

# Extraordinary Council Meeting Agenda 27 November 2019



Meeting is conducted in the Council Chamber, Level 2, Philip Laing House  
144 Rattray Street, Dunedin

## Members:

Hon Marian Hobbs, Chairperson	Cr Gary Kelliher
Cr Michael Laws, Deputy Chairperson	Cr Kevin Malcolm
Cr Hilary Calvert	Cr Andrew Noone
Cr Michael Deaker	Cr Gretchen Robertson
Cr Alexa Forbes	Cr Bryan Scott
Cr Carmen Hope	Cr Kate Wilson

Senior Officer: Sarah Gardner, Chief Executive

Meeting Support: Dianne Railton, Acting Committee Secretary

27 November 2019 09:00 AM - 12:00 PM

## Agenda Topic

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### 1. APOLOGIES

No apologies were received prior to publication of the agenda.

### 2. LEAVE OF ABSENCE

Nil

### 3. ATTENDANCE

Staff in attendance will be noted.

### 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. CONFLICT OF INTEREST

Members are reminded of the need to stand aside from decision-making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

### 6. PUBLIC FORUM

Members of the public may request to speak to the Councillors.

### 7. CONFIRMATION OF MINUTES

Nil

### 8. ACTIONS

Nil

### 9. MATTERS FOR COUNCIL DECISION

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9.1 [Response to Section 24A RMA Investigation Report](#)

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10. PRESENTATION

Honorary Professor Peter Skelton

11. CLOSURE

## 9.1. Response to Section 24A RMA Investigation Report

**Prepared for:** Council  
**Report No.** P&S1809  
**Activity:** Governance Report  
**Author:** Peter Constantine, Consultant Planner  
**Endorsed by:** Gwyneth Elsum, General Manager Strategy, Policy and Science  
**Date:** 21 November 2019

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### PURPOSE

- [1] The purpose of this report is to outline a suggested work programme to achieve the planning framework changes recommended by Minister Parker as a result of the section 24A review into ORC. The focus is on a plan change to manage deemed permit renewals (the Water Permit plan change) which is supported by additional plan changes, including Plan Change 6AA which is underway, and the Omnibus Plan Change, as well as the MAC catchment workstream.

### EXECUTIVE SUMMARY

- [2] Minister Parker, under section 24A of the Resource Management Act 1991, has made three recommendations to Council. Implementing each of these will contribute to Council having in place a fit for purpose planning regime that is compliant with all legislative requirements.
- [3] The recommendations require a staged approach to the establishment of this planning regime.
- Stage 1 comprises a plan change that would establish a framework for the processing of applications to replace deemed permits and existing water permits while a reviewed comprehensive planning regime is developed.
  - Stage 2 requires a full update of the Regional Policy Statement and its inclusion in the new planning standard framework.
  - Stage 3 requires a full review of the Water Plan, work on which has already commenced.
- [4] Council is required to respond to the Minister by 24 December 2019. This paper sets out the key elements of that response for approval by Council.

### RECOMMENDATION

*That the Council:*

- 1) **Notes** the following:
- a. *The community engagement and consultation outlined in paragraph 17*
  - b. *The overall timeline for achieving a fit for purpose freshwater planning regime set out in Appendix 1*
  - c. *Council approved a full review of the Water Plan on 31 October 2018*

- 2) **Approves** the following:
- a. *Development of a Water Permits plan change in accordance with the principles outlined in paragraph 13*
  - b. *The timeline set out in Appendix 2 for the Water Permits plan change*
  - c. *Review of the Regional Policy Statement for Otago*
- 3) **Requests** that staff prepare a formal response to Minister Parker's letter, for consideration at the Council Meeting on 11 December 2019

## BACKGROUND

- [5] By letter dated 16 May 2019, Minister Parker, in accordance with his powers under section 24A of the RMA, engaged Honorary Professor Peter Skelton to investigate whether the Otago Regional Council is on track to adequately perform its functions under section 30(1) of the RMA, in relation to freshwater management and allocation of resources. The focus of the investigation was on whether the Council has, or will have, an appropriate planning framework in place that gives effect to the relevant National Policy Statement for Freshwater Management<sup>1</sup> in time to consider all applications for new water permits before deemed permits expire<sup>2</sup>.
- [6] On 1 October 2019 Professor Skelton reported the results of his investigation to Minister Parker, which included several recommendations.
- [7] Minister Parker wrote to the Council on 18 November 2019, setting out his recommendations (made under section 24A of the RMA) comprising one key finding, three recommendations and a request. These are:

**Finding** – the Otago region does not have a fit for purpose planning framework in place

**Recommendations** – that ORC:

- 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 RPS that is publicly notified, with the intention that it be made operative before the review of the LWRP is notified
  - By December 2023, a new LWRP for Otago that includes region-wide objectives, strategic policies, region-wide activity policies, and provisions for each Freshwater Management Unit, covering all the catchments within the region

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<sup>1</sup> At the time of the investigation, the relevant NPSFM was the 2014, amended 2017 version. While this is still the current NPSFM, a new NPSFM 2019 has been proposed.

<sup>2</sup> When the RMA came into force it provided for the mining privilege water takes as deemed permits – as distinct from standard RMA water and discharge permits. The genesis of the mining privilege water is a regime established in 1858 to give gold-miners access to water and adjacent land for sluicing purposes.

- 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 ORC's planning framework, in line with the requirements in the National Policy Statement for Freshwater Management

**Request** – that Council formally respond to the recommendations by 24 December 2019, including an outline of how it is intended that the planning framework changes will be achieved.

### **Response to Minister's Recommendations**

- [8] There are a few key matters that underpin the response to Minister Parker's recommendations:
- The current Water Plan does not contain an adequate framework for assessing applications for new water permits in a number of catchments, and more particularly, those applications to replace deemed permits;
  - Deemed permits are due to expire on 1 October 2021;
  - There is a hierarchy of planning instruments and these should be prepared and made operative in the correct sequence, if the outcome of an integrated and fit for purpose suite of instruments is to be achieved;
  - The RPS, which sets the integrated resource management package at a region-wide level and which directs particular environmental outcomes to be achieved in subordinate plans, is first in the sequence;
  - Interim fixes to the current Water Plan<sup>3</sup> can be achieved relatively quickly but these cannot overcome the criticism of the Council not having a fit for purpose planning regime; and
  - The demands of the Minister's recommended timeline are not insignificant, but they are achievable provided a disciplined approach to plan making is adopted.
- [9] Staff have considered the Minister's report and prepared a work programme that delivers on the requirements necessary to satisfy the report. The proposed work programme is set out as Attachment 1. The work programme aligns with the programme presented by staff during the Council induction sessions, with some adjustment to meet particular timeframes set out in the Ministers letter.

### **Policy Considerations**

#### *Plan Change 6AA & Omnibus*

- [10] These plan changes are linked. Plan change 6AA defers the implementation of some water quality provisions in the Water Plan. The omnibus plan change introduces into the Water Plan a suite of provisions designed to immediately remedy the deficiencies in the Water Plan in respect of water quality management and to achieve water quality improvement outcomes. They are a substitute for the existing provisions that have been found wanting. The omnibus plan change is to be notified by 31 March 2020, in line with the comments made on page 36 of the Skelton report to Minister Parker.

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<sup>3</sup> Plan Change 6AA; the Omnibus plan change; the interim water permits plan change – all changes to the current Water Plan

- [11] Plan Change 6AA has already been notified and is currently in the further submissions phase of the process. An Independent Hearing Commissioner has been appointed to hear the plan change, and the hearing has been set down for 18 – 20 December 2019.

*Water Permits Plan Change*

- [12] Minister Parker has recommended that Council prepare a new 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 through ORC's yet to be prepared RPS and Water Plan review. The focus of this plan change is to be the processing of water permits (including those to replace deemed permits).
- [13] There are a number of key principles that should inform this work:
- a. The focus must remain on the bigger picture – the Water Plan review – the Water Permit plan change should be as concise as required to achieve a fit for purpose management regime.
  - b. Water allocation should be based on water use not paper allocation.
  - c. Consideration of potential impacts on existing water abstractors, and existing priorities in deemed permits.
  - d. Efficiency of time and cost for both Council applicants and other parties.
  - e. Opportunities for data gathering that will inform the Water Plan review should be pursued.
- [14] These principles give rise to a number of plan change content outcomes, including:
- a. All water permit applications – replacement of deemed permits and replacements of existing water permits – must be included.
  - b. The term of any renewal should be no more than 5 years, during which time the new RPS and reviewed Land and Water Plan will be operative.
  - c. The maximum allocation permitted should be based on an average (yet to be determined) of water actually used over the preceding irrigation seasons (this is different in most cases to allocations on paper).
  - d. Application data requirements must be clearly spelt out.
  - e. Policies must clearly spell out the essential elements of consent term and water volume.
- [15] In addition, the plan change should clearly spell out that this is an interim water management regime that signals the beginning of the journey towards new water management provisions to be included in the new Land and Water Plan.
- [16] Implementation will be facilitated by Council taking a pro-active approach to the processing of these applications for interim consents. This could include clear direction in the plan change regarding application requirements, streamlined application processing and a minimal cost regime.
- [17] Facilitating community engagement with this plan making process is essential but must be tailored such that it allows Council to achieve the Minister's recommended timeframe. To this end there will be an opportunity prior to Christmas 2019 for the public to provide its thoughts on the possible content of the plan change. This will be

done online. All consultation following Council's December 2019 report to Minister Parker will be in accordance with the requirements of the Resource Management Act.

- [18] It is important for the Council to focus on getting the right planning framework in place, rather than putting its resources into consent processing. The new plan change sought by Minister Parker provides the necessary time and opportunity for preparing and consulting on a comprehensive, wholistic regime for water management within Otago that is fit for purpose and meets the requirements of all relevant national direction. It also allows for our community to focus on the Water Plan as the vehicle to make process rather than each application for resource consent to replace an existing water permit.

#### *MAC Catchments*

- [19] It is proposed that the "MAC Catchments" – Manuherekia<sup>4</sup>, Arrow and Cardrona – proceed with their current work programme, but that the resultant plan provisions are inserted directly into the reviewed Land and Water Plan rather than a separate plan change in 2020 as is currently planned. This will allow a process that is more efficient in terms of community engagement, resources required, and planning outcome. However, good communication with the community will be required to mitigate any perception of delays in updating the plan provisions.
- [20] It is proposed that the current work programme to include all elements necessary to be NPSFM compliant, complete by December 2020, and to include the resultant plan provisions directly into the reviewed Land and Water Plan to be notified by December 2023.

## **CONSIDERATIONS**

### **Financial Considerations**

- [21] Some of the work programme set out in this paper is covered by existing budgets.
- [22] Council has budgeted for a full Water Plan review. Plan changes 6AA, Omnibus and now this new plan change are largely unbudgeted. Appeals are unbudgeted.
- [23] The required review of the Regional Policy Statement is not budgeted
- [24] Any necessary budget adjustments to complete the work programme set out in this paper will form part of the annual plan discussion at the December 2019 Council Meeting.

### **Significance and Engagement**

- [25] Council is required to follow the processes set out in Schedule 1 to the Resource Management Act 1991. Doing so will satisfy the requirements of the Significance and Engagement Policy.

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<sup>4</sup> The NZ Geographic Board spelling of Manuherekia River is Manuherikia, however Ngai Tahu have advised that the correct spelling should be Manuherekia.

### **Legislative Considerations**

- [26] The work programme set out in this paper is a result of a section 24 RMA recommendation from Minister Parker. Giving effect to the Minister's recommendations will occur within the constraints of the Resource Management Act 1991.

### **Risk Considerations**

- [27] Preparation and notification of the 'deemed permits' plan change has a number of risks associated with it. Of note is the opportunity for holders of deemed permits to lodge consent applications prior to the Water Permit plan change being notified in February. The net effect of this would be Council having to process applications to replace deemed permits in a less than ideal policy framework.
- [28] There are also risks associated with drafting a new Regional Policy Statement, particularly in terms of the requirement to include content from proposed National direction. At this stage, we are aware of, and have submitted on the proposed NPS for Highly Productive Land, the proposed NPS for Urban Development and the proposed NPS Freshwater 2019. Staff are also aware that a proposed NPS on Indigenous Biodiversity is intended for release before the end of 2019. It will be important that ORC is able to have some certainty around content of the national direction to ensure appropriate RPS provisions can be drafted.

### **NEXT STEPS**

- [29] Refer Appendix 1 and 2.

### **ATTACHMENTS**

Nil



## Appendix 1

### Preparation of Fit for Purpose Planning Regime for Otago Overall Timeline

#### Plan Changes to Regional Plan Water for Otago

##### **PC6AA**

- December 2019 - Hearing
- January 2020 - Decision

##### **Water Permits Plan Change**

- February 2020 - Notify
- 30 November – Operative

##### **Omnibus Plan Change**

- 31 March 2020 - Notify
- June 2021 - Decision

#### Water Plan Review

##### **Regional Policy Statement**

- November 2020 - Notify
- January 2023 - Operative

##### **Land & Water Regional Plan**

- December 2023 – Notify
- December 2025 - Operative

##### Draft FMU Development Plan:

- Arrow & Cardrona 2019 – June 2020
- Manuherekia: 2019 – December 2020
- Taieri & Catlins: June 2020 - March 2021
- North Otago & Dunedin Coast: April 2021 – February 2022
- Clutha (main stem followed by rohe): March 2022 – April 2023
- Upper Lakes
- Roxburgh
- Dunstan
- Lower Clutha

## Appendix 2

### Interim Provisions Plan Changes Content & Timeline

#### Water Permits

- Content driven by consent processing requirements
- Policy establishing outcomes, information requirements, support existing Water Plan
- Term of consent – tied to plan programme
- Efficiency – both take and use
- Activity classification dependent upon volume surrendered
- Provision for water user group
- Minimum/residual flow
- Maximum volume and need for flow variability

#### Omnibus

- Strengthen effluent management rules
- Strengthen the control of sediment runoff from new developments
- Clarify and improve consenting policies for discharge consent applications (both “rural” and “urban” discharges)
- Define “regionally important infrastructure” in relation to the protection of regionally significant wetlands
- Encourage good farming practices (depending on what ends up in the proposed National Environmental Standards), including:
  - Enabling the installation and maintenance of sediment traps
  - Strengthening stock exclusion rules
  - Developing policies or rules for better rural management practices
- Reviewing the current permission to use waste oil on roads as a dust suppressant
- Clarifying the links between Waste Plan’s and Water Plan’s rules
- Developing specific policies for the consenting of landfills

#### Timeline Water Permits

**7 January 2020**

Council Workshop on draft provisions

**16 – 22 January 2020**

Clause 3 consultation

**30 January – 5 February 2020**

Clause 4A consultation

**19 February 2020**

Council approval to notify

**26 February 2020**

Public notification

**Note:**

Water permits plan change process likely to be direct referral to Environment Court

#### Timeline Omnibus

**29 January 2020**

Council Workshop on draft provisions

**17 – 28 February 2020**

Clause 3 consultation

**4 - 13 March 2020**

Clause 4A consultation

**25 March 2020**

Council approval to notify


**31 March 2020**

Public notification

**Note:**

Omnibus plan change normal First Schedule process

## Regional Policy Statement



Rewrite and publicly notify Regional Policy Statement in National Planning Standards format and make compliant with all current national directions

To have RPS operative sufficiently in advance of notification of regional plan in December 2023 it will be necessary for there to be a “single hearing” pathway available to Council (eg direct referral to Environment Court or Board of Enquiry or access to Freshwater hearing panel, or similar)

## Regional Plan: Land & Water for Otago

### Regional Plan: Land & Water for Otago Architecture

- Region-wide objectives
- Strategic policies
- Region-wide activity policies
- FMU Sections – specific intervention only
  - Clutha/Mata-au
    - Dunstan
    - Upper Lakes
    - Manuherehia
    - Roxburgh
    - Lower Clutha
  - Taieri
  - North Otago
  - Upper Lakes
  - Catlins
  - Dunedin Coast
- Schedules

