

Council Agenda 8 May 2024

Meeting will be held in the Council Chamber, Level 2, Philip Laing House, 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

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Agenda Topic

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1. WELCOME

2. APOLOGIES

No apologies were received at the time of agenda publication

3. PUBLIC FORUM

No requests to speak at Public Forum were received at the time of agenda publication.

4. CONFIRMATION OF AGENDA

Note: Any additions to the agenda must be approved by resolution with an explanation as to why they cannot be delayed until a future meeting.

5. DECLARATIONS OF INTEREST

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.

[The Register of Pecuniary Interests can be found on the ORC Website](#)

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6.1. Report to Minister for the Environment on providing for vegetable production

Prepared for: Council
Report No. POL2412
Activity: Community - Response to External Proposals
Author: Dolina Lee, Senior Analyst Freshwater and Land
Endorsed by: Anita Dawe, General Manager Policy and Science
Date: 8 May 2024

PURPOSE

- [1] To present for approval by the Otago Regional Council (ORC), the second report to the Minister for the Environment, in accordance with section 27 of the Resource Management Act 1991 (RMA) in relation to how ORC intends to provide for vegetable production in its NPS-FM freshwater management planning instruments.

EXECUTIVE SUMMARY

- [2] The Minister for the Environment wrote to the ORC on 4 April 2023 requesting annual reporting on how the regional council intends to provide for vegetable production in its NPS-FM freshwater management planning instruments (for ORC, this is our proposed Land and Water Regional Plan).
- [3] The first report was sent to the Minister on 17 May 2023. The second report is due by 19 May 2024. The second report, as attached, outlines the updated provisions in both the Council Decisions version of the proposed Otago Regional Policy Statement (pORPS) and the draft Land and Water Regional Plan (LWRP) currently under development that may be relevant to vegetable production in the region.

RECOMMENDATION

That the Council:

- 1) **Notes** this report.
- 2) **Approves** the second report to be sent to the Minister for the Environment, by 19 May, that outlines Otago Regional Council's provisions that may be relevant to vegetable production in its NPS-FM freshwater management planning instruments.

BACKGROUND

- [4] On 4 April 2023, the Minister for the Environment wrote to regional and unitary councils requesting, under section 27 of the RMA, information on how those councils intend to provide for vegetable production through National Policy Statement for Freshwater Management 2020 (NPS-FM) planning instruments, specifically land and water plans. The Minister's letter is attached to this report as Attachment 1.
- [5] The first report was due on 19 May 2023, and reporting is expected to be continued on an annual basis until 19 May 2025.

- [6] ORC's first report was presented to Council at its meeting on 24 May 2023¹ after it was sent to the Minister on 17 May 2023.
- [7] The second report is due on 19 May 2024. A draft of the second report to the Minister is attached to this report as Attachment 2.

DISCUSSION

- [8] The draft of the second report outlines the updated provisions in the Council Decisions version of the pORPS, which was publicly notified on 30 March 2024 and the draft provisions in the forthcoming LWRP that may be of relevance to the management of activities typically associated with vegetable growing.

Proposed Otago Regional Policy Statement

- [9] Overall, the direction set by the objectives and policies in the Decisions version of the pORPS allows for vegetable production to occur provided it is undertaken in a manner that is consistent with the fundamental concept and principles of Te Mana o te Wai, and maintains water quality and the health and well-being of water bodies and freshwater ecosystems, while allowing for improvement where water bodies are degraded².
- [10] The Decisions version of the pORPS also requires that the availability and productive capacity of highly productive land (including that intended to be used for vegetables) is maintained and prioritised for land based primary production in accordance with the National Policy Statement for Highly Productive Land (NPS-HPL)³.

Draft Land and Water Regional Plan

- [11] Restrictions or controls (such as permitted activity conditions or consent requirements) on a wider suite of farming activities that also capture activities associated with vegetable growing are included in the draft LWRP to ensure that land uses do not contribute to further degradation of water bodies and contribute towards environmental outcomes for freshwater being met.
- [12] Each FMU chapter includes an objective that enables the cultivation and production of food, beverage and fibre as an economic activity provided the health of water bodies and freshwater ecosystems (as a first priority) and the human health needs (as a second priority) are met. Beyond that there are no specific provisions for managing vegetable growing or provide for the expansion of vegetable growing.
- [13] Environmental flows and levels may impact on the reliability of water supply for vegetable production (where this activity relies on irrigation), while take limits may impact on the availability of irrigation water for existing vegetable production or on the potential for expansion of this land use.
- [14] Freshwater Farm Plans will be required for vegetable growing operations that are five hectares or more [or 20 hectares or more where the activity comprises a combination of vegetable growing and other use(s)]⁴.

¹ <https://www.orc.govt.nz/media/14347/agenda-council-20230524.pdf> page 300

² pORPS: LF-WAI-P4; Objective LF-LS-O12; Policy LF-LS-P18; Policy LF-LS-P20; Policy LF-LS-P21.

³ pORPS: Objective LF-LS-O11; Objective LF-LS-O12; Objective UFD-O4; Policy LF-LS-P16; Policy LF-LS-P17; Policy LF-LS-P19; Policy UFD—P7; Policy UFD—P8;

- [15] The provisions of the LWRP will enable vegetable production and the conversion of land to vegetable growing activities where the impact of this activity is unlikely to have an adverse impact on the health of freshwater by causing a water body to become (further) over allocated or degraded.

OPTIONS

- [16] The recommended option for Council is to accept the draft report, and update the Minister, in accordance with the section 27 direction.
- [17] Councillors could choose not to accept the draft report, and /or not comply with the section 27 direction. This would mean either the report will not be provided to the Minister by the submission date (19 May 2024), and ORC will be in breach of the Minister's direction issued under section 27 of the RMA.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [18] There are no particular policy considerations as a result of this paper. The policy considerations relate to the ongoing development of the LWRP.

Financial Considerations

- [19] There are no particular financial considerations in relation to this paper. The report to the Minister can be accommodated within existing budgets and/or approved budget variations.

Significance and Engagement

- [20] This paper does not trigger any requirements of He Mahi Rau Rika: Significance, Engagement and Māori Participation Policy 2021.

Legislative and Risk Considerations

- [21] The Minister has requested a formal response under section 27 of the Resource Management Act. Section 27 *Minister May Require Local Authorities to Provide Certain Information* outlines the circumstances under which the Minister may request information and the criteria for local authorities to provide it.

Climate Change Considerations

- [22] There are no climate change considerations from this paper or the report to the Minister.

Communications Considerations

- [23] There are no specific communications considerations as a result of the report.

NEXT STEPS

⁴ The coalition Government has announced it intends to improve the freshwater farm plan system. As part of this, the Government may look into whether current requirements to complete a freshwater farm plan could be paused while improvements are developed. It is uncertain what direction these changes may take, and amendments will likely be required to the draft LWRP.

- [24] The next steps are to submit the report to the Minister, subject to any changes required as a result of decisions made at Council's meeting on 8 May 2024.

ATTACHMENTS

Attachment 1: Request for information on vegetable production

Attachment 2: Second report on vegetable production to the Minister

1. Attachment 1 Request for information on Vegetable Production [6.1.1 - 2 pages]
2. Attachment 2 Second report on vegetable production to the Minister [6.1.2 - 8 pages]

Hon David Parker BCom, LLB

Attorney-General

Minister for the Environment

Minister of Revenue

Associate Minister of Finance



COR4118

Chair and Councillors of Otago Regional Council

CC: Dr Pim Borren, CEO, Otago Regional Council

Pim.Borren@orc.govt.nz

Gretchen.Robertson@orc.govt.nz

Dear Gretchen Robertson and Councillors

Information request – Otago Regional Council intentions to provide for vegetable production when implementing the National Policy Statement for Freshwater Management 2020 (NPS-FM)

Thank you for the recent Te Uru Kahika Progress Report on regional planning implementation of the NPS-FM. I am pleased to see you have notified your regional policy statement and are continuing to make progress towards notifying your plan no later than the extended date of June 2024.

Among other issues, this summer's extreme weather has highlighted the importance of a wide geographic distribution of fresh vegetable production so that New Zealanders can continue to access healthy food options at a reasonable cost. The resilience of our food system will no doubt continue to be tested as the effects of climate change gain severity.

There is uncertainty as to how plans currently in development under the NPS-FM will enable continuity for vegetable growing and expansion of the domestic supply in line with future growth of New Zealand's population. New Zealand's population is forecasted to grow 8% between 2023 and 2033.¹

I am therefore requesting information on Otago Regional Council's intentions to provide for vegetable production in your region through your NPS-FM freshwater management planning instruments (land and water plans). Please include the rationale for your approach.

The information provided should include details about any mechanisms the Council is developing that enable:

- vegetable growers to practice crop rotation, moving their production (and associated discharges) from one property to another – for example allowing a grower to lease land in different properties within a freshwater management unit;
- an expansion of the total area of production – noting this will almost certainly lead to an increase in Nitrogen-related discharges, and potentially other discharges, from new land brought into vegetable production.

¹ StatsNZ projections 2022 - 2073 - available at [https://www.stats.govt.nz/information-releases/national-population-projections-2022base2073/#:~:text=New%20Zealand's%20population%20\(5.13%20million,and%205.85%20million%20in%202033.](https://www.stats.govt.nz/information-releases/national-population-projections-2022base2073/#:~:text=New%20Zealand's%20population%20(5.13%20million,and%205.85%20million%20in%202033.)

I would like to keep the reporting burden to a minimum. My expectation is that the information will be brief, but specific enough to understand whether and how the Council is intending to provide for the matters outlined above.

I acknowledge that the first report date is too early in plan development for specific details on possible plan provisions and understand any proposals need to be thoroughly tested with your community. However, please respond with your intended approach on the basis of currently available knowledge. If the Council has any queries about what reporting is required, please contact Bryan Smith through email bryan.smith@mfe.govt.nz or phone 027 5183327.

My request is in accordance with section 27 of the Resource Management Act 1991 (RMA). The first report is required by 19 May 2023, with reporting to continue on annual basis until 19 May 2025, with a view to capturing any further decisions and their rationale made in the intervening period. Officials will follow up with Council staff after reports are received should any clarification be needed.

I appreciate the sensitivities involved in this early phase of your regional freshwater management planning process. The information will not be shared beyond the cross-agency project team (Ministry for Environment and Ministry for Primary Industries officials), except where needed to meet statutory requirements, such as under the Official Information Act 1982.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'David Parker', is positioned below the 'Yours sincerely' text.

Hon David Parker
Minister for the Environment

Report under Section 27 of the Resource Management Act 1991

In accordance with your letter of 4 April 2023 requesting annual reporting under section 27 of the Resource Management Act 1991 (RMA) on the Otago Regional Council's (ORC) intentions to provide for vegetable production when developing freshwater planning instruments (land and water plans) that give effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM), Council is providing you with its second annual report.

Background

The first annual report, dated 17 May 2023¹ provided an overview of:

- the scale and location of existing and potential vegetable growing areas in Otago;
- the environmental pressures typically associated with vegetable growing;
- the current state of the environment and trends in areas with vegetable growing in Otago; and
- an overview of how ORC was considering providing for vegetable production in proposed and upcoming freshwater planning instruments.

This report provides updates on

- the approach adopted in the Council Decision version of the proposed Regional Policy Statement for Otago (Decisions version of the pORPS) was publicly notified on 30 March 2024; and
- the approach promulgated in the draft provisions of the forthcoming Land and Water Regional Plan (LWRP), which is currently programmed to be notified by 31 October 2024².

Overview of relevant provisions in the pORPS

On 27 March 2024, ORC made decisions on recommendations for both the Freshwater planning instrument and non-freshwater planning instrument parts of the pORPS 2021³.

With respect to vegetable production, the Decisions version of the pORPS incorporates direction from both the NPS-FM and the National Policy Statement for Highly Productive Land (NPS-HPL).

Overall, the direction set by the objectives and policies in the Decisions version of the pORPS allows for vegetable production to occur provided it is undertaken in a manner that is consistent with the fundamental concept and principles of Te Mana o te Wai, and maintains water quality and the health and well-being of water bodies and freshwater ecosystems, while allowing for improvement in water quality where water bodies are degraded.

The Decisions version of the pORPS also requires that the availability and productive capacity of highly productive land (including that intended to be used for vegetables) is maintained and prioritised for land based primary production in accordance with the NPS-HPL. In order to achieve this, the provisions in the Decisions version of the pORPS provisions direct:

¹ <https://www.orc.govt.nz/media/14347/agenda-council-20230524.pdf> page 300

² At its meeting on 27 March 2024, Council resolved that staff prepare the draft land and water regional plan for notification by 31 October 2024.

³ On 26 June 2021 Council notified the pORPS, while the Freshwater Planning Instruments of the pORPS were re-notified on 30 September 2022. Hearings on the pORPS commenced in January 2023 and the hearings of submissions in relation to both the freshwater and non-freshwater parts of the pORPS were formally closed in October 2023. On 27 March 2024, Council adopted the recommendations of the Hearings Panel on the Non-Freshwater Parts of pORPS as its decision; and accepted each recommendation of the Freshwater Hearings Panel on the Proposed Freshwater Planning Instrument Part of the pORPS.

- ORC to identify highly productive land (through collaboration with mana whenua and district councils) and map highly productive land in its pORPS; and
- Territorial authorities to amend their district plans to better protect highly productive land from inappropriate use or development.

A summary of key provisions in the Decisions version of the pORPS that are relevant to existing vegetable growing activities or on the potential for this land use to expand is included in Appendix 1.

Overview of the approach and controls included in the draft LWRP

The draft provisions of the LWRP are still under development, having recently been consulted on under clause 3, Part 1 of the First Schedule of the RMA. Further consultation under clause 4A, Part 1 of the First Schedule of the RMA is tentatively programmed for the period July-August 2024.

The following overview of the draft provisions in the draft LWRP sets out the provisions that may be relevant for current and future vegetable production in Otago. It is important to note that these provisions do not represent Councils' position unless and until a decision to notify the LWRP is made. Because we are still actively engaged with the parties involved in Clause 3 feedback, it is probable that changes to the provisions will still be made.

Restrictions or controls (such as permitted activity conditions or consent requirements) on a wider suite of farming activities that also capture activities associated with vegetable growing are included in the draft LWRP to ensure that land uses do not contribute to further degradation of water bodies and contribute towards environmental outcomes for freshwater being met.

Each FMU chapter includes an objective that enables the cultivation and production of food, beverage and fibre as an economic activity provided the health of water bodies and freshwater ecosystems (as a first priority) and the human health needs (as a second priority) are met. Beyond that there are no specific provisions for managing vegetable growing or provide for the expansion of vegetable growing.

Environmental flows and levels may impact on the reliability of water supply for vegetable production (where this activity relies on irrigation), while take limits may impact on the availability of irrigation water for existing vegetable production or on the potential for expansion of this land use.

Freshwater Farm Plans will be required for vegetable growing operations that are five hectares or more [or 20 hectares or more where the activity comprises a combination of vegetable growing and other use(s)]. We note that the FWFP regulations are likely to change in the future as signalled by Government.

The provisions of the LWRP will enable vegetable production and the conversion of land to vegetable growing activities where the impact of this activity is unlikely to have an adverse impact on the health of freshwater by causing a water body to become (further) over allocated or degraded.

A summary of key provisions in the draft LWRP that may be relevant for existing vegetable growing activities or on the potential for this land use to expand is included in Appendix 2.

Conclusion

The direction set by the objectives and policies in the Decisions version of the pORPS protect the availability and productive capacity of highly productive land for primary production (including that intended to be used for vegetables), and allow for primary production to occur provided it is undertaken in a manner that is consistent with the fundamental concept and principles of Te Mana o

te Wai, and maintains water quality and the health and well-being of water bodies and freshwater ecosystems, while allowing for improvement where water quality is degraded.

The draft LWRP provisions seek to ensure that primary production (including vegetable growing) is enabled, while including limits, restrictions or requirements to ensure any potential adverse effects of land use on freshwater are managed, and environmental outcomes are able to be achieved.

Appendix 1: Overview of provisions in the Decisions version of pORPS that are relevant to vegetable production

pORPS Provision	Summary of relevant aspects of this provision
Land and Freshwater – Land and Soil	
Objective LF-LS-O11	Requires the availability and productive capacity of highly productive land for primary production is protected.
Objective LF-LS-O12	Ensures that the use, development, and protection of land and soil: <ul style="list-style-type: none"> - safeguards the life-supporting capacity of soil; - contributes to achieving environmental outcomes for fresh water; and - recognises the role of these resources in providing for the social, economic, and cultural well-being of Otago’s people and communities.
Objective UFD-O4	Ensures that development in rural areas will occur in a way provides for the ongoing use of rural areas for primary production and rural industry and does not compromise the long-term viability of primary production and rural communities.
Policy LF-LS-P16	Requires managing both land and freshwater resources, including the interconnections between soil health, vegetative cover and water quality and quantity, to maintain soil quality.
Policy LF-LS-P17	Requires that the use and development of land is managed in a way that maintains the mauri, health and productive potential of soils.
Policy LF-LS-P18	Requires that soil erosion and the associated risk of sedimentation in water bodies, resulting from land use activities is managed, including by controlling the timing, duration, scale and location of soil exposure.
Policy LF-LS-P19	Requires that the availability and productive capacity of highly productive land is maintained by: <ul style="list-style-type: none"> - identifying highly productive land; and - prioritising the use of highly productive land for land-based primary production in accordance with the NPS-HPL.
Policy LF-LS-P20	Promotes changes in land use or land management practices that improve: <ul style="list-style-type: none"> - the sustainability and efficiency of water use; - resilience to the impacts of climate change; - the health and quality of soil; and - water quality.
Policy LF-LS-P21	Requires the health and well-being of water bodies and freshwater ecosystems is maintained to meet environmental outcomes by: <ul style="list-style-type: none"> - reducing or otherwise managing the adverse effects of direct and indirect discharges of contaminants to water from the use and development of land; - managing land uses that may have adverse effects on the flow of water in surface water bodies or the recharge of groundwater; - recognising the drylands nature of some of Otago’s catchments and the resulting low water availability; and - maintaining or, where degraded, enhancing the values of riparian margins.
Policy UFD-P7	Requires that in the management of development in rural areas prioritises land based primary production on highly productive land in accordance with the NPS-HPL.
Policy UFD-P8	Requires that the establishment, development or expansion of rural lifestyle zones only occurs where it avoids highly productive land except as provided for in the NPS-HPL and minimises the impacts on existing or anticipated primary production and rural industry and other rural activities.
Method LF-LS-M11A	Requires that ORC through collaboration with territorial authorities, and in consultation with tangata whenua, identifies highly productive land in Otago and includes maps of the highly productive land in its RPS by the date specified in the NPS-HPL.
Method LF-LS-M11	Requires that ORC must, through its Land and Water Regional Plan

	<ul style="list-style-type: none"> - manage land uses that may affect the ability of environmental outcomes for water quality to be achieved by requiring the adoption of practices that reduce the risk of sediment and nutrient loss to water including by minimising the area and duration of exposed soil, using buffers and actively managing critical source areas; and - provide for changes in land use that improve the sustainable and efficient use of fresh water and that reduce water demand where there is existing over-allocation.
Method LF-LS-M12	Requires that district plans are prepared, amended and maintained to maintain the availability and productive capacity of highly productive land.
Urban form and development	
Policy UFD—P4	Requires that urban expansion avoids highly productive land except as provided for in the NPS-HPL and considers adverse effects, particularly reverse sensitivity effects, on existing and anticipated primary production or rural industry activities when determining the location of the new urban/rural boundary.

Appendix 2: Provisions in the draft LWRP that may be relevant to vegetable production

Draft land and freshwater chapter	
Objective LF-O10	Ensures that the use and development of land and soil in providing for the social, economic (includes land based primary production), cultural well-being and health and safety of the community is recognised.
Objective LF-O11	Requires that Otago’s people and communities adopt sustainable land and water management practices that enable them to provide for their social, economic (includes land based primary production), cultural well-being and health and safety.
Policy LF-P14	Provides guidance to decision makers on applications for resource consent for discharges to land or water, requiring them to consider the measures that will be implemented to: <ul style="list-style-type: none"> - Minimise the discharge of the contaminant; - Discharge to land in preference to discharge to water, unless the adverse effects are greater; and - Comply with the receiving water standards in the Plan.
Policy LF-P15	Provides guidance to decision makers on applications for resource consent for activities in a drinking water protection zone (DWPZ) to ensure: <ul style="list-style-type: none"> - compliance with the NESDW; and - that all practicable measures are taken to reduce the risk of contaminants reaching groundwater.
Policy LF-P16	Requires all activities managed under the plan are carried out within limits and in accordance with any relevant environmental flows and levels and using practices that: <ul style="list-style-type: none"> - optimise efficient resource use; - safeguard the life-supporting capacity of the region’s land and soils; and - contribute to maintaining or, if degraded, improving the health of water bodies.
Policy LF-P17	Provides guidance to decision makers regarding consent duration. Consents for water permits, discharge permits and land use for an activity that will discharge a contaminant onto or into land in circumstances that may result in the contaminant entering water shall be a maximum of 10 years, taking into account relevant timeframes for achieving target attribute states or interim target attribute states, and methods or timeframes for phasing out or avoiding over-allocation.
Policy LF-P18	Requires the avoidance of over-allocation of freshwater and the phasing out of existing over-allocation while providing for the needs of present generations and recognising the investment of existing uses and provision for new opportunities.
Primary production chapter	
Objective PP-01	Enables primary production provided that: <ul style="list-style-type: none"> - the health and wellbeing of waterbodies and freshwater ecosystems are safeguarded; and - the quantity, quality and structure of soil resources are not permanently degraded
Policy PP-P1	Avoiding, where reasonably practicable, or otherwise minimising any adverse environmental effects from farming activities by: <ul style="list-style-type: none"> - managing cultivation adjoining water bodies and in critical source areas to minimise contaminant loss; - Limiting both the area and duration of exposed soil; - Implementing setbacks from waterbodies to avoid run of and reduce contaminant losses (including sediment) to water; and - Encouraging the use of riparian planting adjoining water bodies to filter and absorb contaminants from rainfall runoff

Policy PP-P3	When considering the timeframe for a new environmental action that necessitates investment and is required by Freshwater Farm Plans or as a condition within a consent, recognise the level of existing investment in environmental actions that has occurred on the landholding in the last ten years, provided that is still consistent with the timeframes for achieving the target attribute states and interim target attribute states
Policy PP-P4	Encourages continuous improvement over time to reduce environmental effects of farming by supporting farmers to have and implement FWFPs.
Policy PP-P6	Avoid granting land use consent applications for changes in land use that involve an increase in the intensity of the use of land compared to the existing use of land unless granting the consent will not result in an increase in the contribution to contaminant loads in the catchment.
Rule PP-R8-PER1	Permits the discharge of fertiliser onto land provided: <ul style="list-style-type: none"> - there is not direct discharge into a water body; - it is not discharged when the soil moisture exceeds field capacity; and - within setbacks from waterbodies.
Rule PP-R9-PER 1	Permits the use of land for farming (including vegetable growing) if: <ul style="list-style-type: none"> - the farm is less than 5 hectares; - over 5 hectares, or 20 hectares if a combination of land uses, the farm has a certified and implemented FWFP; and - there is no increase in irrigated land from 12 months prior to 2 September 2020.
Rule PP-R9A-PER1	The use of land for farming is permitted provided the area of land on the landholding that is irrigated is no more than 10 hectares greater than the maximum area of land on the landholding that was irrigated at any time in the 12 months prior to 2 September 2020.
Other discharges chapter	
Rule OTH-R1-PER1	Permits the discharge of agrichemicals to land provided it is: <ul style="list-style-type: none"> - approved for use under HSNO; - discharged in accordance with the conditions of approval and the manufacturer's directions; - the discharge does not occur within setbacks from waterbodies or in a DWPS; and - the discharge does not result in the physical removal of indigenous vegetation or vegetation clearance.
Environmental flows, levels, and allocations chapter	
Objective EFL-O1	Requires that any water that is taken and used (including for vegetable growing) is shown to be reasonable and efficient for its intended use.
Policy EFL-P2, and Policy EFL-P4	These policies provide for the allocation of water from rivers during high flow period for water storage.
Policy EFL-P11	This policy provides for off stream storage of water.
Policy EFL-P13	This policy requires water permit applicant to demonstrate: <ul style="list-style-type: none"> - The take and use of water is reasonable and efficient for its intended use; and - Water used for irrigation meets an <i>irrigation</i> application efficiency standards.
Policy EFL-P31	This policy limits the duration of resource consents for the take and use of <i>water</i> (including for vegetable growing) to a common catchment expiry date set for some catchments in Otago.
Policy EFL-R9-DIS1	The take and use of <i>surface water</i> (including for vegetable growing) from a <i>river or controlled lake</i> is a discretionary activity provide the river or lake is not fully or over-allocated and it meets any minimum flows conditions.
Policy EFL-R12-DIS1	The take and use of <i>surface water</i> (including for vegetable growing) of groundwater is a discretionary activity provided the aquifer is not fully allocated or over-allocated.
FMU chapters	

Objective FMU1-FMU5-O11	Provided the health and wellbeing of water bodies and freshwater ecosystems and human health needs are met, the cultivation and production of food, beverages and fibre is enabled.
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6.2. Report to Minister for the Environment on notifying LWRP before the NPS-FM is replaced

Prepared for: Council

Report No. POL2410

Activity: Community - Response to External Proposals

Author: Fleur Matthews, Manager Policy

Endorsed by: Anita Dawe, General Manager Policy and Science

Date: 8 May 2024

PURPOSE

- [1] To present for approval by Council, a report to the Minister for the Environment requested under section 27 of the Resource Management Act 1991 (RMA) on the costs, benefits and implications of notifying the Land and Water Regional Plan before the National Policy Statement for Freshwater Management is replaced.

EXECUTIVE SUMMARY

- [2] The Minister for the Environment wrote to the Otago Regional Council on 15 March 2024, providing Council with an extension to the deadline for notifying a proposed Land and Water Regional Plan until 31 December 2027. In that letter, the Minister directed that should a decision be made to notify ahead of December 2027, that Otago Regional Council, under section 27 of the RMA, “provide an outline of the costs, benefits and implications of notifying your plan before the NPS-FM is replaced”.
- [3] The report, as attached, provides information on Council’s decision of 27 March 2024 and the implications, benefits, and costs of notifying the LWRP before the NPS-FM is replaced.

RECOMMENDATION

That the Council:

- 1) **Approves** the attached report to the Minister for the Environment that provides an outline of the costs, benefits, and implications of notifying the Land and Water Regional Plan before the NPS-FM is replaced.
- 2) **Notes** the report will be provided to the Minister for the Environment by **x** May 2024.

DISCUSSION

- [4] The Minister has requested that ORC provide the costs, benefits, and implications for notifying the plan ahead of the December 2027 date. The information in the report has been drawn from a number of places, including the March 2024 Council paper on timelines, along with the work programmes that underpin the plan development.

OPTIONS

- [5] The options for Council are to accept the report, and provide it to the Minister, in accordance with her request of 15 March.
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- [6] Councillors could choose not to accept the report, or to request additional information to be included in it. If Council chooses not to accept the report, ORC would be in breach of the Minister's direction under section 27 of the Resource Management Act 1991.
- [7] If Council requests additional information, a time extension to the reporting deadline may be required.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [8] There are no particular policy considerations as a result of this paper. The policy considerations relate to the planning work programme and will be considered on a case-by-case basis, as the work programme is implemented.

Financial Considerations

- [9] There are no particular financial considerations in relation to this paper.

Significance and Engagement Considerations

- [10] This paper does not trigger any requirements of *He Mahi Rau Rika: Significance, Engagement and Māori Participation Policy 2021*.

Legislative and Risk Considerations

- [11] The Minister has requested a formal response under section 27 of the Resource Management Act. Section 27 *Minister May Require Local Authorities to Provide Certain Information* outlines the circumstances under which the Minister may request information and the criteria for local authorities to provide it.

Climate Change Considerations

- [12] There are no climate change considerations from this paper or the report to the Minister.

Communications Considerations

- [13] A media release is planned to support Council's decision on this paper and attached report.

NEXT STEPS

- [14] Subject to approval, the next step is to submit the report to the Minister, subject to any changes required as a result of Council feedback.

ATTACHMENTS

1. Report to the Minister under section 27 RMA draft for Council 1 May 2024 [6.2.1 - 15 pages]

xx May 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 letter of 15 March 2024, which provided the Otago Regional Council (ORC) with an extension to the deadline for notifying a proposed Land and Water Regional Plan until 31 December 2027. In that letter, you directed Otago Regional Council, under section 27 of the Resource Management Act 1991, to “provide an outline of the costs, benefits, and implications of notifying your plan before the NPS-FM is replaced.” The requested report is appended to this letter and helps to explain Otago’s unique context.

Otago is proud of both its outstanding natural environment and the primary production which plays a critical part in Otago’s economy. The use of freshwater resources guided by appropriate planning and management tools will provide certainty for these activities and the wide range of others that use and interact with our land and freshwater resources, in a manner which sustains Otago’s special environment for future generations.

A decision to introduce a new land and water plan for Otago now ensures that important steps are taken to protect our environment, while providing certainty of operation for all plan users, and importantly, also for primary producers. Acting now ensures that Otago is better prepared to transition to future legislation such as a reworked Resource Management Act or National Policy Statement. Otago’s existing water plan neither protects and enhances our environment or provides a framework within which our primary producers can operate with confidence.

With the work invested in the existing land and water plan programme and the significant input from stakeholder groups from across the spectrum, Otago is well placed to take a first step towards an improved planning framework. We look forward to supporting our primary producers to continue thriving in balance with Otago’s special environment.

We understand the coalition Government is committed to increasing economic productivity while still ensuring that New Zealand’s freshwater resources are protected for the benefit of all New Zealanders. By ensuring a sustainable and balanced approach that attempts to achieve an enabling framework whilst also improving the environmental outcomes for our waterways, the direction proposed in the LWRP will align with the outcomes sought. The Plan will also work towards achieving community expectations for managing freshwater and land, honour our commitment to our iwi partners, and provide certainty to all users of land and freshwater.

Report to the Minister under section 27 RMA

Outline of Costs, benefits and implications of notifying the proposed Land and Water Regional Plan ahead of the NPSFM being replaced

Otago as a region

- [1] The following information is a small snapshot of the information contained in the Otago Region Economic Profile for Land and Water¹ which was developed as part of the economic work programme to support the section 32 analysis for the proposed Land and Water Regional Plan (pLWRP or LWRP).
- [2] The full report should be cited for completeness and can be found at [otago-economic-profile-for-water-and-land v9-2.pdf \(orc.govt.nz\)](https://www.otago.govt.nz/assets/Uploads/otago-economic-profile-for-water-and-land-v9-2.pdf) It provides the context and background for Otago, as a region, and its economy.
- [3] The Otago region has some 3 million hectares of area, of which nearly 700,000 hectares (nearly one quarter) are lakes, rivers, and conservation estate mostly in the inland part of Otago in the Queenstown Lakes and Central Otago Districts. The rest of the region's land use is distributed between primary production use (i.e., agriculture, horticulture, viticulture, and forestry) and urban/settlement centres (i.e., public land use, business properties, and residential properties). Primary production takes up around 70% of Otago's total land use.
- [4] A little over 2 million hectares of land (or two thirds of total land area) is used for agricultural production and a sizeable amount is either non-pastoral land or very low stocked pastoral land (Moran, 2022). The agricultural land consists mostly of dry stock and dairy production with some horticulture and viticulture properties. While dry stock land use is spread across the region, dairy production is more concentrated in the Clutha and Waitaki Districts. Horticulture and Viticulture operations in Otago are mainly centred around Central Otago with limited operations found in the Waitaki District and Dunedin City. Plantation forestry land use covers around 120,000 hectares (or 4% of the region) and is mainly concentrated in the coastal part of the region (Waitaki District, Dunedin City, and Clutha District). Urban/settlement land use, i.e., public use (churches, schools, cemeteries, etc.), residential use and commercial/industrial land use, make up to around 2.5% of total land use.

Figure 1 below shows the distribution of land uses across Otago.

¹ Yang, Y. & Cardwell, R. (2023). Otago Region Economic Profile for Land and Water. Otago Regional Council (LWRP Economic Work Programme), Dunedin.

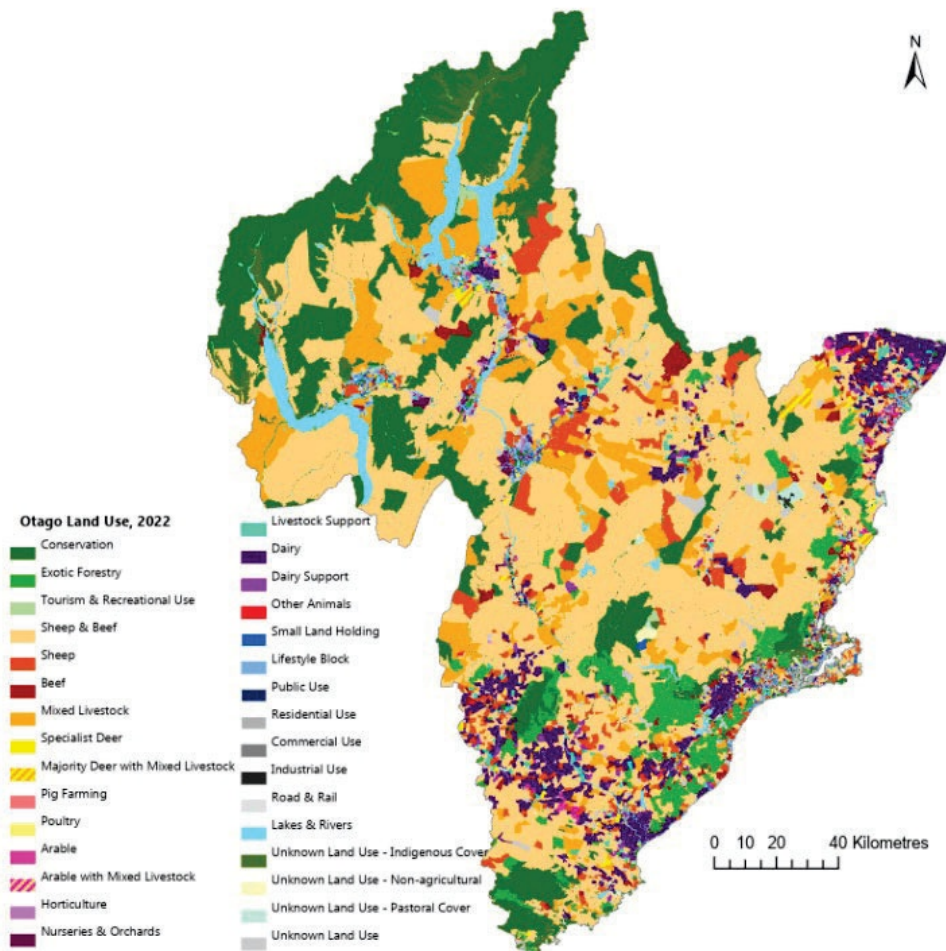


Figure 1. Land use map, Otago, 2022
Source: Data from Couldrey (2022)

- [6] Otago has two main river catchments – the Clutha/ Mata-au and the Taieri/Taiari, along with many lakes. In total, Otago’s lakes make up to roughly 23% of New Zealand’s lake surface area.
- [7] While Lakes Whakatipu, Wānaka, and Hāwea are the three renowned lakes (in Queenstown Lakes District), other large lakes include Lakes Waipori and Waiholā (in Clutha District), Lake Hayes, constructed lakes Dunstan and Roxburgh and semi-constructed lake Onslow (all in Central Otago District) and many smaller lakes in the region. Lakes Whakatipu, Wānaka, and Hāwea drain into Otago’s Clutha River/Mata-Au, New Zealand’s largest river by volume and second longest. The major rivers that feed into the Mata-Au include the Cardrona, Lindis, Shotover, Nevis, Fraser, Manuherikia, Teviot, Pomahaka, and Waiwera. As well as providing for direct water use, the Clutha also accommodates two hydroelectric power stations: the Clyde Dam and the Roxburgh Dam. The two power stations provide an estimated combined power supply of 865 MW to the New Zealand power grid. Most years, the Clutha power stations generate about 10% of New Zealand’s gross electricity demand (Hunt, 2022).

- [8] The Taieri River catchment is the second large catchment in the region. The Taieri River starts from the uplands of Central Otago and runs all the way across the Taieri Plain, where it joins Lake Waipori and Lake Waihola then flows out to the sea at Taieri Mouth. Some other examples of river catchments include the Pomahaka catchment, the Catlins, the Kakanui, Waianakarua, Shag and Waikouaiti Rivers in the northern part of the region, the Tokomairiro River drains between the Taieri and Clutha catchments.

Otago's Economy

- [10] As a region, Otago generated approximately \$15 billion of regional Gross Domestic Product (GDP) in 2022, which accounted for 4.2% of New Zealand's total GDP that year. In terms of labour force indicators in 2022, Otago had a slightly lower labour participation rate than the New Zealand average (67% compared to 69%), a slightly lower unemployment rate (2.8% compared to 3.3%), a slightly lower Youth NEET rate (NEET is the Not in Education, Employment, or Training) (9% compared with 12%).
- [11] Median annual household income (\$74,357) is below the national median (\$89,127), house values are on average lower, and median disposable income after housing costs is also lower than the national median.

Figure 2 below sets out the relative contributions by industry to Otago's economy.²

Industry	Gross output	Value added	Export share	Employment 2020 (MECs)	Employment 2011 (MECs)
Construction	\$4,300m	\$1,300m	0.5%	14,000	9,500
Agriculture	\$2,500m	\$1,100m	9.8%	12,000	12,000
Tourism-related industries	\$2,200m	\$1,000m	19%	19,000	14,000
Agricultural product processing and manufacturing	\$2,100m	\$420m	38%	5,200	5,200
Electricity generation and on-selling	\$1,600m	\$440m	0.2%	350	300
Healthcare services	\$1,100m	\$680m	0.4%	8,800	7,000
Tertiary education	\$700m	\$500m	4.9%	5,000	5,300
Metal ore and non-metallic mineral mining	\$540m	\$290m	6.2%	740	570
Other	\$13,000m	\$7,400m	21%	70,000	59,000
Total	\$28,000m	\$13,000m	100%	140,000	110,000

Note: Totals may not add due to rounding

- [12] In the rural sector, most farms in Otago are pastoral or cropping, with drystock accounting for 60%, dairy 13% and cropping 7%. Horticulture and viticulture combined are 10% and forestry 8%. Farm size varies, with around 48% of farms less than 100 hectares, and another 27% between 100 – 400 hectares.

² Yang, Y. & Cardwell, R. (2023). Otago Region Economic Profile for Land and Water. Otago Regional Council (LWRP Economic Work Programme), Dunedin.

Below are short snapshots of each industry, as described in the above cited report, and authored by the relevant industry.

Sheep and Beef Cattle Farming

- [13] Otago is considered to be the most diverse region in the country for sheep and beef farming, and it is the predominant land use in Otago, making up 70% of developed land. The industry considers much of this land as having few alternative land uses.

One in five of New Zealand's sheep are in Otago, more than any other region, and 9% of country's beef cattle are in Otago. In Otago and Southland, sheep and beef farming and the meat processing sectors make up 12% of the economic activity and employment.

Over the past 30 years, improvements in productivity have outweighed decreases in livestock numbers and land area, and as a result, production levels are similar, albeit with fewer sheep.

Otago has four types of sheep & beef farms – South Island High Country, South Island Hill Country, South Island Finishing-Breeding Farms, South Island Finishing Farms.

Winter grazing is common practice in sheep and beef farms in Otago and the diversity in the region is reflected in these practices, with wintering in Lower Clutha and Catlins closely aligned to Southland due to similarity in production systems, compared with other parts of the region that are drier and therefore have different wintering systems.

Deer Farming

- [14] The deer industry in Otago is considered to be the home of modern deer farming from the 1960s. The industry is based on Red Deer with strains of European and English and the larger North American elk. Deer farming is predominantly in three main areas – the Upper Lakes, South Otago and inland Otago. Overall, there are around 200 deer farms that run approximately 120,000 deer over 53,000 hectares.

Because of their different seasonal requirements to sheep and beef systems, deer are often seen as complementary to these farm systems and many farms will have deer as part of their production system.

Deer products exported have a current value of \$300 million and Otago accounts for around 10% of both the deer herd and revenue.

Arable Cropping

- [15] Otago's arable cropping sector differs from other regions, in that it has less standalone arable farms, and more integrated livestock enterprises that include arable land. Arable cropping tends to occur in three main areas – North Otago, South Otago and to a lesser extent, Central Otago. The industry broadly describes land where you can operate a tractor as suited to arable cropping.

The main features of arable cropping in Otago are its mix of crop rotations by locality, the integration of livestock with the rotations, connections with winter grazing, and contrasting irrigation verses dryland cropping.

In 2021 New Zealand's arable industry contribution to GDP was \$684 million in grains and pulses and \$247 million in seeds, but that does not fully account for the flow on contributions. Otago covers approximately 23,000 hectares or around 8% of New Zealand's arable land and growers harvested a total of 53,670 tonnes of wheat, barley, oats and other cereal grains, field/seed peas and other pulses.

Dairy Farming

- [16] There are around 440 dairy farms in Otago, spread across the Clutha and Waitaki districts with 46 and 33 % of the region's dairy herd respectively. Dairy has expanded in Otago since 1990s and by 2020-21, Otago had 4% of NZ's total dairy herd, 5.6% of the dairy cows, and 5.4% of its dairy land (effective area not total). Expansion has tailed off recently. Winter management practices are integral to dairy farming in Otago.

In 2020-21 Otago produced just under 11 million kilograms of milk solids or an average of 406 kg/milksolids/cow. The region's milk solids have increased over last 20 years, with a 37% increase during 1995-2015. Of that, 56% was attributed to improved milk production and 31% due to more cows. Dairying creates 5.6% of all employment opportunities in rural Otago which is about 4 times higher than the national average for rural areas. In areas like the Clutha and Waitaki districts, this represents 13.5% and 8.1% of total employment in their districts respectively. Direct combined economic contribution of \$525 million in 2019, or 3.9% of regional GDP.

Of the dairy farms in Otago, 398 supply milk to Fonterra and of those 398, 305 have a Farm Environment Plan. Open Country has 30 farms that supply milk and like Fonterra, they have a Farm Environment type plan.

Horticulture

- [17] The horticulture industry across Otago produces a range of products – apples and pears, stone fruit, berry fruit, other fruits and nuts, vegetable growing – both under cover and outdoors, floriculture and nursey production.

More recently the horticulture industry has decreased its overall growing area and has seen a reduction in the overall number of growing businesses, possibly due to consolidation.

Viticulture

- [18] Central Otago is the fourth largest wine growing region in New Zealand for production and the third largest by vineyard area. The industry had 235 vineyards (2022 data) with a collective total planted area of 2055 hectares. Growing grapes for viticulture started in Otago in the 1970s and accelerated in the 1990s, with around 81% of grapes now for Pinot Noir wine.

- [19] In 2018 it was estimated 820 people in Otago were permanently employed in the viticulture industry, with the workforce swelling to over 1000 people during harvest. The ancillary workforce to support the industry includes transportation, warehousing, irrigation, earthworks, trade industries and professional services.

What prompted the plan review?

- [20] The existing suite of regional plans that ORC has are all past their legislated review date. The RMA currently requires a review every 10 years and during the early 2000s this work did not happen.
- [21] In 2018, ORC developed a long-term work programme to address all its regional plans – waste, water, coast and air, with the waste and water plans proposed to be first.
- [22] In October 2018, ORC adopted its Progressive Implementation Programme³ under the NPSFM 2017, to set out a staged approach to reviewing its Regional Plan: Waste and Regional Plan: Water, and to create a revised plan to manage waste, freshwater and land.
- [23] In 2019, the then Minister for the Environment exercised their functions under section 24 of the RMA and as a result of that investigation, ORC committed to a work programme that included delivering a short-term plan change to address expiring deemed permits/mining privileges, reviewing and updating the Regional Policy Statement (RPS), and developing a new Land and Water Plan.
- [24] The plan review was also required because the existing Regional Plan: Water has not stopped intensification and the associated water quality impacts in Otago. While some areas across Otago may have improving water quality trends, many are degrading, and the current water plan settings have the potential for further degradation to occur. To improve water quality, measures that stop further degradation are required.
- [25] In terms of water quantity, many catchments in Otago have a medium to high ecological risk as a result of water abstraction. These catchments require higher minimum flows and/or lower water allocation to decrease their risk level. The current water plan allows for over 50% of the water in some rivers to be taken during low flow periods for purposes such as irrigation. Historical consenting of stored water has resulted in poor structuring of water allocation and low levels of water efficiency. The current plan does not have a mechanism that will allow for the effective restructuring of allocation.

What work has been undertaken to support the plan review?

- [26] Since 2018, ORC has invested around \$18 million on science, monitoring and policy work to support the development of the new planning framework. A portion of this \$18 million is associated with what we would consider to be our core work – including collecting State of the Environment data, and undertaking science investigations, however, a considerable part of the overall expenditure is to directly support the new plan framework. This figure includes around \$2 million which has been spent on developing a minimum flow for the Manuherekia catchment.
- [27] It also includes around \$1 million on an Economics Work Programme that included working with an Industry Advisory Group to develop resources that provide detailed understanding

³ [orc-progressive-implementation-programme-january-2019.pdf](#)

of how each sector operates, and therefore to understand the potential impacts of environmental actions for fresh water on rural businesses in Otago. This work has produced two key reports⁴ that have been crucial in determining how to minimise the impacts of change on the rural community.

- [28] The figure also includes time and costs associated with engagement since 2019. There have been multiple engagement opportunities across Otago associated with both the proposed RPS and the proposed LWRP, most recently in October and November 2023. This has been a critical component of the plan development programme and in relation to the plan, has been essential in determining the content of the Plan.
- [29] Feedback provided through the most recent community wide engagement resulted in a significant number of changes to the plan around activities including silage storage, fertiliser input, stock exclusion, and use of freshwater farm plans as an alternative to rules and consents. An example is a shift away from a limit on silage storage in the form of volumetric storage to a more flexible framework that will manage the risk from stored silage through freshwater farm plans.

What does the plan do?

- [30] The intended outcome of the Plan is to enable existing land use activities to operate with certainty while maintaining or improving water quality and quantity outcomes in Otago. As is common in policy development processes, the draft Plan has been progressing through previous iterations of the NPSFM. This is possible because each version of the NPSFM has sought to improve water quality and quantity albeit in different ways or with different levels of prescription.
- [31] While the plan development has been progressing, ORC has been clear that the proposed LWRP is to be the first step towards establishing an appropriate freshwater framework to manage our land and freshwater resources.
- [32] This means for matters such as achieving Target Attribute States (TASs) that are currently contained in the NPSFM, the science has been clear that, while the actions /rules will move us toward better water quality, they will not take us all the way to achieving TASs. The plan represents movement in the direction of improved water quality and quantity but because it does not propose land use change and/or system change, it will not achieve the TASs.
- [33] Additional changes – likely a combination of regulation and non-regulatory interventions – were always signalled, alongside future changes to the Plan in response to monitoring.

⁴ Moran, E. (Ed.) (2022). *Farmers and Growers in Otago*. Otago Regional Council (LWRP Economic Work Programme), Dunedin. Available at: <https://www.orc.govt.nz/media/15421/farmers-and-growers-in-otago-phase-1.pdf> and

Moran, E. (Ed.). (June, 2023). *Otago's rural businesses and environmental actions for fresh water*. Otago Regional Council (LWRP Economic Work Programme), Dunedin. Available at: <https://www.orc.govt.nz/media/14894/farmer-grower-phase-2-report-otago-s-rural-businesses-and-environmental-actions-for-freshwater.pdf>

- [34] The proposed LWRP is intending to bring in rules to align with rules that other regional councils have been operating under for some time – such as a rule framework for managing farming. As illustration, Environment Southland introduced Plan Change 13 in 2012 to manage dairy farming. PC 13 was made operative in 2014, which made dairy farming a discretionary activity. Similarly, Environment Waikato notified Plan Change 1 to manage non-point discharges, including from farming activities in 2016 and decisions were adopted in 2020, and Environment Canterbury has managed farming activities for some time.
- [35] Some of the other activities in the proposed LWRP that are managed by other regional councils include updated rules for onsite wastewater disposal that provide more environmental consideration, more appropriate water take limits, updated rules for landfills to align with industry best practice, controlling earthworks, and managing cemeteries.
- [36] The economic impacts of change have been evaluated through the Economic Work Programme⁵. The economic work programme recognises that one of the biggest influences on cost to plan users is having the ability to implement rules over time. Some examples of this, and examples of enabling aspects of the plan are set out below:

Water quantity

- [37] Because many of the historical deemed permits have been replaced under Plan Change 7 but without minimum flows, the draft provisions allow for a transition period to implement new water quantity limits such as minimum flows.
- [38] Once the relevant rules are operative, the new minimum flows are proposed to take effect at a date that aligns with when most water permits within a catchment are set to expire and require replacement.
- [39] Any water permits that expire beyond this point are intended to be called in and reviewed so that the minimum flow conditions can be imposed. This will create a more equitable outcome for water permit holders, rather than having water permit holders who come in first having lesser restrictions than those that come in later. In addition, some catchments/rivers/aquifers will, as a result of the Plan, have more allocable water available for abstraction as science work has identified either allocation is not as high as previously thought, or the allocation levels were overly conservative, and more water could be extracted via the consent process.
- [40] For the Manuherehia catchment where an increase in minimum flow is proposed, the plan intends to have a staged increase in the minimum flow, over approximately 15 years. This staged increase in minimum flows is intended to be clearly signalled in the plan and will allow water permit holders to make decisions in the shorter term with the knowledge of the longer-term outcome. Water users will be able to consider how best to invest to ensure improved reliability and resilience in their businesses. The consenting framework will also contribute to better understanding of what run of the river water is available for allocation, which in turn

⁵ [New Otago economic reports a first – ORC | Otago Regional Council](#)

assists with what may be available for current and future storage options.

Rural water quality (farming)

[41] The draft region-wide provisions require farmers to achieve Good Management Practice standards which have been reviewed through the various stages of engagement (involving the community and stakeholders) during the development of the land and water plan. The plan does not promote land use change as further work is required to understand the benefits of widespread good management practice. Many of the good management practices are already being implemented by rural land users in Otago and will not have a significant impact, while others will need to be factored into annual farming operating budgets.

Urban water quality (stormwater)

[42] 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 the 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 and enable ORC to better manage discharges to water. This oversight is currently lacking due to many stormwater activities being permitted.

Council's decision on notification date

[43] On 27 March 2024, Council approved an option for progressing the proposed Land and Water Regional Plan. The intent is that between late March and 31 October, staff focus additional time on ensuring the draft LWRP accounts for the recently notified decisions on the RPS⁶, and further targeted engagement with Clause 3 parties to work through feedback and seek solutions to managing issues that resolve concerns, as far as practicable. The Clause 3 feedback process was open to a wide range of parties, including relevant Ministers of the Crown, industry, iwi, territorial authorities, and environmental and advocacy groups.

What are the costs of notifying ahead of the NPSFM changes?

[44] The costs of notifying the plan before the NPS-FM is replaced relate to the following matters:

- over time there is a risk that the Plan may regulate some matters that are no longer 'required' to be regulated by a new NPS-FM,
- the draft plan relies on the current Freshwater Farm Plan system as an alternative to a resource consent – changes to that system may mean that we can no longer use these alternative pathways and must develop an Otago-specific solution and more rules.

[45] Council intends to manage the risks described above by ensuring that the LWRP has suitable transitional provisions, particularly when there is a significant change to the regulatory

⁶ Note that Council made decisions on the Proposed Otago Regional Policy Statement on 27 March 2024.

framework. Some examples of the transitional provisions are set out earlier. Providing people time to adjust their practices to accommodate a new framework is important and as regulator, we appreciate that time is one of our levers.

- [46] In addition to the costs of notifying before changes to the NPSFM, as with any plan, there are costs associated with activities that have previously not required consent, to either require a consent or require adjustments to meet permitted activity criteria. There is a suite of activities that, unlike most regional councils, ORC has not traditionally managed that the plan will introduce. These include effluent storage, which was introduced through Plan Change 8 in 2021, farming activities, cemeteries, and forestry. Inevitably the industries impacted by these activities being managed incur costs. Those costs range from the costs associated with adjusting approaches to an activity (direction of grazing on slopes for intensive winter grazing for example), costs associated with meeting permitted activity criteria, and costs of obtaining consent and ensuring ongoing compliance.
- [47] The economic programme has worked to understand these costs, and how they might impact rural industries. As noted earlier, enabling clear transition pathways and time to adjust to any new rules are both critical to ensuring land users can adjust to new provisions.
- [48] Table 1 below⁷ is an example of the analysis being undertaken to support the section 32 assessment of the Plan. The table is predicated on some aspects of the plan that are still under review so is illustrative. The intent of providing it as part of this report is to demonstrate the economic analysis that is being undertaken. The example below highlights the costs that might fall to a landowner under the rule scenarios outlined.

Arable 2 is a large mixed arable (i.e., non-irrigated) model farm closely based on a real farm in Otago. The model farm is mostly grain and specialist seed cropping (biased towards grain), selling some feed as cut and carry off-farm as well as contract grazing. The farmer owns no livestock but contract grazes lambs over winter, and has a smaller proportion of higher stocking rate dairy cow that winter graze. Most of the feed is available through the winter and prior to grass seed crops being shut up in the spring. There are no livestock on the property from mid-October to the end of February and any surplus pasture is sold off-farm as silage. It is a dryland farm with an average annual rainfall of 850 millimetres.

Numerous studies have shown that setbacks can be effective in reducing sediment delivery to streams by decreasing the velocity of runoff and allowing particles to settle. In some instances, adding to the buffer area can be more efficient but in others it was not as efficient as modifying in-field practices (e.g., implementing appropriate tillage, land-shaping, and in-field buffer practices) (Dosskey et al., 2002; Barling & Moore, 1994). A common theme in the studies is that a flexible approach based on an appropriate risk assessment is likely to result in better outcomes for the farm and the environment than a unilateral approach.

Carrying out a risk assessment to identify where other actions may be appropriate is best carried out on a farm-by-farm basis as one size rarely fits all situations. It is likely that there will be areas where setbacks need to be greater than five metres. Other actions that fit the scale and character of the risk

⁷ Moran, E. (2024). Primary Production: Farming – analysis of costs and benefits. Draft internal paper for LWRP s32 report, Otago Regional Council.

would be identified from a tool kit of mitigation-type environmental actions (interception drains, culverts, diversion bunds, benched headland, swales, sediment traps, silt fences etc).

Arable 2 is a steady state model to represent the farm's two crop rotations. The model was first adjusted to implement recent policy changes (where there was a three-metre setback of permanent fences from the edge of waterways). It was then used to test an additional two metre setback from waterways and critical source areas with 1) a 'fixed' approach and 2) a 'risk assessment' approach.

The two metre setback based on fixed conditions resulted in a need for a total of 21.7 kilometres of additional permanent fencing. The total cost of fencing was budgeted at \$346,000 and the annual cost of the permanent fencing (over a 10-year period, undiscounted) was budgeted at \$34,600. The total effective farm area reduced by 21 hectares (in addition to the 1.3 hectares lost to bring the steady state up to meet recent policy). Profitability decreased by 4.3 per cent to adjust the farm from 'steady state' to 'meeting recent policy' and a further 8 per cent to get from there to achieve the fixed approach.

The two metre setback based on a risk assessment increased the setback width from three metres to a 5-metre permanent set back from a waterway. This increase resulted in a total of 12.5 kilometres of additional permanent fencing. The total cost of fencing was budgeted at \$225,000 and the annual cost of the permanent fencing (over a 10-year period) was budgeted at \$22,500. The farm's effective area was reduced by 2.7 hectares (in addition to the 1.3 ha lost to adjust the farm from 'steady state' to 'meeting recent policy'). Profitability decreased by 4.3 per cent to move from the steady state to being brought up to meet recent policy and a further 1.2 per cent to move on to achieve the risk assessment approach.

[49] There are also costs associated with retaining the existing Regional Plan: Water and Regional Plan: Waste for longer. Costs include:

- the requirement and costs to obtain consents for diffuse discharges under ORC's Plan Change 6A/6AA. The rules relating to diffuse discharges come into effect in April 2026 and have been determined to be uncertain and unenforceable. It is not efficient to consent these activities knowing they are unenforceable and uncertain.
- water permit holders being limited to a short-term consent due to the rules introduced by the Environment Court through Plan Change 7. Plan Change 7 was predicated on a fit for purpose planning framework being in place before permit holders needed to renew their consents again. Evidence from farmers during Plan Change 7 was that short term consents were not economically viable and did not allow farm expansion. Without a new planning framework in place to manage expiring water permits, consent holders will be limited to 6 years, compounding the existing frustrations with short term permits;
- challenges managing freshwater quality and quantity under the existing framework, and the potential for more stringent restrictions being required in the future to manage water quality if water quality deteriorates and bigger solutions are needed;
- the cost of delaying implementation of the balance of national direction. For example, the pLWRP will implement the National Policy Statement for Renewable Energy Generation (NPS-REG), and delays in notification mean delays in implementing a framework that enables renewables. There are multiple pieces of national direction the plan will implement, and delays impact them all.

- [50] As outlined above, Plan Change 7 [water permits] and Plan Change 6AA [delay to diffuse discharges provisions] were both prepared on the basis that a new plan would be in place by 2026. These two examples are discussed further below.

Water permit replacements

- [51] Provisions that were introduced to the operative Regional Plan: Water by PC7, limit replacements to deemed permits (for both water taking and damming) and all other water permits, and new surface water takes to a six-year duration. Many of these will expire / require renewal prior to 2027.
- [52] During PC7, many submitters spoke to the challenges of financing infrastructure with short term permits, and expressed concern that the Plan may not be notified in the timeframe required. They highlighted that having to obtain one short term would be challenging for their business model, and more than one cycle of short-term consents will compound these issues and limit their ability to achieve economic growth and/or diversification.
- [53] The current draft Plan is proposing a longer term (the plan proposed 10-year consent duration for Clause 3 consultation), with exceptions, and has a pathway for considering intensification, including irrigation expansion. A longer term being available for consent holders reduces the economic limitations associated with short term permits.
- [55] Without a new planning framework in place, the six-year duration will remain in place for the next cycle of permit renewals, which exacerbates the financing pressures outlined through the extensive PC7 hearings.

Diffuse discharges

- [55] The 'un-implementable' provisions in the operative Water Plan for managing diffuse discharges (that were introduced by PC6A) are due to come into effect on 1 April 2026. These provisions are unenforceable, uncertain and ambiguous. The intent of PC6AA was that these rules would not take effect, i.e., they would be superseded by enforceable clear rules in the LWRP. If these rules come into effect in 2026, they will create practical challenges for both land users and Council. For example, because of the drafting of the rules, a diffuse discharge may comply with permitted activity criteria on one day, and not the next. This creates challenges and significant regulatory uncertainty. In a practical sense, this may mean that all landowners who produce diffuse discharges need to obtain consents.

What are the benefits?

- [56] The benefits of notifying the plan before the NPS-FM is replaced are that Council:
- maintains momentum of the Plan development work already completed with our community, ensuring that this investment is not wasted,
 - addresses the issues with the current planning framework as described earlier in this report,
 - provides greater certainty about the regulatory requirements so that investment by

- landowners is not curtailed. This is a critical aspect in the drier parts of Otago.
- ensures that our communities have as much lead-in time as possible to make the necessary changes to maintain and improve freshwater and land management,
- brings Otago's freshwater and land planning framework in line with those for other areas of New Zealand, which have more oversight of risk activities,
- reduces the risk that irreversible effects on habitats or ecosystems do not occur in the meantime,
- can create rules that respond to issues and risks for Otago, and also within Freshwater Management Units. This enables the pLWRP to have different rules for different parts of Otago, rather than having national standards applying.
- Implements the community visions that were consulted on as part of the RPS.

[57] An example of creating rule frameworks that respond to risk is with Intensive Winter Grazing (IWG). With the IWG management reverting back to regional councils, this enables ORC to develop rules that reflect the risk and variability across the region. For example, the Lower Clutha and Catlins FMU tend to have farming systems that more closely align with Southland and hence IWG provisions that are modelled on Southland provisions are likely to be more appropriate⁸. Contrast that with North Otago which has a drier climate, needing some differences in the rule framework for IWG.

What are the implications?

- [58] Council intends that ORC's new freshwater framework will be reviewed and updated as legislation changes, and as new information becomes available. This provides future opportunities, already signalled in the Long-Term Plan, for both the proposed LWRP and the proposed RPS to be updated as and when required, including to respond, if necessary to a new NPSFM.
- [59] The Freshwater Planning Process under section 80A of the RMA, as it currently stands, also provides opportunities for any new national direction to be incorporated into a plan during the hearings process. This means changes to the RMA and/or NPS or any other national direction while the hearings process is underway can be managed by the Panel.
- [60] Managing legislative changes through regional plans is a common part of plan making and can be accommodated.

Conclusion

- [61] The above report provides a high-level outline of the costs, benefits and implications of notifying the pLWRP ahead of changes to the NPSFM. It is important to note the report is not an analysis of the efficiency and effectiveness of the plan itself, as required under section 32 of the RMA.

⁸ Moran, E. (Ed.) (2022). *Farmers and Growers in Otago*. Otago Regional Council (LWRP Economic Work Programme), Dunedin. Available at: <https://www.orc.govt.nz/media/15421/farmers-and-growers-in-otago-phase-1.pdf> and