



Notice of Meeting:

I hereby give notice that an ordinary meeting of the Otago Regional Council will be held on:

Date: Wednesday 22 March 2023
Time: 1:00 PM
Venue: Council Chamber, Level 2 - Philip Laing House
144 Rattray St, Dunedin

The meeting will be livestreamed on the [Council's YouTube channel](#).

Pim Borren
Interim Chief Executive Officer

**Council
PUBLIC AGENDA**

MEMBERSHIP

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

Senior Officer: Pim Borren, interim Chief Executive

Governance Support Officer: Liz Spector

Note: Reports and recommendations contained in this agenda are not to be considered Council policy until adopted.

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1. WELCOME

2. APOLOGIES

No apologies were submitted prior to publication of the agenda.

3. PUBLIC FORUM

3.1. Quintin Jane, President of the Otago Uni Students' Association - Bus fares and tertiary students

3.2. Barbara Anderson, West Harbour Community Board Member - Long term sustainable harvest of Paua and shellfish from the Aramoana mole and surrounding beaches

4. CONFIRMATION OF AGENDA

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

5. DECLARATIONS OF INTERESTS

Members are reminded of the need to stand aside from decision-making when a conflict arises between their role as an elected representative and any private or other external interest they might have. Otago Regional Councillor interests are published on the [ORC website](#).

6. CONFIRMATION OF MINUTES

**6.1. Minutes of the 22 February 2023 Council Meeting
Recommendation**

That the minutes of the (public portion of the) Council meeting held on 22 February 2023 be confirmed as a true and accurate record.

Attachments

1. Draft Minutes - Council 2023.02.22 [6.1.1 - 13 pages]



**Council
MINUTES**

Minutes of an ordinary meeting of the Otago Regional Council held in the Council Chamber, Level 2 Philip Laing House, 144 Rattray Street, Dunedin on Wednesday 22 February 2023, commencing at 1:00 PM.

MEMBERS PRESENT

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

1. WELCOME

Chairperson Gretchen Robertson welcomed Councillors, members of the public and staff to the meeting at 1:00 p.m. Staff present included Pim Borren, (interim Chief Executive), Nick Donnelly (GM Corporate Services), Anita Dawe (arrived 9:35 a.m.) (GM Policy and Science), Richard Saunders (GM Regulatory and Communications), Amanda Vercoe (GM Governance, Culture and Customer), Liz Spector (Governance Support), and Jean-Luc Payan (online) (Manager Natural Hazards).

2. APOLOGIES

Resolution: Cr Noone Moved, Cr Weir Seconded:

That apologies for lateness of Cr Laws be accepted.

MOTION CARRIED

3. PUBLIC FORUM

Pierre Marasti, representing Extinction Rebellion addressed the Council about climate change.

Cr Laws joined the meeting at 1:03 p.m.

Paul Munro, Vice President of Aramaoana League Inc, addressed the Council about erosion and backwash concerns at Shelly Bay.

4. CONFIRMATION OF AGENDA

Per a request from interim Chief Executive Pim Borren, Chairperson Robertson moved acceptance of a late confidential paper, Land and Water Plan Timelines to the agenda, citing Section 7(2)(g) of 48(1)(a) as the reason for considering with the public excluded. Cr Wilson seconded the motion.

Resolution: Cr Robertson moved; Cr Wilson seconded:

That the Council:

- 1) *Add the staff report SPS2301 Proposed Land and Water Plan Timelines to the confidential agenda under Sec 47(1)(a); s 7(2)(g).*

MOTION CARRIED

5. DECLARATIONS OF INTERESTS

No changes to the Councillor Register of Interests were noted.

6. ACTIONS (STATUS OF COUNCIL RESOLUTIONS)

Open actions from resolutions of 2022 - 2025 Council Meetings were reviewed.

7. CONFIRMATION OF MINUTES

Resolution: Cr Wilson Moved, Cr Weir Seconded

That the minutes of the Council meeting held on 24 November 2022 be confirmed as a true and accurate record.

MOTION CARRIED

Resolution: Cr Wilson Moved, Cr Weir Seconded

That the minutes of the Council meeting held on 7 December 2022 be confirmed as a true and accurate record.

MOTION CARRIED

Resolution: Cr Wilson Moved, Cr Weir Seconded

That the minutes of the Council meeting held on 12 December 2022 be confirmed as a true and accurate record.

MOTION CARRIED

8. MATTERS FOR CONSIDERATION

8.1. Annual Plan 2023/24

This report enabled Council to achieve a draft position for adjustments to the financial forecasts and work programme contained in the Otago Regional Council Long-Term Plan 2021-31 (LTP). Nick Donnelly (General Manager Corporate Services) was present to respond to questions about the report. Mr Donnelly noted an 18.8% rates increase was proposed for the 2023/24 financial year and that no formal consultation was recommended as no substantive changes from the budgets adopted in the 2021 - 2031 LTP were made.

Councillors asked questions of Mr Donnelly and interim Chief Executive Pim Borren regarding the assumptions made by staff in compiling the budget. Dr Borren noted the increase from the 12% rates rise proposed for Year 3 in the 2021-2031 LTP to the 18.8% recommended in the paper was largely due to inflationary pressures.

Cr Andrew Noone moved the staff recommendation with an additional motion that reduced the rates rise from the 18.8% to 16.8% if this was able to be done with no substantive changes to the work programmes. Dr Borren indicated he thought this could be accomplished if the Council so resolved.

Cr Scott asked how the community could provide commentary on the proposed rates increase. Dr Borren said there was no substantive change to the work programmes for Year 3 as previously consulted alongside the 2021-2031 LTP so no formal consultation would be undertaken. Mr Donnelly added that the community would be able to submit comments on the rates increase using the online YourSay application and various stakeholders would be asked to provide feedback.

Cr Malcolm asked for assurance that the rates increase as proposed in the Draft Annual Plan was the best way to implement the already agreed upon work programme and Dr Borren stated it was the best way. He noted that the ORC is a lean organisation seeking to achieve the work programme set in place by the Council.

Cr Kelliher noted the trend of large rates increases for the past three budget years and asked if the ORC would be back to business as usual now. Richard Saunders (GM Regulatory and Comms) stated the ORC would now have a budget which enables staff to deliver the programme Councillors had asked them to deliver. He said any impact on long-term future rates increases would be a decision for Council to make and for staff to implement. Mr Saunders said the current budget responds to previous decisions on work programmes per council direction.

Following further questions for staff, Councillors requested to vote on each recommendation moved by Cr Noone separately. Cr Wilson noted she would move a subsequent motion following this vote.

Resolution CM23-101: Cr Noone Moved, Cr Mepham Seconded

That the Council:

- 1) **Notes** the position on proposed expenditure adjustments to associated work programmes in year 3 Long-Term Plan 2021-31 as presented in 'Discussion' section of this report.

MOTION CARRIED

Cr Kelliher requested his vote against the motion be recorded in the minutes.

Resolution CM23-102: Cr Noone Moved, Cr Mepham Seconded

That the Council:

- 1) **Notes** the funding impacts of the proposed adjustments to year 3 Long-Term Plan 2021-31 as presented in 'Discussion' section of this report

MOTION CARRIED

Cr Kelliher requested his vote against the motion be noted in the minutes.

Cr Wilson requested her vote against the motion be noted in the minutes.

Resolution CM23-103: Cr Noone Moved, Cr Mepham Seconded

That the Council:

- 1) **Notes** that approving the proposed adjustments to year 3 Long-Term Plan 2021-31 revises the adopted financial estimates and establishes a draft position for the Annual Plan 2023-24.

MOTION CARRIED

Cr Kelliher requested his vote against the motion be noted in the minutes.

Resolution CM23-104: Cr Noone Moved, Cr Mepham Seconded

That the Council:

- 1) **Approves** the proposed adjustments to year 3 Long-Term Plan 2021-31 that establishes a draft position for the Annual Plan 2023-24.

MOTION CARRIED

Cr Kelliher requested his vote against the motion be recorded in the minutes.

Cr Laws requested his vote against the motion be recorded in the minutes.

Cr Malcolm requested his vote against the motion be recorded in the minutes.

Cr Wilson requested her vote against the motion be recorded in the minutes.

Resolution CM23-105: Cr Noone Moved, Cr Mepham Seconded

That the Council:

- 1) **Approves** proposed changes to the Otago Regional Council 'Schedule of Fees and Charges' for inclusion in communications material provided for community feedback.

MOTION CARRIED

Cr Kelliher requested his vote against the motion be recorded in the minutes.

Cr Laws requested his vote against the motion be recorded in the minutes

Cr Malcolm requested his vote against the motion be recorded in the minutes.

Cr Noone Moved, Cr Mepham Seconded

That the Council:

- 6) Sets the rate increase for the Draft Annual Plan 2023/24 at an average of 16.8%.

A Division was called:

Vote

For:	Cr Malcolm, Cr Mepham and Cr Noone
Against:	Cr Forbes, Cr Kelliher, Cr Laws, Cr McCall, Cr Robertson, Cr Scott, Cr Somerville, Cr Weir and Cr Wilson
Abstained:	Nil

MOTION FAILED

Resolution CM23-106: Cr Noone Moved, Cr Mepham Seconded

That the Council:

- 1) **Notes** the draft position for the Annual Plan 2023-24 provides the basis for communicating or consulting on the Council's intentions for year 3 Long-Term Plan and for Council to consider any final 'non-material' adjustments leading into adoption of the Annual Plan.

A Division was called.

Vote

For:	Cr Forbes, Cr McCall, Cr Mepham, Cr Noone, Cr Robertson, Cr Scott, Cr Somerville, Cr Weir and Cr Wilson
Against:	Cr Kelliher, Cr Laws and Cr Malcolm
Abstained:	Nil

MOTION CARRIED

Resolution CM23-107: Cr Noone Moved, Cr Mepham Seconded

That the Council:

- 1) **Agrees** the adjustments as summarised in the discussion section of this report do not represent significant or material changes to year 3 Long-Term Plan 2021-31.

A Division was called.

Vote

For:	Cr Forbes, Cr McCall, Cr Mepham, Cr Noone, Cr Robertson, Cr Scott, Cr Somerville and Cr Weir
Against:	Cr Kelliher, Cr Laws, Cr Malcolm and Cr Wilson
Abstained:	Nil

MOTION CARRIED

Resolution CM23-108: Cr Noone Moved, Cr Mepham Seconded

That the Council:

- 1) **Notes** the options presented in this report for the approach to finalising the Annual Plan 2023-24.

A Division was called.

Vote

For:	Cr Forbes, Cr Malcolm, Cr McCall, Cr Mepham, Cr Noone, Cr Robertson, Cr Scott, Cr Somerville, Cr Weir and Cr Wilson
Against:	Cr Kelliher and Cr Laws
Abstained:	Nil

MOTION CARRIED

Resolution CM23-109: Cr Noone Moved, Cr Mepham Seconded

That the Council:

- 1) **Approves** Option 1 being 'Communicate Council's Intentions for the Annual Plan 2023-24'.

A Division was called.

Vote

For:	Cr Forbes, Cr McCall, Cr Mepham, Cr Noone, Cr Robertson, Cr Scott, Cr Somerville and Cr Weir
Against:	Cr Kelliher, Cr Laws, Cr Malcolm and Cr Wilson
Abstained:	Nil

MOTION CARRIED

Resolution CM23-110: Cr Noone Moved, Cr Mepham Seconded

That the Council:

- 1) **Directs** the Chief Executive to prepare the supporting information for Council's preferred option for finalising the Annual Plan 2023-24.

A Division was called.

Vote

For:	Cr Forbes, Cr Malcolm, Cr McCall, Cr Mepham, Cr Noone, Cr Robertson, Cr Scott, Cr Somerville, Cr Weir and Cr Wilson
Against:	Cr Kelliher
Abstained:	Cr Laws

MOTION CARRIED

Resolution CM23-111: Cr Noone Moved, Cr Mepham Seconded

That the Council:

- 1) **Directs** the Chief Executive to complete an independent efficiency review in the 2023/2024 financial year to inform the Long-Term Plan Process.

Division called

Vote

For:	Cr Forbes, Cr Kelliher, Cr Laws, Cr Malcolm, Cr McCall, Cr Mepham, Cr Noone, Cr Robertson, Cr Scott, Cr Somerville, Cr Weir and Cr Wilson
Against:	Nil
Abstained:	Nil

MOTION CARRIED

Cr Wilson stated that as the review of the Taieri Flood and Drainage Scheme was yet to be undertaken, she moved that no rates increase for that scheme be approved and that rates remain the same as the 2022/23 rates.

Cr Wilson Moved, Cr Malcolm Seconded

That the Council:

- 1) **Directs** that targeted rates for the Taieri Flood and Drainage Scheme which are subject to a review stay at the 2022/23 rate until the review is undertaken.

A Division was called.

Vote

For:	Cr Kelliher, Cr Laws, Cr Malcolm, Cr Noone and Cr Wilson
Against:	Cr Mepham, Cr Robertson, Cr Scott, Cr Somerville and Cr Weir
Abstained:	Cr Forbes and Cr McCall

The vote was tied; Chair Robertson declined to use her casting vote, and the status quo was retained.

MOTION FAILED

At 3:35 p.m. Cr Noone moved that the meeting adjourn for 10 minutes. Cr Weir seconded and the motion passed.

At 3:50 p.m. Chair Robertson resumed the Council Meeting.

8.2. RPS Freshwater Planning Instrument Parts - Advice to Chief Freshwater Commissioner

This report sought Council's approval to provide two nominations to the Chief Freshwater Commissioner, as the Otago Regional Council's nominees to sit, hear, and make recommendations on the freshwater parts of the proposed Otago Regional Policy Statement 2021 (the freshwater planning instrument, or FPI). Anita Dawe (General Manager Policy and Science) was present to respond to questions about the report.

Following Councillor questions and deliberation, the following was resolved:

Resolution CM23-112: Cr Wilson Moved, Cr Forbes Seconded

That the Council:

- 1) **Notes** this report.
- 2) **Approves** the nominations of Allan Cubitt and Bianca Sullivan as Otago Regional Council's nominees to sit, hear and make recommendations on the freshwater planning instrument parts of the proposed Otago Regional Policy Statement 2021.
- 3) **Notes** that the Chief Freshwater Commissioner will be formally advised of ORC's two nominees in accordance with the requirements of the RMA.

MOTION CARRIED

8.3. Proposal for Participating in a Regional Sector Shared Services Council Controlled Organisation

The regional sector, through the regional Chief Executive Forum, is proposing to establish a new Regional Sector Shared Services Organisation (RSSSO) to consolidate existing collaboration programmes and put in place a fit for purpose structure to enable the sector to respond quickly to shared issues and opportunities while sharing cost and resources. It will also provide a platform for future strategic regional sector shared services initiatives. This report was provided to seek approval for Otago Regional Council to become a shareholder in such a regional sector shared services organisation. Andrea Howard (Manager Executive Advice) and Nick Donnelly (General Manager Corporate Services) were present to respond to questions about the report.

Mr Donnelly noted that CCOs were accountable through statements of intent, shareholder meetings, and various collaborative projects. Cr Scott asked there to be more transparency in projects underway and requested updates to Council on a project-by-project basis. Mr Donnelly said updates were currently provided to Councillors on various collaborative projects and will be provided in the future through annual shareholder updates which will go to the Finance Committee if this proposal is approved. Cr Noone asked whether there would be annual fees to cover shared administrative costs. Mr Donnelly said there were no direct fees, as administrative costs will be part of each project.

There were no further questions.

Resolution CM23-113: Cr Wilson Moved, Cr Noone Seconded

That the Council:

- 1) **Notes** the sole submission received during the consultation process.
- 2) **Approves** ORC becoming a shareholder in the regional sector shared services organisation, Regional Software Holdings Limited (RSHL).
- 3) **Delegates** authority to the Interim Chief Executive to take the necessary steps to become a shareholder in RSHL including signing a deed of Accession.

MOTION CARRIED

8.4. Ratifying the Otago Local Authorities' Triennial Agreement 2023-25

Under Section 15 of the Local Government Act 2002, local authorities within a region must enter into an agreement containing protocols for communication and coordination to enable them to give better effect to their core purposes under the Local Government Act by adopting a regional approach where appropriate to deliver seamless local government service. This agreement must be entered into no later than 1 March 2023 for the 2022 – 2025 triennium. Andrea Howard

(Manager Executive Advice) and Marianna Brook (Otago Mayoral Forum Secretariat) were present to respond to questions. Following a Councillor questions and debate, Cr Robertson moved:

Resolution CM23-114: Cr Robertson Moved, Cr Weir Seconded

That the Council:

- 1) **Approves** the attached Otago Local Authorities' Triennial Agreement 2023–25; and
- 2) **Authorises** the Chair to sign the Otago Local Authorities' Triennial Agreement 2023–25 on behalf of Otago Regional Council.

MOTION CARRIED

Cr Wilson noted this agreement must be signed each triennium and said she wants to ensure that future Councils can provide input into Mayoral Forum topics to drive a more meaningful Forum and moved a subsequential motion.

Resolution CM23-115: Cr Wilson Moved, Cr Forbes Seconded

That the Council:

- 1) **Requests** the chief executive provide an opportunity for Council to review the triennial agreement to inform priorities for the Otago Mayoral Forum prior to the end of the 2022 - 2025 triennium to inform future Councils.

MOTION CARRIED

8.5. Governance and Community Engagement on Dunedin City Council's Future Development Strategy

This report was provided to detail and seek confirmation of Council's preferred governance arrangements for stage one of the Dunedin City Council Future Development Strategy (FDS) work. Anita Dawe (General Manager Policy and Science) and Dr Anna Johnson from DCC (online) were available to respond to questions about the report.

Amanda Vercoe (GM Governance, Culture and Customer) provided advice per Chair Robertson's request that the Terms of Reference for the Regional Leadership Committee were able to be amended through a motion with this report and would be the most efficient avenue to do this.

Cr Scott then moved:

Resolution CM23-116: Cr Scott Moved, Cr Noone Seconded

That the Council:

- 1) **Resolves** to confirm Option 1 as detailed in the staff report as preferred Future Development Strategy governance arrangements with Dunedin City Council.
- 2) **Resolves** the preferred governance arrangement be to utilise the Regional Leadership Committee and provides delegation to that Committee to enable the Committee to consider and make decisions concerning the FDS work with the Dunedin City Council.
- 3) **Notes** the DCC's proposed approach to stakeholder and community engagement.
- 4) **Notes** that the DCC will confirm its preferred FDS governance arrangements on 28 February 2023.
- 5) **Agrees** that if the DCC chooses a different governance option to that chosen by the ORC, the FDS Steering Group will meet to discuss and determine a way forward.

MOTION CARRIED

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8.6. Confirmation of QLDC nomination to Regional Transport Committee

This paper sought approval to appoint the final member of the Otago Regional Transport Committee for the 2022-2025 triennium. Amanda Vercoe (General Manager Governance, Culture & Customer) was present to respond to questions. There were no questions for staff.

Resolution CM23-117: Cr Wilson Moved, Cr Forbes Seconded

That the Council:

- 1) **Confirms** the appointment of Queenstown Lakes District Council Councillor Quentin Smith as an appointee to the Regional Transport Committee.

MOTION CARRIED

8.7. Documents Signed Under Council Seal

This report was provided to inform the Council of delegations exercised requiring application of the Council Seal during the period 29 September 2022 through 1 February 2023. There were no questions for staff.

Resolution CM23-118: Cr Wilson Moved, Cr Noone Seconded

That the Council:

- 1) **Notes** this report.

MOTION CARRIED

8.8. Review of Open Actions (Public) from 2019-2022 Meetings

This paper was provided to present and report against outstanding actions from the 2019-2022 triennium.

Cr Malcolm asked why the action related to the Manuherekia decision-making process was marked complete. Cr Robertson said as the issues surrounding that action had moved on, any further review of the Manuherekia decision-making process was not efficient. Cr Malcolm said nothing had been resolved. Dr Borren said as these were old actions, it might be best to close them out and keep moving forward. After a further discussion, Cr Robertson said it may be best to reconsider this report at a future meeting and Cr Wilson moved:

Resolution CM23-119: Cr Wilson Moved, Cr Noone Seconded

That the Council:

- 1) **Lays** this report on the table.

MOTION CARRIED

9. RECOMMENDATIONS ADOPTED AT COMMITTEE MEETINGS

9.1. Recommendations of the Environmental Implementation Committee

Recommendations made at previous meetings of committees of Council were presented for adoption.

Resolution CM23-120: Cr Wilson Moved, Cr McCall Seconded

That the Council

- 1) **Adopts** the recommendations of the [2 February 2023 Environmental Implementation Committee](#).

MOTION CARRIED

10. CHAIRPERSON'S AND CHIEF EXECUTIVE'S REPORTS

10.1. Chairperson's Report

Resolution: Cr Malcolm Moved, Cr Forbes Seconded

That the Council:

- 1) **Note** the Chairperson's report.

MOTION CARRIED

10.2. Chief Executive's Report

Resolution: Cr Scott Moved, Cr Noone Seconded

That the Council:

- 1) **Note** the Chief Executive's report.

MOTION CARRIED

11. RESOLUTION TO EXCLUDE THE PUBLIC

Resolution: Cr McCall Moved, Cr Wilson Seconded:

That the public be excluded from the following parts of this meeting, namely:

- *Minutes of the following confidential meetings:*
 - 24 November 2022
 - 5 December 2022
 - 7 December 2022
 - 12 December 2022
- 3.1 Whare Rūnaka / Head Office Update
- 3.2 Review of Open Actions from Confidential Resolutions of 2019 – 2022 Committee and Council Meetings
- 3.3 Proposed Land and Water Plan Timelines (late paper)

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under [section 48\(1\)](#) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
<i>Confidential Minutes of:</i> <ul style="list-style-type: none"> • 24 November 2022 Council Meeting • 5 December 2022 Council Meeting 	To protect the privacy of natural persons, including that of deceased natural persons – Section 7(2)(a) To protect information where the making available of the information—would be likely unreasonably to prejudice the	Section 48(1)(a): Subject to subsection (3), a local authority may by resolution exclude the public from the whole or any part of the proceedings of any meeting only on 1 or more of the

<ul style="list-style-type: none"> • 7 December 2022 Council Meeting • 12 December 2022 Council Meeting 	<p>commercial position of the person who supplied or who is the subject of the information – Section 7(2)(b)(ii)</p> <p>To enable any local authority holding the information to carry out, without prejudice or disadvantage, commercial activities – Section 7(2)(h)</p> <p>To enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations) – Section 7(2)(i)</p> <p>To prevent the disclosure or use of official information for improper gain or improper advantage – Section 7(2)(j)</p>	<p>following grounds:</p> <p>(a) that the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</p>
<p>3.1 ORC Whare Rūnaka/ Head Office Update</p>	<p>To protect information where the making available of the information—would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information – Section 7(2)(b)(ii)</p> <p>To protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information—would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied – Section 7(2)(c)(i)</p> <p>To enable any local authority holding the information to carry out, without prejudice or disadvantage, commercial activities – Section 7(2)(h)</p> <p>To enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations) – Section 7(2)(i)</p>	<p>Section 48(1)(a): Subject to subsection (3), a local authority may by resolution exclude the public from the whole or any part of the proceedings of any meeting only on 1 or more of the following grounds:</p> <p>(a) that the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</p>

<p>3.2 Review of Open Actions from Confidential Resolutions of 2019-2022 Council and Committee meetings</p>	<p>To avoid prejudice to measures protecting the health or safety of members of the public – Section 7(2)(d) To enable any local authority holding the information to carry out, without prejudice or disadvantage, commercial activities – Section 7(2)(h) To enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations) – Section 7(2)(i) To prevent the disclosure or use of official information for improper gain or improper advantage – Section 7(2)(j)</p>	<p>Section 48(1)(a): Subject to subsection (3), a local authority may by resolution exclude the public from the whole or any part of the proceedings of any meeting only on 1 or more of the following grounds: (a) that the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</p>
<p>3.3 Proposed Land and Water Plan Timelines</p>	<p>To maintain legal professional privilege – Section 7(2)(g)</p>	<p>Section 48(1)(a): Subject to subsection (3), a local authority may by resolution exclude the public from the whole or any part of the proceedings of any meeting only on 1 or more of the following grounds: (a) that the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</p>

This resolution was made in reliance on [section 48\(1\)\(a\)](#) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by [section 6](#) or [section 7](#) of that Act or [section 6](#) or [section 7](#) or [section 9](#) of the Official Information Act 1982, as the case may require, which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public.

12. CLOSURE

There was no further business and Chairperson Robertson declared the public meeting closed at 4:50 p.m.

 Chairperson

 Date

MINUTES – Council Meeting 2023.02.22

6.2. Minutes of the 8 March 2023 Council Meeting

Recommendation

That the minutes of the (public portion of the) emergency Council meeting held on 8 March 2023 be confirmed as a true and accurate record.

Attachments

1. Confidential Minutes - Council 2023.03.08 [6.2.1 - 2 pages]



Council MINUTES

Minutes of an emergency meeting of the Otago Regional Council held in the Council Chamber, Level 2 Philip Laing House, 144 Rattray Street, Dunedin on Wednesday 8 March 2023, commencing at 3:31 PM.

PRESENT

Cr Gretchen Robertson (online) *(Chairperson)*
Cr Lloyd McCall *(Deputy Chairperson)*
Cr Alexa Forbes (online)
Cr Gary Kelliher (online)
Cr Michael Laws (online)
Cr Kevin Malcolm
Cr Tim Mephram
Cr Andrew Noone
Cr Bryan Scott
Cr Alan Somerville

WELCOME

Deputy Chairperson Lloyd McCall welcomed Councillors, members of the public and staff to the meeting at 3:31 pm and led the meeting in a karakia. Staff present were Nick Donnelly (GM Corporate Services), Amanda Vercoe (GM Governance, Culture and Customer) and Liz Spector (Governance Support). Staff present electronically were Pim Borren (Interim Chief Executive) and Richard Saunders (GM Communications).

1. APOLOGIES

Resolution: Cr Noone Moved, Cr Mephram Seconded:

- 1) *That the apologies for Cr Weir, Cr Wilson be accepted.*

MOTION CARRIED

Cr Malcolm left the meeting at 3:32pm which caused the quorum to be lost.

Chair McCall moved to adjourn the meeting for ten minutes to allow Cr Robertson to physically join the meeting which would cause the quorum to be regained. Cr Scott seconded the motion for a ten-minute adjournment and the motion passed. Members present following the departure of Cr Malcolm were Cr McCall, Cr Mephram, Cr Noone, Cr Scott, and Cr Somerville. Members present electronically were Cr Forbes, Cr Kelliher, Cr Laws, and Cr Robertson.

Cr Robertson physically joined the meeting at 3:42pm and Deputy Chair McCall called the meeting back to order at 3:43 pm. Members present were Cr McCall, Cr Mephram, Cr Noone, Cr Robertson, Cr Scott, and Cr Somerville constituting a quorum. Members present electronically were Cr Forbes, Cr Kelliher and Cr Laws.

Cr Robertson then moved that she vacate the Chair for this meeting under ORC Standing Orders 14.1 and requested Deputy Chair McCall to continue chairing. Cr Scott seconded Cr Robertson's motion to vacate the chair for the meeting, and the motion passed.

2. CONFIRMATION OF AGENDA

Deputy Chair McCall confirmed the agenda as presented.

3. DECLARATIONS OF INTERESTS

No changes to the Councillor Declarations of Interests were noted.

4. RESOLUTION TO EXCLUDE THE PUBLIC

Resolution: Cr McCall Moved, Cr Noone Seconded:

- 1) *That the meeting moves into confidential session to consider the report **Local Government Funding Agency Requirements for Funding Drawdown.***

MOTION CARRIED

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under [section 48\(1\)](#) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
<i>Local Government Funding Agency (LGFA) Requirements for Funding Drawdown</i>	To protect the privacy of natural persons, including that of deceased natural persons – Section 7(2)(a) To maintain legal professional privilege – Section 7(2)(g)	Section 48(1)(a): Subject to subsection (3), a local authority may by resolution exclude the public from the whole or any part of the proceedings of any meeting only on 1 or more of the following grounds:

		(a) that the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.
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This resolution was made in reliance on [section 48\(1\)\(a\)](#) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by [section 6](#) or [section 7](#) of that Act or [section 6](#) or [section 7](#) or [section 9](#) of the Official Information Act 1982, as the case may require, which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public.

5. CLOSURE

There was no further business and Deputy Chairperson Lloyd McCall declared the public portion of the meeting closed at 3:47 pm.

Chairperson

Date

7. ACTIONS (STATUS OF COUNCIL RESOLUTIONS)

7.1. Actions

Open actions from resolutions of Council are provided for review.

Action Register

Search Criteria

Showing Completed Items: Yes

Include Items Completed From: 15/02/2023

Applied Filters

Start Meeting Date: 1st Oct 2022

Meeting Types: Council Meeting

Generated By: Liz Spector

Generated On: 15/03/2023 at 11:12am

Council Agenda - 22 March 2023 - Actions (Status of Council Resolutions)

Meeting Date	Item	Status	Action Required	Assignee/s	Action Taken	Due Date
07/12/2022	GOV2277 Consideration of terms of reference for committee structure adopted on 9 Nov 2022	Completed	Initiate and lead discussions between ORC, DCC, QLDC and Waka Kotahi on establishment of a joint-member subcommittee(s) of the Public and Active Transport Committee by 28 February 2023. Res CM22-289	Chairperson, General Manager Regulatory and Communications, Interim Chief Executive	14/02/2023 EA to CE & Chair: An update will be provided at the 28 Feb 2023 meeting. 14/03/2023 Governance Support Officer: Following discussions with DCC, QLDC and Waka Kotahi, it was decided establishment of a joint-member subcommittee would not be progressed.	23/02/2023
07/12/2022	GOV2278 Review of Open Actions (Public) from 2019-2022 Meetings	Completed	The Chief Executive will provide detailed commentary on the open actions from the 2019-2022 triennium to the 22 Feb 2023 Council Meeting alongside the quarterly report. Res CM22-297	General Manager Regulatory and Communications, Interim Chief Executive	13/02/2023 Governance Support Officer: A report on open actions from the 2019 - 2022 triennium was provided to Council with the 22 February 2023 agenda and will be provided quarterly going forward.	22/02/2023
07/12/2022	STG2207 Otago Lakes Management Review report	Completed	The Chair and CE shall establish a working group to advance a Lakes Strategy for the region, engaging with all relevant stakeholders, and report progress to the 22 March 2023 Council Meeting. Res CM22-298	Chairperson, General Manager Governance, Culture and Customer, General Manager Regulatory and Communications, Interim Chief Executive	11/01/2023 Governance Support Officer: Meeting of working group organised for 24 January 2023. 13/02/2023 General Manager Governance, Culture and Customer: The Working Group met on 24 January 2023 to determine scope and priorities. The Group is currently considering membership and finalising formal terms of reference. 14/02/2023 EA to CE & Chair: ToR has been drafted. Update will be provided at the 22 March 2023 meeting.	22/03/2023

Council Agenda - 22 March 2023 - Actions (Status of Council Resolutions)

Meeting Date	Item	Status	Action Required	Assignee/s	Action Taken	Due Date
					14/03/2023 Governance Support Officer: An update from the working group reported progress to the 22 March 2023 meeting per resolution CM22-298.	
07/12/2022	GOV2277 Consideration of terms of reference for committee structure adopted on 9 Nov 2022	In Progress	Provide a report to the Public and Active Transport Committee (PATC) on possible development of a regional public and active transport connectivity strategy by 30 April 2023. Res CM22-290	Interim Chief Executive, Manager Transport	14/02/2023 EA to CE and Chair: This action is progressing.	30/04/2023
07/12/2022	COMS2204 Otago Regional Council Community Survey Results 2022	In Progress	Provide progress reports on the Community Survey Action Plan to the Regional Leadership Committee during the 2023 financial year. Res CM22-300	General Manager Regulatory and Communications, Manager Communications and Marketing	01/02/2023 GM Regulatory and Comms R Saunders: A report will be prepared for the 10 May 2023 Regional Leadership Committee agenda.	31/12/2023
22/02/2023	CS2304 Annual Plan 2023/24	Assigned	Have an independent efficiency review performed in FY 2023/24 to inform the Long-Term Plan process. CM23-111	General Manager Corporate Services and CFO, General Manager Regulatory and Communications, Interim Chief Executive		31/12/2023
22/02/2023	GOV2286 Proposal for Participating in a Regional Sector Shared Services Council Controlled Organisation	Assigned	Undertake steps to become a shareholder in Regional Software Holdings Ltd including the signing of a Deed of Accession. CM23-113	General Manager Corporate Services and CFO		22/03/2023
22/02/2023	Recommendations of the Environmental Implementation Committee	Assigned	Investigate the process required to have RHDV removed from the National Unwanted Organism list. EIC23-104	General Manager Policy and Science, Manager Science		11/05/2023

8. MATTERS FOR CONSIDERATION

8.1. Six Monthly Report to the Minister

Prepared for:	Council
Report No.	POL2301
Activity:	Governance Report
Author:	Fleur Matthews, Manager Policy and Planning
Endorsed by:	Anita Dawe, General Manager Policy and Science
Date:	22 March 2023

PURPOSE

- [1] To present for adoption by Council, the seventh progress report to the Minister for the Environment, in accordance with section 27 of the Resource Management Act 1991 in relation to the recommendations made under section 24A of the Resource Management Act.

EXECUTIVE SUMMARY

- [2] The Minister for the Environment wrote to the Otago Regional Council on 18 November 2019, setting out several recommendations regarding the development of a fit for purpose planning framework for Otago. One of the requirements outlined in the letter was a formal report, every six months, on progress against three measures. The reports have been provided every six months since that time, with the most recent in August 2022.
- [3] The report, as attached, updates the Minister on both capacity and capability, and work programmes, in accordance with the requirements set out in the initial 2019 correspondence.

RECOMMENDATION

That the Council:

- 1) **Notes** this report.
- 2) **Approves** the seventh report to the Minister for the Environment, that reports on progress against the recommendations made in his letter dated 19 November 2019.
- 3) **Notes** that the next report will be brought to Council in September 2023.

BACKGROUND

- [4] In December 2019, ORC agreed to the work programme as set out by the Minister, in response to the investigation led by Professor Skelton under Section 24A of the Resource Management Act. Part of that work programme requires 6-monthly progress reports.
- [5] The progress reports have been provided in April and October 2020, in March and September 2021, and in March and August 2022. The reports address the recommendations of the Minister, which are to:
-

- *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;*
- *Develop and adopt a programme of work to achieve the following:*
 - *By November 2020, a complete review of the current Regional Policy Statement (RPS) that is publicly notified, with the intention that it is made operative before the review of its Land Water Regional Plan (LWRP) is notified;*
 - *By 31 December 2023, 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 (FMUs), covering all catchments within the region.*
 - *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 National Policy Statement for Freshwater Management (NPS-FM).*

- [6] In addition, the following matters were to be included as part of the 6-monthly updates:
- *Progress made in developing science, planning, consenting, monitoring and enforcement, and land management organisational capability and capacity;*
 - *Progress in achieving the [above] recommendations 1, 2 and 3; and*
 - *A summary of freshwater resource consenting activity for the reporting period.*
- [7] The seventh report is due in March 2023. The previous report was brought forward by one month due to Local Body Elections.

DISCUSSION

- [8] Since December 2019, staff have continued to work to implement the agreed work programme.
- [9] A full report is appended, but in summary, against the formal request above, the following has been undertaken:
- Progress has been made across the organisation to develop and improve organisational capacity and capability across planning, science, environmental monitoring, consents and compliance monitoring. While there is still difficulty recruiting in the current labour market, a number of vacancies have been filled since the last report. Where possible, consultants are being used to assist.
 - The Environmental Data Portal was launched in February 2023, which provides information on water quality and quantity. The portal enables users to access full historical records for all sites, as well as flood and low flow information.
 - The proposed Regional Policy Statement (pRPS) has been separated out, in accordance with the High Court declaration on what relates to freshwater. The freshwater planning instrument was notified in September 2022 in accordance with your direction last year, and submissions and further submissions have been received. The non-freshwater Hearing began in January this year and will continue until early June. The Freshwater Hearing has not yet started.
 - The Land and Water Regional Plan (LWRP) work programme has continued, with a significant amount of technical (scientific and economic) work progressing, as well as community consultation and targeted consultation on the region wide provisions.

- The development of a fit for purpose planning framework is complete, with all relevant parts of Plan Change 7 and Plan Change 8 operative, and Plan Change 1 also operative.
- The Consents Team has processed the majority of the Deemed Permit replacements. There are 22 applications remaining, and they are being processed in line with the agreed staging plan.
- A summary of freshwater consenting has been prepared and is included in the attached report.

OPTIONS

- [10] The options for Council are to accept the report, and update the Minister, in accordance with his recommendations. The report simply outlines the progress on work programmes, and improvements in capacity and capability.
- [11] Councillors could choose not to update the Minister and be in breach of their commitment to the Minister to do so.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [12] The outcome of the Minister's review was to ensure ORC developed a fit for purpose framework for managing Otago's land and freshwater. This most closely aligns with *Healthy Water, Soil and Coast* but also touches on a number of other parts of the Strategic Directions.
- [13] 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

- [14] 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 Considerations

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

Legislative and Risk Considerations

- [16] The Minister has requested a formal response under section 27 of the Resource Management Act 1991. 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

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

Communications Considerations

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

NEXT STEPS

[19] The next steps are to continue to implement the work programme and prepare for the next report due in September 2023.

ATTACHMENTS

1. March 2023 Report to the Minister attachment draft [8.1.1 - 16 pages]

23 March 2023

Minister for the
Environment
Private Bag 18041
Parliament Buildings
Wellington 6160

BY EMAIL

Dear Minister

Report under section 27 of the Resource Management Act 1991

In accordance with your letter of 18 November 2019 and following on from the previous six reports from 2020 until now, the following comprises the Otago Regional Council's seventh report, in accordance with section 27 of the Resource Management Act 1991 (the Act) and the recommendations pursuant to section 24 of the Act. This is the first report of the current triennium.

This report will address the following:

- *Progress made in developing science, planning, consenting, monitoring and enforcement, and land management organisational capability and capacity; and*
- *Progress in achieving the [above] recommendations 1, 2 and 3 (copied below for ease of reference):*
 1. *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;*
 2. *Develop and adopt a programme of work to achieve the following*
 - i. *By November 2020¹, a complete review of the current RPS that is publicly notified, with the intention that it is made operative before the review of its LWRP is notified;*
 - ii. *By 31 December 2023, 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 catchments within the region.*
 3. *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 National Policy Statement for Freshwater Management; and;*
- *A summary of freshwater resource consenting activity for the reporting period.*

As you are aware, we have sought a 6-month extension for notifying the Land and Water

¹ Please note an extension of this date to 30 June 2021 as per your letter to ORC of 11 September 2020.

Regional Plan for Otago. This extension was sought due to the uncertainty around the application of section 80A of the Resource Management Act and the challenging implementation of the High Court declaration, as well as the flow on impacts on the dual processes for the proposed Otago Regional Policy Statement. At the time of writing, we have not received a formal response and therefore are continuing to work towards notification by 31 December 2023.

Progress Made in Developing Science, Planning, Consenting, Monitoring and Enforcement, and Land Management Organisational Capability and Capacity

The following table outlines the particular improvements in each of the areas specifically identified in your report.

Area	What we advised in August 2022	Latest Update
Science	<p>The Science Team is in place and work has progressed on implementing programmes for biodiversity, land and water.</p> <p>Recruitment has been ongoing, with only one role is left to recruit. The Science Manager has been in the role for six months now.</p> <p>The Environmental Monitoring (EM) Team was fully resourced towards the end of 2021/22 and will be recruiting 2 more roles that are funded in 2022/23.</p> <p>The EM team work closely with the Science team and are responsible for the State of the Environment monitoring programme. Their work programme will also be critical to the implementation of the NPSFM, including through the increased monitoring requirements.</p>	<p>The Science Team is continuing to produce material to support the LWRP development.</p> <p>There is a new vacancy in the soil science space, with one of the team moving to MfE. Recruitment is underway for that role.</p> <p>Some of the hydrology staff have had a slight adjustment in focus across early 2023 to support the work required as Otago neared drought. With recent rain, the pressure on rivers is easing and staff are now redirecting back to the LWRP.</p> <p>Significant contracts have been let including for habitat modelling, and threatened species work, as well as work on identifying Outstanding Water Bodies.</p> <p>One of the ecologists has been seconded to the Policy team to support the LWRP, with their role backfilled with consultant support.</p> <p>In the next few months, significant science team time will be spent on review and feedback on LWRP drafting.</p> <p>Development of the Long term plan 2024/25 is now underway in the Science Team.</p> <p>The EM team are in the process of recruiting the additional two Technical roles for the 2022/23 financial year.</p> <p>Following recruitment of the Manager Environmental Monitoring, secondment positions for Acting Team Leader – Central Otago and Environmental Monitoring Lead – Coastal Otago have been put in place</p>

		<p>for a period of 6 months.</p> <p>A restructure of the EM team and additional staff recruitment will be undertaken in 2023/24 to start to move towards meeting the increased monitoring requirements following the implementation of NPSFM.</p>
Planning	<p>The Land and Water Regional Plan Governance Group have increased the frequency of meetings, to monthly, in response to the work programme. A representative from Kai tahu ki Murihiku now has a permanent role on the group and a wider group of ORC Councillors are also attending in an observer capacity.</p> <p>There is a critical shortage of staff in the Policy team, with all urban and RPS roles vacant, and recruitment challenging. The RPS work is now being driven by consultants.</p> <p>There are also vacancies in the Land and Freshwater team but they are currently being managed through the use of external consultants. Recruitment for all vacant policy roles will commence shortly.</p> <p>The final part of the Omnibus Plan Change – the urban provisions of Plan Change 8 are beyond appeal and, subject to Council approval, will be made operative from September. This is a valuable step for managing, in particular, sediment discharges from urban development.</p> <p>The recent High Court declaration decision on the proposed RPS has required some additional work for staff. The RPS team is working through the implications, and how to separate out the proposed RPS in order to renotify the parts considered by the High Court to be freshwater.</p> <p>Council approval is being sought in August to appoint a Hearings Panel</p>	<p>The Land and Water Regional Plan Governance Group has continued to meet, including mana whenua representatives and a wider group of ORC Councillors attending as observers.</p> <p>There remains a critical shortage of staff in the Policy team, although some roles have been filled. This includes a Manager Policy and Planning for a three-year period, a Team Leader – RPS, Air and Coast, and two Senior Policy Analysts. Secondments from the Science and Consents teams are also assisting with drafting the Land and Water Regional Plan. Recruitment remains challenging, but we will continue to advertise and recruit as we can.</p> <p>Gaps in the team are being filled by the use of consultants. In particular, the RPS work is being driven by consultants.</p> <p>Updates on the proposed RPS and Land and Water Plan are provided further down in the report.</p>

	<p>to hear the non-freshwater parts of the proposed RPS. In September, Council will be asked to approve for notification, the parts of the proposed RPS that are freshwater.</p> <p>The Freshwater Hearing Panel had directed parties to participate in meaningful negotiations to attempt to settle or narrow points of difference. Council led a series of pre-hearing discussions (in confidence and without prejudice) with interested parties across the months of June and July. This resulted in some points of differences being narrowed, and supplementary evidence was being prepared for the Panel. A consequence of the High Court declaration is that the Freshwater Panel that was appointed is now dissolved which means the supplementary evidence will be redirected to the new Panels, when they are appointed.</p>	
<p>Consenting</p>	<p>Staffing levels remain generally in line with those indicated in the previous report, but we are recruiting for one FTE at the Senior Planner level. Support is continuing to be provided by contractors, for over-flow processing. The vacant FTE is not affecting processing timeframes as it was due to an internal promotion within the team.</p> <p>Stakeholders and consultants have been kept regularly up to date on processing and resources available.</p> <p>An update on consent processing under Plan Change 7 is provided further down in the report.</p>	<p>Staffing levels remain generally in line with those indicated in the previous report. We have recruited internally for two Senior Consent Planners. There is one FTE vacant in the team, which is due to internal movements within the team. Support is continuing to be provided by contractors for over-flow processing. However, the bulk of the workload is handled by internal staff.</p> <p>Stakeholders and consultants have been kept regularly up to date on processing and resources available. This is through regular email updates and meetings.</p> <p>An update on consent processing is provided further down in the report. The number of applications remaining in the system relating to deemed permits processing has reduced greatly, with the team making excellent progress.</p>

<p>Monitoring & Enforcement</p>	<p>Appointments have been made for a Team Leader Compliance Monitoring (in Central Otago), a Team Leader Investigations and a Senior Investigator. Recruiting these roles was a significant challenge in a competitive labour market.</p> <p>Staff turnover has increased, with two Environmental Officers, one Environmental Data Officer and one Incident Responder vacancies in the last six months.</p> <p>A total of 37.5 FTE dedicated to CME activities is budgeted in the 2021/22 financial year.</p> <p>Ongoing business process and system improvements continue to enable staff to better undertake their CME activities, including introducing tools for mobility in the field, updating standard operating procedures, and streamlining enforcement and compliance monitoring processes. These efficiency improvements are reflected in both increased onsite audits and inspections as well as formal enforcement actions being taken by ORC.</p> <p>Work continues to improve the Council's new Environmental Monitoring System. As noted in the last report, year on year desktop compliance inspections have increased by 25.5%.</p>	<p>The Compliance Monitoring Team is fully staffed.</p> <p>Business process, training and system improvements documented in previous reports are reflected in increased desktop compliance reviews, and on-site compliance audits and inspections.</p> <p>Appropriate formal enforcement action is being taken, as well as an increase in compliance education and engagement activities in IWG, animal effluent, forestry, septic and wastewater discharges, and other discharges to water.</p> <p>The Environmental Data Portal which provides information on water quality and water quantity was launched on 22 February 2023. This portal enables users to access full historical records for all sites held by the ORC as well as providing up to date flood and low flow information. The new portal can be found here: https://envdata.orc.govt.nz/AQWebPortal</p> <p>Year on year desktop compliance inspections have increased by 37%. This follows a full year increase of 25.5% for the year ending 30 June 2022.</p> <p>Several sites in Otago are currently or have recently been in low flow. ORC is actively monitoring consent holders with low flow conditions, including daily checks of telemetered water meter data.</p>
<p>Land Management</p>	<p>Since March 2022, the Environmental Implementation Team recruited three catchment advisors to support communities across Otago to implement best practice with a specific focus on water quality, biodiversity</p>	<p>Since August 2022 the Environmental Implementation team has increased FTE across the region. There are currently two vacancies (one is a fixed term maternity leave cover) in the catchment advisor space but</p>

	<p>and biosecurity.</p> <p>Due to an internal shift, the Manager, Environmental Implementation role was vacated however it is currently being recruited, with an Acting Manager covering the role in the interim.</p> <p>Recruitment across the team has been challenging and there are continued recruitment processes still underway for a Project Delivery role and Biosecurity Specialist. In addition to this, recruitment is also now underway for two Biosecurity Officer roles and an additional Biosecurity Specialist. The total of 36 FTE committed in the LTP is still on track, to ensure programme delivery over time.</p> <p>The team has continued to build on core biosecurity work through further development of strategic decision making and through continuing and building on face-to-face community led pest management approaches. The two new biosecurity specialist roles will enable further strategic approaches for integration into biosecurity work.</p> <p>On the ground community facing work continues to build with catchment advisors making new networks and developing projects. In addition, the project delivery specialists are managing large scale projects involving the community and mana whenua partners. Our ECO Fund has also provided \$290,000 worth of funding to community groups across the region who are delivering environmental projects. Further incentive funding has also been provided to support replanting after wilding conifer removal, rabbit management and improving water quality.</p> <p>The Integrated Catchment</p>	<p>recruitment for these roles is underway and there are a good number of applicants for both roles.</p> <p>The Manager, Environmental Implementation role has also been filled.</p> <p>Recruitment pressures have eased over the last six months. The vacant biosecurity roles have been filled as well as a project delivery and support roles.</p> <p>The team has continued to build on core biosecurity work through further development of strategic decision making and through continuing and building on face-to-face community led pest management approaches.</p> <p>On the ground community facing work continues to build with catchment advisors making new networks and developing projects. In addition, the project delivery specialists are managing large scale projects involving the community and mana whenua partners.</p> <p>Our ECO Fund has reopened for 2023/2024 where funding is available to community groups across the region who are delivering environmental projects. Further incentive funding has also been provided to support replanting after pest plant removal, rabbit management and, supporting private landowners who have biodiversity values that are protected in perpetuity and for improving water quality.</p> <p>The Integrated Catchment Management framework is being developed further. The working group has been formed and meetings are underway with community members and our mana whenua partners for</p>
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	<p>Management framework is being developed further through an internal cross directorate working group before going to the community and our mana whenua partners for collaborative development of integrated catchment action plans. These CAPs are planned to align to the FMUs and will give effect to the action plans required in the NPSFM 2020.</p> <p>Ongoing business process and system improvements continue to enable staff to better undertake their work to ensure that data is accurate relevant.</p>	<p>collaborative development of integrated catchment action plans. The catchment action plans will align to the FMUs and will integrate action plans required in the NPSFM 2020 with the requirements of Freshwater Farm Plans.</p> <p>Ongoing business process and system improvements continue to enable staff to better undertake their work to ensure that data is accurate and relevant.</p> <p>Funding has been offered to ORC from MfE for two roles over the next 3 years which we are looking to finalise. These roles are for Catchment Group Planner and Senior Advisor Iwi Partnerships and Engagement.</p>
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Progress in Achieving the specified recommendations

The particular recommendations as outlined in the original letter, and ORC’s response, to date, is detailed below:

Action	What we advised in August 2022	Latest Update
<i>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.</i>	<p>The Omnibus plan change provisions are, subject to Council approval, all operative, or soon to be operative.</p> <p>The rural provisions of Plan Change 8 (PC8) were made operative from 4 June 2022. Plan Change 1 was made operative from 9 July 202.</p> <p>A hearing for PC8 – Urban was held in March 2022, and a decision released in July. No appeals have been received and the provisions of PC8-urban, will be operative, subject to Council endorsement, from 3 September 2022.</p>	<p>The final part of Plan Change 8 Urban Discharges was made operative from 3 September 2022.</p> <p>All Omnibus plan change provisions are now operative. No further reporting will be provided against this action.</p>
<i>By November 2020, a complete review of the current RPS that is publicly notified, with the intention that it be made operative before the review of the LWRP is notified</i>	<p>In relation to the proposed RPS, the s42A reports have been available since 4 May 2022. At the direction of the Panel, meaningful but informal discussions, by chapter, have occurred across June and July. These discussions were intended to either provide more rationale for Council’s position or understand submitters positions, and where possible settle or narrow points of difference. As a result of the discussions, amended s42A reports were being prepared (as supplementary evidence) and were to be filed with the Freshwater Panel by 5 August.</p> <p>The Freshwater Panel had issued alternative timetabling directions to accommodate the supplementary evidence however this timetable has been overtaken by the High Court declaration, as noted earlier.</p> <p>The High Court declaration hearing on whether the proposed RPS 21 is a freshwater instrument in its</p>	<p>The High Court decision on 22 July 2022 has required Council to re-notify those parts of the PORPS it considers to be a freshwater planning instrument, and to continue with the process for the remainder (the ‘non-freshwater’ parts) of the PORPS through the Resource Management Act 1991, Schedule 1 hearing process.</p> <p>Council approved re-notification of the parts of the PORPS that are freshwater and appointed a panel to hear the non-freshwater parts of the POPRS in September 2022. Hearings on the non-freshwater part of the PORPS commenced on 23 January 2023, and will continue until early June 2023, with time for the Hearing Panel to deliberate and prepare its report in June and July.</p> <p>Council wrote to the Chief Freshwater Commissioner in February 2023 with the nominees for the Freshwater hearing panel from Council and tangata whenua. The</p>

	<p>entirety was heard in February 2022, with the decision released in July. The consequences of the decision have been set out earlier, but in short, there will now be two separate processes to hear each part of the proposed RPS – the parts of the proposed RPS that are freshwater, and the parts that are non-freshwater.</p> <p>For the non-freshwater parts, a new Hearings Panel will need to be appointed. Once that has occurred, a new timetable will be able to be issued to parties.</p> <p>For the freshwater parts, the first step is to determine how to separate the proposed RPS. Once Council has approved the delineation and agreed to renotify the freshwater parts of the proposed RPS, the process as provided for in s80A will take place – Council nominates Commissioners, the Chief Freshwater Commissioner receives the relevant documents, appoints a Panel, and sets out a timetable.</p> <p>All of these decisions around the proposed RPS impact on the timelines however staff and Councillors are working to progress as quickly as reasonably possible.</p> <p>With regard to the partially operative RPS, the Court of Appeal dismissed Port Otago Limited’s (PoL) appeal. PoL sought leave to appeal to the Supreme Court. Leave to appeal was granted, the approved question being “whether the Court of Appeal was correct to dismiss the appeal”. The hearing was held on 11 and 12 May. No decision has yet been released.</p>	<p>nominees are the same as those appointed to the original Freshwater Hearing Panel, and are members of the current non-freshwater Hearing Panel.</p> <p>The Freshwater Hearing has not yet been scheduled, however it could be completed as early as the end of September 2023.</p> <p>The non-Freshwater Hearing Panel and Council are keen to ensure that the two Panels do not recommend changes to the RPS that result in inconsistencies or lack of integration however the Panel is aware there is a lack of legal mechanisms to fully accommodate this.</p>
<p><i>By 31 December 2023, a new LWRP for Otago that includes objectives,</i></p>	<p>The first round of consultations in every Freshwater Management Unit (FMU) or rohe has now occurred, and summaries of the consultation feedback has been</p>	<p>The second round of consultation across all FMUs commenced in October 2022 and was completed at the start of December 2022. This round of FMU community</p>

<p><i>strategic policies, region-wide activity policies, & provisions for each of the FMU's, covering all catchments within the region</i></p>	<p>made available.</p> <p>Good progress has been made on confirming the regional provisions policy direction with the Strategy and Planning Committee, with all topics having a confirmed policy direction via a series of workshops with Councillors and formal papers to the Strategy and Planning Committee. Consultation on the region wide provisions is due to commence from September.</p> <p>The second round of consultation across all FMU's was intended to commence from August however the release of the Ministry for the Environments' Periphyton Guidelines has created challenges that the Science team are working through. The periphyton guidelines under protect Otago's rivers and our science team have made attempts to enhance the model to better represent what we understand is happening in our rivers. The guidelines are having a meaningful impact on the overall timeline.</p> <p>In July staff presented additional timeline options to the LWRP GG that would enable some additional work on periphyton modelling to occur however since that time, updated timelines have been discussed with the Governance Group, taking into consideration the Minister's latest (July) correspondence.</p> <p>The science programme to support the pLWRP is progressing well. As advised in the last update, the programme includes quality modelling to undertake analysis of future mitigation scenarios for nitrogen and phosphorus (periphyton), sediment and <i>E.coli</i> at the regional scale. and draws on and refines work published by the Our Land and Water programme as</p>	<p>consultation was focussed on seeking feedback on:</p> <ul style="list-style-type: none"> • possible environmental outcomes for identified values for FMUs and rohe in the Otago region; and • possible actions (regulatory and non-regulatory) for achieving the environmental outcomes. <p>Consultation with key stakeholders on the region wide provisions was completed in November and December 2022. These stakeholder discussions were focused on identifying and confirming issues and options for developing management approaches and planning responses for different categories of activities.</p> <p>Policy staff have commenced drafting provisions for the LWRP, incorporating the feedback received during the second round of FMU community consultation and the key stakeholder workshops.</p> <p>However, Council and our iwi partners consider that achieving notification of the pLWRP by December 2023 will be extremely difficult, and have sought a 6-month extension. This is due primarily to the challenges and delays associated with the High Court declaration on how s80A applies including:</p> <ul style="list-style-type: none"> • the Hearing process for the freshwater visions in the pORPS will not be starting until August 2023 (subject to the appointment of a Hearing Panel by the Chief Freshwater Commissioner), meaning there is greater uncertainty with respect to the visions, making it more challenging to give effect to through the pLWRP; • having to determine for every single provision whether it is a freshwater instrument according to the Court's determination (and the associated legal risks either
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	<p>a part of the National Science Challenge.</p> <p>Regional sediment models are still being pursued with results expected late September. <i>E.coli</i> models have been explored, but have been discounted as any model would not be able to develop outputs with any reasonable certainty.</p> <p>Work on wetlands protection provisions and delineation are well underway. Conversations with stakeholders and landowners have begun in the Upper Taieri Catchment.</p> <p>The quantity modelling commissioned to date includes bespoke modelling in 15 catchments where detailed analysis is required. All other catchments will be covered by a region wide model. This modelling is also supported by ecological habitat model development in some catchments, although this work was not completed this summer as planned as river flows have persisted at unseasonably high levels.</p> <p>The Science Team are planning to establish habitat models as early as possible in 2022/23. This work is dependent on flows and is a risk that is being actively managed for the project. The key catchments that are impacted are the Taieri and several North Otago Catchments such as the Shag, Wainakarua and Kakanui.</p> <p>With regard to the Manuherekia rohe, the Technical Advisory Group (TAG) are continuing to work to an agreed set of tasks, and likely to report back to Council later this year. The work has been delayed as a key input; a hydrological model has not yet been delivered. TAG is still on track to complete this work to</p>	<p>way); and</p> <ul style="list-style-type: none"> the lack of a legal mechanism to align freshwater and non-freshwater provisions within a single plan to allow for an integrated document. <p>The science programme to support the LWRP is progressing well. As advised in the last update, the programme includes quality modelling to undertake analysis of future mitigation scenarios for nitrogen and phosphorus (periphyton), and sediment. This work draws on and refines work published by the Our Land and Water programme as a part of the National Science Challenge.</p> <p>Modelling work is now substantially complete, with final reports pending. Future policy decisions may necessitate further modelling.</p> <p>Work on wetlands protection provisions and delineation are well underway. Conversations with stakeholders and landowners in the Upper Taieri Catchment have commenced and are developing positively.</p> <p>The water quantity modelling commissioned to date includes bespoke modelling in 15 catchments where detailed analysis is required. All other catchments will be covered by a region wide model. This modelling is also supported by ecological habitat model development in some catchments, although this work was not completed in the summer of 2021/22 as planned as river flows persisted at unseasonably high levels. As at February 2023, several models are now complete in catchments such as the Shag and Wainakarua, with further work on track in other catchments such as the Kakanui.</p> <p>The economics programme has continued with completion of two significant reports from two</p>
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	<p>feed into the Land and Water Regional Plan.</p> <p>The economics team presented an overview of the programme supporting the pLWRP in a workshop with Councillors on 13 July.</p> <p>The Industry Advisory Group has continued to meet every 3 weeks – it has been providing information and advice on the baseline economic status report, which is in draft form and expected to be complete by the end of September.</p> <p>The industry groups are scoping work to model policy impacts, and contracts are in place for all but two groups. Communication is ongoing internally with the Policy and Science teams as this is critical to the economics at this stage to ensure modelling is appropriate to provide the outputs required for impact assessment. Workshops of the industry groups with the Science and Policy teams are expected in the next few weeks to finalise the scoping of the modelling, which needs to be completed by the end of November.</p> <p>The catchment stories field phase has been completed and a draft report is under preparation, expected to be complete by the end of September. Knowledge from that report about actions and their effectiveness, is also actively being fed into the industry group modelling process.</p> <p>The Economic Profile of Land and Water project is progressing well, with a contract to relate and map land use and water demand through irrigation recently underway. The report on this workstream is also expected to be complete by the end of the year.</p> <p>The Māori economy project has also commenced, with Aukaha working in-house to collect and collate</p>	<p>workstreams and good progress on the other two workstreams.</p> <p>The Catchment Stories workstream has been completed. An overview of the findings was presented to the LWRP Governance Group in November 2022. The report has since been finalised and will be released soon. Findings from this study were also used to inform the Farmers and Growers Phase 1 report and the development of actions for modelling in Phase 2 (see below).</p> <p>As part of the Farmers and Growers workstream, the Industry Advisory Group (IAG) has continued to meet every three weeks. It made a significant contribution to an important new baseline report on the primary industries in Otago “Farmers and Growers in Otago” (Farmers and Growers Phase 1 Report), which was completed in early December. The IAG is continuing its work to feed into a Phase 2 report which will describe the impact of environmental actions on case study farm businesses in each industry, compared with the baseline. The modelling has been completed and an initial internal presentation of that work has been made to ORC. A copy of the Phase 1 report was provided to your office in late 2022.</p> <p>The Phase 2 report is expected to be complete by May, however more emphasis is currently being placed on communication of its findings in real time to policy team as they develop the Plan and ultimately the LWRP Governance Group.</p> <p>The Economic Profile of Land and Water workstream has made good progress and is providing useful insights into the Otago economy and its use of land and water. A draft report has been developed and is currently under peer review. It will also be reviewed by the Industry Advisory Group once they have completed the Phase 2 modelling work.</p>
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	<p>information.</p> <p>The work on delineating Outstanding Water Bodies is progressing, noting that ORC will be only the second regional council to undertake this work under the NPSFM 2020.</p>	<p>Aukaha has made significant progress on the Māori economy project. The Kai Tahu Economy has now been characterised pre-settlement from cultural narratives, providing a baseline for considering the present context and which will then be used to then understand the policy impacts. Case studies and interviews are underway in relation to characterising the modern Kai Tahu economy and its relationship alongside the Otago capitalist economy.</p>
<p><i>Prepare a Plan Change by 31 March 2020 that will provide an adequate interim planning & consenting framework to manage freshwater up until the time that new discharge and allocation limits are set, in line with requirements in the NPSFM.</i></p>	<p>With regard to consent processing, applications covered by Plan Change 7 are being processed in a staging plan that has been agreed with consultants and applicants. This also allows for people to be working on one part of the region at once and allows time for the water use analysis to be completed for permits in a similar area at one time.</p> <p>We are continuing to actively process these as the amendments are lodged and to follow up on lodgement dates for the amendments of the outstanding applications. Some applicants are using the restricted discretionary pathway provided for under PC7, with most using the controlled pathway. The applications still to progress are generally in the Manuherekia, Taieri, Lowburn, and Bannockburn areas, as well as the Trustpower ones. This is in line with the staging plan mentioned above.</p>	<p>Plan Change 7 is fully operative and is part of the Regional Plan Water. This provides the interim consenting framework referred to in the 2019 recommendations.</p> <p>The Consents Team has processed the majority of the Deemed Permit replacements. There are 22 applications remaining and they are being processed in line with the agreed staging plan. Processing in line with the staging plan has allowed for the applications in similar areas to be processed at the same time and to ensure consistency.</p> <p>The Consents Team continues to actively process the remaining applications. Of these applications to be progressed, six are in the Taieri and 16 in the Manuherekia. This is also in line with the staging plan mentioned above. Most applicants are using the controlled activity pathway provided by the rules, with some using the restricted discretionary pathway.</p>

Summary of Freshwater Resource Consenting Activity – for the period 1 August 2022 – 28 February 2023

The following is a summary of the freshwater resource consenting activity for the reporting period:

- Between 1 August 2022 and 28 February 2023, the Otago Regional Council received 49 applications for water take consents. These applications are being processed as 55 separate resource consents, with 25 for taking groundwater and 30 for taking surface water. Of the 49 applications, one relates to the replacement of a Deemed Permit.
- From the 49 applications lodged between 1 August 2022 and 28 February 2023, Council issued 17 resource consents, 6 for taking groundwater and 11 for taking surface water. Of the remaining 35 resource consents, 27 are currently being processed and 11 have been rejected, withdrawn or were not required.
- The Council also issued a further 91 resource consents relating to applications lodged before 1 August 2022. These include 10 resource consent for taking groundwater and 81 for taking surface water. Of the 91 resource consents issued, 45 related to the replacement of 54 Deemed Permits.
- In total, the Council is currently processing 57 applications for water take consents. These applications are being processed as 130 resource consents, with 23 for taking groundwater and 107 for taking surface water. Of the 57 applications, 22 relate to the replacement of Deemed Permits.
- Between 1 August 2022 and 28 February 2023, no applications relating to taking water were publicly notified or limited notified.
- There are currently no active Deemed Permits in the Otago Region, excluding those operating under s124.
- No new appeals relating to decisions on an application for new water permits relating to deemed permit, have been lodged with the Environment Court.

Conclusion

ORC, along with our iwi partners, is committed to achieve its new planning framework, namely a notified proposed Land and Water Regional Plan. However, due to the factors described above and as set out in the letter to you in February 2023, we no longer consider it possible to do so within the agreed timelines originally set out in December 2019. The proposed RPS is progressing as two separate parts and will be made operative as soon as is reasonably practical.

The next 6 monthly report will be due to you in September 2023.

In the interim, if you have any questions or need further clarification, please don't hesitate to get in touch with Fleur Matthews (fleur.matthews@orc.govt.nz; or 027 257 0813).

Yours sincerely

Pim Borren
Interim Chief Executive Officer

8.2. Update from Lakes Management Working Group

Prepared for: Council

Report No. GOV2305

Activity: Environmental: Water
Governance Report

Author: Andrea Howard, Manager Executive Advice

Endorsed by: Gretchen Robertson, Chair
Pim Borren, Interim Chief Executive

Date: 22 March 2023

PURPOSE

- [1] The purpose of this report is to provide an update to Council on the activities of the newly formed Lakes Management Group.

EXECUTIVE SUMMARY

- [2] At its 7 December 2022 meeting, Council agreed to establish a Lakes Management Working Group to respond to the opportunities for improvement raised by the Parliamentary Commissioner for the Environment.
- [3] The Lakes Management Group has met twice since being established in January 2023 and a draft Terms of Reference has been developed for approval by Council (Appendix 1).
- [4] The Group will focus its efforts on the issues raised by the Parliamentary Commissioner, as well as ensuring co-ordination of new and existing workstreams, identifying potential interregional collaboration and external funding opportunities, and creating tangible actions (e.g., monitoring, research, mitigation strategies) for inclusion in the draft 2024-2034 Long Term Plan.
- [5] As agreed on 7 December 2022, broader work to create a comprehensive Otago Lakes Strategy will continue in parallel with this more focused effort.

RECOMMENDATION

That the Council:

- 1) **Notes** this report.
- 2) **Approves** the Terms of Reference for the Working Group.
- 3) **Notes** the complementary work underway to prepare for an overarching Lakes Management Strategy.

BACKGROUND

- [6] On 26 May 2021, Council requested:
“[E]stablishment and funding of a scoping study for an Otago Lakes Strategic Plan, in association with relevant stakeholders, that creates lake management plans aimed at improving the environmental and amenity value of these water bodies, and acquire the
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science, partnerships and information for these purposes with an initial budget of \$100,000 in each of years one and two of the LTP 2021-31.”

- [7] On 10 November 2021, the Strategy and Planning Committee approved a staff proposal to divide the scoping study into two separate stages:
- a. Stage 1: confirming the case for developing a strategic plan, and
 - b. Stage 2: if a strategic plan was seen as an appropriate tool, clarifying the purpose, scope, and function of a strategic plan.
- [8] This division into two stages recognised the need to mitigate the risk of overlap with ORC’s existing projects, primarily the review of the Land and Water Regional Plan and development of new integrated catchment management plans. It also recognised the complexity of the roles and responsibilities in lakes management.
- [9] Stage 1, known as the Otago Lakes Management Review, was considered by Council on 7 December 2022. The review sought to determine what steps need to be taken to address a variety of lake management issues and opportunities. It also confirmed the need for an Otago Lakes Strategic Plan.
- [10] The report identified 43 strategic and operational recommendations aimed at improving lakes management in Otago. While there is more work to do, many recommendations contained in the report are already underway, or planned for, through existing initiatives and large-scale work programmes including the Land and Water Regional Plan (LWRP) process and via the newly established Integrated Catchment Management (ICM) programme.
- [11] Council agreed to continue to ‘phase 2’ of the Lakes Management Strategy, which will clarify:
- a. Whether an Otago Lakes Strategic Plan should cover all lakes or certain specified lakes only.
 - b. The Plan’s purpose and function, and how it integrates with existing workstreams.
 - c. Whether the Plan will be jointly developed and owned with key stakeholders or be an ORC-owned document.
 - d. Associated governance arrangements to oversee the delivery and review.
 - e. Any further resourcing required.
 - f. Consultation needs and approaches.
- [12] On 1 December 2022, the interim Chief Executive received correspondence from the Parliamentary Commissioner for the Environment, Simon Upton, regarding the health of Otago’s deep-water alpine lakes¹. The Commissioner outlined concerns about lake health from local groups and drew attention to a lack of monitoring on the lakes’ evolving conditions and insufficient research targeted at addressing the origins of the problem or identifying mitigation strategies.
- [13] In response to the letter from the Parliamentary Commissioner for the Environment, Council agreed to direct:

¹ [Correspondence with the Parliamentary Commissioner for the Environment](#)

“the Chair and Chief Executive to establish a working group tasked with providing an overall plan for Council consideration to advance a Lakes Strategy for the Region – and include authorisation to engage with all relevant stakeholders and report progress to the 22 March 2023 Council Meeting.”

DISCUSSION

- [14] The Lakes Management Working Group has met twice since Council endorsed its establishment on 7 December 2022. The Group has been primarily focused on defining its purpose and scope of activities to be undertaken. The draft Terms of Reference are attached in Appendix 1.
- [15] The Working Group proposes to focus on:
- a. Responding to the issues raised by the Parliamentary Commissioner for the Environment.
 - b. Ensuring strategic co-ordination of existing and new workstreams focused on improved lake management.
 - c. Empowering existing groups with a focus on improving lake health.
 - d. Identifying information gaps.
 - e. Creating a set of strategic recommendations for Council to consider as part of the upcoming Long Term Plan discussions.
- [16] The lakes included in this work are lakes Hāwea, Wānaka, Whakatipu-wai-Māori/Wakatipu, Wai Whakaata/Hayes and Dunstan.
- [17] The Working Group agreed to focus on short term actions that could be undertaken to respond to the Commissioner’s concerns with monitoring changes over time in lake health and the need for research targeted at addressing the origins of the problem and/or identifying mitigation strategies. Medium to long-term plans would be incorporated within the existing broader Lakes Management Strategy process that is currently underway.
- [18] The Working Group would also continue dialogue with central government and neighbouring councils to identify opportunities for collaboration and external funding to facilitate better information and/or mitigation interventions to protect or improve alpine lake health.
- [19] Associate Professor Marc Schallenberg was invited to attend the Working Group’s second meeting as an independent technical expert. The group will continue to seek advice from Associate Professor Schallenberg and other parties as needed.
- [20] Any further investment in research, monitoring or mitigation would need to be considered as part of the upcoming LTP process for implementation from mid-2024 onwards. This work also needs to be connected to the broader strategy and existing work programmes, including Integrated Catchment Management plans and work undertaken by the Science and Environmental Monitoring Teams. Work will commence shortly to identify what is being done and by when, this will help identify gaps and priorities.

- [21] The Working Group will facilitate the implementation of any actions that can be done within existing work programmes and budgets and make recommendations for additional priorities and initiatives.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [22] There are no strategic and policy decisions at this point in the process.

Financial Considerations

- [23] There are no financial considerations at present, although it is likely that substantial investment would be required if Council is to increase lake health monitoring and implement mitigation strategies more actively. External funding opportunities will be pursued.

Significance and Engagement

- [24] There are no significance or engagement considerations, although mana whenua representation will be essential (either directly, or via existing processes as per mana whenua's wishes).

Legislative and Risk Considerations

- [25] There are no legislative considerations.

Climate Change Considerations

- [26] There are no specific climate change considerations, although climate change impacts on the health of our lakes.

Communications Considerations

- [27] There are no immediate communication considerations.

NEXT STEPS

- [28] The Working Group will continue to meet to identify and progress short term opportunities for better deep inland lake management, providing quarterly updates to Council on progress.

ATTACHMENTS

1. Draft Terms of Reference Lakes Management Working Group v1 Jan 2023 [8.2.1 - 2 pages]

DRAFT TERMS OF REFERENCE OTAGO LAKES MANAGEMENT WORKING GROUP

1. PURPOSE

The Otago Lakes Management Working Group will lead strategic discussions and prioritisation, and oversee action, to protect, preserve and enhance deep water inland lakes in Otago. This includes Lakes Hāwea, Wānaka, Whakatipu-wai-Māori/Wakatipu, Wai Whakaata/Hayes and Dunstan.

2. ROLE OF THE GROUP

The Otago Lakes Management Working Group shall focus on:

- Determining the appropriate categorisation of Otago Lakes to facilitate better management.
- Identifying priority Lakes for protection, preservation, or enhancement.
- Seeking mitigation/remediation options to achieve overall purpose.
- Ensuring strategic co-ordination of existing and new workstreams focused on Lake management.
- Developing an overarching Lakes Management Strategy and associated implementation plans.
- Ensuring that Council, communities and stakeholders are engaged and made aware of progress.

3. SCOPE OF THE GROUP

The Group shall focus primarily on issues related to deep water inland lakes in Otago, and the development of short-term actions and planning to protect, preserve and enhance deep these lakes in Otago.

4. GENERAL

MEMBERSHIP

ORC Chairperson, Cr Gretchen Robertson (Chair)
Representative, Mana Whenua (TBC)
ORC Interim Chief Executive, Pim Borren
Councillor representative, Cr Michael Laws
Councillor representative, Cr Alexa Forbes

Support: Acting Strategy Manager, Andrea Howard

The Group will co-opt technical expertise as needed.

QUORUM AND DECISION-MAKING

The Working Group is not a decision-making body of Council. Any recommendations made at a meeting, will require a quorum of three members and will be presented to Council for consideration.

FREQUENCY OF MEETINGS

The Otago Lakes Management Working Group will meet monthly, or more frequently as required.

DRAFT

8.3. Proposal to participate in CouncilMARK programme

Prepared for: Council

Report No. GOV2306

Activity: Governance Report

Author: Andrea Howard, Manager Executive Advice

Endorsed by: Amanda Vercoe, General Manager Governance, Culture and Customer
Richard Saunders, General Manager Regulatory and Communications

Date: 22 March 2023

PURPOSE

[1] This report seeks Council approval to participate in the national CouncilMARK™ programme, an independent performance assessment and continuous improvement initiative.

EXECUTIVE SUMMARY

[2] CouncilMARK™ is best described as a system of performance assessment and continuous improvement that assists councils to deliver top service and value to their communities. The performance assessment is focused on ensuring continuous improvement, and a long-term lift in outcomes, performance and reputation.

[3] The combination of a newly elected Council and an incoming permanent Chief Executive provides an opportunity to take stock of the Council's performance across a range of areas to identify where improvements can be made and to create a benchmark from which change over time can be measured.

[4] It is proposed that Council utilises the existing CouncilMARK™ programme as a core benching marking tool. This will complement other continuous improvement initiatives planned such as the forthcoming Cultural Audit and Efficiency Review and existing feedback mechanisms including the Community Satisfaction Survey.

RECOMMENDATION

That the Council:

- 1) **Notes** this report.
- 2) **Approves** Council's participation to the CouncilMARK™ programme.
- 3) **Approves** the Chief Executive to enter into a formal agreement with CouncilMARK™ to undertake an independent assessment in 2023.

BACKGROUND

[5] Local Government New Zealand's independently run CouncilMARK™ programme is designed to improve the public's knowledge of the work councils are doing in their communities and to support individual councils to further improve the service and value they provide.

- [6] The programme incorporates a set of performance measurement principles, an overarching performance framework and a set of underlying indicators that will guide an independent assessment of how well the Council is responding across a range of matters. Councils receive an overall performance rating from an Independent Assessment Board and commentary on their performance.
- [7] The performance framework focuses on four priority areas that were derived from public and business feedback in the 2015 New Zealand Local Government Survey, these being:
- a. **Leading locally** - Governance, leadership and strategy.
 - b. **Investing money well** - Financial decision-making and transparency;
 - c. **Delivering what's important** - Service delivery and asset management; and
 - d. **Listening and responding** - Communicating and engaging with the public and businesses.
- [8] The CouncilMARK™ programme is widely used across New Zealand by over 30 councils. Three of those Councils are within the Otago Region. The tool facilitates the assessment of current performance to provide transparency to communities and inform Council's continuous improvement programme. Examples of CouncilMARK™ independent assessment reports can be read online [here](#).

DISCUSSION

- [9] The combination of a newly elected Council and an incoming permanent Chief Executive provides an opportunity to take stock of the Council's performance across a range of areas to identify where improvements can be made and to create a benchmark from which change over time can be measured.
- [10] It is proposed that Council utilises the existing CouncilMARK™ programme as a core benching marking tool. CouncilMARK™ will support other accountability mechanisms already in existence such as the annual Community Satisfaction Survey and the forthcoming Cultural Audit and Efficiency Review. It will also complement wider work being undertaken on areas including governance, strategy, and organisational business improvement.
- [11] CouncilMARK™ undertakes a review of documentation including Council's:
- a. Long Term and Annual Plans.
 - b. Infrastructure and Finance strategies.
 - c. Communications and Engagement Strategy/Plan and Communications and stakeholder audits.
 - d. Audit reports.
 - e. Operational/financial reports sent to elected members.
 - f. Delegations Manual, and
 - g. Examples of community engagement plans, business cases, management reports to Council.
- [12] The analysis of documentation is supported by Council and stakeholder interviews. It is expected that the independent panel will meet with elected members, the Chief Executive and senior leaders, a broad selection of staff, iwi partners and selected external stakeholders.

- [13] More detailed information on the Performance Assessment Framework for Regional Councils can be found in Appendix 1.
- [14] Currently, results of the assessment are published on the CouncilMARK™ website (as shown in Figure 1). An example output report for another regional council is attached as Appendix 2.

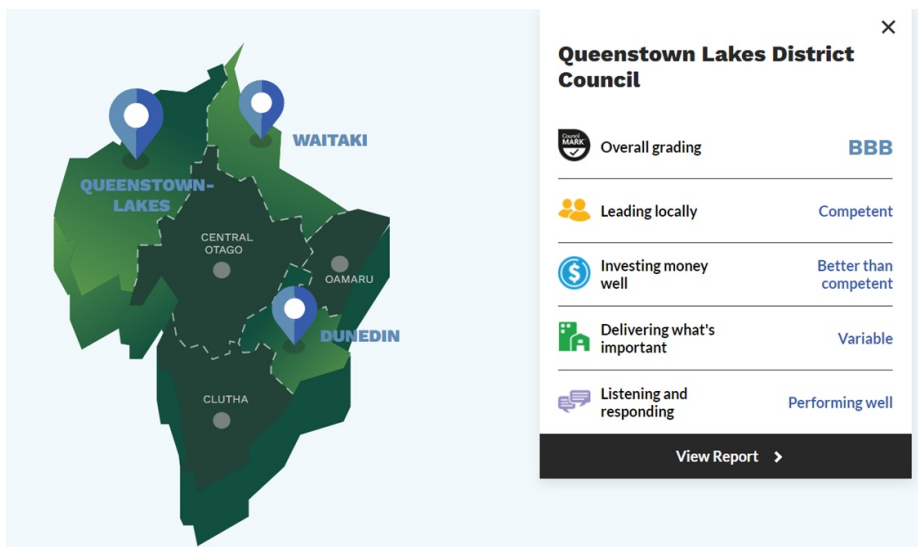


Figure 1: Example Summary of Results – Public Website

- [15] If approved, it is anticipated that the formal assessment could take place mid-year, with the entire process taking approximately 3 months to complete. The timing would ensure that any recommendations from the report that Council wished to pursue could be incorporated into the next Long-Term Plan.
- [16] A range of enhancements (not all compulsory) are planned for the current CouncilMARK™ programme including the opportunity for:
 - a. Staff and governors to utilise a self-reflection tool, to enable an understanding of similarities and differences with respect to performance to be articulated.
 - b. Conducting a simpler, condensed survey with community to determine perceptions and expectations. Although we would not want to duplicate content from the existing Community Satisfaction Survey.
 - c. Add-on modules focused on Te Tiriti and climate change adaption.
- [17] CouncilMARK™ are also reviewing the grading system, including potentially offering the choice whether to publish the overall grade and/or moving towards a certification approach based on certain standards.

OPTIONS

- [18] Council has three options, these being (1) proceed with undertaking the CouncilMARK™ programme, (2) consider alternative approaches or (3) do nothing.

- [19] The benefits include undertaking an assessment of performance using standard methodology and an independent assessment panel, relatively low cost, ability to benchmark against other councils and improving public transparency and accountability.
- [20] The risks include reputational damage through possible poor results, addition of work for both staff and governors and potential for a range of recommendations to be made that will require resources and budget to implement.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [21] There are no strategic and policy decisions.

Financial Considerations

- [22] The CouncilMARK™ programme runs on a cost-recovery basis, with participating councils paying a set fee for the independent assessment process and the resulting assessment report. The average cost is expected to be in the range of \$18,500 to \$26,000 plus GST and disbursements.

Significance and Engagement

- [23] There are no significance or engagement considerations. Although mana whenua will be consulted about our participation. There may also be an opportunity later to implement a more targeted community survey.

Legislative and Risk Considerations

- [24] There are no legislative considerations. There is some risk in undertaking a publicly available performance assessment process. Likewise, there is risk in not being accountable and transparent.

Climate Change Considerations

- [25] There are no climate change considerations.

Communications Considerations

- [26] Results of the audit would be publicly available on the CouncilMARK™ website.

NEXT STEPS

- [27] If approved, the next steps would include:
- a. Discussion with iwi partners to understand any concerns and opportunities.
 - b. Confirming internal resources to support the process, and
 - c. Entering into a formal agreement with CouncilMARK™.

ATTACHMENTS

1. Appendix 1 Performance Assessment Framework [8.3.1 - 41 pages]



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Local Government Excellence Programme

Performance Assessment Framework
(Regional Council version)

2019



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1

Instructions and required documentation

Instructions

The Performance Assessment Framework (PAF) is the primary data collection and collation document to inform your CouncilMARK™ assessment.

This version of the PAF is for Regional Councils.

Please complete all sections in this document. The purpose of the CouncilMARK™ assessment is to both assess current performance to provide transparency to your constituents, and inform your continuous improvement programme, so please answer each section as candidly as possible.

Use Dropbox to share a copy of the completed document (complete with copies of all required documents listed below, and any supplementary documents) with the assessors **at least three weeks** before the scheduled on-site assessment visit. The CouncilMARK™ Programme Manager will confirm the names and contact details of the two assessors assigned to your assessment.

Required documentation

Please provide copies of the following documents, together with any other supplementary documents you deem appropriate, to inform the assessment. Add the publication date in the table.

Required documentation	Date of publication
1. Long-Term Plan	
2. Annual Plan	
3. 30-year Infrastructure Strategy	
4. Financial Strategy	
5. Two examples of current Asset Management Plans	
6. Communications and Engagement Strategy/Plan and Communications and stakeholder audits	
7. Key strategies/policies that are guiding documents (for example economic development strategy, property acquisition and sale policy, media policy)	
8. Annual resident/ratepayer survey	
9. Business satisfaction survey	
10. Two examples of most recently completed Section 17A service reviews	



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Required documentation	Date of publication
11. Two examples of recently completed business cases	
12. Two recent (substantive) examples of management reports to council	
13. Audit report (with any corrective actions)	
14. Risk policy, risk register and risk analysis reporting by senior executive	
15. Example of a community engagement plan	
16. Most recent operational/financial reports sent to elected members	
17. Chief Executive's Performance Agreement	
18. Committee Structure (and names)	
19. Delegations Manual/Document	
Supplementary documentation	Date of publication
1.	
2.	
3.	
4.	
5.	
6.	



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2 Council and stakeholder interviews

The assessors will meet with elected members, the Chief Executive and senior leaders, a broad selection of staff, and selected external stakeholders during on-site portion of the assessment process. Please provide the names and position/role of all people who will be interviewed in the following table.

A copy of the completed on-site assessment agenda should also be provided.

Interviewees (name and position)	
Chair and elected members	Role
•	
•	
•	
•	
•	
•	
•	
•	
•	
•	
Staff	Role
•	
•	
•	
•	
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•	
•	
•	



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External stakeholders	Organisation/role
<ul style="list-style-type: none"> • Māori/iwi representatives (ideally, a group) 	
<ul style="list-style-type: none"> • Community group(s) with whom Council has substantial dealings 	
<ul style="list-style-type: none"> • NZTA representative 	
<ul style="list-style-type: none"> • Representatives from one (ideally, more) TLAs 	
<ul style="list-style-type: none"> • 	
<ul style="list-style-type: none"> • 	



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3

About Council

Please fill in the following table to provide context for the assessors, and include references/website links to the latest available source data.

Population (most recent figure, noting the source)	Reference Statistics New Zealand
Population characteristics	Reference Statistics New Zealand
Land area (square km)	Reference Department of Internal Affairs
Public Transport network	Include information on public transport services and infrastructure
Significant water bodies	List significant waterbodies; lakes, estuaries, rivers, and include km of stop banks in region
Gross domestic product	
Growth/decline/stable population	



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Please provide answers to the below to ensure consistency throughout the assessment process:

What do you refer to your senior leadership team as (ie Chief Executive and second tier managers)?
Does Council have a formal committee that represents the interests of iwi/hapu, ie Māori Standing Committee? If so, what is the name of the group, and what is the purpose/role of the committee?

Please include an organisational hierarchy in the pack.



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4

Performance indicators

Priority one: Governance, leadership and strategy

Vision, strategy and goals	Indicators
<ol style="list-style-type: none"> 1. How was Council’s vision and overall strategy (for its community as a whole) developed? 2. What level of involvement do stakeholders and the public have in determining vision, strategy and goals? 3. How well aligned is vision and overall strategy with community’s interests and goals, and the wider environmental and social context? How often is this tested? 4. Is the vision and strategy clearly articulated with measurable goals, and is documentation easily accessible by the public? 5. How is vision and strategy used to justify operating plans, work programmes, projects and expenditure? 6. How are competing demands assessed and prioritised? 	<ul style="list-style-type: none"> • Vision, overall strategy and goals is coherent, succinct, clearly articulated in LTP and all other core council documents. • Elected members are actively involved in the development and promotion of the vision, strategy and goals. • Internal and external documentation is explicitly aligned to vision, strategy and goals. • Strategic documents and policies are reviewed regularly. • Formal and informal collaborations with territorial authorities and other agencies to set and achieve region-wide goals.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Conduct of Council business	Indicators
<p>7. How is 'the business of council' conducted?</p> <p>8. What use is made of committees, and has their effectiveness been reviewed in the last three years?</p> <p>9. To what extent are elected members committed to the tenet of collective responsibility, and how is this demonstrated?</p> <p>10. How are conflicts of interest managed?</p> <p>11. What is the quality of the relationship (confidence, trust and transparency) between elected members, between the Chair and Chief Executive, and between the elected members and the Chief Executive?</p> <p>12. How are major differences/splits that may occur between groups of elected members dealt with?</p>	<ul style="list-style-type: none"> • Elected members are united in their commitment to achieve vision and goals, via agreed strategy. • Committee structures, terms of references and delegations are explicitly documented. • Register of interests and formal conflict of interest process in place. • A mechanism to express and resolve major differences in place. • There is mutual trust and confidence between elected members and management (especially the Chief Executive) to deliver community outcomes. • Elected members understand and adhere to the tenet of collective responsibility. • Chair, elected members and the Chief Executive project a publicly-united view on all strategic matters. • Code of Conduct reviewed in the last three years.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Professional development of elected members	Indicators
<p>13. Is a formal induction programme in place for elected members that covers governance (role, function, responsibilities); vision, strategy and goals; policies, culture and work practices; and operations?</p> <p>14. What provision is made for the ongoing professional development of elected members, both individually and as a group?</p> <p>15. What process is used to ensure the elected member induction conveys necessary information and that it is effective?</p>	<ul style="list-style-type: none"> • Comprehensive induction programme, covering both governance role and strategic and operational topics is in place. • A structured professional development programme is established for all elected members; budget is assigned and programme is delivered. • Supplementary professional development options are utilised to support specific needs. • All elected members understand the 'governance' role and function, and observe it in practice.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Performance of elected members	Indicators
16. Have the elected members undertaken a self-assessment and/or an independent assessment (third party evaluation) of their individual and collective performance in the last year. If so, what form did it take and what was learned? 17. Has the Chair sought feedback on his/her performance in the last three years? If so, what was the feedback?	<ul style="list-style-type: none"> • Structured and independent performance review system in place. • Findings from performance reviews documented, and are discussed amongst elected members, and actioned.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Chief Executive performance	Indicators
18. How is the Chief Executive’s performance agreement aligned with vision, strategy and agreed goals? 19. How do elected members both monitor and support the Chief Executive, and hold him/her accountable for performance?	<ul style="list-style-type: none"> • Chief Executive’s performance agreement is aligned with the Council’s vision, strategy and goals. • Performance of the Chief Executive evaluated regularly, at least once a year. Findings are documented. • Structured professional development programme in place for the Chief Executive.
Council self-assessment	
Assessor comments	



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Health and Safety framework	Indicators
20. Are the core principles of health and safety embedded in the organisation? 21. Is the health and safety framework fully compliant with legislation? 22. What training is provided to ensure the health and safety system is well understood by both elected members and management? 23. What is the quality and frequency of health and safety performance reporting? And to whom is this provided?	<ul style="list-style-type: none"> • A comprehensive health and safety framework is in place and understood by both elected members and senior management. • Regular reporting (minimum quarterly) is provided to elected members, with relevant 'lead and lag' indicators, trend reporting and corrective actions. • Health and safety is embedded in the culture of the organisation.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Advice, reporting and decision-making	Indicators
24. What is the frequency and scope of management reporting? 25. In what form is management advice and reporting provided? 26. How does management advice and reporting enable informed decisions by elected members? 27. Are the decisions of elected members transparent and well-documented? 28. How do elected members monitor the implementation of their decisions, and verify whether expected benefits/outcomes are achieved?	<ul style="list-style-type: none"> • Regular (monthly) management reporting in place, covering all material operational and financial matters. • Reports are well-written, well-structured, well-reasoned, evidence-based and balanced (not pushing a preferred staff option), with explicit references to approved goals and policies. • Proposals are understood and critically assessed by elected members, especially for relevance, value-for-money and alignment with vision, strategy and LTP priorities. • Decision-making considers risk in accordance with the significance of the decisions. • Formal delegations framework in place.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Assessors' recommended grading
Assessors' initial comments on Council's performance
Areas where the Council excels and why
Areas where the Council could improve and why



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Priority two: Financial decision-making and transparency

Financial strategy and reporting	Indicators
<ol style="list-style-type: none"> 1. How is the financial strategy linked to council vision, outcomes and strategic goals (including the infrastructure strategy)? 2. Is the financial strategy realistic and suitable to support council priorities and outcomes? 3. What financial reports are generated, how often and to whom? 4. How is financial data being used to inform spending decisions, monitor and verify performance and forecast future demands? 	<ul style="list-style-type: none"> • Financial strategy is visibly and coherently linked to the vision and overall outcomes, and 30-year infrastructure strategy. • Financial strategy provides relevant context for financial goals including evidence-based analysis, and quantifiable steps for achieving the long-term financial goals. • Financial reports are succinct and enable effective analysis to an appropriate level of detail. Comprehensive explanations of material variances are provided. • Financial performance is publicly reported at least annually, and variances from budget are explained. • Finance team understands revenue and expenditure drivers, and provides sound and straightforward (jargon-free) advice to both senior management and elected members. • Annual financial results are largely free of both significant operating surpluses and capital expenditure carry-forwards. • Capital and operating budgets are clearly linked to strategic goals in the LTP.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Audit, risk and control	Indicators
5. Does Council have an audit and risk committee (or equivalent), with independent members and a terms of reference? 6. Is an approved risk policy in place that is regularly reviewed? 7. How are significant risks identified, recorded and mitigated? 8. Do elected members understand, monitor and take responsibility for significant risks? 9. Is the risk register regularly updated?	<ul style="list-style-type: none"> • An audit and risk committee is operating with suitable expertise and independent member(s). Appropriate independent advice (eg treasury) is sought when needed. • Risk policy (including risk appetite statement) in place. • Risk register in use; material risks are measured, prioritised, mitigated and reported quarterly. Economic trade-offs between mitigation and non-mitigation are documented and reported. • Elected members understand and actively manage significant risks. • Financial management is substantively compliant with Office of the Auditor-General standards and guidelines, especially in relation to purchasing/contracting. • Issues of financial probity dealt with to the highest standards, especially registers of elected member interests and conflicts maintained by Chief Executive or legal counsel.
Council self-assessment	
Assessor comments	



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Budgeting	Indicators
10. How are annual budgets set? 11. Is the annual budget balanced or unbalanced due to specific circumstances; and is the basis documented and explained? 12. Are the budgets financially sustainable?	<ul style="list-style-type: none"> • Budgets for each activity area are zero-based. • If budget is unbalanced, reasons are explained in plain language. • Budgets are presented in a format that is readily understood by non-technical readers (especially elected members and senior managers). • Budgets have regard for past financial performance, such as areas of consistent under-spending or over-spending in activities.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Financial position	Indicators
<p>13. Is the Council’s level of debt aligned to its growth and the capacity of its ratepayers?</p> <p>14. Does Council have a recognised credit rating, or has it been deemed prudent not to do so? What is basis for decision?</p> <p>15. In the last three years, has an adverse, disclaimer or qualified opinion been given to the Annual Plan, LTP or Annual Report? If so, what action was taken?</p> <p>16. Have any issues raised in audit management letters been resolved in a timely manner?</p> <p>17. What processes are in place to manage debtors and rates arrears?</p>	<ul style="list-style-type: none"> • No unnecessary cash reserves held. • Levels of debt have regard to inter-generational equity between ratepayers. • Fiscal benchmark requirements met. • Any audit report qualifications are quickly and effectively resolved. • All issues identified in audit management letters are resolved satisfactorily. • Aged debt (90-plus day) is actively managed down. • Process in place to regularly review, and where appropriate dispose of non-strategic assets.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Transparency	Indicators
18. Is the rates-setting process published publicly? 19. Is rates information easily accessible and understandable by all ratepayers? 20. Is financial performance information readily available online and presented in a manner that is easily understood by the public? 21. What approach is used to ensure 'best value' procurement? 22. Is information about major contracts published online?	<ul style="list-style-type: none"> • Empirical data is used to justify all rates demands, especially targeted rates. • Straightforward language is used to report and justify rates and user charges. • Cost-allocation decisions (eg user charges) driven by strategy and operational priorities, not political expediency. • Debt and financing costs are equitably shared between current and future generations. • Capital expenditure is reported comprehensively at a major project level. • Procurement strategy balances price and non-price attributes to achieve best value for money. • Procurement policy and associated documents are maintained and publicly available, including online.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Assessors' recommended grading
Assessors' initial comments on Council's performance
Areas where the Council excels and why
Areas where the Council could improve and why



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Priority three: Service delivery and asset management

Aligning services with vision and strategic outcomes	Indicators
<ol style="list-style-type: none"> 1. How are core service delivery strategies linked with vision, overall strategy and goals, for the achievement of community outcomes? 2. Are linkages explicitly summarised and explained in public documentation? 3. How is Council responding to potential consequences of climatic change and other locally-relevant environmental considerations? 	<ul style="list-style-type: none"> • Strategies are in place for all core activities (infrastructure; property, land and buildings; regulatory compliance and enforcement). • Current state and desired future state of all services is identified and clearly documented. • Strategies are interlinked both internally and with relevant external entities (territorial councils, NZTA, etc).
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Determining and monitoring service levels	Indicators
4. How are service levels determined and communicated? 5. How is service performance monitored, reported and improved?	<ul style="list-style-type: none"> • Service levels are based on an effective mix of quality, timeliness and value for money. Service levels reference appropriate benchmarks. • Performance trends are monitored and reported over a sustained period of time, and Council can demonstrate upward improvement trends. • Survey results are credible, publicly reported and used to inform decision-making and make adjustments as appropriate.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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People capability, capacity and culture	Indicators
<p>6. How does the Council ensure it has the appropriate capability and capacity to deliver services at agreed levels now and in the future?</p> <p>7. What arrangements are in place for staff development and succession planning?</p> <p>8. How is staff performance assessed?</p> <p>9. What form of staff engagement surveys are conducted and how are the results actioned?</p>	<ul style="list-style-type: none"> • Effective resource planning systems in place. • Sufficient skills and capacity available to deliver on plans, through an effective mix of internal and external resources. • Appropriate training and development plans and tools in place and in use (for all staff). • Chief Executive has a strong commitment to continuously improving the organisational culture. • Recognised and independent process used to diagnose organisational culture. • Engagement results are shared with staff, prioritised for action, and changes monitored and reported. • Engagement and other results demonstrate a strong and cohesive team culture.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Asset management	Indicators
<p>10. Are management plans in place for all major assets and categories (transport, property, land and buildings, fresh water management, infrastructure including flood protection, pest management, etc), and how are they aligned to overall vision, strategy and goals?</p> <p>11. What systems are in place for effective monitoring and maintenance of assets, to ensure agreed service levels are delivered?</p> <p>12. What benchmarks are used to measure asset condition and performance?</p> <p>13. Is asset condition explicitly reconciled with strategy and service level goals?</p>	<ul style="list-style-type: none"> • AMPs in place for all asset and service categories. • AMPs and related technical documents include a plan-English summary; linkages to overall vision, outcomes and infrastructure strategy is explicit. • Asset performance and condition is continuously measured, monitored and reported. • Impact of climatic change (and other significant environmental considerations) on asset condition, and current and future performance, is identified and understood; appropriate mitigations are documented. • Network efficiency and network resilience is understood and measured. • Relevant international accreditations in place. • Condition of assets is regularly assessed and asset condition is reconciled with infrastructure and financial strategies.
Council self-assessment	
Assessor comments	



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Environmental monitoring and reporting	Indicators
14. How does the cCouncil meet its environmental monitoring and reporting obligations? 15. What systems and processes are in place to ensure breaches are detected and mitigated, and reported?	<ul style="list-style-type: none"> • Quality assurance systems in place to fulfil statutory requirements, especially National Environmental Monitoring Standards. • Strategy for future investment in environmental monitoring and reporting to meet current and emerging obligations. • Environmental performance data published in a format that is readily accessible to the public (online and print).
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Public Transport	Indicators
<p>16. How is the public transport network documented and understood with regard to current and future demand/capacity and changes in usage?</p> <p>17. What initiatives are in place for increasing use of all forms of public transport?</p> <p>18. How does the Council assess trade-offs between cost and levels of service?</p> <p>19. How does the Council interact with territorial authorities to ensure quality of service goals are achieved?</p>	<ul style="list-style-type: none"> • Transport network comprehensively documented. • Transport infrastructure and assets (buses, trains, etc) are well-maintained and fit-for-purpose. • Transport maintenance contracts are cost-effective. • Network availability measured and reported. • Modes of transport are well integrated. • Transport and roads managed as a system. • Close integration with Police, NZTA and territorial authorities on road safety issues. • Economic and social value of transport network is considered in assessment of maintenance and replacement. • Multi-tiered investment plan in place for future transport demands. • Key route journeys documented and monitored to ensure quality of journey.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Regulatory services	Indicators
20. How are the Council’s regulatory activities linked to outcomes? 21. How are regulatory service standards set, monitored and reported? 22. Are regulatory service standards aligned nationally or regionally?	<ul style="list-style-type: none"> • All regulatory services meet national standards. • The cost of all regulatory services is understood and documented. • Resourcing of each service is appropriate to satisfy community needs, regulatory requirements and economic imperatives are well aligned and prioritised according to community needs.
Council self-assessment	
Assessor comments	



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Spatial planning	Indicators
<p>23. How does the Council’s RMA, land use and infrastructure, and Land Transport Management Act (LTMA) planning take into account projected demographic changes in the city or district; future infrastructure requirements; natural hazards; and environmental factors?</p>	<ul style="list-style-type: none"> • Long-term development needs and intentions are understood, defined and documented, with due consideration of population growth/change, and climatic change. • Land use, infrastructure planning, and financial planning is explicitly linked to spatial planning. • Future demographics are well understood and linked to plans. • Spatial planning includes air space and water rights, and consideration of regional community needs. • There is a well-reasoned view of amenity value. • Spatial policy is supported by sound economic analysis and relevant rights are fully considered and documented. • A high-quality and well-evidenced land banking strategy is in place (in conjunction with territorial authorities). • Regional Policy Statement in place and given effect (or process is in place to do so).
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Regulatory compliance and enforcement	Indicators
24. Does the Council have a Compliance and Enforcement Strategy? 25. How are resourcing decisions for different compliance activities prioritised? 26. To what extent are timeframes for consenting decisions imposed under RMA legislation achieved? 27. How are different compliance options determined (eg education versus infringements)? 28. How is the effectiveness of compliance and enforcement measured and monitored?	<ul style="list-style-type: none"> • A comprehensive strategy is in place and is linked to key community outcomes (environmental, public safety, etc). • An effective work programme is in place (and documented) for prioritising and actioning compliance activities. • Consent applicants clear of what is required of them, and decisions issued within legislative timeframes. • Compliance activities are appropriately resourced and targeted to the most important issues facing the region. • There is an effective balance between ‘carrot’ (eg public education programmes) and stick (eg prosecution) regulatory options.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Accountability reporting	Indicators
<p>29. How are actual service delivery levels reported (including comparisons against published strategy and work programme)?</p> <p>30. How does the Council ensure public reporting is readily accessible and presented in an informative and transparent manner?</p> <p>31. Does the Council report on the completion of capital projects (including whether the project was completed on time, budget and scope)?</p> <p>32. How does the Council balance reporting against social, environmental and economic outcomes?</p>	<ul style="list-style-type: none"> • Actual performance is clearly articulated in the Annual Report, with effective use of visual elements such as tables and graphs. • Annual Report contains comprehensive overview of activities and service performance including multi-year (trend-line) comparisons. • Annual Report includes candid summaries of underperforming activities and projects, with corrective actions and/or lessons learned. • Capital projects are reported across financial years. • Capital project over-runs/under-runs are reported and variances are explained. • Council uses a variety of financial and non-financial measures to account for performance.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Capital investments	Indicators
<p>33. What analysis processes are used to inform investment/ownership decisions and capital projects (ie cost of capital analysis, or taking a better business case focus)?</p> <p>34. What formal delegations framework is used, and is it documented and applied consistently?</p> <p>35. What project management methodologies and disciplines are in use to support delivery of projects within budget and time goals?</p> <p>36. Are formal project reviews conducted and reported?</p> <p>37. Are the benefits to be realised from a capital project documented, monitored and reported post-project delivery?</p>	<ul style="list-style-type: none"> • Major capital expenditure decisions (over a documented threshold) are supported by a comprehensive business case, ideally containing essential elements of a better business case (strategic, economic, financial, commercial, management). • All business cases genuinely assess all reasonable options, including doing nothing. • Business case development is facilitated by an accredited Better Business Case Practitioner (or equivalent). • Business cases are robust and recognised by agencies such as Officer of the Auditor-General and NZTA. • Reputable project management methodology used to deliver capital projects over a documented threshold (including project management, steering/oversight group, detailed project plan, independent quality assurance and reporting framework). • Capital projects are managed by accredited/recognised and independent project managers. • Post-implementation reviews and benefits realisation assessments are undertaken and reported for all major capital projects. • Major capital projects are individually reported in the Annual Report.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Assessors' recommended grading
Assessors' initial comments on Council's performance
Areas where the council excels and why
Areas where the Council could improve and why



A measure for better community value.

Priority four: Communicating and engaging with the public and business

Communication and engagement	Indicators
<ol style="list-style-type: none"> 1. Does the Council have a communications strategy that complements its Significance and Engagement Policy? 2. How do its communication documents align with the Council's vision, goals and strategies? 3. How does the Council promote two-way communication with its community? 4. Is the Council's communications and engagement strategy well understood and implemented by elected members and staff? 	<ul style="list-style-type: none"> • An effective communications strategy that promotes the vision, strategy and values (internally and publicly) is in use. • Pro-active, two-way and open system in place for communication, with appropriate mechanisms for both community and staff feedback. • Key messages are clearly, unambiguously and consistently articulated in all internal and external messaging across print, social, online and other channels.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Reputation	Indicators
5. Is the Council's reputation within the community and with key stakeholders assessed regularly, and if so how? 6. Are reputation survey results segmented by community group?	<ul style="list-style-type: none"> • A credible, independent survey mechanism is in use (in addition to public submissions), to understand regional needs and preferences, and to determine delivery performance. • Survey results are publicly reported, and they are actioned and monitored for improvement.
Council self-assessment	
Assessor comments	



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Media	Indicators
7. Does the Council have a media and social media strategy? 8. Have relevant designated staff and elected members received media training? 9. Do the Chair and Chief Executive regularly meet with media to discuss key matters?	<ul style="list-style-type: none"> • Media strategy effectively promotes the key goals and outcomes. • Chair, Chief Executive and other nominated elected members and staff are effective media communicators. • Effective media relationships enables the council to be portrayed in a fair and balanced manner. • Social media used for direct communication with selected stakeholders (as appropriate). • Effectiveness of communication is monitored and evaluated.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



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Engagement with Māori/iwi	Indicators
10. What is the Council’s strategy for engagement with local Māori/iwi? 11. How is the effectiveness of engagement measured? 12. How do iwi participate in local government decision-making?	<ul style="list-style-type: none"> • An active stakeholder engagement plan is operating and valued by both council and Māori/iwi. • Elected members and managers meet with local Māori/iwi periodically, to gain a shared understanding of current and emerging matters. • Engagement is translated into tangible action on mutually-agreed matters of importance. • Council provides Māori/iwi tangible opportunities for participation in decision-making.
Council self-assessment	
Assessor comments	



A measure for better community value.

Engagement with key stakeholders	Indicators
<p>13. What is the Council’s strategy for engagement with the business community and other key stakeholder groups (primary sector, industry, environmental organisations, etc)?</p> <p>14. How is the effectiveness of engagement measured?</p>	<ul style="list-style-type: none"> • An active stakeholder engagement plan is operating and valued by both council and relevant business and community groups. • Elected members and managers meet with business and other stakeholder groups periodically, to gain a shared understanding of current and emerging matters. • Engagement is translated into tangible action on mutually-agreed matters of importance. • Council provides tangible opportunities for participation in decision-making.
Council self-assessment	
Assessor comments	



A measure for better community value.

Engagement with general public	Indicators
<p>15. How does the Council engage with the general public?</p> <p>16. How is the effectiveness of engagement and communication measured?</p> <p>17. How are consultation documents presented and accessed by all sectors of the community?</p> <p>18. What process is used to record information received from community engagement, and how is this used?</p>	<ul style="list-style-type: none"> • Elected members and staff meet with community groups according to current and emerging needs and issues. • Community consultation is substantive (not merely validating committed decisions). • Consultation documents are readily available in a variety of formats, and key information is presented in a straightforward and balanced manner. • Council provides tangible opportunities for participation in decision-making. • Engagement is translated into tangible action on matters of importance. • Service quality and value for money is prominently addressed in council communications. • Complex and/or detailed information is summarised, with effective use of visual aids, such as graphs and charts. • Mandatory statutory information of lesser public interest is provided separately, in appendices.
<p>Council self-assessment</p>	
<p>Assessor comments</p>	



A measure for better community value.

Assessors' recommended grading
Assessors' initial comments on Council's performance
Areas where the Council excels and why
Areas where the Council could improve and why



A measure for better community value.

5

Overall comments

Assessors' recommended CouncilMARK™ rating
Assessors' overall comments

8.4. Queenstown Lakes Future Development Strategy: Governance Arrangements

Prepared for: Council

Report No. SPS2302

Activity: Governance Report

Author: Patricia McLean, Senior Policy Analyst Urban Growth and Development

Endorsed by: Anita Dawe, General Manager Policy and Science

Date: 22 March 2023

PURPOSE

- [1] The purpose of this report is to set out how ORC will work with Queenstown Lakes District Council (QLDC) on the development of the Queenstown Future Development Strategy, following a workshop with QLDC staff on 23 February 2023.

EXECUTIVE SUMMARY

- [2] The Queenstown Future Development Strategy (FDS) will be developed using the existing Grow Well Whaiora Partnership. This encompasses a range of Central Government representatives, as well as the two Councils, and iwi representatives. Despite the wide range of partners in the Grow Well partnership, the legal responsibility for approving the FDS lies with ORC and QLDC.
- [3] Throughout the development of the FDS, joint workshops with QLDC Councillors will be held to seek views on various aspects of the FDS. Key decisions will be brought to both Councils, then taken to the Grow Well Whaiora Partnership for endorsement.

RECOMMENDATION

That the Council:

- 1) **Notes** that at its meeting on 13 July 2022, the Council endorsed the use of the existing Grow Well Whaiora partnership to deliver the FDS in partnership with QLDC.
- 2) **Notes** that joint workshops will be held with QLDC Councillors to seek ORC input on the FDS; and
- 3) **Notes** that there will be key decisions that both Councils will be required to approve during the development and approval of the FDS.

BACKGROUND

- [4] Otago Regional Council (ORC) is a member of the Grow Well Whaiora Partnership, with Councillors Forbes and Noone representing ORC on the Partnership group. The Partnership oversees (among other things):
- a. the implementation of the existing Queenstown Lakes Spatial Plan (developed by QLDC in partnership with mana whenua and central government); and
 - b. the development of the Queenstown Lakes Future Development Strategy.
- [5] The Queenstown Lakes Spatial Plan was developed over three years in partnership with mana whenua and central government through the Grow Well Whaiora Partnership. ORC was not a partner at that time however was involved in the Plan's development at an operational level.

- [6] The Spatial Plan has much of the same content as an FDS. However, for a few reasons, including that as it was not developed jointly with ORC, it does not meet the requirements of the National Policy Statement on Urban Development (NPS UD).
- [7] In July 2022, staff presented a report to the Strategy and Planning Committee on the *Joint Future Development Strategy with Queenstown Lakes District Council* [Report No. SPS2229, attached for your information]. The Committee at that time:
- a. *endorsed the approach to build on the Spatial Plan for Queenstown Lakes District to fulfil the requirements of delivering an FDS; and*
 - b. *endorsed the use of the existing Grow Well Whaioara Partnership to deliver the FDS in partnership with QLDC.*
- [8] On 23 February 2023, QLDC staff briefed Councillors on the work done to date to develop the FDS and implement the Spatial Plan. At the briefing, the governance arrangements for the FDS were discussed at a high level. This paper provides further information.

DISCUSSION

- [9] Although responsibility for adopting the FDS lies only with ORC and QLDC, input from other agencies and partners through the Grow Well Whaioara Partnership will add to the robustness of the FDS. Importantly, the existing partnership supports the involvement of Kāi Tahu at all levels of development and decision making.
- [10] Throughout the FDS's development, it is intended that joint workshops with QLDC Councillors will be held to seek Governance views on various aspects of the FDS. The details on the first workshop are still being worked on but the types of direction being sought will include a review of the strategic directions set out in the Spatial Plan to check they are still fit for purpose for the FDS.
- [11] Key decisions on the FDS will be brought to both Councils, and then taken to the Grow Well Whaioara Partnership to be endorsed. At this stage, the key decision points are:
- a. notification of the draft Strategy for public consultation, and
 - b. appointment of a Joint Hearings Panel; and
 - c. final adoption of the FDS.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [12] The development of the FDS is consistent with the Strategic Framework, including *Sustainable and Quality Urban Environment, Community Resilience to Climate Change, Sustainable, Safe and Inclusive Transport, and Regional Leadership.*

Financial Considerations

- [13] There are no significant financial considerations. The development of the FDS in partnership with the QLDC is a funded activity.

Significance and Engagement

- [14] The FDS must be prepared using the Special Consultative Procedure (SCP), under the Local Government Act 2002.
- [15] Public notification of the draft FDS is planned for late 2023 or early 2024 with submissions being considered by a joint hearing panel prior to adoption.
- [16] Using the SCP will satisfy the requirements of He Mahi Rau Rika: Significance, Engagement and Māori Participation Policy.

Legislative and Risk Considerations

- [17] The preparation and approval of an FDS is a requirement of the National Policy Statement on Urban Development, under the Resource Management Act 1991.

Climate Change Considerations

- [18] Not relevant to this report.

Communications Considerations

- [19] The ORC and QLDC Communications teams will work together on media and messaging, and on promoting the community consultation process as required.

NEXT STEPS

- [20] QLDC intends to “call for sites” as a first public-facing step, which is where landowners and developers can identify any sites to be considered for inclusion as future development areas. These sites will be assessed against criteria, including those in the NPS UD. Queenstown staff are briefing their Councillors on the draft Call for Sites, and the draft will be provided to ORC for information ahead of it being released.
- [21] The FDS is required to be in place to inform the LTPs. The anticipated timeline for public notification of the FDS is December 2023/January 2024. Hearings are expected to be held in February/March 2024.

ATTACHMENTS

Nil

8.5. Appointed Member Remuneration

Prepared for:	Council
Report No.	GOV2309
Activity:	Governance Report
Author:	Amanda Vercoe, GM Governance, Culture and Customer
Endorsed by:	Pim Borren, Interim Chief Executive
Date:	22 March 2023

PURPOSE

- [1] To set remuneration rates for external appointments to ORC's Committees for the 2022-2025 triennium.

EXECUTIVE SUMMARY

- [2] For the 2022-2025 triennium, external members have been appointed to the Environmental Policy and Science Committee, the Regional Leadership Committee, and the Audit and Risk Subcommittee, including two appointments to Co-Chair roles.
- [3] Remuneration for external appointments in previous trienniums has been a mixture of a percentage of the elected member remuneration paid fortnightly, or a flat rate paid per meeting invoiced by the member after the fact.
- [4] Following consideration of how other Councils approach this issue, staff have reviewed ORC's remuneration rates and provide an updated option for consideration.
- [5] The paper also proposes adopting a meeting fee for external appointments to the Land and Water Regional Plan Governance Group, given the significant workload of that group and the priority of the work for the ORC.

RECOMMENDATION

That the Council:

- 1) **Notes** this report.
- 2) **Agrees** a mechanism for remuneration external members to ORC Committees for the 2022-2025 triennium to be funded out of the governance budget.
- 3) **Approves** remuneration for the Land and Water Governance Group external appointments to be funded out of the LWRP budget.
- 4) **Notes** that the remuneration will be operationalised by the Chief Executive.

BACKGROUND

- [6] Remunerating external appointments to Committees recognises the skill and expertise they are bringing to the Council table, and the value of their time. For ORC, two of the external appointments will hold Co-Chair roles, which will require a higher degree of preparation and meeting participation.

- [7] No guidance is provided by the Remuneration Authority for external appointments to committees, which only provides Determinations for elected member salaries, and Hearing Panel fees for councillors. Therefore, it is up to Councils to determine their own remuneration rates.

DISCUSSION

Council Committees

- [8] A scan of other local government authorities demonstrates a range of options for remunerating external appointments. From being entirely managed by the Chief Executive, to adopting public External Member Remuneration Policies, the approach varies. Some Councils offer meeting rates, and others offer salaries up to the rate of elected members.
- [9] Remuneration for external appointments to ORC Committees in previous trienniums has been a mixture of a percentage of the elected member remuneration, or a flat rate paid per meeting.
- [10] Feedback from the 2019-2022 triennium from external appointments noted that while the remuneration covered the Committee work, workshops and additional meetings which ended up being significant for the Strategy and Planning Committee in particular, weren't remunerated.
- [11] It is recommended that Council adopt a remuneration mechanism for external appointments that includes:
- a. A percentage fee of 20 percent of the elected member rate for external appointments, which includes meeting time and preparation for the core committee meetings (same as 2019-2022 triennium)
 - b. A percentage fee of 25 percent of elected member rate for co-chairs, which includes meeting time and preparation for the core committee meetings.
 - c. An additional meeting fee (to be determined by the Chief Executive) for workshops attended, including time in the workshop and preparation time, for up to 10 workshops per calendar year attended.
- [12] It is proposed this would take effect from the first committee meetings attended by the external members.

Land and Water Regional Plan Governance Group (LWRPGG)

- [13] The LWRPGG hasn't provided remuneration to the external members on the group to date. Given the priority completing the LWRP is for the Council, and the significant workload for the Governance Group this year, it is proposed to offer a meeting fee for external appointments to this Group. This would be for the duration of the LWRP and claimable for each meeting attended. An appropriate fee would be determined by the Chief Executive.

OPTIONS

[14] Option 1: To consider an updated remuneration framework for external members appointed to ORC Committees, and the ORC LWRPGG. This could be what is outlined in paragraphs 11 and 13, or an alternative.

Advantages

- Recognises the skills, expertise, and time of appointed members on ORC Committees
- Recognises the additional workload of Co-Chairs on ORC Committees
- Enables remuneration for workshops, that can add a considerable amount of time to a Committee's workload

Disadvantages

- Has an impact on the budget for Committees, which will be factored into the LTP 2024/34 and may result in a small overspend in the governance budget for the 2023/24 financial year.
- Has an impact on the LWRP budget.

[15] Option 2: To stay with the status-quo (no additional remuneration for external Co-Chairs and no remuneration for the LWRPGG meetings)

Advantages

- Is budgeted for and can be managed within existing budgets as the only impact is an additional external appointment for the governance budget.
- No impact on the LWRP budget.

Disadvantages

- Doesn't recognise the additional workload for external appointments holding Co-Chair roles.
- Doesn't recognise the contribution of LWRPGG members in terms of time, skills and expertise.

CONSIDERATIONS

Strategic Framework and Policy Considerations

[16] Nil.

Financial Considerations

[17] Remuneration for external appointments is discussed above in paragraph 13.

Significance and Engagement Considerations

[18] Nil.

Legislative and Risk Considerations

[19] The Local Government Act provides the ability for Council to make external appointments to Council Committees and working groups. It does not provide a framework for remuneration for these positions.

Climate Change Considerations

[20] Nil.

Communications Considerations

[21] Nil.

NEXT STEPS

[22] Council's decision will be communicated to ORC's Finance Team to enable the necessary arrangements to be made for providing remuneration to external appointments.

ATTACHMENTS

Nil

8.6. Opening and Closing ORC Council Meetings

Prepared for: Council

Report No. GOV2310

Activity: Governance Report

Author: Cr Gretchen Robertson, Chairperson

Endorsed by: Cr Gretchen Robertson, Chairperson

Date: 22 March 2023

PURPOSE

- [1] To enable a discussion at Council around opening and closing Council and Committee meetings.

EXECUTIVE SUMMARY

- [2] ORC's standing orders provide that meetings may be opened with some form of reflection to recognise the civic importance of the occasion.
- [3] ORC has used karakia in the past to open and close meetings, including the inaugural Council Meeting for the 2022-2025 triennium. This is part of our ongoing commitment to an improved mana whenua partnership and as part of ensuring the ORC is enabled to apply the use of appropriate tikanga at ORC meetings and events.

RECOMMENDATION

That the Council:

- 1) **Notes this report.**

BACKGROUND

- [4] ORC's Standing Orders provide the following guidance for opening and closing meetings:

Meeting Procedures

10. Opening and closing

Local authorities may, at the start of a meeting, choose to recognise the civic importance of the occasion through some form of reflection. This could be an expression of community values, a reminder of the contribution of members who have gone before or a formal welcome, such as a mihi whakatau.

Options for opening a meeting could include a karakia timatanga, mihi whakatau, or powhiri as well as a karakia whakamutunga to close a meeting where appropriate.

- [5] Additionally, they provide the following guidance for the Chairperson of the meeting:

14.1 Council meetings

The Chairperson must preside at meetings of the council unless they vacate the chair for a part or all of a meeting. If the Chairperson is absent from a meeting or vacates the chair, the deputy Chairperson must act as chairperson. If the deputy Chairperson is also absent the local authority members who are present must elect a member to be the Chairperson at that meeting. This person may exercise the meeting responsibilities, duties and powers of the Chairperson for that meeting.

cl. 26(1), (5) & (6) Schedule 7, LGA 2002.

- [6] For committees and subcommittees, the following guidance is provided:

14.2 Other meetings

In the case of committees, subcommittees and subordinate decision-making bodies, the appointed Chairperson must preside at each meeting unless they vacate the chair for all or part of a meeting. If the Chairperson is absent from a meeting or vacates the chair, the deputy Chairperson (if any) will act as Chairperson. If the deputy Chairperson is also absent, or has not been appointed, the committee members who are present must elect a member to act as Chairperson. This person may exercise the meeting responsibilities, duties and powers of the Chairperson.

cl. 26(2), (5) & (6), schedule 7 LGA 2002.

- [7] In the previous triennium, then Chair Andrew Noone spoke with mana whenua about a recommendation for a karakia that would be appropriate for the ORC to use in various forums. This was in recognition of our ongoing commitment to our partnership with mana whenua (as discussed by Council on 27 October 2021), to part of ensuring the ORC is enabled to apply the use of appropriate tikanga at ORC meetings and events, and in recognition of our iwi representation on ORC committees.
- [8] In Te Ao Māori (the Māori world view) karakia delineates a time and space for a specific activity/event. It clears the pathway and brings people together for a common purpose, as often members of the group have come from different areas and via different journeys, it settles and brings the group together and enables the group to focus on the work at hand. There are many forms of karakia for different purposes (opening and closing meetings, blessing food, blessing carvings, blessing activities/sites for example). Karakia connects the purpose of the activity/event, with those that are there, and to the wider world.
- [9] It is commonly translated as a “prayer”, but it does not have to have religious intent.
- [10] Through Mana to Mana, the following karakia (with translation) was provided:

Opening:

Tuia ki runga (Unite above)

Tuia ki raro (Unite below)

Tuia ki waho (Unite without)

Tuia ki roto (Unite within)

Tuia ki te here tangata (Unite as one)

Ka rongō te po (Listen to the night)

Ka rongō te ao (Listen to the world of light)

Haumi e, hui e, taiki e (and now we can come together).

Closing:

Kua mutu a mātou mahi (Our work is finished)

Mō tēnei wā (for the moment)

Manaakitia mai mātou katoa (Bless us all)

O mātou hoa (Our colleagues)

O mātou whānau (Our families)

Aio ki te aorangi (Peace to the universe).

Or alternative closing:

Kia tau te rangimarie (Let peace reign)

Ki runga i ngā iwi o te ao (On all the peoples of the world).

[11] This karakia may be chosen by the meeting Chair or they may determine that there is another karakia or alternative they would like to use for opening and closing a meeting.

DISCUSSION

[12] Nil.

OPTIONS

[13] This is a noting report, so no options have been provided.

CONSIDERATIONS

Strategic Framework and Policy Considerations

[14] Nil.

Financial Considerations

[15] Nil.

Significance and Engagement

[16] Nil.

Legislative and Risk Considerations

[17] Nil.

Climate Change Considerations

[18] Nil.

Communications Considerations

[19] Nil.

NEXT STEPS

[20] Nil.

ATTACHMENTS

1. LGNZ Guide [8.6.1 - 6 pages]

Local government obligations under Te Tiriti o Waitangi

// Ngā kawenga a te kāwanatanga ā-rohe i raro i te Tiriti o Waitangi

Local governments are part of the governing framework of Aotearoa New Zealand with obligations that flow from the Crown's duties under Te Tiriti o Waitangi. In addition, as mechanisms through which communities make decisions about what matters to them, kaunihera can only be successful by building and operating through a wide network of community relationships. Chief amongst these are those iwi and hapū, who hold traditional and indigenous authority in their hapori (community).

Local government's empowering statute, the Local Government Act (LGA) 2002, along with other acts of parliament, sets out the expectations and requirements of local governments, that relate directly to the Crown's obligations to Māori.

Standing orders provide a mechanism for achieving the following:

// 1 Acknowledging the mandate of mana whenua as the traditional governors of Aotearoa New Zealand and the area of your kaunihera.

// 2 Enabling the participation of Māori as citizens in kaunihera decision-making processes.

Acknowledging the mandate of mana whenua as the traditional governors // Te tūtohu i te mana o te mana whenua hei kāwana tuku iho

Iwi and hapū have a mandate based on their role as the indigenous governors of the land. This is quite different from the 'stakeholder' status given to many local organisations kaunihera works with. It is a status that would exist even if it wasn't enshrined in Te Tiriti o Waitangi.

It is incumbent on local authorities to work with relevant iwi and hapū to determine how best to recognise their status. A common approach involves developing a joint memorandum or charter of understanding which can provide clarity around expectations, including how current and future engagement should occur.

The scope of an agreement could include:

- >> Processes for ensuring relevant mana whenua concerns can be incorporated in governing body and committee hui agendas.
- >> Mechanisms for ensuring that papers and advice going to meetings incorporates the views and aspirations of mana whenua. Such mechanisms might include the co-design and co-production of policy papers and allowing mana whenua themselves to submit papers.
- >> A role for kaumatua in formal kaunihera processes, such as:

// the inaugural hui, having a local kaumatua or mana whenua representative chair the hui and swearing in of members, or

// enabling kaumatua or other mana whenua representatives to sit at the governing body table as advisors.

Other initiatives that can be included in standing orders and recognise the mandate of mana whenua, are:

- >> placing information about significant aspects of your area's history as a regular item on the governing body's agenda,
- >> holding hui on marae and other places of significance to Māori,
- >> providing presentations at governing body meetings highlighting the history of the local area; and
- >> inviting mana whenua organisations to appoint representatives on kaunihera committees and working parties.

Enabling the participation of Māori as citizens // Te whakarite i te āheinga a Māori ki te whai wāhi hei kirirarau

Standing orders are a mechanism for enabling members to work collectively to advance the public interests of their hapori: they are a tool for promoting active citizenship. Enabling the participation of Māori citizens is one of the duties that the Crown has placed on local governments to give effect to Te Tiriti o Waitangi obligations, as set out in Article 3.

In the words of the Waitangi Tribunal:

In article 3, the Crown promised to Māori the benefits of royal protection and full citizenship. This text emphasises equality. ²

To recognise and respect these responsibilities and to maintain and improve opportunities for Māori to contribute, parts 2 and 6 of the LGA provide principles and requirements for local authorities that aim to achieve these objectives (LGA 2002, section 4, Treaty of Waitangi).

The emphasis in this section is on facilitating the participation of Māori in decision-making processes. Local government decisions are made in meetings which are governed by standing orders. Kaunihera must consider how their standing orders facilitate such participation and proactively take steps to make it easy and encourage Māori citizens to become involved in decision-making processes.

The legislation itself provides some help, namely that local authorities must:

- >> establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority, (LGA 2002 section 14(1)(d)),

² The Waitangi Tribunal considers both the English Treaty of Waitangi and the Māori Te Tiriti o Waitangi in coming to an interpretation.

>> consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authority, and

>> provide relevant information to Māori for the purposes of contributing to, and building ‘capacity’ to contribute to, the local authority’s decision-making processes.

In relation to the LGA 2002 ‘capacity’ is the ability of a person (or group) to participate knowledgeably, given their resources and their understanding of the requisite skills, tools, and systems. Ways to build capacity include:

- >> providing training and guidance on how kaunihera meeting and decision-making processes work,
- >> holding meetings and workshops on marae and other community settings to help demystify local government processes, and
- >> providing information about meetings in te reo Māori, including agendas and papers.

Kaunihera also need to look at the degree to which their facilities are culturally welcoming and incorporate Māori tikanga values and customs.

This is about incorporating practices, protocols and values from mātauranga Māori or Māori knowledge.

Examples to achieve this include:

- >> appropriate use of local protocol at the beginning and end of formal occasions, including pōwhiri and mihi whakatau,
- >> using karakia timatanga for starting meetings and hui,
- >> closing meetings and hui with karakia whakamutunga,
- >> re-designing order papers and report formats to include te reo Māori, including headings,
- >> reviewing kaunihera processes and cultural responses through a Te Tiriti o Waitangi lens, and
- >> offering members the option of making the declaration in te reo Māori.

// MEMBERS DECLARATION

I, [.....], declare that I will faithfully and impartially, and according to the best of my skill and judgment, execute and perform, in the best interests of [name of region or district], the powers, authorities, and duties vested in or imposed upon me as a member of the [name of local authority] by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act.

Ko ahau, ko _____, e oati ana ka whai ahau i te pono me te tōkeke, i runga hoki i te mutunga kē mai nei o āku pūkenga, o āku whakatau hoki kia whakatutuki, kia mahi anō hoki i te mana whakahaere, te mana whakatau me ngā momo mahi kua uhia ki runga i a au kia whiwhi painga mō te takiwā o Te Wairoa hei kaikaunihera o te Kaunihera-a-rohe o Te Wairoa, e ai hoki ki te Ture Kāwanatanga-ā-Taiao 2002, ki te Ture Kāwanatanga-ā-Taiao Whakapae me te Hui 1987, me ētahi Ture anō rānei.

He mea whakaū tēnei i Te Wairoa i tēnei rā rua tekau mā rua o Whiringa-ā-nuku i te tau rua mano tekau mā toru.

Waitohu: _____

Waitohu mai ki mua i a: _____

13 14 15

8.7. ORC consultation responses to The Future for Local Government draft report, the Natural and Built Environment Bill and Spatial Planning Bill

Prepared for: Council

Report No. SPS2303

Activity: Governance Report

Authors: Warren Hanley, Senior Resource Planner Liaison; Marianna Brook,
Principal Advisor Mayoral Forum

Date: 22 March 2023

PURPOSE

- [1] To formally document two submissions lodged in February on behalf of Council, regarding the Natural and Built Environment Bill and Spatial Planning Bill before the Environment Select Committee, and the Review into the Future for Local Government draft report.

RECOMMENDATION

That the Council:

- 1) *Notes the attached submission on the Natural and Built Environment Bill and Spatial Planning Bill, lodged with the Environment Committee on 4 February 2023; and*
- 2) *Notes the attached response to the Future for Local Government draft report, submitted to the review panel on 28 February 2023.*

BACKGROUND

- [2] Central Government is engaged in significant reform in both resource management, and local government. Both pieces of reform have been underway for some time and Councillors have been engaged throughout both processes. These two consultations are part of those high-level reform initiatives being progressed.
- [3] The Natural and Built Environment Bill and Spatial Planning Bill are a culmination of Central Government's Resource Management Reforms (RM Reforms). The Bills are the product of the Randerson Panel's review and recommendations for replacing the Resource Management Act 1991.
- [4] ORC had the benefit of a workshop session with Rachel Brooking MP who was able to clarify questions on the Bills related to her involvement with the process as a member of the Randerson Panel.
- [5] Due to the length of time between lodgement of the submission and the next available formal reporting date to Council, Councillors were provided a copy of the submission for their awareness on 17 February 2023.

DISCUSSION

Natural and Built Environment Act Bill, and Spatial Planning Bill

- [6] ORC staff and the Council's Submission Working Group² reviewed the consultation material, including both Bills across two sessions in January. They also reviewed the draft ORC submission, and the regional sector submission made on behalf of New Zealand's 16 regional authorities Chief Executives (including ORC) and coordinated by Te Uru Kahika.
- [7] ORC's submission was lodged on 4 February 2023 and is attached to this report as Appendix 1. It supports the overall intent of the Bills, supports the issues raised in the regional sector submission (attached), and outlines some Otago specific concerns based on our experience.
- [8] Some of the key points of ORC's submission were:
- Concern Freshwater Working Group may negatively impact development and notification of Otago's Land and Water Regional Plan.
 - A disconnect between the provisions of NBE Bill and the National Policy Statement for Freshwater Management as to Regional Plan content.
 - National resourcing constraints that could affect the implementation of Regional Planning Committees.
 - The negative impact on resourcing and process in applying a blanket expiry date to grouped categories of consents.
 - Support for Regional Spatial Strategies as an effective strategic tool for managing regional issues of significance.
 - A need to improve ability of the public to input into Regional Spatial Strategies such as mandatory hearings.

ORC's Deputy Chair Cr McCall presented to the Environment Committee on 10 March 2023 and highlighted some of ORC's concerns.

Review into the Future for Local Government Draft Report

- [9] The Review into the Future for Local Government was initiated in mid-2021. An interim report was released in September 2021 and a draft report in October 2022. These reports were informed by various events, presentations, and discussions, including a visit from members of the panel to ORC in March 2022. The final report is due to the Minister for Local Government in June 2023.
- [10] In early February, Council participated in a workshop focussing on the questions and recommendations in the draft report. The papers for this workshop included a summary of staff discussions on the same content. Notes from both the staff and council sessions were combined to inform a draft of the attached response.
- [11] The final response, collated based on the workshop in February (attached as Appendix 2), was approved following a meeting of the Submission Working Group on 23 February and submitted to the panel on 28 February.

OPTIONS

- [12] This is a noting paper to formally record submissions lodged/sent in February 2023. There are no options or decisions sought.

² Crs Lloyd McCall, Kate Wilson, Andrew Noone, and Elliot Weir.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [13] Our strategic directions require that we take leadership on issues of significance and importance to both our Otago communities and national direction. Making a submission to address issues that may affect Otago's interest is part of that leadership. Both consultations relate to the structure and functions of regional authorities. There will be impacts - both operationally and at a governance level – from the proposed changes to either or both current reforms.

Financial Considerations

- [14] There are no financial considerations as a result of this paper. Making submissions on national consultation is a budgeted activity

Significance and Engagement

- [15] This paper is a noting paper and does not trigger *He Rau Rika* Significance, Engagement and Māori Participation Policy.

Legislative and Risk Considerations

- [16] There are no legislative or risk considerations from this paper.
- [17] The NBE and SP Bills may result in new legislation that replaces the RMA 1991 and a raft of transitional, operational and governance process changes. There will be risks around the ability to resource and fund these changes. Many of these risks have been addressed in the submission from the regional sector, and ORC.

Climate Change Considerations

- [18] There are no climate change considerations.

Communications Considerations

- [19] Any submissions made by ORC may be made publicly available via the agencies responsible for each consultation.

NEXT STEPS

- [20] The Environment Committee must report back to Parliament on the NBE and SP Bills by May 2023. The timing for the remaining stages in Parliament will depend on the Government's priorities. A proposed Climate Adaptation Act, the third leg of the RM Reforms, is still be drafted and is yet to be released as a Bill.
- [21] The final report from the Review in the Future for Local Government will be submitted to the Minister for Local Government in June 2023. The Government's formal response can be expected after the general election.

ATTACHMENTS

1. ORC submission on NBE Bill and SP Bill [8.7.1 - 8 pages]
2. FINAL Future for Local Govt draft report - Otago Regional Council response [8.7.2 - 4 pages]



Our ref: A1753837

Environment Select Committee
Wellington

Via EMAIL: esc@govt.nz

3 February 2023

Otago Regional Council submission to the Environment Committee on the Natural and Built Environment Bill and the Spatial Planning Bill

1 Introduction

Otago Regional Council (ORC) appreciates the opportunity to provide comment to the Environment Committee on the proposed Natural and Built Environment Bill and the Spatial Planning Bill. Our submission consists of the following:

- Section 3: ORC endorsement of Te Uru Kahika Regional Sector Group Submission
- Section 4: ORC comments on the National Built and Environment Bill
- Section 5: ORC comments on the Spatial Planning Bill

2 Executive Summary

ORC is **supportive** of the goals of reform, particularly:

- Integrating regional spatial planning with the resource management framework
- Simplifying resource consent processes
- Improving the integration of land use and development and natural resource management

However, there are significant challenges that will need careful consideration by the Environment Committee which are discussed further in this submission. Overall, we consider both Bills must achieve the following outcomes:

1. Good and clear integration together, with clarity on responsibilities and expected outcomes, and it must resolve any conflicts, must be clear, certain, and defensible.
2. Any transitional provisions must be clear, with sufficient time to implement resourcing (including staffing) for all requirements of the new resource management framework as they come online.
3. Regional Councils must retain greater agency in the decision making on the NBE plans and Regional Spatial Strategies. As proposed, councils' agency is further removed as they must adopt the decision of the RPC but remain accountable for NBE plan's ongoing implementation and resourcing any challenges to those plans.



3 ORC endorsement of Te Uru Kahika Regional Sector Group Submission

ORC has read Te Uru Kahika regional sector group submission (the sector submission) on the Natural and Built Environment Bill, and the Spatial Planning Bill.

ORC broadly supports the sector submission. If our own comments deviate from the sector submission, then our comments stand. We were able to feedback into the drafting of the sector submission and consider that it accurately addresses the matters on both Bills that the collective regional sector generally either supports or has concerns with.

4 ORC comments on the Natural and Built Environment Bill

While providing broad support for the sector submission, ORC has some additional aspects that we consider require specific submissions on the Natural and Built Environment Bill (the NBE Bill). These submission points can be categorised as relating to the structure, drafting, definitions, and clarity of the NBE Bill.

4.1 Primary Concerns on the drafting of the NBE Bill

4.1.1 Freshwater Working Group (Part 10 Subpart 7 sections 689 – 693)

The Freshwater Working Group is a new concept that has had very little attention during the Bill's development. It is not clear how the Freshwater Working Group is intended to relate to existing work on water allocation as directed by the National Policy Statement for Freshwater Management 2020(NPSFM), and we consider that there are significant risks with the proposal as drafted.

Section 692 requires that the Working Group must make an allocation report to the Minister for the Environment no later than 31 October 2024 and the NPSFM requires regional councils to have notified freshwater plans by December 2024 ORC's proposed freshwater plan is due to be notified by December 2023, 12 months ahead of other Councils'. The expectation in the NPSFM is that freshwater plans will address freshwater allocation, including overallocation. We expect the allocation report required under s692, and any decision on it would likely cut across the work regional councils will do, and in particular that ORC will have done to establish well-considered and integrated water allocation provisions in the proposed LWRP. We anticipate that the allocation report and subsequent allocation statement could, at best, create confusion and delays to implementing the LWRP provisions. At worst, it could essentially push Otago back to square one in this work.

In addition, it runs the risk of imposing an additional and competing demand on our iwi partners – requiring them to work on an allocation report as well as freshwater plans that will address allocation.

4.1.2 Substitution of Accepted RMA Planning Definitions and Concepts

Since 1991, the implementation of the RMA has seen the development of a substantial body of accepted resource management practices, definitions, and case law that has clarified, defined and directed resource management in New Zealand. We acknowledge not all of the case law has been positive.

The NBE Bill introduces new concepts and terminology, with some appearing to replace RMA terminology that is well understood legally. ORC acknowledges the NBE is new environmental legislation and therefore requires some new concepts and terminology however we have concerns that some of the new concepts are replacing existing, non-controversial and clearly understood terminology.

One example is that the terms 'submission' and 'further submission' are to be replaced with 'primary', 'secondary' and 'enduring' submission. There appears to be little benefit from the change from submission and further submission to primary and secondary submissions, and no clarity on what an enduring submission is.

Another example is the introduction of the term 'trivial effect' which is undefined in the Bill. From its reading in the context of the Bill, it appears to have similar meaning to replace *de minimus* and 'less than minor' effects. However, without a definition its use is confusing and potentially unnecessary.

Similarly, we suggest caution where existing RMA terms are used, but in a different way. For example, the term 'controlled activity' is quite different to an RMA controlled activity and retaining this term may create uncertainty and confusion for plan users

Overall, we are concerned that if too many new, untested concepts and definitions replace RMA language and concepts which have forged through the Courts, then this risks a new wave of resource management litigation, directing focus away from implementing the new reform framework and delivering on the environmental and societal outcomes sought.

4.1.3 Incorporating Existing National Direction into the NBE Bill

We understand from the Ministry for the Environment that existing national direction would be brought through into the structure and provisions of the NBE. Our concern is that national direction has not been accurately incorporated throughout the Bill, including section 5 (System Outcomes).

If the NBE is to integrate existing national direction, then the wording and concepts within those documents should not be deviated from, particularly where there is case law built on that direction.

4.1.4 Plan Content and Regional Council Matters of Responsibility

Section 102 of the Bill directs the objectives and outcomes that must be achieved, and the specific content NBE plans that must be included. Section 103 further directs for regional councils those matters that must be included, and those that may be included in the NBE plans.

We consider that, as it is currently drafted, section 103 is in conflict with the NPSFM and in particular Te Mana o te Wai, and managing freshwater in an integrated manner. We consider that with so many freshwater related aspects being optional rules in NBE, it shifts the focus that the NPSFM brings to integration and holistic management.

ORC considers section 103 would be improved by amending it to include more of the matters for which regional councils are responsible for to be mandatory rule requirements in NBE plans. For example, the use of water (i.e., water quantity) must be included, but discharge of contaminants (i.e.

water quality) is optional. This is inconsistent with the NPSFM which has a strong focus on the integration of water management issues.

4.1.5 Section 108(d): Matters that must be disregarded when preparing or changing plans

Section 108(d) introduces three new concepts to the NBE – people on low incomes, people with special housing needs, and people with disabilities that need housing support or supervision. The section requires that any adverse effects from the use of land by these three groups of people must be disregarded by a Regional Planning Committee when preparing or changing a NBE plan.

It is not clear what the intended outcome of this clause is however ORC has concerns that it might result in some unintended or perverse outcomes. The requirement to disregard any adverse effects resulting from the use of land could, for example, mean that if land was zoned residential but contained significant biodiversity values, the adverse effect of using the land for residential uses that resulted in the loss of biodiversity must be disregarded. Similarly, a proposal for affordable housing could involve land that features a degree of natural hazards, or stormwater issues and constraints, yet the potential effects on these people identified by s108(d) would not be able to be considered. These people are likely to be less resilient to the impact of these adverse effects.

The new groups of people are not defined, and this creates the potential for the section to be manipulated, especially as the terms are subjective. For example, a person of low income could mean a variety of people, including retired people on pensions, people earning minimum wage or even those who have significant assets but no regular or significant income.

4.1.6 Regional Planning Committees (RPC)

The concept of the RPC is a significant shift in approach for strategic planning decisions for each region. ORC understands that the NBE will be implemented initially by three regions, and we expect there to be significant lessons about the establishment, operation and funding (including cost sharing) of the committees through those first tranche of Councils that puts them in place. ORC supports staggering the implementation of the reforms across the country, and suggests sufficient time is provided between the first group and any subsequent groups such that an effective and responsive feedback loop can be in place, to address any significant issues if identified.

Staggering implementation will also help alleviate the severe shortage of appropriately qualified and experienced planners, technical experts, and Hearing Panel members across the New Zealand planning system.

4.1.7 Expiration of Grouped Consents

Section 76(b) of Part 3 (national planning framework) of the NBE Bill contains provision for “*requiring specified categories of consents to have the same expiry date in specified circumstances*”.

A similar scenario was provided for in the RMA with the ‘sunset’ clause that required all Deemed Permits to expire on 1 October 2021. There were significant repercussions for holders of Deemed Permits who did not have applications to replace their historical water right sufficiently in progress by that expiry date.

ORC's experience in managing the expiration of hundreds of consents all at the same time was that this resulted in significant pressure for all parties – from permit holders, and affected parties, iwi parties and for Council.

We understand that under a “first in, first served” model of resource allocation, there are benefits of common expiration dates such that managing them and their resource burden is worthwhile however with the ability under the NBE to move away from the first in first served model, the use of common expirations should not be the first option, given the challenges it creates.

ORC strongly recommends the Environment Committee consider whether this provision is necessary under the allocation methodologies now available, factoring in the significant resource burden on all parties involved in consenting.

4.2 Additional Concerns or Comment

4.2.1 Support for the Principles for Biodiversity Offsetting and Biodiversity Redress (Schedules 3 and 4)

We support the best practice biodiversity offsetting and redress provisions in the NBE Bill. These are important and will support, and strongly align with the provisions ORC currently in our proposed s Regional Policy Statement 2021 which is currenting before a hearings panel.

4.2.2 Section 3 (Purpose)

Section 3 of the proposed Bill requires that in enabling the use, development and protection of the environment, specified objectives and outcomes must be met.

‘Environment’ is defined in the Bill as follows:

Environment means, as the context requires –

(a) The natural environment:

(b) People and communities and the built environment that they create:

(c) The social, economic and cultural conditions that affect the matters stated in paragraphs (a) and (b) or that are affected by those matters

In a context where the use of the environment for development also requires it be protected, section 3(a)(ii) gives no guidance as to what weighting of ‘promotes outcomes of benefit’ is to be applied to either provision (a) or (b) of the definition of Environment. It is possible both may be achievable, but equally both may be in conflict. Furthermore, the ‘outcomes of benefit’ are not identified as being those ‘system outcomes’ detailed in section 5 of the Bill.

ORC requests the Environment Committee ensure there is clarity how any conflict in outcomes between the natural and built environment are to be resolved. ORC is concerned that the definition for environment being contextual opens a degree of uncertainty similar to that found in the preeminent sections of the RMA.

4.2.3 Section 5 (System Outcomes)

Section 5 also raises uncertainties due to the drafting. For example, section 5(c)(ii) uses the words 'ample' and 'inflated' in the context of urban land supply and prices. This wording is ambiguous, with no clear direction on how to qualify or quantify what is 'ample' or 'inflated'. Importantly, the drafting is inconsistent with relevant concepts and wording used in the National Policy Statement on Urban Development 2020, including within the definition for '*well-functioning urban environments*'.

4.2.4 Insurance for non-compliance fines

Our experience is that most people make all appropriate effort to reduce risk to the environment from their activities. Even so, non-compliance of a serious degree can result from genuine accidents even when robust plans and processes are followed.

While we support the Bill's intention to prohibit the option of insurance for paying fines (section 766), we consider this should be reserved for instances where reasonably avoidable risk, or outright negligence can be demonstrated. We consider there needs to be recognition that in situations where it can be shown despite all reasonable and acceptable efforts a genuine accident still occurred, insurance to assist with the fine may be appropriate.

Without such a provision, some businesses may determine that the risk is of a degree that is out of balance with the business' viability, and they reduce or cease operation. This could have wider adverse impacts on a community's social and economic well-being.

4.2.5 Farm Plans and Catchment Plans

We support the ability for NBE plans to determine the appropriate scale for managing different environmental issues. For some issues, farm plans requiring actions to contribute to addressing environmental issues and outcomes are the appropriate scale.

However, for other issues such as biodiversity or pest management we would like to see the NBE Bill specifically reference the use of catchment scale approach in scenarios where it will be more effective for managing an issue, including achieving economies of scale, a coherent strategy and ultimately greater community buy-in. The catchment scale approach may inform actions that are appropriate to filter down and require at the farm plan scale.

A current example is sedimentation in the Kyeburn, located in the Maniototo district of Otago. Managing sources of sedimentation may be more effectively lead with a catchment wide approach with all relevant partner agencies and landowners involved. This would assist landowners to better understand options and actions they can take and build into their farm plan, and importantly how their efforts will contribute to the overall strategy to reduce sedimentation.

4.2.6 Places of National Importance (Part 8 Subpart 3)

This subpart of the NBE Bill provides for identifying and protecting places of national importance where they have important natural, cultural, biodiversity or public access values. We support the intent of these provisions and consider that they will assist Regional Planning Committees to identify and protect these areas more effectively.

However, we are concerned that the definition of a 'place of national importance' is very broad and may involve substantial amounts of land in Otago's case – much more than envisaged by the drafting in the NBE Bill.

Ultimately it could create a huge burden on local authorities to identify all areas that meet the broad definition of 'place of national importance', particularly with respect to public access.

We note that 'public access' is not defined in the NBE Bill. Instead, a common law test would likely be used asking "is there a right of way or passage granted to the public by the landowner?" This can include land publicly or privately owned. In practice this will include land that is very remote and/or inaccessible due to its terrain.

In terms of public access, we consider a more appropriate threshold would be identifying areas based on the frequency of their use by the public. Areas with demonstrably high use would be considered places of national importance whereas those infrequently or never used would not. These high use areas should be the focus of the provisions.

We request the Environment Committee to amend the definition of a 'place of national importance' to 'raise the bar' for places considered of national importance. For public access this would focus on providing protection for areas with demonstrably frequent public access use.

5 ORC Comments on the Spatial Planning Bill

5.1 Overall support for Spatial Planning Bill

Overall ORC is supportive of the Spatial Planning Bill. We recognise the important role Regional Spatial Strategies (RSS) will play in strategically identifying and directing the management of regional and district issues of strategic significance and ensuring integration into NBE Plans.

5.2 General considerations: instruments (section 24)

This section directs planning instruments (strategies, statements, plans etc) that a regional planning committee must have regard to in preparing a regional spatial strategy. This includes any statement of regional environmental outcomes (SREO) and any statement of community outcomes (SCO) which local authorities may produce under sections 643 and 645 of the NBE respectively.

Neither the SP Bill nor the NBE Bill provide guidance on how SCO and SREO are to be structured and whether there needs to be any integration between two statements (made within the same region) on issues that overlap. While any connections or relationships between a SCO and SREO may be a role of regional planning committee to determine under section 107 of the NBE Bill, the purpose of both statements is to identify important issues to support strategic planning.

Our understanding is that the SREO reflects the larger environment in which the SCO's issues sit. Therefore, we consider that the Regional Planning Committee should give a higher priority to the SREO than the SCO if there is any conflict between the two statements.

ORC requests that the Environment Committee require Regional Planning Committees to give priority to an SCO over an SREO if there is any conflict between the two statements.

5.3 Hearings for a Regional Spatial Strategy

We do not support hearings being optional under section 35(1) of the SP Bill. This appears contrary to section 32 which encourages participation. A hearing provides a forum in which all issues and evidence can be rigorously explored, giving all parties a better context to understand the issues and their position.

A regional spatial strategy will have a significant influence on the NBE plan, which in turn will affect all people in the region, and so it is critically important this process ensures full participation of our communities.

ORC requests that the Environment Committee make Hearings mandatory.

5.4 Policy for determining significant change (section 49)

We consider that allowing regional planning committees to adopt different criteria to determine whether a change is significant is unnecessary. While there may be some instances where issues specific to a region might trigger a review, the criteria underlying these issues are likely to be common.

ORC requests that the Environment Committee include the criteria for determining whether a change is significant is included in the Bill.

ORC will speak to its submission.

ORC does not object to its submission being made publicly available on the Ministry's website.

Yours sincerely



Gretchen Robertson
Chairperson, Otago Regional Council

28 February 2023

Review Panel
Review into the Future for Local Government



By email: futureforlg@dia.govt.nz

Tēnā koutou kātoa,

On behalf of the elected members and staff of the Otago Regional Council (ORC), I would like to congratulate you on the publication of *He mata whāriki, he matawhanui*. We acknowledge that the review has been, and continues to be, a significant undertaking. We extend our support and gratitude as you move into the final phase.

Our response to the report reflects two phases of engagement at our Council. In January, a group of staff participated in a series of discussions on the report content. In February, elected members received a summary of the staff discussions and participated in a workshop. Both groups largely worked through the report in chapter order, focusing on areas of interest and importance to our region and our council. This response does the same.

Regional councils are first and foremost environmental custodians. We have a dual role: as an enabler and as a regulator. Both are crucially important both now and into the future.

Regional councils are enablers with ultimate responsibility for environmental bottom line adherence. The need and demand for information brokerage, facilitation, and fostering community vision has increased hugely over the last decade. We believe this is a core regional council role for the future. Regional councils' role as regulatory backstop has also grown with increased regulation. There is a worthy debate possible on whether and where the two roles work optimally together.

To foster community responsibility and capacity for environmental outcomes and sustained change, Otago Regional Council does not do operational environmental enhancement work. Instead we enable community action through initiatives like our Eco-Fund, facilitation, technical training sessions, communications, brokering partnership funding, monitoring and advice. Community itself has an increasing role in envisioning environmental futures and instigating change on the ground. In our experience, the better our relationships with communities, the better the outcomes.

Due to our important role in fostering community vision, we started with a discussion on citizen-led democracy (**Chapter 2**), which is something we see as a centerpiece of the report. We see this chapter as heralding a move away from the old paternalistic system of governance to a more collaborative approach: we have to learn to be more inclusive. Like the report, we noted that it takes time and money to get these processes up and running, but this is an investment in a more engaged future.

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The staff group focussed on how a deliberative or participatory process would work in practice, and suggested that these concepts would work best for well-defined issues, with elected councils remaining central for long-term governance and oversight.

We acknowledge the central role of mana whenua in our work (**Chapter 3**), but chose not to discuss the concepts in this chapter in depth without both parties in the room. ORC has three Iwi representatives in two of its committees: Policy and Science (including as co-chair) and Regional Leadership. We also have a Mana to Mana group for Council governors and Rūnaka leaders, and a Land and Water Regional Plan Governance Group which includes Rūnaka representation. Decision making needs to occur at a meaningful, partnership level. We acknowledge that we are ourselves responsible for increasing our own capability and capacity to support an effective partnership with mana whenua.

Both staff and councillors were interested in the roles and responsibilities chapter (**Chapter 4**), noting that the central and local government relationship is in part challenging because each party strays outside (or does not have a clear understanding of) its role. Anticipating the later chapter on stewardship, there was some discussion as to *who* would represent local government in strategic discussions on roles and responsibilities – but no consensus.

We asked one another how we can support the public to better understand councils' roles (both existing and new), as this seems very muddy. Legislation is both helpful and unhelpful: the Local Government Act defines regional council roles and responsibilities in reasonable detail, but also confers responsibility for the four wellbeings, which cover "everything". Like the public, we need our role defined so we can plan for the future.

We recognise that regional councils' roles can be confusing and, as a result, fly under the radar despite their vital relevance for our environment and communities. Having a clearly defined role may help with community engagement and rates investment understanding. We see opportunity for community wellbeing, capacity building, identity, vision, and outcomes through regional councils but identifying who we are is challenging. Staff noted that discussions on roles and responsibilities can and should be happening at multiple levels, including staff, and involve representatives of all parties involved in an issue.

Chapter 5 'Local government as champion and activator of wellbeing' was a key focus for the councillor workshop. We support councils stepping into the roles of broker and enabler for our communities. As a regional authority with strong planning and regulatory roles, we want to enable people to get on and do things and not be unnecessarily impeded or waiting for council to step in. This is consistent with the inclusive governance approaches discussed earlier.

The staff group was unsure that local government should be innovators and experimenters as the report suggests. Rather they see local government as the constant, the foundation, that can support community groups to experiment and innovate. Councils can do this while setting examples of good practice (e.g. social procurement) and helping to communicate innovative thinking in our communities. Regional Councils have important roles in understanding the health of our environment and in brokering/facilitating access to wider information.

As can be expected, there were mixed views on the relationship between central and local government and how this can be improved (**Chapter 6**). As previously noted, councillors support the report's focus

on negotiating and clarifying roles and responsibilities as one way to improve this relationship. The concept of subsidiarity also found favour, countering a perceived risk that local government is being 'hoodwinked' into being an extension of central government. Two way feedback and communication will lead to better outcomes.

The staff group had fewer concerns about the relationship with central government, and some said that they see all central and local government staff as public servants. The group thought that central and local government would work together better if we better understood how our respective roles and responsibilities contribute to the big picture. Doing this via 'place based' initiatives makes sense.

The workshop did not dwell on the council and councillor-focused discussion in **Chapter 7**. Compulsory training for councillors is useful. It was noted that this is already in place for resource management commissioners. It was also noted that Councils can already delegate decision making authority and bring in expertise into its decision-making structures. Committee members do not need to be elected members. We want to ensure diverse representation from across our region.

Funding and financing (**Chapter 8**) were constant themes in our workshop, and we agree with the concerns expressed in the report. The existing situation is compounded if we consider that implementing many of the report's ideas would further stretch an over-stretched budget. The core funding issue for today's councils is that we are being asked to do more with less, and – unlike central government – councils cannot access further funding without appealing directly to ratepayers. An additional concern is a lack support from the wider assurance system, and especially that of the Auditor General which has failed to look beyond financial measures and ensure councils are genuinely investing in the long term.

We support calls to rate Crown owned land. As an example of a current imbalance, the Leith Flood Protection Scheme in Dunedin was ratepayer funded but largely protects Crown-owned buildings at the University of Otago and nearby.

System design (**Chapter 9**) is always of interest, especially as a regional council working with multiple territorial authorities. We consider that the number of councils in New Zealand will need to reduce if we as a sector are to do what is required. We see the opportunity for localism in local/community boards, especially if these groups are afforded enhanced funding and decision-making powers.

In the interim and as an immediate priority, we support the report's call for meaningful collaboration across existing councils. ORC has recently joined the Regional Sector Shared Services group. Like the panel, we see particular opportunities for digital collaboration.

The staff group went a step further on system design, with a majority drawn to the unitary model. Staff considered that a single authority would see them able to work more easily with others in our region, removing the artificial barriers that make working across councils so challenging. It would also resolve the question of which local authority is responsible for an issue in a region and better connect issues that are currently covered by different authorities (e.g. urban development and pest management). The group saw benefits for the public in that there would be only one council point of contact, and reputational benefits for councils as any conflict would be less likely to play out in the media.

Consideration of **Chapter 10** led to discussion on stewardship for the report and its recommendations, rather than the sector. Some of us remember the report that preceded the local government reforms in

1989. This report contained firm recommendations for the sector and its institutions, which were then implemented by the government of the day. While we are supportive of the current direction, we join calls for the final report to provide firmer and more specific recommendations, for the new government to pick up after the election. We can do much as a sector, but we also need change from the top for genuine transformation.

On that broad note I will conclude this response. I hope these reflections can support your work towards the final report later this year. We look forward to the report itself, but we also thank you for initiating the interesting discussions it has prompted for our council and for our staff. These too bode well for the future of our sector.

Kā mihi nui,

A handwritten signature in blue ink, appearing to read 'Gretchen Robertson', enclosed in a thin black rectangular border.

Gretchen Robertson
Chair, Otago Regional Council

8.8. ORC Submission Made on the Local Government Official Information and Meetings Amendment Bill (Natural Hazards)

Prepared for: Council

Report No. SPS2304

Activity: Governance Report

Authors: Warren Hanley, Senior Resource Planner Liaison
Jean-Luc Payan, Manager Natural Hazards

Endorsed by: Anita Dawe, General Manager Policy and Science

Date: 22 March 2023

PURPOSE

- [1] To provide Council with an overview of a staff submission lodged on the '*Local Government Official Information and Meetings Amendment Bill*' to the Governance and Administration Committee (the Select Committee).

EXECUTIVE SUMMARY

- [2] The broad policy and purpose of the Bill is to provide clarity and certainty for local authorities on provisions of the Local Government Official Information and Meetings Act 1987 (LGOIMA) as they relate to Land Information Memoranda (LIMs).
- [3] The Bill proposes amendments relevant to Otago Regional Council (ORC) in relation to improving natural hazard information provided in LIMs.
- [4] Submissions on the Bill closed on 3 February 2023, prior to the first Council meeting. As the provisions were largely technical and reflected current ORC practice, a staff submission was lodged.
- [5] ORC staff support the changes, which will result in improvements to the provision of natural hazard information from regional councils to territorial authorities to inform LIMs.
- [6] Our submission noted general support for the changes and recommended the Select Committee provide clarification on some terms used to remove subjectivity.

RECOMMENDATION

That the Council:

- 1) **Notes** this report.
- 2) **Notes** the staff submission lodged on the *Local Government Official Information and Meetings Amendment Bill*.

BACKGROUND

- [7] Currently, the LGOIMA directs that regional councils provide natural hazard information to territorial authorities (TA) in LIMs. ORC has developed over the years an appropriate method for sharing information with our TA partners. This involves our natural hazards
-

staff fostering strong communication channels with our TA partners to share information such as ORC updates to our natural hazard GIS layers.

- [8] However, this practice of sharing information does not occur to the same extent across New Zealand. The current provisions in LGOIMA are not considered sufficient to support the growing need for the public to be better informed of natural hazards and risks to themselves and property. This is the reason for the proposed amendments.

DISCUSSION

- [9] The new section 44C of LGOIMA which outlines new responsibilities for regional authorities.
- [10] In the context of regional authorities supplying natural hazard information to territorial authorities, section 44C requires they are to:
- Share information they hold as soon as practicable;
 - Provide information to the extent it is known; and
 - Provide further context where required to make the primary information understandable.
- [11] The requirements of section 44C were supported by staff. We sought opinions from our TA partners during the consultation period and had dialogue with 4 of the 5. As far as we are aware, from our TA partners, only DCC made a submission also in support of the Bill.
- [12] Staff presented to the Select Committee on 8 March 2023, which was well received.

OPTIONS

- [13] There are no options for this paper given it is a noting paper.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [14] Our submission aligns with our strategic directions, particularly:
- Enhancing access to, and communication of, data and knowledge;
 - Regional leadership;
 - Effective response to climate change; and
 - Community resilience to natural hazards.

Financial Considerations

- [15] There are no financial implications from this paper. Lodging submissions is a funded activity.

Significance and Engagement

- [16] This paper does not trigger He Mahi Rau Rika: Significance, Engagement and Māori Participation Policy.

Legislative and Risk Considerations

- [17] ORC already has responsibilities to provide natural hazard information to our TA partners. It is important that we clearly understand any changes to these responsibilities, and resourcing implications.

Climate Change Considerations

[18] The amendment proposes that the information provided to TAs must include the impacts of climate change that exacerbate natural hazards.

Communications Considerations

[19] Any submission made by ORC may be publicly available via the Select Committee website which is standard for a public consultation.

NEXT STEPS

[20] Staff will update Council on the outcome of the Bill, and any subsequent impacts on ORC's function and operation in respect to the provision of natural hazard information.

ATTACHMENTS

1. ORC submission on LGOIMA amendment Bill final [**8.8.1** - 3 pages]



Committee Secretariat
Governance and Administration
Parliament Buildings
Wellington

3 February 2023

Via email: ga@parliament.govt.nz

**OTAGO REGIONAL COUNCIL'S SUBMISSION ON THE LOCAL GOVERNMENT
OFFICIAL INFORMATION AND MEETINGS AMENDMENT BILL**

Introduction

1. The Otago Regional Council (ORC) appreciates the opportunity to submit on the Local Government Official Information and Meetings Amendment Bill (the Bill) currently before the Governance and Administration Committee.
2. Due to the timing of this consultation which closes before ORC's first Council meeting of 2023, this is an ORC staff submission. Any reference to an ORC position in this submission is reference to a staff position.
3. We acknowledge the importance of natural hazard information that inform Land Information Memorandums (LIMs), particularly as climate change is starting to impact the frequency and characteristics of many natural hazard events.
4. Overall, ORC is supportive of the purpose of the amendments, and welcomes the opportunity to contribute to improving the provision of natural hazard information for territorial authorities to fulfil their obligations in relation to LIMs.

Proposed Section 44C

5. ORC's submission focuses on proposed section 44C (*Regional council must provide territorial authority with natural hazard information*) because, as defined in the section's title, it directs the scope of what regional councils' role and responsibilities will be.
6. The section reflects broadly the role ORC already undertakes, and relationships, when providing natural hazard information to our territorial authority partners.
7. Section 44C contains four directions that ORC is particularly interested in, identified below in bold and underlined:

(1) A regional council must, as soon as is reasonably practicable in the circumstances, **provide to each** territorial authority within or partly within its region—

For our future

70 Stafford St, Private Bag 1954, Dunedin 9054 | **ph** (03) 474 0827 or 0800 474 082 | www.orc.govt.nz

(a) the following information, to the **extent that it is known** to the council, about natural hazards and impacts of climate change that exacerbate natural hazards:

(i) information about each hazard or impact that affects land in the region:

(ii) information about each potential hazard or impact, to the extent that the council is satisfied that there is **a reasonable possibility** that the hazard or impact may affect land in the region (whether now or in the future):

(iii) information about the cumulative or combined effects of those hazards or impacts on land in the region; and

(b) any further information required by the regulations to make the information provided under **paragraph (a) more understandable**.

(2) The information must be summarised and presented in the form required by the regulations (if any).

ORC acknowledges the intent of the changes but, given each of these terms have subjective terminology, overall **we request** that a definition or guidance would assist for all parties on how these terms are to be interpreted.

“provide to each”

8. Section 44C(1) implies, but is not clear, that it is what information councils hold that must be provided. That is, if Councils know that another organisation has relevant information, they are not obliged to obtain that information and pass it on to the Territorial Authority. Some specific questions we have as raised by this wording are:
- How proactive must a Council be? Is making the information available via a Territorial Authority (and publicly) accessible database acceptable? OR is it required that a document is physically provided?
 - Do all Territorial Authorities within a regional receive the information, even if it doesn't pertain to all Districts e.g. must ORC send DCC liquefaction information for Glenorchy?
 - How is historical information to be accounted for? The Bill implies it relates to new information we gathered from the date of commencement of the Act. Might Councils be expected to go through their entire archive?

“extent that is known”

9. **ORC supports** the intent of this wording in section 44C(1)(a), however we consider it important the Select Committee carefully considers 'when' something is known to a regional council.
10. As an example, ORC initiates technical natural hazard related projects to either identify new, or better understand existing, natural hazards. These projects may span a number of months up to a few years, producing data which must be analysed and ultimately turned into information, typically in the form of technical reports. Such projects follow accepted methodologies, including peer reviews, before a formal report is prepared.
11. For ORC, we also required these reports to be adopted by Council before being published as a council document. During a project, a point can be reached where there is a high degree of confidence in its findings, which typically occurs at the point any peer

review process is completed. This may be in advance of a council officially endorsing a report.

12. ORC's view is that the current wording of section 44C may require ORC to share information with territorial authorities before its Council formally endorses a report. Furthermore, information may be 'known' prior to that information being in a form that is easily shared with a territorial authority.

“a reasonable possibility”

13. **ORC supports** the intent of this wording in section 44C(1)(a), however we consider it important the Select Committee provides clarity on how to determine “a reasonable possibility”. As it stands, the term is subjective and can be open to interpretation.

“more understandable”

14. Similarly, **ORC supports** the intent of section 44C(1)(b) that information is provided to territorial authorities that enables them to provide LIMs with clear and accurate information with respect to natural hazards. By its nature, the study of natural hazards is a technical subject, often involving complex science. This means the output of information can also necessitate a degree of complexity. However, ORC is conscious of its responsibility to appropriately communicate what natural hazards mean for our communities.
15. ORC would welcome consultation on the development of guidance as to the form of information required under section 44C (referenced in section 44C(2)). As with our request for clarity about when information is known, guidance would support better certainty and consistency for Councils as to its form.
16. **ORC is supportive** of the new section 44D that Territorial authorities and regional councils be protected against certain actions when providing information in good faith.

ORC would like to speak to its submission.

Yours sincerely



Pim Borren
Interim Chief Executive

8.9. Draft ORC submission for Resource Management (Infringement Offences) Regulations 1999

Prepared for: Council
Report No. POL2302
Activity: Governance Report
Author: Warren Hanley, Senior Resource Planner
Peter Kelliher, Team Leader Investigations
Endorsed by: Anita Dawe, General Manager Science, Environmental Monitoring, and Policy
Date: 22 March 2023

PURPOSE

- [1] To recommend to Council a submission on the Resource Management (Infringement Offences) Regulations 1999 consultation from the Ministry for the Environment (the Ministry).

EXECUTIVE SUMMARY

- [2] The Resource Management Act 1991 (RMA) provides local authorities with a range of powers to take enforcement action when there is non-compliance with the RMA, rules in a plan or conditions in a resource consent.
- [3] For less serious offending, Councils can issue an infringement notice, which acts as an “instant fine” at the time (or soon after) an infringement offence has been committed.
- [4] The infringement fines were last amended in 1999 and are now widely considered to be too low to effectively discourage non-compliance with plan rules or consent conditions.
- [5] This consultation recommends three options for increasing infringement fines. Staff and the Submissions Working Group³ recommend Council lodge an ORC submission in support of the Ministry’s preferred option, which is “option two”..

RECOMMENDATION

That the Council:

- 1) **Notes** this report.
- 2) **Approves** the attached draft ORC submission on the Resource Management (Infringement Offences) Regulations 1999 consultation and authorises it be lodged with the Ministry for the Environment by 31 March 2023.

DISCUSSION

- [6] The scope of this consultation is limited to the range of fines for RMA infringement offences. These fines are issued for environmental non-compliance that warrant a penalty to deter further offending but do not meet the test for prosecution before the Court.

³ Crs Lloyd McCall, Elliot Weir, Andrew Noone, Kate Wilson

- [7] In 2020, an amendment to the RMA increased the maximum fines able to be set for infringement notices. The Ministry are consulting on options for how the infringement regulations could be updated to best give effect to this change.
- [8] The consultation proposes three options for increasing fines over the status quo. Option One promotes the smallest increase in fines, with Option Three the highest. The Ministry's preferred option is Option Two, which are set out in Appendix 1 of the consultation discussion document (attached).
- [9] The infringement fines are set out in respect to non-compliance with various sections of the RMA .
- [10] The Ministry is also introducing a point of difference in setting fines for individuals and entities, such as companies. . The intent of the differentiation is to have a lesser fine for individuals, while a larger fine for 'non-natural persons' (as occurs with penalties in prosecutions) to provide a more effective deterrent.
- [11] The consultation timeframe was extended due to the Cyclone Gabriella which saw many local government agencies prioritising staff to the emergency response. A planned consultation webinar has been deferred to the 13 March, which is after this report will be finalised.
- [12] Staff will attend the webinar but are not anticipating it will result in any additional information that would significantly affect our recommended draft submission. Any minor changes will be tabled at Council and staff will speak to those if necessary.

OPTIONS

- [13] ORC staff have reviewed the consultation and are supportive of the need for change, and the Ministry's preferred option for raising the infringement fines, Option Two. We recommend making a submission is appropriate.
- [14] The Council's Submission Work Group have also reviewed the draft submission and are supportive of the staff recommendations.
- [15] The draft submission addresses why we recommend supporting Option Two, and why Option One and Three are not supported.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [16] Making a submission is consistent with the themes of our Strategic Directions around regional leadership and ensuring we have health water, soil and coast through protecting Otago's natural resources from inappropriate activities.
- [17] Our regulatory team has policies/procedures to guide their enforcement and investigation activities, including the process of serving infringement fines. Any changes to the regulations will be reflected in these operational policies/procedures.

Financial Considerations

- [18] Changes to the regulations will have little to no impact on the cost of compliance activities of ORC. However, an increase in the fines ORC may impose will assist to recoup more of those costs.
- [19] An increase in the infringement fines may contribute to an increase in non-payment of infringement notices issued by ORC. This may increase the workload of the Ministry of Justice who collect outstanding fines on ORC's behalf.
- [20] ORC may also face more frequent legal challenges to the infringement notices issued, particularly if the fines are perceived to be unreasonably high.

Significance and Engagement

- [21] The consideration of this consultation, and any subsequent submission is consistent with ORC's Significance, Engagement and Māori Participation Policy.

Legislative and Risk Considerations

- [22] ORC has responsibilities of ensuring activities using Otago's natural resources are compliant with the RMA, and ORC's policy and rules framework. Infringement fines are one instrument we can use to offset some of the cost of undertaking this work from funded by general rates and ensure a 'polluter pays' approach. Insufficient fines reduce the availability of general rates to be used for other operational functions of ORC.

Climate Change Considerations

- [23] There are no climate change considerations for this consultation.

Communications Considerations

- [24] If the regulations are amended, we can consider communicating this with Otago's communities.
- [25] Any submission made by ORC may be publicly available via the Ministry's website which is standard for a public consultation.

NEXT STEPS

- [26] ORC staff will report to Council on any changes to the regulations once a decision is made by the Ministry.

ATTACHMENTS

1. Review-of-the- Resource- Management- Infringement- Offences- Regulations-1999 [8.9.1 - 21 pages]
2. Draft ORC submission [8.9.2 - 2 pages]



Discussion Document

Review of the Resource Management (Infringement Offences) Regulations 1999



Ministry for the
Environment
Manatū Mō Te Taiao



Te Kāwanatanga o Aotearoa
New Zealand Government

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Message from the Minister



The RMA provides local authorities with a range of powers to take enforcement action when there is non-compliance with the RMA, rules in a plan or conditions in a resource consent. The purpose of enforcement action is to punish offenders, deter future offending, and/or direct remediation of the damage.

Prosecution via the courts is sometimes disproportionate to the offence. It is costly both for councils and offenders. In such situations, Councils can issue an infringement notice, which acts as an “instant fine”, at the time (or soon after) an infringement offence has been committed. Notices can only be issued by an enforcement officer.

The RMA’s infringement notice structure was last amended in 1999, and the fines are now too low to discourage non-compliance with plan rules or consent conditions.

In some cases, the fine associated with an infringement notice is less than the cost of getting a resource consent, meaning it can be cheaper to just pay the fine than to follow the rules. This puts our environment at risk and is unfair on the thousands of New Zealanders who use our natural resources sustainably, and within the law.

This document sets out several options for updating infringement notice offences and fines to make them a more meaningful consequence for those who fail to meet their environmental obligations.

We would value your feedback on what the fines should be, and what we should be considering as we review them.

Hon David Parker

Minister for the Environment

A handwritten signature in blue ink, appearing to read 'David Parker', written in a cursive style.

Section 1: What we are consulting on

Proposed changes to infringement fines

The Ministry for the Environment (the Ministry) is consulting on the infringement fines that councils can issue for environmental non-compliance.

The Resource Management Act 1991 (RMA) provides councils with a range of powers to take enforcement action when they find environmental non-compliance. Non-compliance means any breach of a rule, condition, standard, direction or regulation made under the RMA.

A range of non-statutory and statutory enforcement tools are available to councils to respond to non-compliance, so they can tailor their response to the nature and severity of any offending. The purpose of enforcement action is to punish offenders, deter future offending and/or direct remediation of the damage. The RMA provides statutory enforcement tools that are either:

- punitive (including infringement notices and prosecutions) or
- directive (abatement notices and enforcement orders).

This consultation is about infringement notices. An infringement notice is an ‘instant fine’ for environmental non-compliance that is serious enough to need a penalty, but not serious enough to warrant prosecution in court. When an infringement notice is issued, no conviction is imposed, and the infringement fines are paid to the council that issued the infringement notice (RMA, section 343D).

The maximum fine¹ that can be set for an infringement offence is prescribed in primary legislation, under section 360 of the RMA. That maximum fine was increased in 2020. However, the individual offences for which infringement notices can be issued – and the associated fine for each of these offences – are set in secondary legislation, the Resource Management (Infringement Offences) Regulations 1999 (the Regulations).

We are now consulting on options for how the Regulations could be updated to give effect to the change in maximum infringement fine introduced in the 2020 amendments to the RMA. This document presents the options alongside some preliminary analysis.

What’s the problem?

The current fines are not effective

There is concern that the existing Regulations are now out of date, and that the infringement fines are set at a level that is too low to be effective.

¹ Section 360 uses the term “infringement fee” for what is commonly referred to as a “fine”. In this document, we use the word “fine” or “infringement fine” to describe the fee associated with an infringement notice.

⁶ Review of the Resource Management (Infringement Offences) Regulations 1999

In 2016, the Ministry for the Environment produced a [report on compliance, monitoring and enforcement by councils under the RMA](#). This research found that many councils and stakeholders considered that the infringement fines set in the Regulations were too low. It was suggested that infringement fines should be higher for companies – as occurs with penalties in prosecutions – to provide a more effective deterrent for companies.

The New Zealand Productivity Commission also noted in its [2013 report](#)² that the “low level of fees that have not been reviewed for many years, are reducing the effectiveness of enforcement strategies”. For example, in that report, Auckland Council notes that an infringement notice for the breach of a land-use rule in a district plan incurs a \$300 fine. They stated that the cost of applying for a resource consent is usually more than ten times this amount. Therefore, they considered the deterrent effect of the current infringement fines is minimal and is not sufficient to deter non-compliant behaviour for some offenders.

The fines can be higher under the RMA

In the 2020 amendment to the Resource Management Act, Parliament increased the maximum fines that can be set for infringement notices and introduced different maximum fines of \$2000 for individuals and \$4000 for companies³. Currently, the Regulations do not include different fines for individuals and companies, and the maximum infringement fine in the current Regulations is much lower than the maximum fines that are now allowed by the RMA.

The fines are inconsistent

Currently, the regulations prescribe one fine for contraventions of land-use rules, irrespective of the type of land-use rule being contravened. However, since the Regulations were introduced in 1999, regional land-use rules for improving water quality have been introduced by some councils and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020. The fine for contravening a land-use rule developed to improve or protect the water quality in a waterway is much lower than the fine for discharging contaminants directly into the same waterway.

The fine for breaching an abatement notice is currently set at 75 per cent of the previous maximum value. This is inconsistent with the significance of the offence, as breaching a formal notice from an enforcement officer can be considered deliberate, and deliberateness makes an offence more serious, which warrants a higher fine.

What needs to be done?

The Regulations are out of date, and infringement fines are too low to be an effective penalty for non-compliance. This means council use of infringement notices are less effective at deterring environmental non-compliance and reducing environmental harm.

² New Zealand Productivity Commission. 2013. Towards Better Local Regulation. Wellington: Productivity Commission.

³ Strictly, the \$2000 maximum applies to a “natural person”, and the \$4000 maximum applies to a “person other than a natural person”. We have used the term ‘individual’ and ‘company’ for simplicity.

The Regulations need to be reviewed to ensure infringement fines are fit for purpose, consistent, provide an appropriate level of deterrence and are aligned with the empowering sections of the RMA.

Scope

The maximum infringement fines are set in the RMA. The recent decision by Parliament to increase the maximum infringement fines was made on the expectation that a review of the Regulations' infringement fines would follow.

The 2020 RMA amendments limit the scope of this review, as well as the options this review may consider. The infringement fines cannot be increased beyond the statutory maximum of \$2000 for individuals and \$4000 for companies.

The scope of potential change in the fines therefore ranges between making no change, and an increase to the maximum amount allowed in legislation.

Resource Management Reform

The Regulations will be transitioned to be regulations under the new Natural and Built Environment Act (NBA), which is planned to replace the RMA. Any changes that are made to the Regulations will have effect under the new legislation.

There is potential that the NBA could include new offences that are suitable to be prescribed as infringement offences. If so, these new infringement offences, and associated fines, could be introduced through transitional provisions, or through future amendments to the Regulations.

Section 2: Proposed policy options

Table 1: Outline of the proposed options

Option ⁴	Description
Option 1:	Option 1 is a proportional increase to fines. This means that the fines for each offence would increase proportionally, so the new fine remains the same proportion of the new maximum as the current fine is of the previous maximum.
Option 2:	Option 2 proposes the same proportional increase as option 1, except that the fine for two offences would be increased to be a higher proportion of the maximum: (a) the fine for contravening land-use rules created under an NES or under a regional plan would be increased from the current 30% of the maximum to 75% of the new maximum, which is \$1500 for natural persons or \$3000 for companies (b) the fine for contravening an abatement notice (a tool used to require non-compliant operators to comply) would be increased to 100% of the maximum, which is \$2000 for natural persons or \$4000 for companies.
Option 3:	Option 3 proposes to increase each infringement fine up to the maximum amount for every offence. All infringement offences would incur a fine of \$2000 for individuals and \$4000 for companies.

⁴ A comparison of the existing and new fines under each option is set out in appendix 1.

Section 3: Preferred option

Preferred option: Option 2

Option 2 best reflects the policy intent of the increases to the fine maximum in the legislation, but also addresses two specific internal consistency issues where circumstances have changed since the regulations were first introduced and where a change to the relative size of the infringement fine is appropriate. The fine increases are broadly consistent with inflation since 1999, except in the two specific cases where a higher than inflation adjustment is appropriate.

Option 1 maintains the current relativity between the existing fines and increases the fines in a way that is consistent with the amendments to the legislation. However, it does not reflect the increased use of landuse rules to protect water quality in Regional Plans and National Environmental Standards, and it doesn't adequately resolve the need for stronger denunciation and deterrence for breaching an abatement notice.

Option 3 removes the relativity that currently exists between the different infringement offences and maximises the deterrent value of the infringement regime. Having the same fine for all offences would make the administration of the infringement regime simpler. However, under this option, the fines for offences that currently have a lower rate (relative to the maximum) would increase by considerably more than the rate of inflation since the fines were last adjusted. This option treats all infringement offences as being equally serious.

Section 4: Options we are not considering

We are not considering linking the fine value to the severity of the non-compliance, as measured in compliance inspection grading. We think that this approach would create unnecessary implementation challenges and may introduce complexity and significant subjectivity back into a system.

Stock-exclusion offences and fines

Changes to [schedule 1A](#) – which sets out offences and infringement fines against the Resource Management (Stock Exclusion) Regulations 2020 (SE Regulations) – are considered out of scope for this review. This is because schedule 1A was introduced in 2020 and therefore already makes use of the RMA 2020’s increased fine maximum. Note that in the SE Regulations exclusions, the fines are all set at the maximum amount available. This reflects that there are no prosecution options available for schedule 1A offences, which contrasts with the offences set out in schedule 1 that are the subject of this discussion document.

Furthermore, given that schedule 1A was inserted into the Regulations by the SE Regulations, any review of the stock-exclusion infringement offences would be more appropriately undertaken as part of a review of the SE Regulations, due to the SE Regulations’ close links to the stock exclusion policy framework.

Section 5: Preliminary impact analysis

The Regulations were introduced as a cost effective and efficient way for councils to respond to minor environmental offending in cases where some enforcement action was appropriate, but which did not warrant a time-consuming and expensive prosecution process. The purpose of an infringement notice is to punish minor offending and deter future offending. Having an effective and credible infringement regime is an important part of a well-functioning resource management system.

This is the first time the fines have been reviewed since 1999 and a wide range of stakeholders have indicated that the current fines are too low. Increasing the fines is intended to make the penalty more meaningful in today's dollar-value terms. An increase in fines would provide greater specific and general deterrence value to the infringement-notice regime.

None of the three options above would increase in the costs faced by regulated parties who are compliant. Individual resource users can personally control the effect of the fine increases, by ensuring that they comply with the applicable regulations.

All three options will significantly increase the costs for resource users who receive infringement notices (at least doubling or quadrupling the current fine, or even more under option 3). The increase in cost will only be incurred by resource users who receive infringement notices for contravening environmental rules – rules that have been put in place to protect natural resources and allow equitable access to use of natural resources for private gain.

Impacts for local government

There is wide support from local government and its representative organisations (Local Government New Zealand, and Taituara (formerly the New Zealand Society of Local Government Managers)) for higher infringement fines. Many local government organisations submitted on the 2020 amendments to the RMA that increased the maximum fines, concerned that current fines were too low, and noting the need to review the Regulations to enable the higher fine amounts.

The changes will have some impacts upon local government, as it is the primary administrator of the resource management infringement-notice system. The degree to which local government is impacted will depend on the extent to which individual local authorities make use of the infringement-notice system. The [national monitoring system](#)⁵ indicates that nearly a quarter of local authorities issued no infringement notices over the period 2014 to 2019, while another quarter issued one or less notices per year over the same period.

For those councils that do make use of the infringement-notice system, the increase in fines will represent a small increase in revenue used to offset compliance service costs, which reduces ratepayer funding. An increase in infringement fines will increase the contribution

⁵ The national monitoring system is the annual dataset that the Ministry collects from local authorities relating to their RMA implementation activities, and includes information about enforcement activity, such as issuing of infringement notices.

¹² Review of the Resource Management (Infringement Offences) Regulations 1999

from those causing the need for the compliance activities, which is consistent with the polluter-pays principle.

It is expected that the increase in fines will encourage greater compliance, which will lead to better performance and less non-compliance with environmental protection rules. Better compliance with environmental rules leads to improved environmental outcomes and reduces the pressure our environment faces from the way we use natural resources.

Higher fines are likely to reduce the risk that resource users view infringement notices as a 'minor licensing fine' that is less expensive than obtaining an appropriate resource consent or authorisation. The resulting increase in applications for appropriate authorisations is likely to contribute to an overall better functioning resource management system.

An increase in the infringement fines may contribute to an increase in non-payment of infringement notices issued by councils. Currently, unpaid infringement fines are lodged for recovery with the Ministry of Justice's (MOJ) fine-recovery service. An increase in non-recovery would contribute to a greater workload for MOJ. However, given the current volume of infringement notices issued in the resource management system is small, in comparison to the overall volume of fines dealt with by MOJ, this impact is expected to be small.

Councils may face more frequent legal challenges to the infringement notices they issue, particularly if the fines are perceived to be unreasonably high. This is a potential impact that is more likely with option 3, where the fine for a breach of a district plan land-use rule would incur the same fine as a discharge to water from an industrial or trade premise. An increase in legal challenges would add costs and administrative burden on issuing councils, and, if the challenges were frequent and successful, this could have the unintended effect of dissuading some councils from issuing infringement notices.

Impacts for regulated parties

As discussed earlier in this section, none of the three options outlined in this document would impact on most resource users, who comply with their regulatory obligations. It is worth noting, also, that only a small fraction of resource users receive infringement notices each year. For example, in 2020/21, the regional sector issued infringement notices in around 3.5 per cent of the more than 60,000 consent-monitoring inspections and environmental incidents they attended.

The most obvious impact on regulated parties will be the increased fines that those contravening their obligations may face.

- Under option 1, fines either double (for individuals) or quadruple (for companies). Under option 2, most fines would either double or quadruple, except for the fines for contraventions of section 9(1) or 9(2), which would increase five-fold from \$300 to \$1500 (for individuals) and ten-fold from \$300 to \$3000 (for companies).
- Under option 2, fines for contraventions of an abatement notice would increase by around 30 per cent more than would occur under option 1.
- Under option 3, fines would increase by a variable proportion, ranging from a doubling through to a nearly seven-fold increase (for individuals) and ranging from a quadrupling through to a nearly fourteen-fold increase (for companies).

To put these increases in context, it is helpful to compare them to inflation over the period since 1999. The comparison uses wage inflation, as infringement fines would generally be paid

from a person's earnings. Over the period 1999 to 2022, wage inflation has increased by approximately 108 per cent.⁶ This means that \$300 in wages in 1999 would have the equivalent buying power of \$625 in 2022. This means:

- Option 1 represents a similar, or slightly lower, fine for individuals (and an approximate doubling for companies) in today's dollar terms, compared to the fine originally levied in 1999.
- Option 2 results in the same fine increase as option 1 for most fines, except for two offences where the proposed fine is increased relative to inflation.
- Option 3 results in a large increase in fines (above the rate of inflation), noting that the most significant increases under option 3 would apply to those infringement offences with lower fines, that have historically been considered less serious.

Deterrence

Agencies use enforcement tools to encourage good behaviour and discourage (or deter) poor behaviour. There are two types of deterrence that are considered: general and specific. Both are important to a compliance regime's effectiveness.

Infringement notices are specific deterrence tools, targeted at deterring the behaviour of the individuals undertaking the behaviour.

It is generally accepted that deterrence is determined by three factors:

- the certainty of getting caught in breach of the rules
- the swiftness with which a consequence is delivered
- the size or severity of the penalty.

Infringement notices enable an enforcement officer to issue a consequence at the time or shortly after becoming aware of non-compliant behaviour. All the options presented in this discussion document increase infringement fines, with the express expectation that higher fines will promote higher compliance, through greater deterrence. In considering the deterrence value of infringement notices, it is important to remember that infringement notices are intended as responses to non-compliance that is not serious enough to warrant prosecution, but that still requires appropriate denunciation. The fines need to be high enough to be meaningful to the individual (or company) receiving them.

Who is likely to be affected?

Resource management infringement notices are issued for non-compliance with resource management laws, regulations, rules, and resource consents. Therefore, any user of the resource management system is potentially affected by these changes, if they contravene any regulatory requirements. Given that we all interact with natural resources to some extent, the application of these changes is very broad. Those parties could include infrastructure providers, farmers, contractors, companies, and homeowners.

⁶ Calculated using the Reserve Bank's inflation calculator, under the category "Wages", for the period Q4 1999 to Q1 2022.

Section 7: How to have your say

Consultation questions

You are welcome to provide feedback on any part of the proposal to review the Regulations. We have prepared some questions you might like to consider as you prepare your submission.

- Do you agree that the fines need to increase? If not, why not?
- Are there any fines that shouldn't increase? Which ones? And why?
- Are there other options for increasing the fines that we haven't considered? What are they? And why would they be better?
- Do you agree with our preferred approach? If not, why not? What approach should we take instead, and why?
- Are there impacts from increasing the fines that we haven't considered? What are these?

Timeframes

This discussion document was published on 7 February 2023. We are accepting submissions between 7 February 2023 and 6 March 2023.

When the consultation period has ended, we will analyse feedback and provide advice to Ministers on next steps.

How to provide feedback

You can make a submission in two ways.

- Use our [online submission tool](#). **This is our preferred way to receive submissions.**
- Write your own submission.

In your submission, please make sure you include:

- the title of the consultation
- your name or organisation
- your postal address
- your telephone number
- your email address.

If you are posting your submission, send it to:
Review of the Resource Management Infringement Offences Regulations
Policy Implementation and Delivery Division
Ministry for the Environment
PO Box 10362
Wellington 6143

If you are emailing your submission, you can send it to rmior.consultation@mfe.govt.nz as a:

- PDF
- Microsoft Word document (2003 or later version).

When emailing your submission, please use add 'Resource Management Infringement Offences Regulation Review' in the subject line.

Submissions close on 6 March 2023.

More information

Please send any queries to:

Email: rmior.consultation@mfe.govt.nz

Post: Review of the Resource Management (Infringement Offences) Regulations, Policy Implementation and Delivery team, Ministry for the Environment, PO Box 10362, Wellington 6143

Publishing and releasing submissions

All or part of any written comments (including names of submitters) may be published on the Ministry for the Environment's website, environment.govt.nz. Unless you clearly specify otherwise in your submission, the Ministry will consider that you have consented to website posting of both your submission and your name.

Contents of submissions may be released to the public under the Official Information Act 1982 following requests to the Ministry for the Environment (including via email). Please advise if you have any objection to the release of any information contained in a submission and, in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information. We will take into account all such objections when responding to requests for copies of, and information on, submissions to this document under the Official Information Act.

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Appendix 1: Fines under the proposed options

Table 2: Comparison between the existing fines and the new fines for each option

General description of offence	Existing fine (\$)	Fine under Option 1 (\$)		Fine under Option 2 (\$)		Fine under Option 3 (\$)	
		Individual	Company	Individual	Company	Individual	Company
Contravention of section 9(1) and 9(2) (restrictions on use of land)	300	600	1200	1500	3000	2000	4000
Contravention of section 9(3) and 9(4) (restrictions on use of land)	300	600	1200	600	1200	2000	4000
Contravention of section 12 (restrictions on use of coastal marine area)	500	1000	2000	1000	2000	2000	4000
Contravention of section 13 (restriction on certain uses of beds of lakes and rivers)	500	1000	2000	1000	2000	2000	4000
Contravention of section 14 (restrictions relating to water)	500	1000	2000	1000	2000	2000	4000
Contravention of section 15(1)(a) and (b) (discharge of contaminants or water into water or onto or into land where contaminant is likely to enter water)	750	1500	3000	1500	3000	2000	4000
Contravention of section 15(1)(c) and (d) (discharge of contaminants into environment from industrial or trade premises)	1000	2000	4000	2000	4000	2000	4000
Contravention of section 15(2) or (2A) (discharge of contaminant into air or onto or into land)	300	600	1200	600	1200	2000	4000
Contravention of an abatement notice (other than a notice under section 322(1)(c))	750	1500	3000	2000	4000	2000	4000
Contravention of a water shortage direction under section 329	500	1000	2000	1000	2000	2000	4000
Contravention of section 15A(1)(a) (dumping of waste or other matter from any ship, aircraft, or offshore installation)	500	1000	2000	1000	2000	2000	4000
Contravention of section 15B(1) and (2) (discharge in the coastal marine area of harmful substances, contaminants, or water from a ship or offshore installation)	500	1000	2000	1000	2000	2000	4000
Contravention of section 22 (failure to provide certain information to an enforcement officer)	300	600	1200	600	1200	2000	4000
Contravention of an excessive noise direction under section 327	500	1000	2000	1000	2000	2000	4000
Contravention of an abatement notice for unreasonable noise under section 322(1)(c)	750	1500	3000	1500	3000	2000	4000

Appendix 2: Option analysis

Table 2 sets out a comparative analysis of the options against the assessment criteria.

Table 3: Analysis of the proposed options

Criteria	Option 1: Proportional increase in fines for all offences	Option 2: Increase in fines for two offences and proportional increase for remaining offences	Option 3: Increase fines to maximum for all offences
<p>Practical</p> <p>Ensures consistency between primary legislation and regulations</p> <p>Easy for councils to implement and does not require major changes to existing systems and processes</p> <p>Increases the quality of monitoring and compliance approaches by councils</p>	<p>++</p> <p>Option 1 would result in consistency between regulations and primary legislation, but some fines may not reflect the relative importance of current policy direction.</p> <p>There may be an impact on councils to update their templates and systems to reflect the new fine amounts, but this option does not require major changes to existing systems and processes.</p> <p>The increased fines would better reflect the actual cost to councils of issuing infringement notices, which would reduce the funding burden on ratepayers for addressing non-compliance.</p>	<p>+++</p> <p>Option 2 would result in consistency between regulations and primary legislation, as well as reflect the importance of current policy direction.</p> <p>There may be an impact on councils to update their templates and systems to reflect the new fine amounts, but these options do not require major changes to existing systems and processes.</p> <p>The increased fines would better reflect the actual cost to councils of issuing infringement notices, which would reduce the funding burden on ratepayers for addressing non-compliance.</p>	<p>++</p> <p>Option 3 would result in consistency between regulations and primary legislation but may be perceived as being too onerous by some users.</p> <p>Having a single fine for all offences would simplify the infringement system. There would still be an impact on councils to update templates and systems, but no major changes are required.</p> <p>The increased fines would better reflect the actual cost to councils of issuing infringement notices, which would reduce the funding burden on ratepayers for addressing non-compliance.</p>
<p>Effective</p> <p>Strengthens deterrence of non-compliance with the RMA by users of the system</p> <p>Supports compliance monitoring and enforcement objectives</p> <p>Supports protection of resources</p>	<p>+</p> <p>Option 1 would provide stronger deterrence, in that all fines would be increased, but fines for offences with similar effects may be inconsistent with each other.</p> <p>Promotes the objectives of maximizing compliance for most infringement offences, but fines for some offences may be too low.</p> <p>Maintains a hierarchy of fines that is consistent with the previous regulations' but may not reflect the most up-to-</p>	<p>++</p> <p>Option 2 would provide stronger deterrence in that all fines would be increased and would result in similar fines for offences with similar effects.</p> <p>Increased fines better reflect seriousness and provide a logical hierarchy of increasing penalty.</p> <p>Option 2 goes further than option 1 and provides an opportunity for a more detailed consideration of the levels of individual fines. This better reflects the relative importance of</p>	<p>++</p> <p>Option 3 would provide the strongest deterrence but makes all fines the same even though the seriousness of the effects of non-compliance may be perceived to be quite different.</p> <p>May set fine levels at a level that is perceived to be unfair for some offences, increasing the number of legal challenges.</p> <p>More serious offences are more appropriately managed through prosecution.</p>

Criteria	Option 1: Proportional increase in fines for all offences	Option 2: Increase in fines for two offences and proportional increase for remaining offences	Option 3: Increase fines to maximum for all offences
	date views of resource protection.	those offences to which fines relate.	Option 3 would not maintain existing relativity, therefore would not reflect the seriousness of different offences.
<p>Reasonable</p> <p>Targeted to those who are contravening environmental rules</p> <p>Reflects the relative importance of the offending and the associated environmental effects</p> <p>Treats regulated parties who must comply with environmental laws fairly</p>	<p>+</p> <p>Only those who contravene environmental laws will be subject to the increased costs.</p> <p>Maintains the existing relative importance between offences set in 1999.</p> <p>Simply adjusts previous fines for inflation, so existing hierarchy is maintained. May not reflect the increased effort applied by many resource users to be compliant.</p>	<p>+++</p> <p>Only those who contravene environmental laws will be subject to the increased costs.</p> <p>Reflects the relative importance of offences, the decreased societal acceptance of environmental offending, and the importance of protecting water quality.</p> <p>Better reflects compliance efforts of existing resource users and inflation adjusts the remaining fines.</p>	<p>+</p> <p>Only those who contravene environmental laws will be subject to the increased costs.</p> <p>Treats all offences as being equal in terms of their seriousness.</p> <p>Increases most fines by considerably more than the rate of inflation over the period.</p>

Appendix 3: Submissions from the 2020 legislative amendment

The majority of submissions in the 2020 amendment on the proposal to increase the fine maximum were in support. The majority of respondents to the New Zealand Planning Institute (NZPI) member survey supported the proposal (73.8 per cent), while a small proportion opposed (2.98 per cent).

Support

1. Those in support included councils, Local Government New Zealand and the Society of Local Government Managers. These submitters generally voiced categorical support for the proposal and some noted that the proposed uplift had been advocated for by local government for several years. Support for the proposal also come from iwi, NGOs, and individuals.
2. Many individual submitters stated that they wished to see much stronger infringement penalties – in some cases up to \$100,000.
3. A number of submitters in favour of the proposal also noted that the Resource Management (Infringement Offences) Regulations 1991 will need to be updated before the new maximums have any practical effect.
4. Comments of support from respondents to the NZPI survey included the following themes:
 - support for stronger deterrence
 - concern that low fines were seen merely as licensing fees or business costs
 - concern about the adequacy of resourcing for compliance and enforcement services
 - the need to balance strong deterrence of deliberate or reckless offending while also taking broad collaborative non-regulatory approaches to improve outcomes
 - the low value of the fines in comparison with the value of the resources being used unlawfully
 - the need to develop new regulations to make the proposed maximum fines effective
 - support for further changes (such as prohibiting insurance for RMA fines).

Opposition

5. A few submissions in opposition of the proposal included Federated Farmers of New Zealand, Eastland Generation Limited, and two individuals. These submissions asserted that the current infringement penalties are appropriate and sufficient.
6. Federated Farmers of New Zealand noted that the proposed increase would exceed the recommended maximum infringement fine of \$1000 cited in the Legislation Design and Advisory Committee Guidelines. This submission also asserted that infringement offences are “absolute” and do not allow for any avenue to challenge or query infringement notices.
7. Comments of opposition from respondents to the NZPI survey included the following themes:

- current fines are adequate
- futile to raise infringement fines if there is insufficient resourcing for compliance and enforcement services
- scepticism that stronger fines will change non-compliant behaviour
- a need to collaborate with non-compliant parties and only use escalated enforcement against deliberate, repeat or reckless offenders.

A1758313

Ministry for the Environment

Wellington 6143

rmior.consultation@mfe.govt.nz

Otago Regional Council submission on Review of the Resource Management (Infringement Offences) Regulations 1999

Dear Sir/Madam

Introduction:

Thank you for the opportunity to provide feedback on this proposal to review of the review of the Resource Management (Infringement Offences) Regulations 1999.

ORC agrees with the discussion document that current fines are too low and need to be increased to be more effective in changing non-compliant behaviour. We do have some requests for changes to wording and fines. We provide explanations with those requests and the reasoning for them.

Preferred Option

ORC agrees with, and **supports**, the Ministry's Preferred **Option two**, in line with our requested changes set out below. The ORC considers the quantum of fine specified in Option two would serve appropriately to deter bad or ignorant practices and encourage behavioural change.

ORC does not support Option One as we consider the increase in fines fall short of being a strong enough shift in signal to change behaviour.

ORC does not support Option Three as the level of fines, particularly for individuals, is too high in proportion to a number of offences that we would issue infringement fines for. For those incidences where a higher penalty is warranted (due to the seriousness of offending), it is more likely the matter would be considered for prosecution.

Requested changes to Option Two's fine structure under Appendix 1

Water Shortage Direction

The contravention of an abatement notice attracts a higher fine than the contravention of a water shortage direction. We cannot understand why the difference is drawn as it is arguable that, (1) both documents are "a formal notice" which is being contravened; and (2) due to the severity of

environment conditions that must be present before issuing a water shortage direction, any non-compliance could have an immediate and significant adverse effect on the environment.

ORC requests that the fine for contravention of a water shortage direction under option 2 is \$2,000 (individual) and \$4,000 (company)

Dumping/Discharging of contaminants

ORC notes that the fine for the dumping/discharge of waste/harmful substances in the coastal marine area (s15A(1) and s15B of the RMA) attracts a lesser fine than a discharge into fresh water (s15(1)(a) and (b) of the RMA). There is the potential for this discrepancy to incentivise polluting within the coastal marine area, where it is more difficult to detect

ORC requests that the fine under sections 15A and 15B of the RMA are consistent with those under section 15.

Failing to provide information

We consider that the contravention of failing to provide certain information to an enforcement officer should attract a higher fine than what is proposed. This is to reflect the impact on the enforcement process which that behaviour can have. Consciously withholding information from an enforcement officer can hinder identifying the polluter, and risk enforcement options.

ORC requests that the fine for contravention of section 22 (failure to provide certain information to an enforcement officer) increased to \$1000 (individual) and \$2000(Company)

If there is the opportunity, ORC would like to speak to its submission.

Yours sincerely

Gretchen Robertson

Chair, Otago Regional Council

9. RECOMMENDATIONS ADOPTED AT COMMITTEE MEETINGS

9.1. Recommendations of the Finance Committee

Resolution

That the Council adopt the recommendations of the [23 February 2023 Finance Committee](#).

Report	Resolution	Res#	Mover/ Seconder
ORC Environment Awards Proposal	Recommends to Council Option 2 community awards: that the Chief Executive direct staff to undertake further work towards development of an annual awards programme including detailed costs.	FIN23-103	Cr Robertson / Cr Somerville
ORC Environment Awards Proposal	Recommends to Council: That the Chief Executive direct staff to prepare a report for consideration during the upcoming long-term plan process.	FIN23-103	Cr Robertson / Cr Somerville

9.2. Recommendations of the Public and Active Transport Committee Resolution

That the Council adopts the recommendations of the [22 February 2023 Public and Active Transport Committee](#).

Report	Resolution	Res#	Mover/ Seconder
Unit 5 Public Transport Contract Extension	Recommends Council approval of a variation to the Unit 5 Southern Routes passenger transport services contract expiry date from 30 June 2023 to 30 June 2024 which will incorporate the previously approved service level variation.	PAT23-103	Cr Malcolm / Cr Wilson
Unit 5 Public Transport Contract Extension	Recommends Council authorise the Chief Executive to sign the variation on behalf of Council.	PAT23-103	Cr Malcolm / Cr Wilson
Queenstown Public Transport Business Case Engagement Plan	Recommends Council approval of the engagement plan.	PAT23-105	Cr Malcolm / Cr Wilson

10. CHAIRPERSON'S AND CHIEF EXECUTIVE'S REPORTS

10.1. Chairperson's Report

Prepared for: Council
Activity: Governance Report
Author: Cr Robertson, Chairperson
Date: 15 March 2023

- 1 **27th February Governance Workshop Maniototo**
Councillors together with Interim CE Pim Borren and General Manager Richard Saunders, took the opportunity to participate in a workshop run by Doug Craig of RDC Group. The first of a series of planned workshops building a strong basis for future work including the 2024 Long Term Plan.
- 2 **28th February Visit to Upper Taieri Area**
Key areas visited and discussed were: the extensive and highly valued Upper Taieri wetlands, flood impacts, dry climate challenges, irrigation infrastructure and management, biodiversity, and community sustainability. Thank you kindly to Tiaki Maniototo for hosting our Council for the day and to Maniototo Irrigation Company for showing Councillors their infrastructure and discussing day to day water management in this dry environment. Thank you to our staff involved in coordinating this opportunity. It is important our Council is able to engage throughout the Region.
- 3 **1st February Fonterra Introductory Meeting**
Met with Morgan Watt (Stirling Site Manager), Robb Stephens (Group Customs Manager) and Michael Jones (Regional Head Otago/Southland). Introductory meeting including discussion on Fonterra's 'The Cooperative Difference' audited programme and upgrade programme for Stirling Cheese factory including conversion to biomass boiler and site water reuse.
- 4 **1st February Mana to Mana Meeting**
This meeting reflected on the successful public Ngai Tahu Waitangi Festival day hosted by Otakou Marae, an upcoming ORC cultural audit, ORC's upcoming strategic LTP derivation, and noted the contribution of Lyn Carter on her final Mana to Mana meeting as Otago Regional Council Kaitohutohu.
- 5 **3 March Radio Interview OARFM**
An interview with Barbara Anderson (Otago Institute for the Arts and Science) focussed on the work of Otago Regional Council.
- 6 **7 March New Staff Induction**
It was positive to be able to welcome new staff to the ORC and speak about the role of our Elected Members.
- 7 **9-10 March National River Managers Special Interest Group Conference.**
This was the first time Otago Regional Council hosted this bi-annual event. The group comprises of multi-council skilled Flood Protection, Land Drainage, and River

Management staff. There are 70 members of this 'SIG' nationally. Climate Resilience Projects and wider SIG business were covered as well as field visits to the ORC's Water of Leith Flood Protection Works. Lloyd McCall opened and closed the conference.

- 8 **10 March Te Ropu Taiao**
Gore District Council hosted Te Ropu Taiao. This is a grouping of Murihiku Iwi and Councils within this southern area. There was a round table of work Iwi and Southern Councils have underway, a session on Spatial Planning (QLDC and Southland Councils' approach) and a discussion on the current Charter of Understanding.
- 9 **10-11 March Wanaka Show**
Otago Regional Council had a stand at the highly successful show. An important opportunity to engage with community face to face. A huge thank you to all staff and Councillors who were present at the event.
- 10 We note the receipt of the letter (14/3/23) attached from Hon David Parker.
- 11 Special recognition of the ORC staff who have been assisting other Councils and community with specialist skills in flood impacted communities to the North. This is a very challenging time and our thoughts are with all those who have lost so much and who are working hard for recovery in the transition period. It is of small consolation that we are able to lend some specialist skills to the effort. Our people will gain experience and skills that will enhance the collective toolbox.

RECOMMENDATION

That the Council:

- 1) **Notes this report.**

ATTACHMENTS

1. Parker LETTER Robertson Borren 14-3-23 [**10.1.1** - 1 page]

Hon David Parker BCom, LLB

Attorney-General

Minister for the Environment

Minister of Revenue

Associate Minister of Finance



COR3854

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

Pim Borren
Interim Chief Executive
Otago Regional Council
Pim.Borren@orc.govt.nz

Dear Gretchen Robertson and Pim Borren

Approval of request to extend the notification deadline for the proposed Land and Water Regional Plan

Thank you for your letter of 23 February 2023 requesting an extension of the 31 December 2023 notification deadline to 30 June 2024 for the proposed Land and Water Regional Plan (pLWRP).

As you are aware, I set the December 2023 notification timeframe based on the findings of Professor Peter Skelton's 2019 report. Since that time, you have made progress notifying your Regional Policy Statement (RPS). I note that Otago Regional Council (ORC) is the first council to utilise the Freshwater Planning Process and, given the recent court declarations, I accept the RPS process will take longer than was originally envisioned.

I therefore approve your request for an extension to allow additional time for ORC's RPS hearings to progress prior to pLWRP notification. The new notification date for ORC's pLWRP is **30 June 2024**.

I look forward to receiving your next 6-monthly update.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'David Parker'.

Hon David Parker
Minister for the Environment

Private Bag 18041, Parliament Buildings, Wellington 6160, New Zealand
+64 4 817 8710 | d.parker@ministers.govt.nz | beehive.govt.nz

10.2. Chief Executive's Report

Prepared for: Council
Activity: Governance Report
Endorsed by: Pim Borren, Interim Chief Executive
Date: 15 March 2023

- [1] I am working well with Richard, and we are well aligned on our leadership thinking. I am supporting his transition to his new role starting 1 June in whatever way I am able. It is partly my job to ensure he is well prepared. I am committed to Richard being a successful CE and I am confident, given his range of skills as a senior manager, that he will be.
- [2] I continue to work well with Gretchen and Lloyd in their roles as Chair and Deputy Chair. Generally, I think there is a very good alignment between our Council (governance) and our Executive and I give a good chunk of the credit for this to Gretchen.
- [3] My view is that the year has started very well for ORC. We have had our Annual Plan approved early so that we can focus on a much more thorough review of our 10-year plan (through our LTP development) and I see this as a huge opportunity for us to review what we do and prioritise our work programme for the next decade. We did not get this opportunity three years ago, so we mustn't waste it this time.
- [4] I am excited to see the beginnings of our Whare Rūnaka project – a project that has been 15 years in the making. ORC needs a main office like every other Council in the country. The opportunity through one space of breaking down silos and having our staff work better across directorates, will make a significant difference in the way we work into the future and will be good for our staff culture.
- [5] There are other significant decisions Council needs to make over the next nine months, both in terms of a review of our rating system and in terms of providing clear strategic direction for us going forward.
- [6] Cyclone Gabrielle and the other extreme weather events faced across the North Island, highlights again how important our role is across Otago in providing flood protection, emergency management, and ways of addressing climate change more generally. These seem to me to be three logical areas for prioritisation for ORC.
- [7] I continue to enjoy leading this organisation, not least because of the staff we employ across the board. It is a privilege working with such professional and hardworking people. If only the public and our communities across Otago, saw what I see every day - we would get far less negative press and far more support in general. But in the meantime, I would like to thank our elected members for their wisdom and support.

ATTACHMENTS

Nil

11. RESOLUTION TO EXCLUDE THE PUBLIC

Nil

I move that the public be excluded from the following parts of this meeting, namely:

- *Confidential Minutes of the 22 February 2023 Council Meeting*
- *Confidential Minutes of the 8 March 2023 Council Meeting*
- *Median Wage Uplift for Bus Drivers*
- *Appointment of Iwi Representatives to Committees*
- *On-lending Agreement Variation*

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under [section 48\(1\)](#) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

General subject of each matter to be considered	Reason for passing this resolution in relation to each matter	Ground(s) under section 48(1) for the passing of this resolution
<i>Confidential Minutes of the 22 February 2023 Meeting</i>	<p>To protect information where the making available of the information— would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information – Section 7(2)(b)(ii)</p> <p>To protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information— would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied – Section 7(2)(c)(i)</p> <p>To avoid prejudice to measures protecting the health or safety of members of the public – Section 7(2)(d) To maintain legal professional privilege – Section 7(2)(g)</p> <p>To enable any local authority holding the information to carry out, without prejudice or disadvantage, commercial activities – Section 7(2)(h)</p>	

	<p>To enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations) – Section 7(2)(i)</p> <p>To prevent the disclosure or use of official information for improper gain or improper advantage – Section 7(2)(j)</p>	
<i>Confidential Minutes of the 8 March 2023 Meeting</i>	<p>To protect the privacy of natural persons, including that of deceased natural persons – Section 7(2)(a)</p> <p>To maintain legal professional privilege – Section 7(2)(g)</p>	
<i>3.1 Median Wage Uplift for Bus Drivers</i>	<p>To enable any local authority holding the information to carry out, without prejudice or disadvantage, commercial activities – Section 7(2)(h)</p> <p>To enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations) – Section 7(2)(i)</p>	<p>Section 48(1)(a); Subject to subsection (3), a local authority may by resolution exclude the public from the whole or any part of the proceedings of any meeting only on 1 or more of the following grounds: (a) that the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</p>
<i>3.2 Appointment of iwi representatives for Committees</i>	<p>To protect the privacy of natural persons, including that of deceased natural persons – Section 7(2)(a)</p>	<p>Section 48(1)(a); Subject to subsection (3), a local authority may by resolution exclude the public from the whole or any part of the proceedings of any meeting only on 1 or more of the following grounds: (a) that the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</p>
<i>3.3 On-lending Agreement</i>	<p>To maintain legal professional privilege – Section 7(2)(g)</p>	<p>Section 48(1)(a); Subject to subsection (3), a local</p>

<p><i>Variation</i></p>	<p>To enable any local authority holding the information to carry out, without prejudice or disadvantage, commercial activities – Section 7(2)(h)</p> <p>To enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations) – Section 7(2)(i)</p>	<p>authority may by resolution exclude the public from the whole or any part of the proceedings of any meeting only on 1 or more of the following grounds:</p> <p>(a) that the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</p>
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This resolution is made in reliance on [section 48\(1\)\(a\)](#) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by [section 6](#) or [section 7](#) of that Act or [section 6](#) or [section 7](#) or [section 9](#) of the Official Information Act 1982, as the case may require, which would be prejudiced by the holding of the whole or the relevant part of the proceedings of the meeting in public.

12. CLOSURE