

Council Extraordinary, Agenda 3 October 2024

Meeting will be held at ORC Chambers, Philip Laing House, Lvl 2, 144 Rattray Street, Dunedin, and live streamed to the [ORC YouTube Channel](#)



Members:

Cr Gretchen Robertson, Chairperson
Cr Lloyd McCall, Deputy Chairperson
Cr Alexa Forbes
Cr Gary Kelliher
Cr Michael Laws
Cr Tim Mepham
Cr Kevin Malcolm
Cr Andrew Noone
Cr Bryan Scott
Cr Alan Somerville
Cr Elliot Weir
Cr Kate Wilson

Senior Officer: Richard Saunders, Chief Executive
Meeting Support: Kylie Darragh, Governance Support Officer

03 October 2024 01:00 PM

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1. WELCOME	
2. APOLOGIES	
3. CONFIRMATION OF AGENDA The agenda to be confirmed as published.	
4. DECLARATION OF INTERESTS Members are reminded of the need to stand aside from decision-making when a conflict arises between their role as an elected representative and any private or other external interest they might have. ORC Councillors Declarations of Interests are published on the website.	
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6. CLOSURE

5.1. Correspondence from the Minister for the Environment regarding the LWRP

Prepared for:	Council
Report No.	GOV2448
Activity:	Governance Report
Author:	Richard Saunders, Chief Executive
Endorsed by:	Richard Saunders, Chief Executive
Date:	3 October 2024

PURPOSE

- [1] The purpose of this report is to present the most recent letter received from the Minister for the Environment, regarding Otago Regional Council's Land and Water Regional Plan and to seek direction from Council on a response to that letter.

EXECUTIVE SUMMARY

- [2] Otago Regional Council (ORC) has received further correspondence from the Minister for the Environment on the 26th of September 2024. This letter follows a recent meeting with Ministers and sets out ways in which ORC could work with the Government on matters relating to the notification of the draft Land and Water Regional Plan (LWRP).
- [3] Staff recommend that the offer be carefully considered by Council when determining whether or not to notify the LWRP. This decision is due to be made on 23 October 2024.

RECOMMENDATION

That the Council:

- a) **Notes** the report.
- b) **Directs** staff to include the option for a short pause as set out in the letter from the Minister for the Environment dated 26 September 2024, along with an assessment of the advantages and disadvantages of this option, as part of the report to consider plan notification on the 23rd of October 2024.
- c) **Approves** the draft response from the Council to the Minister for the Environment.

BACKGROUND

- [4] Requests under Section 27 of the Resource Management Act 1991 were received from the Minister for the Environment on the 31st of July and 8th of August 2024. Council responded to these requests in writing on the 5th of September 2024.
- [5] On the 12th of September the Chair, Deputy Chair, a mana whenua representative and staff representatives met with Minister Simmonds and Minister McClay in Wellington to

discuss the most recent response from ORC. At this meeting Ministers restated their strong preference for ORC not to notify its LWRP by 31 October 2024.

- [6] An extraordinary Council meeting was held on the 20th of September 2024 to discuss the meeting with Ministers in Wellington and the potential investigation of options for Government support on LWRP matters. At that meeting Councillors resolved the following:

That the Council:

- a. *Notes the report.*
 - b. *Requests that staff engage with officials to discuss the NPS-FM review process and identify actions that seek to address the issues associated with Plan Change 6AA and Plan Change 7 should a new LWRP not be notified and report back to Council ahead of the decision on notification of the plan*
 - c. *Notes that the above engagement will address both legislative and financial opportunities*
- [7] Staff met with Ministry for the Environment staff on the 25th of September to discuss the resolutions from the 20th of September meeting and outline the current work programme associated with the LWRP. This included confirmation of the current work programme milestone to prepare a paper seeking a notification decision on the draft LWRP for consideration at a Council meeting on 23 October 2024.

DISCUSSION

Letter from the Minister

- [8] ORC received a further letter from Minister Simmonds on 26 September 2024. This letter is included as Attachment 1.
- [9] In this letter the Minister sets out further details on how the Government proposes to assist ORC to align the draft LWRP with the NPS-FM. The letter notes that Council resolved to explore opportunities to work together during a recent meeting.
- [10] The letter from the Minister proposes that ORC participates in targeted engagement on the review and replacement of the NPS-FM between October and early 2025. This would also provide ORC early access to the direction of the new NPS-FM.
- [11] The letter states that to allow for the new direction for the NPS-FM to be incorporated into the ORC draft plan, notification would need to be delayed until at least early 2025.
- [12] In addition, the letter acknowledges that should notification of the plan be delayed further than the initial pause until early 2025, the Government understands that there could be unintended consequences, particularly for water take and discharge consent holders. The letter states that the *'Government will work with you to make sure unintended consequences do not negatively impact resource users or unnecessarily burden ratepayers'*.

Recommended response

- [13] Staff recommend that consideration should be given to this offer from the Government as part of your deliberations on October 23rd. Staff should be directed to include this as an option with the associated assessment of advantages and disadvantages.
- [14] The proposal received from the Minister provides an opportunity for ORC to have an early view on the direction of the NPS-FM review and replacement. The advantages and disadvantages of this option should be carefully weighed up when considering whether to notify the plan on the 23rd of October.
- [15] Considering this option on the 23rd of October will also allow time for ORC to seek input from mana whenua partners through the Mana to Mana forum. Discussion on plan notification occurred at previous Mana to Mana meetings on the 20th of February and the 27th of August. Seeking input from Mana to Mana members on the recent offer from Ministers is consistent with the partnership approach which has underpinned the development of the LWRP.
- [16] The letter from the Minister also addresses the unintended consequences of a delay in LWRP notification. While it has been too soon for staff to work with Government officials to determine exactly what mechanisms might be used the letter contains an undertaking from the Minister that the Government will work with ORC to ensure these consequences do not negatively impact resource users or unnecessarily burden rate payers. The necessity for interventions will be dictated by the final notification date of the LWRP.
- [17] A draft response to the Minister on behalf of Council has been prepared by staff for consideration. This is included as Attachment 2.

OPTIONS

- [18] There are a number of options available to Council as a result of this letter.
- [19] Option 1, the preferred option, is that a response is sent to the Minister thanking her for the clarity included in her letter and noting that this offer will be carefully weighed up when Council considers notification of the LWRP on 23 October 2024.
- [20] Option 2 is that Council could resolve to accept the offer as set out in the letter from the Minister and immediately pause the LWRP work programme.
- [21] Option 3 is that the Council could resolve not to accept the offer nor consider it as part of the LWRP notification consideration on the 23rd of October.
- [22] Option 1 is the preferred option as it allows Council to adequately consider all of the advantages and disadvantages of the options as part of the decision-making process at the 23 October Council meeting. This is consistent with section 77 of the Local Government Act 2002.
- [23] Option 2 is not preferred as making the decision as part of this paper does not enable Council to weigh up all of the options available to it.

- [24] Option 3 is not preferred as the offer received from the Minister is a legitimate option which should be weighed against the advantages and disadvantages of other options.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [25] The LWRP supports the vision for Otago and a number of the strategic priorities confirmed through the Long-Term Plan process.

Financial Considerations

- [26] There are no financial considerations associated with the decisions in this paper.

Significance and Engagement Considerations

- [27] The subject of the paper does not trigger He Mahi Rau Rika, ORC's Significance and Engagement Policy, however there is wide public interest in the correspondence between the Minister and ORC and decisions made as a result of this correspondence.

Legislative and Risk Considerations

- [28] The Minister has functions under sections 24A, 25 and 25A of the Resource Management Act that relate to directions and powers, when a Council is not performing its functions under the Act.

- [29] Decision making of Council must be in accordance with the Local Government Act 2002.

Climate Change Considerations

- [30] There are no climate change considerations associated with this paper.

Communications Considerations

- [31] There are no specific communications considerations associated with this paper.

NEXT STEPS

- [32] If Council decides to submit the response to the Minister, staff will update it with any changes directed by Council and submit it as soon as possible.
- [33] Staff will continue to work with Government Officials to clarify the details of the offer in the letter from the Minister and include these details in the LWRP report due to be considered on 23 October 2024.

ATTACHMENTS

1. P S- CO R 0757 - Letter from Minister Simmonds [5.1.1 - 1 page]
2. Draft Response to Minister Simmonds for Council consideration [5.1.2 - 1 page]

Hon Penny Simmonds

Minister for the Environment
Minister for Tertiary Education and Skills
Associate Minister for Social Development and Employment



26 SEP 2024

Cr Gretchen Robertson
Chairperson
Otago Regional Council
Gretchen.Robertson@orc.govt.nz

Dear Gretchen

Thank you for taking the time to meet with Hon Todd McClay and myself on 12 September.

At that meeting we offered to assist the Council to align your plan with the new National Policy Statement for Freshwater Management (NPS-FM) in an efficient way avoiding unnecessary cost on ratepayers. We note Council resolved to explore this further. To support your decision making we have set out below how we suggest the Council and Government can work together.

We propose Otago Regional Council participate in targeted engagement on the review and replacement of NPS-FM between October and early 2025, ahead of public consultation. This will provide the Council with the ability to test proposals are robust, provide advice on workability, and input into how to ensure effective and efficient implementation. This would also provide you early access to the direction of the new NPS-FM.

To allow for the new direction for NPS-FM to be incorporated into your draft plan you would need to delay notification until at least early 2025.

If you need to delay your plan further, we understand this could have unintended consequences, particularly for water take and discharge consent holders and applicants. If that eventuates, the Government will work with you to make sure unintended consequences do not negatively impact resource users or unnecessarily burden ratepayers. This could include a legislative amendment extending timeframes or establishing temporary measures to provide certainty for resource users until a new plan is developed.

We hope Councillors consider this proposal and see the benefits in working together on this matter to reduce the risks of unnecessary duplication and cost to Otago ratepayers.

Kind regards,

A handwritten signature in black ink, appearing to read 'Penny Simmonds', written over a light blue horizontal line.

Hon Penny Simmonds
Minister for the Environment



4 October 2024

Minister for the Environment
Private Bag 18041
Parliament Buildings
Wellington 6160

via **EMAIL:** P.Simmonds@ministers.govt.nz

Dear Minister Simmonds,

Thank you for your recent letter dated 26 September 2024 setting out opportunities for ORC to work closely with Government to align our Land and Water Regional Plan (LWRP) with the new National Policy Statement for Freshwater Management (NPS-FM).

Council held an extraordinary meeting on 3 October to consider your letter. We appreciated the clarity it provided us and the willingness from the Government to work with ORC on this matter. Alongside an early view of the NSP-FM policy direction we note your intent to work with ORC to make sure any unintended consequences of delaying notification do not negatively impact resource users or unnecessarily burden ratepayers.

Council has resolved to direct staff to include this option along with the associated advantages and disadvantages in the report we are due to consider on 23 October 2024. This will ensure that we are able to make a fully informed decision on our LWRP with all of the options in front of us, in accordance with the decision-making principles of the Local Government Act 2002. It also gives us time to seek the views of mana whenua who have been partners with ORC in the drafting of the LWRP.

Thank you again for your letter and for the intent to work constructively with ORC on this matter. We look forward to updating you on the decision made by Council following our meeting scheduled for 23 October 2024

Yours sincerely