Section 32 Evaluation Report for the Proposed Otago Land and Water Regional Plan

Chapter 3: Current Planning Framework

This Section 32 Evaluation Report should be read together with the Proposed Otago Land and Water Regional Plan

Otago Regional Council

Contents

Abbreviations

FMU	Freshwater Management Unit
HSNO Act	Hazardous Substances and New Organisms Act 1996
NPSFM	National Policy Statement for Freshwater Management 2020
ORC	Otago Regional Council
ORPS	Otago Regional Policy Statement 2019
pORPS	Proposed Otago Regional Policy Statement 2021
pLWRP	Proposed Otago Land and Water Regional Plan 2024
RMA	Resource Management Act 1991

1. Current planning framework

1. In addition to the issues described in Chapter 2, the development of the pLWRP also needs to respond to revised regulatory requirements. The primary regulatory drivers for preparing the pLWRP include:

    a. The requirement under section 79 of the RMA to review the provisions of operative regional plans that have not been subject to a review or change during the previous 10 years;

    b. To implement the recommendations of the Minister for the Environment in response to the section 24A review of ORC's planning functions undertaken by Professor Skelton;

    c. To respond to a range of new and amended national direction, and new regional policy statements.

2. These drivers are discussed in more detail in the sections below.

1.1. Regional plan reviews

3. The RMA requires local authorities to commence a review of a provision of a regional plan if that provision has not been subject of a review or a plan change during the previous ten years.[1] If they are not reviewed regularly, they can become out of date. This section provides an overview of the history of changes to the Water and Waste Plans, as well as known issues with these plans.

1.1.1. Regional Plan: Water for Otago (the Water Plan)

4. The Water Plan was notified in 1998 and became operative in 2004. Since it became operative, there have been 18 plan changes. Broadly, these have established flow and allocation regimes for some surface water catchments, groundwater allocation regimes for some aquifers, and provisions to manage water quality issues.[2] The plan changes that have occurred to date have not been undertaken as part of a programme of 'rolling reviews' under section 79 of the RMA, rather they have responded to specific issues that have arisen over time or gaps in the Water Plan framework for particular activities.

5. Between the Water Plan becoming operative and the year 2020, no full review of the Water Plan was carried out. A desktop review was undertaken between August 2020 and February 2021. This review was used to identify provisions or management approaches that were giving effect to the relevant national direction and legislation and that could be carried over into the Water Plan's successor, and to identify gaps or opportunities for improved management. The review included the following steps:

    a. an assessment of the current plan framework against relevant national policies and standards, the regional policy statement (proposed), and other relevant criteria;

    b. a review of management approaches by other regional councils;

[1] Section 79(1), RMA

[2] See full list of changes to the Water Pan here: https://www.orc.govt.nz/plans-policies-reports/regional-plans-and-policies/water

c. discussion with key stakeholders (internal and external) about the plan and the management of Otago's Freshwater resources in general; and

d. an audit of the provisions in the plan and gap analysis based on findings from the three steps outlined above.

6. The sections below describe the structure of the Water Plan, the policy direction set in the Plan and some of the key issues with the Water Plan, including those that were identified through the 2020/2021 Water Plan review.

1.1.2. Structure of the Water Plan

7. The Water Plan is structured as follows:

a. Chapters 1 – 3 contain introductory material;

b. Chapter 4 sets out the Kāi Tahu ki Otago water perspective and identifies issues;

c. Chapters 5 – 10 set out issues, objectives, and policies and, in some cases, anticipated environmental results for six topics:

i. Natural and human use values of lakes and rivers;

ii. Water quantity;

iii. Water quality;

iv. Beds and margins of lakes and rivers;

v. Groundwater; and

vi. Wetlands.

d. Chapter 11 introduces the rules;

e. Chapters 12 – 14 contain the plan's rules categorised into three topics:

i. Water take, use and management;

ii. Land use on lake or river beds or regionally significant wetlands; and

iii. Land use other than in lake or river beds.

f. Chapters 15 – 19 contain methods other than rules, the information requirements for resource consent applications; the use of financial contributions; cross boundary issues; and monitoring and review procedures; and

g. Chapters 20 – 22 contain the schedules, glossary, and appendices.

1.1.2.1. Policy direction in the Water Plan

8. Although not explicitly stated as such, Chapter 5 (Natural and human use values of lakes and rivers) appears to provide the overarching strategic direction for the plan.[3] However, there is no explicit relationship between the different objectives of the plan. For example, while the objectives in Chapter 5 seek to achieve particular outcomes in the natural environment

[3] Section 5.1 states that "This chapter contains issues, objectives and policies that apply to [the taking damming and diversion of surface water, including the management of lake levels; the taking of groundwater; discharges to water, and onto or into land in circumstances which may result in a contaminant entering water; and land use activities] as they may adversely affect natural and human use values."

(such as the preservation of natural character), objectives in later chapters include a focus on enabling or promoting the use of resources. There is no guidance within the plan to assist decision-makers with reconciling the apparent conflicts between these objectives. The structure of the plan separates rules from their corresponding policies and objectives, requiring users to navigate multiple different chapters in order to understand how activities are managed. The six chapters containing objectives and policies are also grouped differently from the three chapters containing rules, meaning users cannot easily connect rules to the relevant objectives and policies.

9. This lack of clear linkages between rules and policies was identified as a key issue during the review of the Water Plan. The review also identified that the Water Plan provisions lack specificity, allowing for broad or diverging interpretation. It was considered that streamlining and strengthening the policy and rule framework would make the provisions easier to navigate and understand.

10. There are also many instances of disconnection between the provisions of the plan and the schedules and maps. For example, stakeholders participating in the Water Plan review raised the lack of clear links between Water Plan Schedules 15 (numerical limits and targets for good quality water) and 16 (permitted activity discharge thresholds for water quality), as well as the rules and policies of the Water Plan, as having a detrimental effect on the Plan's ability to manage water quality in the region. Other examples of the lack of linkages between the Water Plan provisions are Schedule 8 and Groundwater Protection Zones. Schedule 8 contains requirements for discharge of animal wastes. However, these are not referenced in any of the provisions. Groundwater Protection Zones are areas that are mapped in the Water Plan, without a clear explanation about their purpose or application in the Plan's provisions. Policy 9.4.20 uses these zones as a way to manage risky activities on the land surface, while Rule 12.2.2.2 places restrictions on the volume of water that can be abstracted from some of these zones. It is unclear whether the zones are a mechanism to protect groundwater quality or quantity, or how they have been identified.

11. Finally, the Water Plan does not give full effect to the relevant suite of national direction, and has not done so for a considerable period of time.

1.1.2.2. Kāi Tahu values in the Water Plan

12. To respond to the issues outlined in Chapter 4 of the Water Plan, objective 5.3.2 seeks to maintain or enhance the spiritual and cultural beliefs, values and uses of significance to Kāi Tahu, identified in Schedule 1D, as these relate to Otago's lakes and rivers. Schedule 1D lists specific values and identifies where in the region those values are present. The content of Chapter 4 and Schedule 1D pre-dates the publication of the three iwi management plans in the region (Waitaki Iwi Management Plan Working Party, 2019) (Ngāi Tahu ki Murihiku, 2008) (Käi Tahu ki Otago, 2005).

13. The prescriptive approach in the Water Plan does not reflect contemporary understanding of Kāi Tahu values and how these are considered in resource management decision-making. They do not take into account the content of the iwi management plans. The approach does not reflect the current approach adopted by ORC and Kāi Tahu, whereby Kāi Tahu values are 'woven' into planning documents rather than 'ring-fenced' and considered separately.

14. The outcome of this approach to Kāi Tahu values is articulated in the resource management issues of significance to iwi authorities in the pORPS.[4] Most of those issues are relevant to the Water Plan and the development of the LWRP, however the following issues are particularly relevant:

    a. RMIA-WAI-I2 – Current water management does not adequately address Kāi Tahu cultural values and interests

    b. Kāi Tahu values and interests are not properly considered in current land and water resource management. The well-being of mahika kai and taoka and protection of other cultural values has historically been given less weight in environmental policy or decision-making processes and these considerations are often compromised in favour of other values, including economic values. The mana of mana whenua and of the water is not recognised because water quality and quantity have been negatively affected by the use of water and land. An improvement in resource management in Otago to recognise Kāi Tahu values and provide for the relationship of Kāi Tahu with the water bodies within their rohe is required. The understanding of cultural values by many is still developing and, as a result, Kāi Tahu values and interests are often not well represented in plans and decision-making.

    c. RMIA-WAI-I4 – Effective participation of Kāi Tahu in freshwater management is hampered by poor recognition of mātauraka

    d. The term 'mātauraka Māori' includes all branches of Māori knowledge, past, present, and still developing. It involves observing, experiencing, studying, and understanding the world from an indigenous cultural perspective. It is a tool for thinking, organising information, considering the ethics of knowledge, and informing us about our world and our place in it. Incorporation of mātauraka in resource management decision-making is important to ensure that cultural interests are appropriately recognised and provided for. Resource managers do not always appreciate the depth and value of mātauraka held by members of Kāi Tahu Whānui. Even where mātauraka is valued there may be difficulty in determining how best to apply the knowledge.

15. Another key finding of the 2020/2021 Water Plan review was that the Water Plan framework does not clearly articulate or adequately provide for the role of mana whenua in the management of natural and physical resources. In addition, the review found that the mana whenua values and objectives are not very well integrated throughout the plan and that there is a need for greater clarity for plan users on how the mana whenua provisions are to be interpreted and applied.

1.1.2.3. Water quantity in the Water Plan

16. Water quantity is primarily managed by three chapters of the Water Plan:

    a. Chapter 6: Water quantity (issues, objectives, and policies);

    b. Chapter 10A: Objective, policies, and rules for replacement water take and use permits; and

    c. Chapter 12: Water take, use and management (rules).

[4] RMIA – Resource management issues of significance to iwi authorities, pORPS.

17. There are also a number of schedules and appendices that support the implementation of these chapters. Aside from several targeted plan changes, most of the water quantity provisions in the Water Plan were notified prior to the introduction of the first NPSFM in 2011 and have become increasingly out of step with national direction as the NPSFM has evolved since then. The deepening gap between the planning framework in the Water Plan and the direction for freshwater management set in national planning instruments, as well as the inadequacy of the plan's provisions for managing water allocation in the region, were identified as important issues during the 2020/2021 review of the Water Plan.

18. The framework in the Water Plan was discussed in detail during the Environment Court hearing on Plan Change 7 (PC7). The decision (Otago Regional Council - Plan Change 7 - Interim decision, 2021) discussed, broadly, the approach of the framework for managing water quantity in Otago as follows:

> *[50] For decades regional policies supported increasing farm production, fuelled in parts of the region by virtually unregulated access to water. Security around access to water has been all but assumed, including by lending institutions. In more recent times policy signalling by the Regional Council encouraged farmers to convert from inefficient (e.g. wild flooding and border dykes) to more efficient (e.g. spray) irrigation systems in anticipation of securing long-term replacement consents.*
>
> *[51] As regional policy pivots from laissez faire (particularly, the seeming indifference towards the exercise of deemed permits) to tight control under PC7, this has given rise to uncertainty within the primary sector. Some permit holders worry over the return on investment in irrigation infrastructure made prior to PC7's notification. Others who have yet to undertake planned development, are concerned that the six-year duration may prove unattractive to potential investors or that the terms of repayment to fund the capital cost of development over six years will be unaffordable (either that or lending will not be available).*

19. The Court also noted the deficiencies with the Water Plan:

> *[71] The deficiencies of the operative regional plan are well summarised in the evidence of Ms S McIntyre (Ngā Rūnanga). Ms McIntyre considers the regional plan is inconsistent with the higher order direction for managing freshwater, or hampers the ability to give effect to that direction, in the following ways:*
>
> > "(a) it does not recognise and address over-allocation, and the approach to setting flow and allocation regimes is inadequate to protect instream values;
> >
> > (b) there is an apparent priority for consumptive use over instream values, with only narrow provisions, in policies and rules, to consider the effects of abstraction on natural and cultural values;
> >
> > (c) in consent decision-making, there is a strong focus on effects at the abstraction point and inadequate consideration of effects, including cumulative effects, on the broader freshwater system. Hydrological and ecological information is often inadequate to assess such broader effects;
> >
> > (d) policies incentivise increased use and increased dependence on water consumption; and

(e) policy on consent duration gives inadequate direction and provides an expectation of long consent terms."

20. The objectives set out in Chapter 5 of the Water Plan are primarily focused on the health and well-being of Otago's water bodies and the values they support. However, the objectives in Chapter 6 of the Water Plan for managing water quantity are largely focused on providing for the use of water. As discussed previously, there is no hierarchy in the objectives of the Water Plan and it is unclear how the tension between these objectives is expected to be resolved.

21. This is particularly difficult for implementation as the objectives are likely to often be in conflict. This emphasis on using water in Chapter 6, and particularly consumptive uses, sets the overarching direction for the policy and rule frameworks that follow. The objectives in Chapter 6 in isolation, or as a package, do not give effect to Te Mana o te Wai. Two objectives in particular place emphasis on using water in a way that is inconsistent with Te Mana o te Wai:

    a. Objective 6.3.2 seeks to provide for the water needs of Otago's primary and secondary industries, and community domestic water supplies. These uses of water are third and second priorities (respectively) under the objective of NPSFM and cannot take priority over the health and well-being of the water. While there are other objectives concerned with the health of the water, all of these objectives had traditionally been read alongside each other without one having priority over another.

    b. Objective 6.3.4 seeks to maximise the opportunity for diverse consumptive uses of water which is available for taking. The explanation emphasises that those taking water should not be unnecessarily restricted in how they can use that water. This does not recognise the importance of integrated management and ki uta ki tai – it is important that the environment is considered holistically and that uses of resources are considered in terms of their effects on all other resources.

22. Objectives 6.3.6 and 6.3.7 describe outcomes from managing flows and controlled lakes. However, it is unclear whether the regime described for surface water applies to lakes and whether, if it does, it is able to be implemented given it relies on mean annual low flow information rather than levels.

23. The policies in Chapter 6 provide for the establishment of environmental flow and level regimes, including allocations (take limits) for surface water and groundwater. Schedules 2A and 2B in the Water Plan set out tailored primary allocation limits and minimum flows for 14 of the approximately 140 catchments in Otago. Schedules 4A and 4B set out tailored allocation limits (known as maximum allocation volumes) and take restrictions for specified aquifers in the region. All four schedules were introduced before the NPSFM 2020 and have not been determined in accordance with the requirements of that document.

24. For those catchments and aquifers not listed in the schedules, the Water Plan sets a 'default' allocation limit, which is determined as follows:

    a. For surface water bodies (and connected groundwater): 50% of the catchment's 7-day Mean Annual Low Flow (MALF), and

    b. For unconnected groundwater, 50% of the aquifer's mean annual recharge (MAR).

25. Chapter 6 of the Water Plan does not apply to surface water takes (and connected groundwater takes) from Lakes Dunstan/Te Wairere, Hāwea, Roxburgh, Wānaka or

Whakatipu-Waimāori/Lake Wakatipu, nor the main stems of the Clutha Mata-au or Kawarau River.[5] Together, these water bodies constitute the majority of the region's fresh water. The Water Plan does not set any limits on the allocation of water from them or provide any policy guidance for their environmental flows or levels.

26. Another legacy issue of this framework is that, historically, stored water has been consented and metered as though it were primary allocation (rather than supplementary allocation) despite reservoirs being filled during winter or during large rainfall events. This results in an overly large primary allocation block. (Augspurger, Olsen, & Dyer, 2024) describe the impacts of this as follows:

> *"An overly large primary block, consisting of stored water and run of river water, poses significant challenges for policies aimed at reducing allocation. To re-apportion stored water into appropriate allocation blocks, future plans must provide appropriate measures which distinguish stored water from run of river takes, such as separate metering. This re-apportioning would form the part of any allocation "reduction" in catchments with stored water."*

27. Against this backdrop, Chapter 10A was introduced by PC7 in 2020 to address the impending expiry of hundreds of deemed permits. The plan change was called in by the Minister for the Environment as a proposal of national significance and referred to the Environment Court for hearing and decision. The plan change provisions became operative in 2022. The purpose of Chapter 10A is set out in its sole objective:

> Facilitate an efficient and effective transition from the operative freshwater planning framework toward a new integrated regional planning framework, by managing:
>
> *(a) the take and use of freshwater; and*
>
> *(b) the replacement of Deemed Permits; and*
>
> *(c) the replacement of water permits for takes and uses of freshwater where those water permits expire prior to 31 December 2025.*[6]

28. The policies in Chapter 10A require:

a. Avoiding granting consent for the take and use of surface water with expiry dates prior to 31 December 2025, except where:

   i. A deemed permit or water permit being replaced is a valid permit; and

   ii. There is no increase in land area irrigated (except for irrigation for orchard or viticultural uses and all pipes for the additional area were installed before 18 March 2020);

   iii. Any existing residual flow, minimum flow, or take cessation condition is applied to the new permit; and

   iv. Other than community water supplies, there is no increase in the historical instantaneous rate of abstraction and any historical volume of water taken;[7] and

[5] Policy 6.4.1, Water Plan

[6] Objective 10A.1.1, Water Plan

[7] Policy 10A.2.2, Water Plan

b. Limiting the duration of any replacement consent to no more than six years (except for specified hydro-electricity generation activities).[8]

29. The rules set out in section 10A.3.1 apply to replacements for deemed permits and existing consents as either restricted discretionary (for hydro-electricity generation activities) or controlled, restricted discretionary, or non-complying for all other uses. The chapter is supported by a set of definitions and a schedule containing the methodology for calculating assessed actual usage for surface water and connected groundwater takes.

30. The provisions of Chapter 10A are having significant impacts on Otago's communities. The Environment Court (2021) [NZEnvC 164] highlighted the economic uncertainty associated with PC7 as follows:

[52] PC7's freeze on expansion of irrigable areas may further depress investment in irrigation, as farmers cannot look to increased returns from irrigating larger areas of land. Deferred capital investment in infrastructure, such as the Falls Dam on the Manuherekia River, is likely to remain on hold while uncertainties around future minimum flow(s) of water bodies persist. In short, uncertainty around access to water and the reliability of future supply, is eroding business (farmer) confidence.

[53] Meantime, PC7 not only impacts decisions requiring significant capital outlay, e.g. irrigation infrastructure and storage, but also less visible decisions by farmers to do with realising plans for their family and the farm. This includes investment in staff training and recruitment, riparian planting and fencing, maintenance of existing inefficient infrastructure and succession planning. Without the opportunity to grow profits, downstream spending in the wider community may be delayed or, at the very least, is uncertain.

31. Without a plan change or a new plan, the provisions in Chapter 10A will continue to apply, including the six-year maximum duration for water permits.

32. Many permit holders who invested in infrastructure prior the Chapter 10A provisions coming into effect now face uncertainty on the return of their investments (2021) [NZEnvC 164]. For those who are yet to undertake planned developments, there is a risk that the short duration of any water permit will deter potential investors or render the terms of repayment unfeasible over such a limited time. This is particularly so for irrigation, as irrigation development generally takes five years to start showing a return on capital.

33. Chapter 10A freezes the expansion of irrigable areas, which further exacerbates this issue. Farmers are unable to expand their irrigated land to increase returns, which could otherwise have justified further investment. As a result, significant capital investments, such as the Falls Dam on the Manuherekia River, have been postponed due to uncertainties about future minimum flows. Uncertainty surrounding future water access, and the reliability of supply, erodes business confidence and causes farmers to hesitate before committing to large-scale infrastructure projects, if they commit at all.

34. Short-term permits also result in uncertainty about future productivity, which makes it difficult for farmers to secure financing. Banks and investors, faced with the risk that access to irrigation water could cease entirely at the end of the permit term, demand higher yields

[8] Policy 10A.2.3, Water Plan

or interest rates to compensate for the increased risk. This financial pressure negatively impacts the new investments in irrigation and other agricultural infrastructure.

35. When assessing loan applications, banks typically consider cash flow, security, and valuations. Short-term permit durations introduce uncertainty in each of these areas. For example, reduced reliability of access to water impacts future productivity and cash flow projections, which in turn reduces the assessed value of the land. This diminished land value affects the available security for loans, making it difficult for farmers to secure the necessary financing. As a result, farmers may face a reduced level of access to funding, and shareholders may need to introduce additional capital to support development.

36. The financial strain associated with a shorter permit duration may encourage farmers to search for cheaper, less efficient irrigation alternatives, such as k-line irrigation instead of fixed grid systems, which come at the expense of water use efficiency and increased wage cost. This risk may grow, the longer that short-term permits are the only possibility under the Water Plan. As a flow-on impact, if farmers need to prioritise debt reduction, this may occur at the loss of investment in other activities on the farm, such as adoption of new technology to improve water use efficiency or environmental gains.

37. In the long term, successive six-year permits could lead to a decline in the overall value of agricultural land in Otago. This would compound the issues with investment and financing described above. This would be significant challenge to the economic viability of farming in Otago.

1.1.2.4. Water quality in the Water Plan

38. The chapters that contain the provisions for water quality are:

    a. Chapter 7: Water quality (issues, objectives, and policies); and

    b. Chapter 12: Water take, use and management (rules).

39. There is a history to the provisions in the Water Plan for managing water quality that is important context.

40. In 2011, in response to monitoring showing declining water quality in some parts of Otago, ORC released a Rural Water Quality Strategy (Otago Regional Council, 2011) that established an effects-based approach to managing rural discharges (primarily diffuse discharges) of contaminants to water. The Strategy focused on controlling the discharge of contaminants from land to water, instead of land use activities and/or inputs (e.g. fertiliser). This approach was intended to reduce the adverse effects of land use practices on water quality, without imposing unnecessary costs on land managers (Otago Regional Council, 2012, p. 8)

41. To implement the Rural Water Quality Strategy, ORC prepared Plan Change 6A (PC6A) to the Water Plan which was notified in 2012 and became operative in 2014. PC6A introduced a suite of provisions which sought to manage diffuse discharges from rural land uses as follows:

    a. Discharges of contaminants to land or water are permitted if they comply with standards (Rules 12.C.1.1, 12.C.1.1A and 12.C.1.2).

b. Discharges of nitrogen to land (calculated by Overseer[9]) where nitrogen may enter groundwater are permitted if they comply with standards (Rule 12.C.1.3).

c. Discharges which are not permitted by the rules above are either:

i. Restricted discretionary if their duration is less than five years (Rule 12.C.2.1); or

ii. Restricted discretionary if their duration is less than two years and they have a short-term effect (Rule 12.C.2.2); or

iii. Restricted discretionary if the discharge is of nitrogen to groundwater and the duration is no more than five years (Rule 12.C.2.3); or

iv. Discretionary (Rule 12.C.3.2).

42. Permitted activity rules 12.C.1.1 and 12.C.1.2 contain conditions that relate to the physical state of the water post-discharge. It is difficult for land users to determine in advance whether a discharge from their activities will give rise to these types of effects, meaning they are at risk of non-compliance with the Water Plan if they do not hold resource consent. Rule 12.C.1.1A does not come into effect until 2026 (previously 2020)[10] and requires compliance with the contaminant limits in Schedule 16A. As discussed in more detail in the next section, that schedule is considered to be largely unworkable. For land users who are uncertain about their ability to meet the permitted activity rules on a day-to-day basis, the only pathway for a certain, long-term authorisation of activities is by seeking consent as a discretionary activity under Rule 12.C.3.2. This is because the restricted discretionary activity pathways (Rules 12.C.2.2 and 12.C.3.2) only provide for consent durations of either two or five years.

43. By 2018, it had become apparent that the permitted activity rules were ambiguous, unenforceable and uncertain and also that they relied on a version of Overseer that no longer existed (Otago Regional Council, 2019, p. 7). Schedule 16A to the Water Plan, which housed the contaminant limits, was considered to be "ambiguous to the extent that it would more than likely be incapable of application" (Otago Regional Council, 2019, p. 7). While it contains numerical thresholds for certain contaminants, it is silent on the application of those values. For example, it does not state whether the values are medians, averages, or 95th percentiles or what monitoring period is to be used. A strict application could see activities permitted on some days and requiring consent on others.

44. ORC was beginning to receive increasing numbers of enquiries about the PC6A provisions and the discretionary activity resource consent pathway it provided for longer-term discharges of contaminants that could not meet permitted activity standards. The permitted activity standards in Rules 12.C.1.1 and, by reference, 12.C.1.1A are considered to be so ambiguous that compliance could vary on a day-to-day basis and may be impossible to determine at all.

45. The only way for resource users to ensure they remain compliant with the Water Plan at all times would be to apply for a resource consent to discharge contaminants as a discretionary activity under Rule 12.C.3.2. This creates a risk that land users apply for a 'whole of farm' resource consent, potentially undermining ORC's ability to implement the NPSFM and

[9] Overseer is a model that describes nutrient flows on farms, it takes nutrients that are present or introduced to the farm, models how they are used by plants and animals on the farm, and then estimates how they leave the farm and in what form.

[10] Amended via Plan Change 6AA.

exercise its functions under s30 of the RMA. Introduced by PC8, Policy 7.D.6 limits the duration of these consents to 10 years, with no exceptions. As described above in relation to water quantity and the six-year permits required by Chapter 10A, there is a risk that this duration would impact investment decisions by farmers as well as financing decisions by lending institutions. Alternatively, resource users could opt not to apply for consent and therefore be at risk of non-compliance with the Water Plan.

46. Stakeholders involved in the Water Plan review considered the effects-based provisions introduced into Water Plan by PC6A to be a reactive and often ineffective approach to managing the environment (by requiring discharges to occur before compliance can be assessed). They also pointed at other shortcomings of the Water Plan in managing water quality, including the absence of a comprehensive framework for managing agricultural intensification, land use conversion and forestry.

47. There has been a large number of reports prepared on water quality in Otago, particularly in recent years to assist with the development of the pLWRP. As illustrated in Chapter 2 of this report, while water quality is good in parts of Otago, all FMUs have monitoring sites and modelled segments which fail to meet the national bottom line for at least one attribute (Augspurger & Dyer, 2024). This demonstrates that the Water Plan framework has not been effective at maintaining water quality across the region.

48. Occurring at around the same time as the issues above with deemed permits, this was another contributing factor to the Minister for the Environment's decision to initiate a review of ORC's implementation of its planning functions, discussed in more detail in section 3.2.

1.1.3. Other matters to consider in a replacement regional plan

49. In addition to the matters described above, the review of the Water Plan identified the following matters for consideration when developing a replacement for the Water Plan:

a. Where possible, activities should still be provided for as permitted activities, subject to conditions. However, permitted activities are not appropriate where the (cumulative) effects of activities are not well understood and further monitoring of the effects of resource use is required. The activity status of various activities currently permitted under the operative Water Plan (including permitted water takes, discharges, gravel extraction and damming activities) needs to be reviewed.

b. The degree to which non-regulatory methods are included within the regional plan should be limited. These methods include, but are not limited to, education, financial incentives, funding programmes, and design guidelines.

c. The framework for managing wetlands needs to be amended to better align with national direction and regulation.

1.1.3.1. Regional Plan: Waste for Otago (the Waste Plan)

50. The Waste Plan became operative in 1997 and manages waste activities (including contaminated land, landfills, and hazardous substances) in Otago. There has only been one plan change to the Waste Plan: PC1, which was notified in 2020 and became operative in

2022[11]. A desktop review of the Waste Plan took place in the period August 2020 to January 2021. The purpose and process steps for this review were identical to those applied to the Water Plan review (described in the previous section).

51. Key findings of the review process were:

    a. The non-regulatory policies and methods in the Waste Plan have been mostly overlooked and not implemented by ORC. This non-regulatory approach could be included in a regional waste strategy, which outlines ORC's intended facilitation of waste management.

    b. The Waste Minimisation Act 2002 and the responsibilities of territorial authorities have been the main drivers for waste management and minimisation in Otago. Territorial authorities would like a more regional-scale coordination for waste management.

    c. Identifying and monitoring contaminated sites is an ORC function that could be improved by developing a protocol between the regional council and territorial authorities. Such a protocol would outline roles, responsibilities, and lines of communication for identifying, monitoring and managing contaminated sites.

    d. Managing hazardous substances or hazardous waste is no longer a function for regional council except for the potential risk of discharges affecting the environment. This function now sits with the Environmental Protection Authority under the Hazardous Substances and New Organisms Act 1996 (HSNO Act).

    e. Landfills are the main area of responsibility for ORC through consenting of such facilities. The rule framework of the new plan should be tailored to reflect the level of risk from each type and varying scales of landfill, from residential composting up to large scale municipal landfills and transfer facilities.

52. In addition to these review findings, ORC staff have also identified the broader issue that there is considerable overlap between the Waste and Water Plans. While the Waste Plan manages a series of specific activities, such as managing contaminated sites, hazardous substances and wastes, and landfills (including farm landfills, cleanfills, offal pits, and green waste), these activities are not explicitly excluded from the provisions of the Water Plan, meaning that they must be managed under both plans. For example, the Water Plan contains general policies and rules for discharges of contaminants which apply to discharges from landfills in addition to the landfill-specific provisions in the Waste Plan. This leads to inefficiency in administration and unnecessary duplication in consenting processes.

53. While the Water Plan has been amended since it was introduced, the Waste Plan was not amended at all between 1997 and 2020. This led to differences in the wording and strength of policy direction between the two plans, which adds to the inefficiencies of needing to consider activities under both plans.

54. One of the key tasks noted by ORC as part of developing a new LWRP was the need to combine the content of the Water and Waste Plans.

[11] See https://www.orc.govt.nz/your-council/plans-and-strategies/waste-plans-and-policies/

1.1.3.2. Implementing current national and regional policy direction

55. Since the Water Plan and Waste Plan became operative, there have been significant changes in national direction which has not been fully implemented through either plan. Many provisions in the pLWRP have been developed to give effect to higher order documents or more clearly align with activities managed under regulations. Where this is the case, the relevant national direction and the response in the pLWRP is described in later sections of this report. Chapter 7 of this report sets out the relevant national direction and how the provisions of the proposed LWRP give effect to them.

56. In addition to national direction, there is relevant regional policy direction that has not been fully implemented in Otago's regional plans. Section 1.4 outlines the background to the two regional policy statements at play in Otago: the operative Otago Regional Policy Statement 2019 and the proposed Otago Regional Policy Statement 2021.

57. Neither the Water or Waste Plans have been amended to implement the ORPS 2019 or pORPS 2021. Overall, the Water and Waste Plans would require significant review and amendment in order to implement all of these changes to higher order direction.

1.2. The Minister for the Environment's s24A investigation

58. The issues described above in relation to deemed permits, as well as emerging issues with the Water Plan's approach to managing diffuse contaminant discharges, led to a concern within ORC, central government, and the wider public that ORC was not adequately fulfilling its statutory obligations under the RMA.

59. In May 2019, a review of ORC's planning functions was commissioned by the Minister for the Environment and undertaken by his appointee, Honorary Professor Peter Skelton. After receiving Professor Skelton's report and recommendations, in November 2019 the Minister for the Environment concluded that ORC's current freshwater management framework was not fit for purpose and not in line with the previous NPSFM 2014, amended in 2017 (Minister for the Environment, 2019).

60. The Minister made a number of recommendations to ORC on the future of its freshwater planning framework. These were accepted by ORC in December 2019 and included agreements to:

    a. take all necessary steps to develop a fit for purpose freshwater management planning regime that gives effect to the relevant national instruments and sets a coherent framework for assessing all water consent applications, including those that are to replace any deemed permits;

    b. develop and adopt a programme of work to achieve the following:

        i. prepare a plan change by 31 March 2020 that will provide an adequate interim planning and consenting framework to manage freshwater up until the time that new discharge and allocation limits are set, in line with the requirements in the relevant NPSFM at that time;

        ii. by November 2020 [later amended to June 2021 with the Minister's approval], a complete review of the current Regional Policy Statement that is publicly notified, with the intention that it be made operative before the review of its LWRP is notified; and

iii. by 31 December 2023 [later amended to June 2024 with the Minister's approval], notification of a new LWRP for Otago that includes region-wide objectives, strategic policies, region-wide activity policies and provisions for each of the Freshwater Management Units, covering all the catchments within the region.

61. These three workstreams are discussed in more detail below.

1.3. Interim planning and consenting framework

62. At the time ORC accepted the Minister's recommendations, work had already begun on targeted plan changes to address specific and pressing issues with the Water Plan:

a. PC6AA to the Water Plan;

b. PC7 (Water permits) to the Water Plan; and

c. PC8 to the Water Plan and PC1 to the Waste Plan (the Omnibus Plan Changes).

1.3.1. Plan Change 6AA

63. One of the issues with ORC's planning framework in 2019 was the flawed approach to managing diffuse contaminant discharges outlined in section 1.1.2.4. Despite their issues, the provisions introduced by PC6A were due to become operative in April 2020. To avoid this, in October 2019 ORC notified Plan Change 6AA (PC6AA). This plan change was very narrow in scope and aimed simply to delay the implementation of the problematic PC6A provisions from 1 April 2020 to 1 April 2026, after which time it was assumed that a new LWRP would be in place. PC6AA was made operative in May 2020.

1.3.2. Plan Change 7: Water permits

64. ORC and the Minister for the Environment agreed that processing replacement permits under the operative Water Plan was inappropriate for the reasons outlined previously in relation to the framework for managing water quantity in Otago.

65. In March 2020, Plan Change 7 (PC7) was notified to manage the replacement of expiring deemed permits as a first step in transitioning to a new LWRP. During the submission period, the Minister for the Environment called in PC7 as a proposal of national significance, on advice and recommendation from the Environmental Protection Authority (EPA).[12] To comply with the requirements for proposals of national significance under the RMA, PC7 was then re-notified by the EPA in July 2020.

66. PC7 introduced new Chapter 10A to the Water Plan, which is discussed above in section 3.1.1.4. As discussed, this essentially instituted a 'holding pattern' whereby expiring/expired deemed permits could be replaced by short term consents which restrict further intensification of activities. This approach was developed on the assumption that by 2026 a new LWRP would be in place in Otago that would be fit for purpose and give effect to all relevant national direction, allowing consideration of longer consent durations for these activities. PC7 was made operative in March 2022.

[12] In accordance with ss 142 and 144, RMA.

1.3.3. Plan Change 8 to the Water Plan and Plan Change 1 to the Waste Plan: the Omnibus Plan Changes

67. Plan Change 8 (PC8) and Plan Change 1 (PC1) were developed in tandem to address known issues with water quality in the region. The purpose of the two plan changes was to strengthen the management of particular activities that result in discharges of contaminants to water which are known to contribute to water quality issues in the region.

68. PC8 addressed eight matters:

    a. Part A: Discharge policies;

    b. Part B: Animal waste storage and application;

    c. Part C: Good farming practices;

    d. Part D: Intensive winter grazing;

    e. Part E: Stock access to water;

    f. Part F: Sediment traps;

    g. Part G: Sediment from earthworks for residential development; and

    h. Part H: Nationally or regionally important infrastructure.

69. PC1 addressed two matters:

    a. Prohibiting the use of waste oil as a dust suppressant and encouraging the use of safer alternatives;

    b. Improving the policy direction for establishing and managing certain classes of landfill so that it reflects current best practice.

70. Both plan changes were called in by the Minister for the Environment as a proposal of national significance and notified by the EPA in July 2020. Following Environment Court mediation and hearings, the plan changes were made operative in September 2022.

1.4. Regional policy statement review

71. Otago's first regional policy statement became operative on 1 October 1998. A review of that document was commenced in 2014 with the aim to develop a replacement regional policy statement. The second regional policy statement was notified in 2015. Decisions were made in 2016 and most of the policy statement became operative in 2019. A small number of provisions were appealed by Port Otago Ltd and were not made operative until 2024 following a Supreme Court decision. This document is referred to as the Otago Regional Policy Statement (ORPS 2019).

72. A targeted review of the second regional policy statement was undertaken in March 2020. As there had been limited implementation by that date (and, in some cases, some provisions had not yet become operative so had not been implemented), the review was primarily a planning evaluation of the compliance of the document with higher order documents and the effectiveness of the provisions. This review confirmed that the policy statement did not give effect to the NPSFM 2017 (which was the relevant version at the time). This compounded the issue with replacing expiring deemed permits as it meant that neither the

Water Plan nor the regional policy statement provided an adequate planning framework for considering the applications.

73. The review also found issues with the structure and logic of the document which made implementation difficult. In response to the Minister's recommendations, ORC prepared a third regional policy statement. This document was originally to be notified by November 2020, however an extension was sought by ORC after the Government introduced the National Policy Statement for Freshwater Management (NPSFM 2020) in September 2020 which contained a range of new matters to be included in regional policy statements that had not formed part of the draft regional policy statement.

74. The third regional policy statement was notified in June 2021 and is referred to as the proposed Otago Regional Policy Statement (pORPS) 2021. It was notified as a freshwater planning instrument in its entirety, meaning that the document would follow the freshwater planning process (with limited appeal rights) rather than the traditional planning process outlined in Schedule 1 of the RMA. Some parties disagreed with this decision and advised ORC of their decision to judicially review its decision. In response, ORC filed an application for declarations itself with a number of other parties joining the proceeding.

75. The High Court decision in 2021 confirmed that ORC's decision had been unlawful. ORC was directed to identify the parts of the policy statement that met the requirements for being a freshwater planning instrument and to re-notify those parts only. This occurred in June 2021. Hearings were held during 2023 and the panel's recommendations on both parts of the pORPS were accepted by ORC in March 2024. Appeals on the pORPS have been lodged with the High Court (in relation to freshwater planning instrument parts) and the Environment Court (in relation to all other parts).

1.5. A new Land and Water Regional Plan (LWRP)

76. The final workstream agreed by ORC was the development of a new LWRP to replace its Water and Waste Plans. It was expected that by the time the LWRP was notified, the pORPS 2021 (which gives effect to all relevant higher order direction, including the NPSFM) would be operative and provide a fit-for-purpose foundation for the regional plan.

77. In 2019, ORC agreed to notify its new LWRP by 31 December 2023 based on the timeframe also agreed for notifying a new regional policy statement. When the timeframe for notifying the pORPS changed, ORC also sought to amend the LWRP notification date in order to ensure there was sufficient time for the plan to be amended to give effect to the regional policy statement.

78. Following the general election in 2023, section 80A of the RMA was amended to remove the requirement for all regional councils to notify plan changes to give effect to the NPSFM 2020 by 31 December 2024 and replace it with a later date: 31 December 2027. The Government also signalled a review of the NPSFM 2020. In early 2024, the Minister for the Environment confirmed that the extension applied to ORC. In March 2024, Council agreed to extend the notification date to 31 October 2024, primarily to provide an opportunity for its decision on the regional policy statement to be implemented in the LWRP.