

Written Submission on Freshwater Planning Instrument Parts of Proposed Otago Regional Policy Statement 2021

To: Attn: ORC Policy Team
Otago Regional Council
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Via email: fpisubmission@orc.govt.nz

Submitter: Fulton Hogan Limited.

This is a submission by Fulton Hogan Limited (**Fulton Hogan**) on the Freshwater Planning Instrument Parts of the proposed Otago Regional Policy Statement 2021 (**FPI PORPS**).

Fulton Hogan:

- (a) could not gain an advantage in trade competition through this submission.
- (b) is directly affected by an effect of the subject matter of the submission that:
 - (i) adversely affects the environment; and
 - (ii) does not relate to trade competition or the effects of trade competition.
- (c) Fulton Hogan wishes to be heard in support of its submission and would consider presenting a joint case with others making a similar submission at any hearing.

Background

Fulton Hogan Limited

1. Fulton Hogan is one of New Zealand's largest roading and infrastructure construction companies. Within New Zealand, Fulton Hogan employs close to 4700 staff.
2. Within Otago, Fulton Hogan has operated since 1933 and currently employs approximately 700 staff. In the Otago region we operate two regional businesses, based in Dunedin and Central Otago.
3. Fulton Hogan undertakes numerous activities in the Otago Region including:
 - 3.1 Gravel extraction, both within river beds and within land-based quarries/pits;
 - 3.2 Aggregate processing and storage; and
 - 3.3 Infrastructure development and maintenance activities.
4. Fulton Hogan wishes to ensure the regulatory regime under the FPI PORPS does not curtail its existing lawfully established activities. Fulton Hogan also wishes to ensure that the policy framework does not unnecessarily constrain future activities or have unintended consequences through not adequately recognising the breadth of activities associated with quarrying activities.
5. The activities of Fulton Hogan contribute to the sustainable management of resources for the wider benefit of people and communities. Where aggregates and aggregate-based products are not available (including at a reasonable cost), this has a fundamental effect on the ability of

communities to provide for roading, bridges, building and other infrastructural requirements vital to their needs. Disruptions to this critical link in the construction supply chain also has significant implications for the resilience of the region in the face of climate change, increased frequency and intensity of flooding, and other natural hazard risks.

General submissions

6. In order to ensure that the FPI PORPS promotes sustainable management and provides for the efficient use and development of natural resources, Fulton Hogan is seeking the following general relief:
7. Fulton Hogan is concerned that the FPI PORPS does not recognise the importance of aggregate to many aspects of life in Otago. Aggregate, and particularly a local supply is key to achieving many of the development and infrastructure aspirations of the region in a cost-effective manner. Aggregate literally forms the foundation of the infrastructure and buildings that we rely on. For example, aggregate is used for:
 - 7.1 Road, footpath, car park and driveway construction foundation materials;
 - 7.2 Foundation materials for a wide variety of buildings;
 - 7.3 Concrete of numerous uses; and
 - 7.4 General filling, river embankments, drainage systems and retaining wall construction.
8. Aggregate resources are locationally constrained and therefore quarrying can only occur where these resources exist. The locational constraints of quarrying and significant benefits of aggregate resources have been recognised by the Government in their recently released National Policy Statement for Highly Productive Land (**NPSHPL**), with provision for a consenting pathway for aggregate extraction within highly productive land. Similarly, the Exposure Draft National Policy Statement for Indigenous Biodiversity (**Exposure Draft NPSIB**) and Exposure Draft National Policy Statement for Freshwater Management (**Exposure Draft NPSFM**), and Exposure Draft National Environmental Standards for Freshwater (**Exposure Draft NESF**) all provide a similar consenting pathway within protected areas. Government direction in this area is becoming increasingly clear.
9. Fulton Hogan is concerned that the FPI PORPS fails to recognise the locational constraints of quarrying by not providing a consenting pathway for quarrying activities within natural wetlands, as is provided within the Exposure Draft NESF and Exposure Draft NPSFM. Land use decisions that force supply away from the locations where it is used contribute the cost of construction and therefore impact social and economic wellbeing. There are also climate implications of increased transportation distances.
10. Fulton Hogan is concerned that the FPI PORPS fails to provide an appropriate level of guidance through objectives and policies relating to freshwater management. The PORPS does little to give region specific context to the NPSFM and fails to address some potential conflict that exists between competing water uses.

Relief sought

11. The specific submissions of Fulton Hogan and specific relief sought are contained in **Appendix A**. Where additions are proposed to provisions, these are shown by underline, and any deletions are shown by strikeout. While specific wording has been provided, there may be other or better ways of achieving the relief sought in Appendix A and above. Fulton Hogan also seeks any consequential relief to that sought in this submission.

Signed on behalf of
Fulton Hogan Limited



Dated 29/11/2022

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Appendix A: Submissions

Sub #	The provisions of the proposed RPS that the Fulton Hogan submission relates to are:	The Fulton Hogan submission is that:		Fulton Hogan seek the following decisions from Otago Regional Council:
		Oppose/ Support	Reasons	
LF – Land and freshwater				
LF–WAI – Te Mana o te Wai				
1.	<p>LF–WAI–P1 – Prioritisation</p> <p>In all management of fresh water in Otago, prioritise:</p> <p>(1) first, the health and well-being of water bodies and freshwater ecosystems, te hauora o te wai and te hauora o te taiao, and the exercise of mana whenua to uphold these,</p> <p>(2) second, the health and well-being needs of people, te hauora o te tangata; interacting with water through ingestion (such as drinking water and consuming harvested resources) and immersive activities (such as harvesting resources and bathing), and</p> <p>(3) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.</p>	Oppose in part	<p>Policy LF–WAI–P1 – Prioritisation, provides very little additional guidance to that provided by the Objective of the NPSFM. The FPI PORPS needs to give effect to the NPSFM but should provide a regional context to the priorities. The S32 evaluation report identifies the PORPS as “...<i>the primary vehicle for setting out the region-wide framework for managing freshwater.</i>”</p> <p>This region wide framework does not necessarily need to occur in Policy LF–WAI–P1 alone. However, the FPI PORPS does not appear to have done this in any substantial way elsewhere.</p> <p>An example of where regional level guidance is required is in relation to drinking and community water supplies. Drinking water (a second order priority use of water) is often provided as a component of water taken and distributed through reticulated networks for wider community use. This can include a number of activities that would be third order priority uses, including uses within an individual’s home. There is generally no practical way of separating drinking water from water used for wider community uses. Practical policy guidance is therefore required as to how this tension will be addressed in Otago.</p> <p>LF-WAI-P1 sets in place priorities but does not provide policy guidance for how activities that sit under each level of the hierarchy will be managed, or even what these activities might actually be. As notified, the FPI PORPS does not meet the goal of being the primary vehicle for setting out the region-wide framework for managing freshwater. Clarity is required within the FPI PORPS so this can filter through to lower order documents.</p>	<p>Provide a comprehensive suite of policies in the LF-Land and Freshwater chapter that addresses “...<i>how Te Mana o te Wai applies to water bodies and freshwater ecosystems in the region</i>”¹ including the activities that sit under each priority level and how the potential tensions between these activities are to be resolved.</p> <p>Part 3 of the NPSFM places the responsibility for this task on regional councils and it is best addressed within the FPI PROPS to provide clarity for lower order documents.</p>
LF-VM – Visions and management				
2.	<p>Objectives - FMU Visions</p>	Oppose in part	<p>The visions for all FMU require that “<i>fresh water is managed in accordance with the LF–WAI objectives and policies.</i>” As discussed in relation to Policy LF–WAI–P1 – Prioritisation, the LF–WAI objectives and policies do not resolve tension that exists between the priorities for freshwater management. Therefore, reference to these objectives and policies does not assist in the implementation of the NPSFM as described in Part 3 of the NPSFM.</p>	<p>Delete the phrase “<i>fresh water is managed in accordance with the LF–WAI objectives and policies</i>” from the FMU visions unless a comprehensive set of policies addressing “...<i>how Te Mana o te Wai applies to water bodies and freshwater ecosystems in the region</i>” is included amongst the LF–WAI objectives and policies.</p>

¹ Part 3.2 of the NPSFM 2020.

Sub #	The provisions of the proposed RPS that the Fulton Hogan submission relates to are:	The Fulton Hogan submission is that:		Fulton Hogan seek the following decisions from Otago Regional Council:
		Oppose/ Support	Reasons	
LF-FW – Fresh water				
3.	<p>LF-FW-O9 – Natural wetlands</p> <p>Otago's natural wetlands are protected or restored so that:</p> <p>(1) mahika kai and other mana whenua values are sustained and enhanced now and for future generations,</p> <p>(2) there is no decrease in the range and diversity of indigenous ecosystem types and habitats in natural wetlands,</p> <p>(3) there is no reduction in their ecosystem health, hydrological functioning, amenity values, extent or water quality, and if degraded they are improved, and</p> <p>(4) their flood attenuation capacity is maintained.</p>	Oppose in part	<p>This objective gives effect to the NPSFM and provides regional context around the regulations contained in the NES-F.</p> <p>Policy 6 of the NPSFM states '<i>There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.</i>'</p> <p>Clause 3.22 of the NPSFM sets out a consenting pathway for certain activities which may result in the loss of extent of natural wetlands or affect their values. Consent may be granted provided the regional council is satisfied that (amongst other matters) the effects of the activity are managed through applying the effects management hierarchy. Aquatic offsetting is provided in the hierarchy.</p> <p>Therefore, the NPSFM seeks to prevent a loss of extent of wetlands generally, but on a project specific basis, aquatic offsetting may be appropriate, which could see a loss in extent for a specific wetland, provided there is no net loss.</p> <p>LF-FW-09 should be amended to make it clear that the objective seeks no net loss, across the region, rather than in relation to individual wetlands.</p>	<p>Objective LF-FW-O9 – Natural wetlands, is amended so that reference to “no decrease” or no reduction” in subclauses 2 and 3 is clearly placed in the context of what is to be achieved on a regional scale rather than at an activity scale.</p> <p>LF-FW-O9 – Natural wetlands</p> <p>Otago's natural wetlands are protected or restored so that:</p> <p>(1) mahika kai and other mana whenua values are sustained and enhanced now and for future generations,</p> <p>(2) there is no <u>net</u> decrease in the range and diversity of indigenous ecosystem types and habitats in<u>of</u> natural wetlands <u>across the region</u>,</p> <p>(3) there is no <u>net</u> reduction in their <u>wetland</u> ecosystem health, hydrological functioning, amenity values, extent or water quality <u>across the region</u>, and if degraded they are <u>it is</u> improved, and</p> <p>(4) their flood attenuation capacity is maintained.</p>

Sub #	The provisions of the proposed RPS that the Fulton Hogan submission relates to are:	The Fulton Hogan submission is that:		Fulton Hogan seek the following decisions from Otago Regional Council:
		Oppose/ Support	Reasons	
4.	<p>LF–FW–P9 – Protecting natural wetlands</p> <p>Protect natural wetlands by:</p> <p>(1) avoiding a reduction in their values or extent unless:</p> <p>(a) the loss of values or extent arises from:</p> <p>(i) the customary harvest of food or resources undertaken in accordance with tikaka Māori,</p> <p>(ii) restoration activities,</p> <p>(iii) scientific research,</p> <p>(iv) the sustainable harvest of sphagnum moss,</p> <p>(v) the construction or maintenance of wetland utility structures,</p> <p>(vi) the maintenance of operation of specific infrastructure, or other infrastructure,</p> <p>(vii) natural hazard works, or</p> <p>(b) the Regional Council is satisfied that:</p> <p>(i) the activity is necessary for the construction or upgrade of specified infrastructure,</p> <p>(ii) the specified infrastructure will provide significant national or regional benefits,</p> <p>(iii) there is a functional need for the specified infrastructure in that location,</p> <p>(iv) the effects of the activity on indigenous biodiversity are managed by applying either ECO–P3 or ECO–P6 (whichever is applicable), and</p> <p>(v) the other effects of the activity (excluding those managed under (1)(b)(iv)) are managed by applying the effects management hierarchy, and</p> <p>(2) not granting resource consents for activities under (1)(b) unless the Regional Council is satisfied that:</p> <p>(a) the application demonstrates how each step of the effects management hierarchies in (1)(b)(iv) and (1)(b)(v) will be applied to the loss of values or extent of the natural wetland, and</p> <p>(b) any consent is granted subject to conditions that apply the effects management hierarchies in (1)(b)(iv) and (1)(b)(v).</p>	Oppose in part	<p>Policy LF-LW-P9 is to give effect to Clause 3.22 of the NPSFM. The Government has recently released the Exposure Draft NPSFM which includes a consenting pathway for expanding existing and developing new quarries within natural wetlands, in recognition of the importance and locational constraints of quarrying.</p> <p>While ORC is not yet required to give effect to the Exposure Draft NPSFM, it is considered likely consenting pathway for quarrying will remain, given this approach has already been adopted in the NPSHPL in relation to aggregate extraction within highly productive land, and is also proposed in the Exposure Draft NPSIB in relation to significant natural areas.</p> <p>Policy LF-LW-P9 should be amended to provide a consenting pathway for quarrying.</p>	<p>Amend Policy LF–FW–P9 – Protecting natural wetlands to include a consenting pathway for quarrying.</p> <p>LF–FW–P9 – Protecting natural wetlands</p> <p>Protect natural wetlands by:</p> <p>(1) avoiding a reduction in their values or extent unless:</p> <p>(a) the loss of values or extent arises from:</p> <p>(i) the customary harvest of food or resources undertaken in accordance with tikaka Māori,</p> <p>(ii) restoration activities,</p> <p>(iii) scientific research,</p> <p>(iv) the sustainable harvest of sphagnum moss,</p> <p>(v) the construction or maintenance of wetland utility structures,</p> <p>(vi) the maintenance of operation of specific infrastructure, or other infrastructure,</p> <p>(vii) natural hazard works, or</p> <p>(b) the Regional Council is satisfied that:</p> <p>(i) the activity is necessary for the construction or upgrade of specified infrastructure,</p> <p>(ii) the specified infrastructure will provide significant national or regional benefits,</p> <p>(iii) there is functional need for the specified infrastructure in that location,</p> <p>(iv) the effects of the activity on indigenous biodiversity are managed by applying either ECO–P3, <u>ECO–P4, ECO–P5</u> or ECO–P6 (whichever is applicable), and</p> <p>(v) the other effects of the activity (excluding those managed under (1)(b)(iv)) are managed by applying the effects management hierarchy, <u>and or</u></p> <p><u>(c) the Regional Council is satisfied that:</u></p> <p><u>(i) the activity is for the purpose of expanding an existing, or developing a new, quarry for the extraction of aggregate; and</u></p> <p><u>(ii) the extraction of the aggregate will provide significant national or regional benefits; and</u></p> <p><u>(iii) there is a functional need for the extraction to be done in that location;</u></p> <p><u>(iv) the effects of the activity on indigenous biodiversity are managed by applying either ECO–P3, ECO–P4, ECO–P5 or ECO–P6 (whichever is applicable), and</u></p> <p><u>(v) the other effects of the activity (excluding those managed under (1)(b)(iv)) are managed by applying the effects management hierarchy, and or</u></p> <p>(2) not granting resource consents for activities under (1)(b) <u>or (c)</u> unless the Regional Council is satisfied that:</p> <p>(a) the application demonstrates how each step of the effects management hierarchies in (1)(b)(iv) and (1)(b)(v) will be applied to the loss of values or extent of the natural wetland, and</p> <p>(b) any consent is granted subject to conditions that apply the effects management hierarchies in (1)(b)(iv) and (1)(b)(v).</p>
5.	<p>LF-FW-AER11</p> <p>There is no reduction in the extent or quality of Otago's natural wetlands.</p>	Support	This phrasing applies across the region, rather than to individual wetlands.	Retain as notified.