is it necessarily the most efficient use of water.
35. ORC cautions that a narrow focus on enabling small-scale off-stream storage can create unintended consequences and may not always provide for the best outcomes for communities and ecosystems at local or broader scale. For example, to establish off stream storage an appropriate site and sufficient land area needs to be available. Off-stream storage will therefore only be possible for larger land holdings and the conversion of this land into storage may result in the loss of productive land. In some instances, instream storage can better provide for community or ecological outcomes than off-stream storage, especially where it creates opportunities for ecological habitat creation, flow attenuation during flood events, community water supplies, and renewable electricity generation.
36. Finally, it should be noted that enabling small scale on-farm storage could disincentivise communities to pool resources to establish a single reservoir that would provide greater efficiency in water use for diverse purposes, retain productive land and encourage community/water user co-operation.
37. Therefore, to avoid fragmented storage solutions and ensure alignment with community and environmental goals, ORC supports stronger national direction on water security that:
  - addresses management of water quality and water quantity encompassing the entire catchment (ki uta ki tai) in the context of climate change and climate variability; and
  - recognises the interplay with a range of resource management issues and domains, including food production, natural hazards management (i.e. flood attenuation and mitigation, drought resilience, wildfire responses); and
  - considers the technical and economic feasibility and ecological cost/benefits of a broader range of water security / storage options, including multipurpose and community-scale on-stream and off stream storage.
38. ORC notes that under the current NPS-FM framework, any proposals for in-stream storage are unlikely to be able to be consented, as they are inconsistent with national direction. While a new objective or policy in the NPS-FM could better signal the importance of addressing water security, further amendments to existing NPS-FM clauses will be required to avoid conflicts with this new objective or policy. Otherwise, instream storage proposals will not be considered a feasible option.

## **Wetlands**

### *Support for a new definition of induced wetlands*

39. ORC supports the proposed new definition of induced wetlands as this will provide clarity and ensures that the infrastructure, activities or land uses that allowed these wetland areas to emerge can continue to operate or be carried out. ORC recommends that, where induced wetlands support important ecosystem services or biodiversity or recreational values,



councils should be able to manage these through a regional planning framework to ensure they can be protected.

*Support for appropriate provision for low risk/impact farming activities in natural inland wetlands*

40. ORC supports the removal of the pasture exclusion provision from the natural inland wetland definition as long as irrigation, the establishment/replacement of fences, and access of non-intensively grazed beef cattle and deer in natural wetlands that support a population of threatened species are enabled. (see also ORC submission on Package 2).

*Support for retaining the mapping requirement but allowing greater flexibility for councils*

41. ORC considers that the proposed amendment to the natural inland wetland definition (i.e. removal of the pasture exclusion) will reduce the complexity and cost of the wetland identification and mapping process.<sup>3</sup> The systematic mapping of natural inland wetlands and inclusion of these maps in regional plans will provide much-needed certainty for land holders, applicants, decision-makers and compliance staff and will remove the burden on landholders to prove the absence or presence of natural inland wetlands on their properties. For these reasons, ORC supports retaining the requirement for regional councils to map natural inland wetlands.
42. ORC has already collated a lot of the information needed to identify and map the region's natural inland wetlands using the proposed amended definition. Therefore, we are able to meet the existing timeframes for completing the mapping of natural inland wetlands in the NPS-FM 2020. However, we do recognise that this requirement may put a strain on the resources of other regional councils. Therefore, ORC considers it appropriate to extend the current 2030 deadline but recommends retaining a firm end date to ensure continued progress.
43. ORC also recommends that the minimum mapping size requirement be increased from 0.05 to 0.5 ha, as this will focus mapping effort on more substantial wetland areas. Many smaller wetlands are critical source areas and therefore are already protected through the national regulations. The amended national direction should provide regional councils with the flexibility to map and protect smaller wetlands where they support high ecological, cultural or social values, provide important ecosystem services to the community or contribute to the health of downstream waterbodies.

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<sup>3</sup> The total cost for updating the mapping of the Upper Taieri Scroll Plain using the RMA definition was NZ\$74,600. A further NZ\$136,700 was spent on further refining these mapped boundaries using the pasture exclusion provision. The total cost for updating the mapping of all other wetlands currently included as Regionally Significant Wetlands in the Regional Plan: Water for Otago was NZ\$63,890. Of that amount NZ\$ 32,750 was spent on the refining these mapped boundaries using the pasture exclusion provision. So far, the total estimated cost of the mapping of all Natural Wetlands greater than 0.05 ha and smaller if known to contain threatened species and ephemeral wetlands (but excluding the Upper Taieri Scroll Plain and other wetlands currently included as Regionally Significant Wetlands in the Water Plan) has been NZ\$ 588,300 with a further NZ\$250,000 to be budgeted for the year 2025-2026.



*Support for a new framework for constructing wetlands and encouraging edge of field mitigations*

44. ORC supports the proposal to better provide for wetlands construction, because it will help incentivise the use of constructed wetlands as environmental mitigation tools and provide clarity and certainty for regulators and landowners.

### **Fish Passage**

*Streamlined information requirements in the NES-F are supported*

45. ORC supports changing the information requirements in the fish passage regulations in the NES-F by eliminating those information requirements that are superfluous or overly onerous.  
<sup>4</sup> These proposed changes will reduce the burden for persons wanting to establish new instream structures and will also ensure greater consistency between the information requirements for new structures in the NES-F and the information requirements for existing structures in the NPS-FM. Greater alignment of the two sets of requirements allows for a more efficient management of information about instream structures, and more effective management of fish passage issues.

*Providing for boxed culverts, modern design standards and temporary structures*

46. ORC supports the proposals to:
- better provide for boxed culverts and updated best-practice standards in the design of all culverts, including circular culverts; and
  - provide more lenient pathways for the construction of temporary fords and culverts.

*Better providing for fish passage remediation works and the management of species interaction*

47. ORC recommends that the NES-F is further amended to include permitted activity rules that better enable structures or works aimed at improving fish passage, restoring habitat for indigenous species or managing interactions between desirable and undesirable species. Currently, such projects can be hindered by complex consent requirements despite their environmental benefits.

### **NES-Fertiliser**

*Synthetic nitrogen fertiliser cap should be retained*

48. ORC supports retaining the current cap of 190 kg/ha/year for synthetic nitrogen (N) fertiliser within the NES-F. The information provided in the interim regulatory impact statement demonstrates that the cap has contributed to positive environmental outcomes. Removing this requirement now or increasing the current cap risks reversing the progress made in improving freshwater quality as amounts of synthetic N fertiliser greater than 190kg/ha/year could be applied without consent.

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<sup>4</sup> ORC supports the proposed amendments to the fish passage information requirements outlined under option 1 and shown in Appendix B of the *Interim Regulatory Impact Statement: Simplifying the fish passage regulations in the NES-F*. ORC considers that these amendments seek to eliminate information requirements (e.g. info on the material from which the structure is made and on flow velocity) that are not critical in determining the likelihood of passage being impeded.

*Align reporting dates with the farming calendar*

49. ORC supports amending Regulation 36 of the NES-F to align the reporting date for synthetic nitrogen fertiliser application with other dairy reporting requirements, as it is more efficient to require dairy farmers to report on their fertiliser use at the same time as they report on other matters. This amendment will reduce an unnecessary burden on farmers, while still enabling regional councils to monitor compliance.

*Support simplifying reporting while retaining key data*

50. ORC supports streamlining the reporting requirements for synthetic nitrogen fertiliser use by removing the requirement to submit receipts for the purchase of fertiliser. ORC considers that there is no risk associated with this proposal as the regulations will continue to require reporting on other critical information—such as fertiliser type, application method, and land area treated. This proposed change strikes a good balance between oversight and practicality.

**Mapping Drinking Water – NPS-FM**

*Mapping Source Water Risk Management Areas (SWRMAs)*

51. ORC has some concerns around the implications of national direction that requires the mapping of SWRMAs, as there is currently no clarity around the future controls on land uses or discharges that may be imposed within any of the proposed three SWRMA zones. ORC requests that the government provides more clarity around the types of controls and/or measures it is intending to apply to these SWRMAs and considers the costs and benefits of these controls and measures when finalising the mapping requirements.

*Need for flexibility in how the SWRMA mapping is undertaken*

52. To avoid the risk of SWRMAs mapped using the “default methods” being overly restrictive or ineffective, the framework for mapping the SWRMAs should allow for flexibility in the identification or delineation of SWRMAs where technical data or local environmental conditions suggest that the default methods will impose unnecessary restrictions for landholders or fail to provide adequate protection for source water. For example, if a water intake is in public conservation land, it could be exempt from the requirement to identify SWRMAs.

*Need to safeguard drinking water safety for vulnerable communities*

53. ORC considers that source water protection should apply to all community water schemes, not just large-scale ones. Larger communities are often serviced by reticulated drinking water supplies with centralised treatment, which can lower the risk of contamination. However, centralised treatment of source water can be more financially challenging for smaller drinking water supply networks or small communities. ORC therefore requests that the framework for mapping SWRMAs and/or managing source water should address the drinking water needs of smaller communities, including communities where individual

households take water (via a bore or surface water intake) from a common source (aquifer or catchment).

*Including SWRMAs in plans and inventories*

54. Having the SWRMA maps included in regional plans will ensure that activities within SWRMAs are managed in a consistent manner and contributes to the protection of source water quality. However, where SWRMAs around new takes need to be delineated or existing SWRMAs need to be updated, these new or updated maps need to be added to the plan through the RMA Schedule 1 process. This can be a costly and time-consuming process and including the SWRMA maps in a non-regulatory inventory outside the plan better allows for the most up-to-date information to be made publicly available at very little cost. For these reasons, ORC recommends that the national direction requires regional councils to maintain an up-to-date and publicly accessible inventory of SWRMAs and require SWRMA maps to be added to regional plans as soon as practicable.

*Conclusion*

55. We appreciate the opportunities to engage with the Ministry on freshwater matters to date, and we look forward to the exposure draft on the proposed NPS-FM being released later this year.

Yours sincerely



Gretchen Robertson  
**Chairperson**