

8.2. Timing of notification of the proposed Land and Water Regional Plan

Prepared for: Council
Report No. POL2403
Activity: Policy and Science
Author: Anita Dawe, General Manager Policy and Science
Endorsed by: Richard Saunders, Chief Executive
Date: 14 February 2024

PURPOSE

- [1] To update Council on the timelines and process for developing the proposed Land and Water Regional Plan, to manage land and freshwater in Otago.

EXECUTIVE SUMMARY

- [2] Otago Regional Council has been working on the development of a new Land and Water Regional Plan for Otago for a number of years, in response to a direction under section 24A of the Resource Management Act 1991.
- [3] A change in Government has resulted in communications advising that changes to the national framework for freshwater management are being planned and would be developed in the next 18 to 24 months.

RECOMMENDATION

That the Council:

- 1) **Notes** this report.

BACKGROUND

- [4] The first National Policy Statement for Freshwater Management came into effect in 2011 (the NPSFM 2011)¹ to support improved freshwater planning. It had a series of objectives, across water quality, water quantity, integrated management and involvement of iwi and hapu in freshwater matters. These objectives were supported by a range of policies to give effect to those objectives.

Objective A1

To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the use and development of land, and of discharges of contaminants.

Objective A2

The overall quality of fresh water within a region is maintained or improved while:

¹ [National Policy Statement for Freshwater Management 2011 | Ministry for the Environment](#)

a. protecting the quality of outstanding freshwater bodies

b. protecting the significant values of wetlands and

c. improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.

Objective B1

To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the taking, using, damming, or diverting of fresh water.

Objective B2

To avoid any further over-allocation of fresh water and phase out existing over-allocation.

Objective B3

To improve and maximise the efficient allocation and efficient use of water.

Objective B4

To protect significant values of wetlands.

Objective C1

To improve integrated management of fresh water and the use and development of land in whole catchments, including the interactions between fresh water, land, associated ecosystems and the coastal environment.

Objective D1

To provide for the involvement of iwi and hapū, and to ensure that tāngata whenua values and interests are identified and reflected in the management of fresh water including associated ecosystems, and decision-making regarding freshwater planning, including on how all other objectives of this national policy statement are given effect to.

[5] At the time of the 2011 NPSFM, ORC considered that its regional plans did not need to be amended to give effect to the NPS as the plan already achieved the objectives. The plan changes that were already underway continued to be progressed.

[6] The 2014 NPSFM introduced the concept of Te Mana o te Wai, and then in amendments made in 2017 (by the NPSFM Amendment Order), Te Mana o te Wai was embedded as an objective².

² [nps-freshwater-ameneded-2017_0.pdf \(environment.govt.nz\)](#)

- [7] The NPSFM 2014(amended 2017) also introduced the Target Attribute States, Freshwater Management Units (FMU), an objective about suitable contact recreation, and an objective that required communities to provide for their economic wellbeing, within freshwater limits.

DISCUSSION

- [8] The changes to the NPSFM in 2017 prompted ORC to reassess its regional plans and in October 2018, a decision was made to commence a full review of the Regional Plan: Water, and to adopt a Progressive Implementation Programme (PIP)³, which would allow time to develop a regional plan that was consistent with the NPSFM 2014 (amended 2017).
- [9] The NPSFM 2014 (amended 2017) required plans to be changed or amended to be consistent with it by December 2025.
- [10] In May 2019, the Minister for the Environment initiated a review into ORC, to determine whether it was adequately carrying out its functions related to freshwater management and allocation of resources⁴.
- [11] The findings were presented to Council in November 2019, and in December 2019, ORC confirmed it would accept the Ministers recommendations to;
- a. *Take all necessary steps to develop a fit for purpose freshwater management planning regime that gives effect to the relevant national instruments and sets out a coherent framework for assessing all water consent applications, including those that are to replace any deemed permits; and*
 - b. *Develop and adopt a programme of work to achieve the following:*
 - i. *By November 2020⁵, a complete review of the current Regional Policy Statement that is publicly notified, with the intention that it be made operative before the review of its water plan is notified*
 - ii. *By 31 December 2023⁶, a new land and water regional plan for Otago that includes region-wide objectives, strategic policies, region wide activity policies, and provisions for each of the Freshwater Management Units sections that will cover all the catchments within the region*
 - c. *To assist the management of deemed permits, that the Council 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*

³ [council-agenda-31-october-2018.pdf \(orc.govt.nz\)](#)

⁴ [Investigation into whether the Otago Regional Council was adequately carrying out its freshwater management functions | Ministry for the Environment](#)

⁵ The notification timeline for the RPS was extended by the Minister out to June 2022;

⁶ The notification timeline for the new Land and Water Plan was extended by the Minister out to June 2024;

discharge and allocation limits are set, in line with the requirements in the National Policy Statement for Freshwater Management.

d. That the council provide six-monthly progress reports, with the first report due by 30 April 2020 until the end of 2025.

- [12] In October 2019, Plan Change 6AA to delay the effect of water quality rules that were considered unimplementable, and unenforceable was notified and in early 2020, work commenced to implement the Ministers recommendations, with work on Plan Change 7, Plan Change 8 and 1 (called the Omnibus plan change) to address the Ministers recommendations commencing.
- [13] Existing work to set minimum flows in the Manuherekia, Arrow and Cardrona (MAC) catchments was continued, but the decision was made not to proceed with a separate plan change for these rivers and instead to incorporate recommended flows into the new Land and Water Plan to be developed.
- [14] The NPSFM 2020 was gazetted in August 2020, and came into effect in September that year. The 2020 NPS had one objective to prioritise freshwater in accordance with a hierarchy of providing for the river and ecosystem health first, then human health needs and then other uses including economic uses.
- [15] The requirement for regional councils to have plans compliant with the NPSFM 2020 was brought forward from December 2025 under the 2014 (amended 2017) NPS to December 2024⁷. This applied to all regional councils, except ORC who were operating in accordance with the Minister for the Environments powers under section 24A of the Resource Management Act 1991 (RMA).
- [16] Currently ORC has fulfilled several of its commitments to the Minister, including the short-term plan change to address deemed permits (Plan Change 7), the review and notification of the proposed Regional Policy Statement (pRPS), and several water quality plan changes to address immediate issues (Plan Change 6AA, and the Omnibus Plan Change).
- [17] The work programme to meet the notification of the proposed Land and Water Plan by 30 June 2024 is also on track, with the plan currently in its Clause 3 statutory consultation phase. This consultation is due to close on Friday 23 February.
- [18] The proposed LWRP has been developed to give effect to all national direction, including the NPSFM but also the NPS Renewable Energy Direction (NPSREG), the NES Freshwater, and the NES Drinking Water, among others. It has been developed to give effect to the RMA, and to address Councils' functions under that Act.
- [19] The current Long-Term Plan 2021 – 31 has signalled future plan changes to the pLWRP, as required to ensure the plan remains as up to date as possible.

⁷ Amendments to the RMA originally sought for the notification to be December 2023, but this was changed to 2024 due to COVID -19 impacts.

- [20] Decisions on the proposed Regional Policy Statement(pRPS) are anticipated to be with Council in the near future. The Hearings Panel will be required to make decisions on the pRPS in accordance with the law that exists at the time, including the current NPSFM.
- [21] Following the election in 2023, and subsequent forming of the new Government, regional councils have been advised that there is an intention to replace the current NSPFM. Communication from Ministers has indicated that this update will be undertaken over the next 18-24 months.
- [22] Recent changes to the RMA have extended the timeframe for regional Council's to notify new NPS compliant water plans from December 2024 to December 2027. This time extension does not currently apply to Otago Regional Council as Ministry for the Environment staff have confirmed that the existing Ministerial direction under section 24A still applies (30 June 2024). Ministers have indicated however that they will ask for advice from officials on modifying this date to align it with other Councils.
- [23] Over the past month there has been a strong recommendation from Ministers that all regional councils, including Otago, should wait for the updated NPS before notifying new water plans. This is to avoid unnecessary costs should parts of the plan need to be reviewed.
- [24] Staff are currently reviewing the draft plan to determine which areas of the plan may be impacted by a change in the NPSFM. It is intended that a full report on this assessment will be presented to Council at the March meeting.

OPTIONS

- [25] As this paper is for noting, no options are presented to Council.

CONSIDERATIONS

Strategic Framework and Policy Considerations

- [26] The Regional Plan: Water and Regional Plan: Waste are overdue to be reviewed. Section 79 of the RMA requires that Councils review their plans every 10 years.
- [27] The current work programme to develop a new LWRP addresses the requirements of s79, and also responds to the direction from the Minister for the Environment.
- [28] The development of the plan aligns with several of the Councils' current and proposed Strategic Directions.

Financial Considerations

- [29] There are no financial considerations associated with this report. Development of the pLWRP is a funded and programmed activity.

Significance and Engagement

- [30] This paper is for noting only and hence does not trigger an assessment under *He Mahi Rau Rika*. The development of the pLWRP and its notification is consistent with *He Mahi*

Rau Rika in terms of being a significant activity and satisfying the engagement requirements.

Legislative and Risk Considerations

- [31] There are legislative and risk considerations associated with any decision in respect to notifying a new Land and Water Regional Plan. Staff are undertaking an assessment of these considerations and will report back in March.
- [32] ORC is currently operating under directions from the Minister for the Environment, pursuant to s24A of the RMA. The Minister has also issued communications to indicate those directions may change.

Climate Change Considerations

- [33] There are no climate change considerations associated with this report.

Communications Considerations

- [34] This paper is for noting however due to the impact that the pLWRP will have on the wider community, it is important that the community is kept informed of future process steps, and timeline decisions.

NEXT STEPS

- [35] Clause 3 consultation is due to end on Friday 23 February, and the plan is on track for notification by 30 June 2024, in accordance with Council decisions. Staff will continue to implement directions from Council.
- [36] Staff are proposing to present a further report to Council at the March meeting.

ATTACHMENTS

Nil