

5 September 2024

Hon Penny Simmonds
Minister for the Environment
Parliament Buildings
Wellington 6160

via EMAIL: p.simmonds@ministers.govt.nz

Dear Minister Simmonds,

Thank you for the opportunity. The Otago Regional Council appreciates your commitment to open communication to foster a productive partnership and shared understanding.

The decision to continue development of the plan ahead of the notification decision (currently set down for October) has not been easy and we have considered many factors. On balance Council has decided to continue with the development of the draft because:

- We are confident that changes made since our November 2023 engagement are aligned with Government direction, better enable infrastructure and allow more flexibility to farmers through the use of Freshwater Farm Plans.
- There will be ample opportunities as the plan moves through its submission and hearing stages over the following 24 months for us to respond to any changes in national direction.
- It's the latest we can notify and have a plan in place to stop our existing plan having effect. Without a replacement plan our communities - particularly our farmers - will face high administrative costs in complying with our existing plan.
- There has been significant investment from the Otago Community to prepare the current draft plan. Re-doing significant parts of the process will come at a large cost to our community.
- We still have a large part of our community concerned about water quality degradation that is asking us to act now. The bulk of our plan was drafted over 15 years ago and it hasn't kept up with the rest of New Zealand.

This letter and attachments have been prepared in response to your questions. The response does not fully set out all the costs and implications you have requested because the full section 32 report is still in development at the time of writing. We have included information from the draft Section 32 report on three topics - stock exclusion, afforestation and wastewater as examples of the type and detail of the analysis we have completed. Cross-referencing and some detail is still to be finalised and we have an external review underway. We understand that it is acceptable that we provide you the full draft section 32 report, along with the draft proposed Plan, in confidence on 17 September.

With regard to the 31 July letter requesting the provision of the information in relation to costs to territorial authorities to replace wastewater systems, we confirm that we were not aware of the information or the towns that the information related to. We have since obtained the information. It relates to 2023 indicative business cases by Central Otago District Council on improving the treatment and disposal of wastewater services for Omakau and Alexandra¹. The attached parts of the draft Section 32 report include information on the costs of land-based treatment.

Changes in direction on key issues raised during engagement and consultation

During the November 2023 engagement and early 2024 consultation we heard concerns about costs particularly to the farming community, without necessarily the corresponding environmental benefit. In response, the draft plan has sought to reduce costs but still hold to the commitment to maintain water quality and quantity. The draft plan we now have is less costly, more workable and is pragmatic in allowing time to make change. Changes recommended in response to key issues are listed below.

Renewable Energy. We have added a policy to enable increased renewable energy generation and to better provide for upgrades of existing damming structures. We have removed a prohibition on lowering lakes below minimum levels for the purposes of renewable electricity generation.

Enabling more activities. We have enabled a further suite of activities to proceed without resource consent, provided standards – industry good management, codes of practice, minimising effects on waterways etc. – are adhered to. These include:

- Drain maintenance;
- Small temporary in-stream dams and weirs (small off stream storage is already enabled);
- Redistribution of gravel for structure maintenance and post flood events; and
- Earthworks and drilling activities (for example, providing for works in artificial watercourses or earthworks associated with farm tracks).

Primary production. The management of the effects of primary production on water quality has removed some controls and allows farmers more flexibility in their actions.

These changes include:

- Removing, from the Freshwater Farm Plan appendix, an objective that Freshwater Farm Plans must give effect to Te Mana o te Wai.
- Allowing farmers to justify alternatives to compliance with permitted activity thresholds such as fencing set-backs and intensive winter grazing through their Freshwater Farm Plans.
- Removal of controls on silage volumes, removal of the requirement for exclusion of sheep from rivers, and no longer using stock numbers as a measure of intensification.
- Adjusted policy around cultivation and grazing to require minimising rather than avoiding contaminant loss.
- Excluding orchards and vineyards from controls on land use expansion.

We have also added a rules framework for Intensive Winter Grazing, again allowing farmers to

¹ Available at https://centralotago.infocouncil.biz/Open/2023/11/CO_20231129_AGN_2331_AT_WEB.htm

demonstrate alternative approaches to managing the environmental effects through their Freshwater Farm Plan.

We heard strong concerns during engagement and consultation about growth in forestry (replacing farming) and the management of sediment and slash. Other than those two issues, the draft has reverted to the controls in the National Environmental Standard for Commercial Forestry, so that the impacts of the plan on the forestry industry are significantly reduced.

Water quantity. We have lowered the minimum flow and increased the take limit from the Waikouaiti River and included takes that allow water harvesting at higher flows, called ‘B blocks’ from the Kakanui, Poumahaka and Shag Rivers, and Luggate Creek, and Trotters catchments.

Wastewater. The objective for wastewater has been amended to take out an absolute requirement to protect human health, soil and freshwater from wastewater contamination and now reads “adverse impacts of wastewater are managed to protect...” Subsequently, we have removed a prohibited activity status for discharge to water for new wastewater plants. Our existing plan and our new Regional Policy Statement both include a policy to favour land-based treatment of wastewater over direct discharges to water. However, since the November engagement, the draft Plan now has a consent pathway for discharges to water.

Wetlands. Our Regional Policy Statement has extended to a greater range of wetlands than was covered in our November engagement on the regional plan. We have therefore required fencing of a larger range of wetlands from 2030. We have adjusted the farm plan appendix so that a Freshwater Farm Plan can now be used in place of a consent as a means to show compliance with the rule for fencing wetlands. We have also made it easier to create wetlands.

Cross mixing of water. There are instances in Otago where the use of natural water bodies as part of the conveyance network involves the cross mixing of water that has no natural connection. Kāi Tahu have cultural and spiritual concerns about this practice, and mixing of water can also pose risks to spread of invasive species or habitat alteration through species interactions that would not occur otherwise. We consulted on an option to prohibit any new cross mixing of water and to phase out existing cross-mixing practices to the extent practicable. After feedback from iwi, we have refined a new preferred option that moves away from blunt prohibitions and uses an effects-based policy to give more flexibility and guidance on cross mixing. Consent applicants will need to consult with Kāi Tahu before making an application.

Cost implications on specific industries and economic impact

Costs matter to us; we want as much effort and resourcing to go into actions to improve waterways not into administrative costs for us and businesses. The economic impacts of change have been evaluated through the Economic Work Programme². The economic work programme recognises that one of the biggest influences on cost to plan users is having certainty about the rules and being able to implement them over time.

Further activities managed through our draft proposed plan include onsite wastewater disposal, updated rules for landfills to align with industry best practice, controlling earthworks, and

² [Regional economics | Otago Regional Council \(orc.govt.nz\)](https://www.otago.govt.nz/RegionalEconomics)

managing cemeteries. In most cases we have brought our controls up to the same standard as used throughout New Zealand and consistent with industry best practice.

Our previous response outlined our extensive economic work to understand the impact of our rules on rural businesses. We modelled³ the costs of various policies such as riparian setbacks, stocking rate changes, and adjustments to fertilizer, irrigation and nutrient management. Many of the good management practices are already being implemented by businesses in Otago and should not have a significant budgetary impact beyond existing baselines, while others will need to be factored into annual operating budgets.

Our draft Section 32 on stock exclusion from waterways is attached. Our draft plan proposes the following setbacks on low slope land: 5 metres from the beds of wide rivers (over 1 metre) and 3 metres from smaller continually flowing rivers for farmed cattle, pigs and deer. For wide rivers on low slope land, this is 2 metres wider than that required under the national Stock Exclusion Regulations. The exclusion of livestock on steeper slopes (i.e., non-low slope land), in addition to that required by the national Stock Exclusion Regulations, was not seriously considered as an option for farming in Otago.

The Section 32 analysis indicates that the additional 2 metre setback area represents a maximum of 1,951 hectares in total across the region. This was compared to 6,264 hectares if we adopted a 10-metre setback. The analysis further states that the costs of the setback will be highly variable from one farm to the next for a multitude of reasons including how much is already fenced. When the low slope map is dropped from the national regulations, we intend to add our own definition using a stocking rate threshold equivalent to the average rate for Farm Class 2 Hill Country farming which will exclude some of these farms from the requirements.

Importantly, we also assessed the value of flexibility – that is allowing farmers to demonstrate through their Freshwater Farm Plans that they can achieve the same results a different way than straight compliance with a threshold. Modelling on a deer farm⁴ showed that a farmer could save \$40,000 per year by being able to work out their own solution and yet achieve similar environmental results when compared to strict compliance with stock exclusion from steep gullies. This type of example has informed our policy and rule selection and our intent to rely on Freshwater Farm Plans.

Our assessment of the cost to forestry uses the National Environmental Standard for Commercial Forestry as the baseline. We only consider where we are more stringent, which is in three areas. Firstly, we have more stringent control around planting of new forestry that is more than 10 hectares. This is to manage effects of forestry on other water users downstream. Secondly, we allow replanting if existing requirements around wilding pine control and setbacks to waterways are maintained, and, thirdly, we propose to require a resource consent (that cannot be declined) for harvesting to enable us to assess the quality of the management of sediment and slash. These

³ Moran, E. (Ed.). (June, 2023). Otago's rural businesses and environmental actions for fresh water. Otago Regional Council (LWRP Economic Work Programme), Dunedin (provided in previous s.27 response May 2024))

⁴ Moran, E. (Ed.). (June, 2023). Otago's rural businesses and environmental actions for fresh water. Otago Regional Council (LWRP Economic Work Programme), Dunedin

additional controls are consistent with the level of community concern about the growth in forestry and the effect of harvesting including slash and sediment management.

We have attached the draft Section 32 analysis of options for new forestry. It assesses four options – (i) the status quo, (ii) consents for new forestry over 10 hectares in over-allocated catchments, (iii) consents for new forestry over 10 hectares, and (iv) as for three but with the addition of 20 – 50 metre setbacks for new forestry under 10 hectares. The preferred option is option (iii). Other than consenting costs, the cost of new forestry complying with consent conditions is expected to be minimal except where there are water yield considerations. The benefits are that Council would be able to tailor consent conditions to suit the risk profile of the particular site, and limit forestry in locations where it is not appropriate. The option of setbacks for forestry under 10 hectares is not preferred as a 20 m setback has been estimated as resulting in a 12% loss of commercial planting area.

We do not have rules specific to mining. Gold mining is our major mining activity, and all types of mining will be subject to our management of discharges, earth works and any other activities that impact waterways. This is the same way that mining is managed in our current plan.

Not all cost implications are negative - there are also benefits.

A full assessment of costs must sit alongside an assessment of benefits. Legally in New Zealand, no-one can carry out an activity that affects water quality or take water other than for drinking, stock water or firefighting unless there is a rule allowing that activity in a regional plan or the person holds a resource consent.

By far the majority of rules in the plan are permitted activity rules – that is they allow an activity provided it meets thresholds or standards. Permitted activities include: restoration of riparian planting, on-site wastewater, temporary takes for aquifer testing, sediment traps, constructed wetland, small earthworks and off-stream dams. These will all be administratively easier for all parties to do once our plan is operative as consents will not be required for these activities.

We have also increased the consent duration for water take consents compared to that under Plan Change 7– another aspect that will benefit consent applicants compared to what they face now.

Costs imposed because of Te Mana o te Wai

Te Mana o Te Wai applies to values held by all New Zealanders and recognises that finding a balance between the economic and social implications of decisions, and their environmental consequences, is important. The Te Mana o te Wai hierarchy of obligations introduced in 2020 has never been interpreted by Otago Regional Council or other regional councils as protecting the environment at all costs, rather they are used as a tool to ensure that the appropriate balance between activities and the environment is considered. Councils see water quality improvements as a long-term journey that must be based on what communities can realistically achieve over time without undue hardship or disruption.

Our Regional Policy Statement includes a suite of NPS-FM visions for each Freshwater Management Unit in our region, that were developed with the community, and included timeframes which are

often long term. These visions clearly include economic goals such as supporting food and fibre production and ensuring communities are appropriately serviced by community water supplies, and other three waters infrastructure.

We have been very clear in our discussions with Otago's communities that the proposed plan, with its 10 year statutory lifespan, is the first step to achieving the visions set out in our Regional Policy Statement, but more will be required. The plan is the first step toward moving the region towards the agreed visions and attempts to stop further degradation of waterways.

Because we do not intend to fully implement visions in this plan, costs are reasonable and in line with pragmatism and that which arises from the RMA itself. More significant changes such as increased minimum flows are staged to enable further discussion and planning to take place. Additional changes – likely a combination of regulation (i.e. further plan changes) and non-regulatory interventions – were always signalled.

Stormwater and wastewater infrastructure – additional costs

Controls on most discharges including wastewater and stormwater have been carried over from our existing plan. These policies direct decision makers to prefer discharges to land over discharges to water. They also require systems to be operated, maintained, and monitored in accordance with recognised industry standards; and promote the progressive upgrading of existing systems. The latter includes measures to progressively reduce wet and dry weather overflows. All discharges of wastewater from reticulated wastewater systems require a discretionary consent.

We have attached an extract from the draft section 32 evaluation for wastewater. The assessment includes the option we consulted on in November which was a prohibition on new wastewater discharges to water. The draft analysis highlights the environmental benefits of a prohibition, however, concludes there will be areas of Otago which will struggle to achieve this due to land availability, suitability, and affordability. That option is not preferred. We do provide information on the cost of existing systems and upgrades to assist decision-makers understand the variability and magnitude of costs. The draft section includes an example relating to potential costs for wastewater overflows and some examples of the costs of land-based treatment. Costs are highly variable depending on the situation, availability of alternative solutions and are assessed as part of the resource consent process.

Concerns are sometimes raised about the preference for land-based treatment of wastewater and this is incorrectly attributed to the introduction of Te Mana o te Wai in the NPS-FM. The preference for land-based treatment predates the NPS-FM and reflects the concerns of the community, including those of mana whenua and rural communities who have sought fair treatment of urban and rural discharges.

The draft provisions require short-term consents for reticulated stormwater systems, so that territorial authorities can determine where all their discharge points are with a view to seeking global consent for stormwater discharges in five years' time. This transitional approach allows time for the territorial authorities to properly understand and plan their stormwater reticulation and then have a longer-term global consent to manage their network as a whole. While there will be a

cost associated with a short-term consent, the longer-term outcome will be certainty for territorial authorities enabling ORC to better manage discharges to water.

Opportunities for implementation of changes to national direction post notification

Once a plan is notified, the process is managed through the Freshwater Hearing Process, and Freshwater Commissioners. They determine their process but have a time limit, set in the RMA, of two years to make recommendations on the plan to Council.

If the NPS-FM were to change in those two years, Freshwater Commissioners would need to consider the revised version and give effect to it. Councils usually have two major opportunities to respond any revision in the NPS-FM. These are:

- At the start of the hearing Council provides an Officers' report in response to submissions and any changes in national direction. The anticipated timing of the Officers Report is the third quarter of 2025.
- At the end of the hearing, generally Council officers will be asked to provide further recommendations on provisions, after they have considered all submitters evidence. This provides the opportunity to include any changes in national direction. We recently did this as part of incorporating the NPS-Indigenous Biodiversity in hearings on the Otago Regional Policy statement. The NPS-Indigenous Biodiversity was issued just as our hearings were completing and we were able to respond. We anticipate if plan notification occurs in October this year, the hearing would conclude in early 2026.

The approach of adjusting during a hearing process is a much cheaper approach than doing a plan change now to address issues with our existing plan and a fuller plan change once the NPS-FM is reviewed. It will in fact allow a quicker implementation of the reviewed NPS-FM in our plan. Current estimates for a short-term plan change are \$2.3 to \$2.4 million over two years. Beyond this there would still be a need to complete a full plan change to replace the current plan. This adds significant cost on top of the approximately \$18 million invested to date, duplication of process and continued uncertainty for the community.

What happens if there is no replacement plan?

There are also costs associated with retaining the existing Regional Plan: Water and Regional Plan: Waste for longer. Otago's existing water plan neither protects/enhances our environment nor provides a framework within which our primary producers can operate with confidence. There are rules that will come into effect and place an unnecessary burden on the community unless we have a replacement plan in place. These rules start to come into effect on 1 April 2026.

Unnecessary administrative costs of operating under our existing plan include:

- Costs to consent diffuse discharges including intensive winter grazing activities. Our existing rules have been determined to be uncertain and unenforceable. In a practical sense, this may mean that all landowners who create diffuse discharge will need consent. Due to the uncertainty with the rules an exact number of properties who will require consent is not known but it is estimated to be over 3000. It is not efficient to consent these activities knowing they are unenforceable and uncertain.

- Water permit holders being limited to a 6-year duration of consent which farmers, supported by the Environment Court, have said is not an economically viable option and did not allow farm expansion. There are over 600 consents expiring between 2024 and 2030. The existing rules were predicated on a fit for purpose planning framework being in place before permit holders needed to renew their consents again. Part of the commitment we made to the community was that they would only require one short term resource consent, and a new planning framework would be in place that enabled a longer term. Not notifying the plan breaks that commitment.
- The cost of delaying implementation of the National Policy Statement for Renewable Energy Generation means delays in implementing a framework that enables renewables. There are multiple pieces of national direction the plan will implement, and delays impact them all.

Responsibility to Community

Freshwater quality was the highest environmental concern in a recent survey of Otago residents. We have some excellent freshwater in Otago but we also have many sites which show degradation, exacerbated by a rapidly changing climate, and there is a strong voice seeking us to act now. The priority is to maintain or enhance those areas which have deteriorating trends. However, in doing so we must acknowledge the reality that improvement will take time, in many cases decades.

Communities understand it does not mean returning to water quality from pre-human times and have set, through the Regional Policy Statement, visions with time frames which reflect this, as communities do appreciate the costs of improving water quality. There is tension in our community and an undermining of the social licence for farmers. The plan seeks to address this tension and provide certainty for landowners and business of what is expected in both rural and urban settings.

Kind regards,



Cr Gretchen Robertson
Chairperson