

Presented to Policy and Submissions Committee 7/3/12

Decision:

1. *That the Council adopt the Section 32 Report and conclude that Proposed Plan Change 6A (Water Quality) is the most appropriate means of addressing diffuse rural contamination of water bodies.*
2. *That Proposed Plan Change 6A (Water Quality) and its accompanying Section 32 Report be approved for notification in accordance with clause 5, Schedule 1 of the RMA.*
3. *That Proposed Plan Change 6A (Water Quality) be publicly notified on Saturday 31 March 2012.*
4. *That the Council establish a Hearing Committee to hear and make recommendations relating to Proposed Plan Change 6A (Water Quality).*
5. *That Proposed Plan Change 6A (Water Quality) have immediate legal effect upon notification.*

That the tabled Addendum be part of the Proposed Plan Change 6A (Water Quality).

REPORT

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Report No: 2012/0622

Prepared For: Policy and Submissions Committee

Prepared By: Policy Team

Date: 23 February 2012

Subject: Notification of Proposed Plan Change 6A (Water Quality) to the Regional Plan: Water for Otago

1. Précis

This report recommends notification of Proposed Plan Change 6A (Water Quality) to the Regional Plan: Water for Otago (Water Plan) in accordance with clause 5, Schedule 1 of the Resource Management Act 1991 (RMA).

2. Background

The impacts of contaminants in runoff, drainage and leaching (known as non-point source pollution) present one of the most serious freshwater management challenges in New Zealand.

One approach nationally to addressing non-point source pollution is control of land use activities and nutrient inputs. Despite this, water quality continues to be compromised, particularly where there is significant intensification of land use. This approach can also be costly to land owners and the community.

Otago's freshwater is generally of good quality, however in some areas there has been deterioration. Recent reports to Council have detailed the nature of the problems and possible approaches (Reports 2008/328, 2009/592 and 2010/0977).

In 2010 the Council released the Rural Water Quality Strategy. The strategy proposed an effects-based approach to managing rural discharges to water, with a focus on controlling contaminants discharging from land to water, instead of controlling land use activities. Maximum discharge limits are set for common rural contaminants, and discharges from land achieving those limits are permitted. The land manager has the flexibility to implement whatever land use changes are needed to meet the discharge limits that best suit their land management regime.

Proposed Plan Change 6A (Water Quality) to the Water Plan seeks to implement the regulatory framework described in the Rural Water Quality Strategy by permitting discharges that meet specified limits for nitrogen, phosphorus, *Escherichia coli*, and turbidity. These contaminant limits are proposed to reflect those for good quality water and, consequently, there is no need to use a mixing zone to dilute contaminants to the desired level. Discharges that have an obvious adverse effect in receiving water, or that damage property, become prohibited, including where they risk sediment entering water from land disturbance. Discharges to water from animal waste systems (that do not meet the specified limits), silage storage or composting process are also prohibited. Land use is not directly controlled.

The proposed plan change is expected to reduce the adverse effects of land use activities on water quality, without imposing unnecessary cost on land holders, and help ensure Otago achieves good quality water across the whole region before 2020.

3. Review of water quality provisions

A review of the water quality provisions relating to rural discharges in the Water Plan highlighted that amendment of the water quality framework was needed to implement the Rural Water Quality Strategy. Existing provisions for the management of water quality in the rural environment are also simplified and streamlined.

4. Summary of the proposed plan change

Proposed Plan Change 6A (Water Quality) seeks to maintain, or improve as necessary, water quality within rural Otago, with a focus on controlling contaminants discharging from land to water.

The main amendments proposed are:

- A description of the characteristics and measures of good quality water, and timeframes to meet them (Schedule 15).
- A restructure of Chapter 7 Water Quality.
- The removal of policy allowing assimilative capacity of water bodies to be considered when consenting discharges.
- A new suite of rules (and corresponding policies) for discharges of water, and nitrogen, phosphorus, *Escherichia coli* and sediment (excluding human sewage, hazardous wastes and reticulated stormwater, and from industrial and trade premises), that:
 - Prohibit discharges:
 - That have an obvious adverse effect in receiving water bodies.

- To water, that damage property.
- From disturbed land to water, where no mitigation measures are taken to avoid sediment runoff.
- To water from animal waste systems, silage storage or a composting process.
- Permit discharges that meet specified limits for nitrogen, phosphorus, *Escherichia coli*, and sediment.
- Provide a narrow consenting option for discharges that do not meet specified limits.
- Amendment of Chapter 13 Rules: Land Use on Lake or River Beds to:
 - Address bed disturbance in relation to water quality.
 - Provide a more permissive approach to bridges and other crossings in, on or over water bodies.
 - Prohibit the use of water bodies as regular stock crossings.
- A restructure of all the discharge rules (Sections 12.4 to 12.13) in Chapter 12 Rules: Water Take, Use and Management.
- Streamlining of provisions, including removing Issues; Anticipated Environmental Results; Methods; Information Requirements; Explanations and Principal Reasons for Adopting (Objectives, Policies, Rules).

5. Section 32 report

Before a plan change is notified, the Council must evaluate the alternatives, benefits and costs, as required by Section 32 of the RMA. Proposed Plan Change 6A (Water Quality) is the preferred approach to address effects of land use on water quality. The Section 32 Report is attached as Appendix 1.

6. Comments received on the consultation draft

Following the release of the Consultation Draft on 9 February 2012, the Council met with territorial local authorities within the region and Environment Canterbury (with particular reference to the Waitaki River catchment).

Written responses were received from the following agencies in terms of clause 3 of Schedule 1 to the RMA:

- Alliance Group Ltd
- Clutha District Council
- Department of Conservation
- Dunedin City Council
- Fert Research
- Fish and Game Council
- Irrigation NZ
- Minister for the Environment
- New Zealand Transport Agency
- Southern District Health Board
- Te Ao Marama
- TrustPower Ltd

There was support for:

- **Permitted activity approach:** The overall approach of permitting land uses, providing flexibility, and encouraging self management.
- **Waterway margins:** Management of stock and land close to waterways.
- **Structures:** More permissive to allow single span bridges, and crossings.
- **Disturbance of river beds:** More permissive provisions for in-stream works including: removing consecutive from the ten hours work within which must be undertaken and including “wetted” bed, thereby removing the inclusion of banks.
- **Innovation:** Allowing development of technology or innovative practises to mitigate contaminant loss.
- **Costs:** Reducing unnecessary consents and compliance costs.
- **Streamlining.**

The key concerns raised were:

- **Schedule 15 good quality water:** what constitutes good quality water - narrative characteristics; numerical receiving water standards; grouping of catchments.
- **Schedule 16 discharge limits:** use of receiving water standards as a discharge limit does not allow for assimilative capacity; limits are unworkable, unachievable and there is no evidence they can be met; timeframes unrealistic.
- **Certainty:** clarity of how a land manager can measure compliance (sampling, analysis, enforcement); how discharge variability will be addressed; the relationship between land use and discharge; making information publicly available.
- **Prohibited discharge rules:** no flexibility for unforeseen situations; consistency with permitted rules queried, discharges and diversions potentially prohibited.
- **Permitted discharge rules:** rainfall; sediment limits; OVERSEER[®] nitrogen loading values; OVERSEER[®] irrigated land protocols; specifying distance from water bodies for animal waste discharges, dams that are not permitted would need to comply with Schedule 16.
- **Consented discharge rules:** inter-catchment mixing a concern for fish disease and genetics; notification provisions; defining “short-term”; wider restricted discretions.
- **Bed disturbance and structure rules:** bed structures/disturbance should recognise areas with rare fish and fish spawning.
- **Cost-benefit analysis:** not available with the Consultation Draft.
- **Streamlining:** removal of issue descriptions and explanatory text.

7. Amendments proposed to the plan change

The following amendments have been made to the recommended proposed plan change:

- Alignment of Proposed Plan Change 6A (Water Quality) with Proposed Plan Change 2 (Regionally Significant Wetlands) (see also Report 2012/0637).
- Refining of the catchments and areas within Schedules 15 and 16, including mapping of Schedule 16 discharge limit areas.
- Recognition of naturally occurring scums and foams in Schedule 15.
- Using the previously consulted timeframe to meet the Schedule 16 discharge limits.
- Amendment of the nitrogen leaching limit from 40 kilograms of nitrogen per hectare per year to 30 kilograms (Rule 12.C.1.3). Refer to Appendix 2 for the scientific background to this amendment.
- Addition of a discretion for addressing the likelihood of erosion, land instability, sedimentation or property damage (Rule 12.C.2.1).
- Refinement of the bridge and crossing rules (Rules 13.2.1.7, 13.2.1.7A, 13.2.1.7B).
- Streamline only those provisions that are being amended, and leave unchanged those that are only being re-ordered (now listed in the Table of Minor and Consequential Changes).

Proposed Plan Change 6A (Water Quality) to the Water Plan as amended is attached as Appendix 3.

8. Notification

It is proposed to notify the plan change on Saturday 31 March 2012, in accordance with clause 5, Schedule 1 of the RMA. Submissions will close on Monday 2 May 2012.

The rules in Proposed Plan Change 6A (Water Quality) will have immediate legal effect from notification, in accordance with section 86B(3) of the Resource Management Act 1991.

A copy of the public notice and a summary of the proposed plan change must be sent to any person who is likely to be directly affected by the proposed plan change, in accordance with clause 5(1C). In the week following public notification, a brochure will be delivered to all households in the region, including rural deliveries and post box holders, as well as to non-resident property owners.

A copy of the proposed plan change and its accompanying Section 32 Report will be provided to:

- Ministers for the Environment, Conservation, Primary Industries, Agriculture and Forestry;
- Constituent territorial authorities;
- Adjacent regional councils; and
- Iwi;
- Southern District Health Board;
- Fish and Game Council;
- Chair of the Land and Water Forum; and
- Other parties who provided comment on the Consultation Draft.

A copy of Proposed Plan Change 6A (Water Quality) and its Section 32 Report will be made available for the public to view in every public library in Otago, at all Council offices, and on the Council website, www.orc.govt.nz.

9. Timeline

A summary of the expected progress of the proposed plan change is given below:

Action	Expected Date
Council approve public notification Proposed Plan Change 6A (Water Quality)	21 March 2012
Public notification of proposed plan change	31 March 2012
Submissions close	2 May 2012
Public notification of decisions requested and call for further submissions	19 May 2012
Further submissions close	1 June 2012
Hold hearings	July-August 2012
Council decision	19 September 2012

10. Recommendations

6. That the Council adopts the Section 32 Report and concludes that Proposed Plan Change 6A (Water Quality) is the most appropriate means of addressing diffuse rural contamination of water bodies.
7. That Proposed Plan Change 6A (Water Quality) and its accompanying Section 32 Report is approved for notification in accordance with clause 5, Schedule 1 of the RMA.
8. That Proposed Plan Change 6A (Water Quality) is publicly notified on Saturday 31 March 2012.
9. That the Council establishes a Hearing Committee to hear and make recommendations relating to Proposed Plan Change 6A (Water Quality).
10. That Proposed Plan Change 6A (Water Quality) will have immediate legal effect upon notification.

Fraser McRae
Director Policy and Resource Planning