Implementation Committee Agenda - 9 June 2021

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

Members:

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

Senior Officer: Sarah Gardner, Chief Executive

Meeting Support: Liz Spector, Committee Secretary

09 June 2021 09:00 AM

Agenda Topic — Page

This report is provided to consider adoption of the Biosecurity Compliance and Enforcement Policy that covers the requirements for both the Biosecurity Act 1993 and the Otago Regional Pest Management Plan.

Minutes of a meeting of the Implementation Committee held in the Council Chamber on Wednesday 10 March 2021, commencing at 11:00 AM

Membership

Cr Carmen Hope	*(Co-Chair)*
Cr Bryan Scott	*(Co-Chair)*
Cr Hilary Calvert	
Cr Michael Deaker	
Cr Alexa Forbes	
Hon Cr Marian Hobbs	
Cr Gary Kelliher	
Cr Michael Laws	
Cr Kevin Malcolm	
Cr Andrew Noone	
Cr Gretchen Robertson	
Cr Kate Wilson	

Welcome

Co-Chair Carmen Hope welcomed Councillors, members of the public and staff to the meeting at 09:02 am.

Staff present included Sarah Gardner (Chief Executive), Nick Donnelly (GM Corporate Services), Gavin Palmer (GM Operations), Richard Saunders (GM Regulatory), Amanda Vercoe (Executive Advisor), Liz Spector (Governance Support), Dianne Railton, Ann Yang, Shayde Bain, Andrea Howard, Pam Wilson, Michelle Mifflin.

1. APOLOGIES

Resolution

That the lateness for Cr Laws be accepted.

Moved: Cr Calvert
Seconded: Cr Forbes
CARRIED

2. PUBLIC FORUM

No public forum was held.

3. CONFIRMATION OF AGENDA

The agenda was confirmed as published.

4. CONFLICT OF INTEREST

No conflicts of interest were advised.

5. CONFIRMATION OF MINUTES

Resolution

That the minutes of the meeting held on 14 October 2020 be received and confirmed as a true and accurate record.

Moved: Cr Wilson
Seconded: Cr Hobbs
CARRIED

6. ACTIONS

There are no outstanding resolution actions of the Implementation Committee.

Cr Hope requested a short adjournment at 9:05 a.m.

Moved: Cr Wilson
Seconded: Cr Noone
CARRIED

Cr Hope called the meeting back to order at 9:08 a.m.

Cr Laws joined the meeting at 9:08 a.m.

7. MATTERS FOR CONSIDERATION

7.1. Infrastructure Strategy for LTP 2021-31

The report was provided to seek Committee approval of the draft 2021-2051 Flood Protection, Land Drainage and River Assets Infrastructure Strategy which will form part of the Draft 2021-31 Long Term Plan (LTP). Michelle Mifflin (Manager Engineering), Pam Wilson (Infrastructure Engineering Lead), and Gavin Palmer (GM Operations) were present to speak to the report and respond to questions. After a discussion of the draft strategy, Dr Palmer noted Councillor

requests to strengthen recognition of mana whenua provisions in the document and increase focus on trees as infrastructure.

After further discussion of the proposed strategy, Cr Scott moved:

Resolution

That the Committee:

1) ***Receives** this report.*
2) ***Approves** the draft 2021-2051 Infrastructure Strategy to be included in the information available for community consultation in the Long-Term Plan 2021-31 process, subject to any minor editorial changes made by staff.*
3) ***Notes** that the Infrastructure Strategy is to provide the framework (direction) for managing current assets and making future decisions that are identified by the significant issues.*

Moved: Cr Scott
Seconded: Cr Deaker
CARRIED

Cr Laws left the meeting at 09:41 am.
Cr Scott left the meeting at 09:42 am.
Cr Laws returned to the meeting at 09:43 am.
Cr Scott returned to the meeting at 09:44 am.

Co-Chair Bryan Scott took over chairing duties.

7.2. Environmental Implementation Update

The report was provided to summarise quarterly operational implementation activities undertaken in the areas of freshwater, biosecurity, and biodiversity and complemented Annual Plan quarterly reporting. Andrew Howard (Manager Biosecurity and Rural Liaison) and Gavin Palmer (GM Operations) were present to speak to the report and respond to questions. After a discussion of the report, Cr Hope moved:

Resolution

That the Committee:

1) ***Receives** this report.*
2) ***Notes** the range of standard business and transformational activities being undertaken to maintain and improve Otago Regional Council's delivery of environmental implementation activities.*

Moved: Cr Hope
Seconded: Cr Malcolm
CARRIED

Cr Hope left the meeting at 10:36 am.
Cr Hope returned to the meeting at 10:48 am.
Cr Laws left the meeting at 10:48 am.

7.3. Tomahawk Lagoon Enhancement Project Update

This report was provided to update the Committee on proposed future improvement activities for the Tomahawk Lagoon catchment. Libby Caldwell (Project Delivery Specialist), Andrew Howard (Manager Biosecurity and Rural Liaison), and Gavin Palmer (GM Operations) were present to speak to the report and respond to questions.

Cr Deaker noted previous ORC contributions via ECO Fund grants for Tomahawk Lagoon work and said it was important to keep up the momentum on the lagoon improvements. Dr Palmer noted the first draft of the LTP included work in the current year for the lagoon, but during subsequent LTP work, it was pushed into year 2. He said staff realised this could slow momentum with the community and as there is money in existing budgets for some of the work, staff was now asking to reprioritise some of the planned work and move back into year one of the LTP. After a discussion of the options, Cr Malcolm moved:

Resolution

That the Committee:

1) ***Receives*** *the report.*
2) ***Approves*** *that the draft outline management plan is the basis of further community consultation and the prioritisation of projects in 2021/22, managed within existing budgets.*
3) ***Notes*** *that the implementation of projects would proceed in 2022/23, subject to Long Term Plan decisions.*
4) ***Approves*** *implementation of "quick win" actions, where funding allows, in the current financial year.*

Moved: Cr Malcolm
Seconded: Cr Hope
CARRIED

Cr Laws returned to the meeting at 10:51 am.
Cr Noone left the meeting at 10:52 am.
Cr Noone returned to the meeting at 10:54 am.

8. CLOSURE

There was no further business and Co-Chair Bryan Scott declared the meeting closed at 11:05 am.

_____ _____
Co-Chairperson Date

7.1. Draft Lake Tuakitoto Management Plan

Prepared for:	Implementation Committee
Report No.	BIO2109
Activity:	Environmental: Water
Author:	Andrea Howard, Manager Biosecurity and Rural Liaison Libby Caldwell, Project Delivery Specialist
Endorsed by:	Gavin Palmer, General Manager Operations
Date:	31 May 2021

PURPOSE

[1] To provide an update on proposed activities for the Lake Tuakitoto catchment over the coming years. The paper signals engagement will occur to prioritise projects to be implemented which aim to enhance biodiversity, water quality and recreational values within Lake Tuakitoto and its surrounding catchment. A draft outline management plan has been prepared by staff to support that engagement.

EXECUTIVE SUMMARY

[2] In response to concerns about water quality and the need for ORC to make decisions about what to do with land it owns, the 2017/18 Annual Plan provided a budget to work with the local community to scope lake restoration works for Lake Tuakitoto.

[3] Engagement with the local community around Lake Tuakitoto was initiated as water quality was found to be degrading. Through ORC's State of Environment (SoE) monitoring it was identified that there are elevated levels of chlorophyll a, nitrates and phosphates found within the Lake and the catchment has elevated levels of nitrate-nitrate nitrogen and E. coli.

[4] Goals, values, and potential projects were identified through this process. Further engagement with key stakeholders is required to prioritise the projects to implement these and enhance biodiversity and water quality within the catchment.

[5] ORC has undertaken bi-monthly SoE monitoring at the Lake Tuakitoto outlet since July 1995 from which the data analysis has shown significant changes in water quality over this time with a reduction in ammoniacal nitrogen and an increase in dissolved reactive phosphorus.

[6] ORC is currently leading other complementary activities in the catchment area and the proposed draft management plan will take this work into consideration. The Robson Lagoon (part of Lake Tuakitoto Wetland complex) project is underway and is focused on upgrading infrastructure to assist with flood management within and adjacent to Robson Lagoon whilst also protecting natural and ecological values. The project will replace flow management structures to allow sustainable habitat water levels and flows during flood events and provide for native fish passage. This project is one of four ORC Climate Resilience ("shovel-ready" infrastructure) projects being part-funded by Kanoa,

the government's Regional Economic Development and Investment Unit, and is due to be completed by 2023.

[7] The sum of $100,000 has been provided for in the Draft 2021-2031 Long Term Plan for the 2021/22 Financial Year for projects to improve biodiversity and water quality within the Lake Tuakitoto catchment. The sum of $82,000 has been provided in 2022/23 and $84,000 in 2023/2024.

RECOMMENDATIONS

That the Committee:

1) ***Receives*** *this report.*
2) ***Approves*** *the draft outline management plan for further community engagement to prioritise projects and finalise an implementation plan, in 2021/22, subject to Long Term Plan decisions.*
3) ***Notes*** *that the Implementation of projects would proceed in 2021/22, subject to Long Term Plan decisions.*

BACKGROUND

[8] Lake Tuakitoto is a large lowland lake and adjoining swamp, near the coast north of the Clutha River/Mata-Au Mouth (refer to Figure 1). It is fed from the inflow of Lovells Creek at the northern end of the wetland and is the best remaining example in Otago of a previously widespread wetland type (ORC, 2004). Appendix 2 shows a map of the Lake Tuakitoto catchment.

Figure 1: Map showing catchment for Lake Tuakitoto

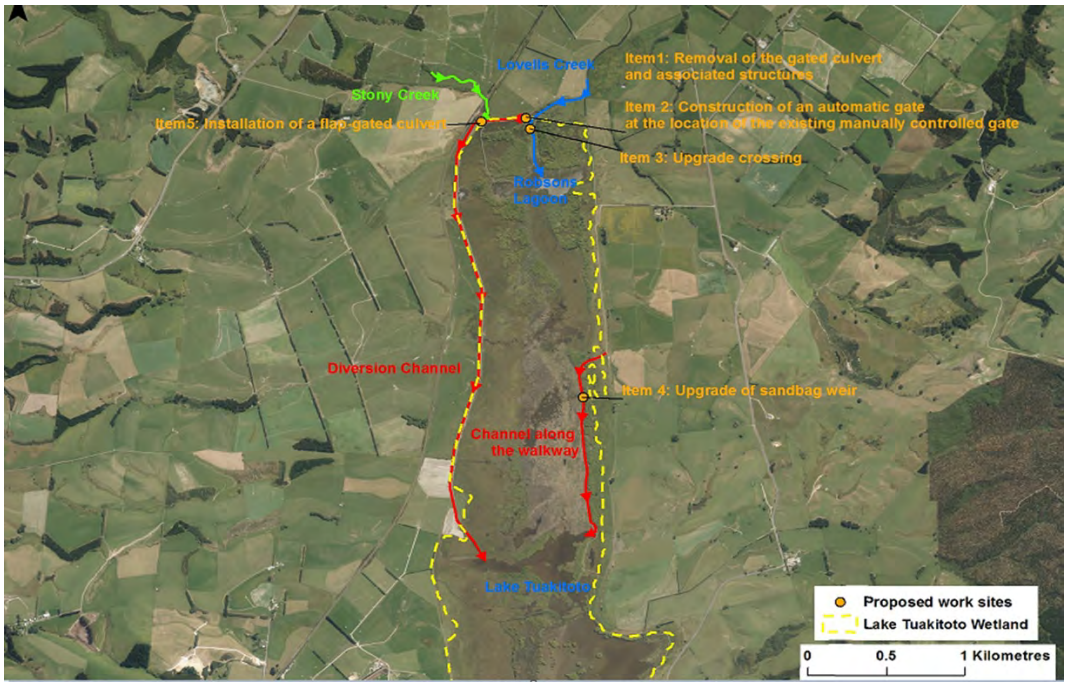


Figure 2: Image showing the location of the Robson Lagoon improvement works

[9] Lake Tuakitoto supports a high diversity of indigenous flora and fauna and an exceptionally high diversity of bird life. It is a regionally significant wetland habitat for nationally and internationally rare or threatened species. It provides a breeding habitat for the rare Australasian Bittern (*Botaurus poiciloptilus)* and Banded Dotterel (*Charadrius bicinctus bicinctus*). It is also a breeding area for the uncommon Marsh Crake (*Porzana pusilla affinis*), Spotless Crake (*Porzana tabuenis plumbea*) and South Island Fernbird (*Bowdleria punctata punctata*). Habitat is provided for the threatened giant kokopu (*Galaxias argenteus*). The threatened plant species swamp nettle (*Urtica linearifolia*) and *Isolepis basilaris* are present on the swamp margin (ORC, 2004).

Figure 3: Lake Tuakitoto

[10] A diverse mosaic of vegetation types and wildlife habitats exists within the Lake Tuakitoto area. It is considered to be a regionally and nationally important habitat for waterfowl, waders and swamp birds. It supports a significant proportion of the national population of Mallard (*Anas platyrhynchos*) and New Zealand Shoveller/Kuruwhengi (*Anas rhynchotis variegata*), Grey Teal (*Anas gracilis*) and Black Swan (*Cygnus atratus*). All these species breed here. It is considered nationally important as a freshwater fishery habitat, supporting longfin eel (*Anguilla dieffenbachii*), shortfin eel (*Anguilla australis*), whitebait/inaka (*Galaxias spp.*) and common bully/pako (*Gobiomorphus cotidianus*) populations (ORC, 2004).

[11] Lake Tuakitoto is highly valued by Kāi Tahu for cultural and spiritual beliefs, values and uses, including mahika kai and waahi taoka. The associated wetland is highly valued by Kāi Tahu for its historical associations, and as a traditional food gathering area (ORC, 2004).

[12] Lake Tuakitoto provides significant hydrological values including maintaining water quality and low flows or reducing flood flows. Lake Tuakitoto and surrounding wetlands perform a valuable hydrological function. It serves as a flood ponding area and is an integral part of the Lower Clutha Flood Control and Drainage Scheme (ORC, 2004). The lakebed and some of the lake margins are owned by ORC.

[13] In 2004 ORC constructed a walkway around the lake, to improve public access to the lake.

[14] The 2017/2018 annual plan included an action for ‘working with local communities to scope lake restoration works for Tuakitoto’.

[15] In April 2018, a workshop was held with the community which identified goals and values for the Lake Tuakitoto catchment. In June 2018, a second workshop was held where potential projects were identified following on from the first workshop.

[16] Based on the feedback received during the initial consultation exercises, staff have prepared a draft outline management plan (attached) to facilitate the implementation of restoration actions.

[17] ORC is currently leading other complementary activities in the catchment area and the proposed draft management plan will take this work into consideration. The Robson's Lagoon (part of Lake Tuakitoto Wetland complex) project is underway and is focused on upgrading infrastructure to assist with flood management within and adjacent to Robson's Lagoon whilst also protecting natural and ecological values. The project will replace flow management structures to allow sustainable habitat water levels and flows during flood events and provide for native fish passage. This project is one of four ORC Climate Resilience ("shovel-ready" infrastructure) projects being part-funded by Kanoa, the government's Regional Economic Development and Investment Unit, and is due to be completed by 2023 (refer to appendix 3 for details on Robson's Lagoon project).

[18] ORC has undertaken bi-monthly SoE monitoring at the Lake Tuakitoto outlet since July 1995 which the data analysis has shown significant changes in water quality over this time with a reduction in ammoniacal nitrogen and an increase in dissolved reactive phosphorus.

ISSUES

[19] The results of grading of SoE sites in the Lower Clutha rohe, according to the NPSFM 2020 National Objectives Framework (NOF) criteria, are summarised in Figure 4. The white cells show variables that were not monitored and the small squares in the upper left quadrant of the cells indicate the site grade for the baseline period (2012-2017). The Government has set quality bands for physical attributes of waterways. For the compulsory 'human health for recreation' value, the bands vary in range from band A to D. Band A indicates that it is suitable for swimming, B is generally suitable for swimming, C is suitable for boating and wading and D is unacceptable risk to human health and is considered the national bottom line. Figure 2 shows that Lovells Creek and the outlet at Lake Tuakitoto variables range from A to D band and these monitoring sites are shown in Figure 5.

Figure 4: Results of grading of SoE sites in the Lower Clutha Rohe according to the NPSFM 2020 including Lovells Creek and Lake Tuakitoto sites (ORC, 2021).

[20] The SoE monitoring undertaken by ORC shows that Lake Tuakitoto at the outlet does not meet the NPSFM 2020 national bottom line for chlorophyll a, total nitrogen and total phosphorus.

[21] Lovells Creek is the main inflow to Lake Tuakitoto. The Lovells Creek catchment consists largely of intensively grazed pasture with some scrub and plantation forestry. Lovells Creek does not meet the NPSFM 2020 national bottom line for total nitrogen and E. coli. The locations of the Lovells Creek and Lake Tuakitoto outlet monitoring sites are shown in Figure 5.

Figure 5: Clutha Delta water quality monitoring and flow sites, including Lovells Creek and Lake Tuakitoto Outlet monitoring sites.

DISCUSSION

[22] The vision for 'a thriving Lake Tuakitoto catchment, where water quality and biodiversity are enhanced through community action to contribute to a healthy ecosystem for all to enjoy' has been developed with the community through workshops 1 and 2.

[23] The four main values that were identified through the workshops were:

a. The natural environment and ecosystem
b. Recreational
c. Mana whenua
d. Hydrological

[24] Potential projects have been identified in consultation with the community through workshops 1 and 2 within the Lake Tuakitoto catchment. These include:

a. Catchment wide projects:

i. Ecological Assessment
ii. Water Quality Improvements
    1. Water quality data
    2. Funding scheme for landowners relating to riparian and wetland restoration
    3. Citizen science
iii. Hydrology
iv. Improve Biodiversity
    1. Riparian planting plan
    2. Riparian planting implemented
    3. Pest and weed programme
    4. Retain and maintain native fish populations
v. Fish passage assessment – remediation/creation of habitat
vi. Community outcomes
    1. Catchment group
    2. Nursery
    3. Collaborative research with other organisations

b. Lake Specific Projects

i. Access and walking track improvement
    1. Survey of wetland
    2. Carpark
    3. Short tracks off main track
ii. ORC owned land
    1. Feasibility study regarding use of ORC owned land

[25] These projects have been assembled into a draft outline management plan, for the purposes of seeking final community feedback on priorities and to enable costs to be prepared (Appendix 1).

[26] Figure 3 below shows a scatter plot separated into quadrants of what is recommended by staff from an ecological outcome and ease of delivery perspective. The green spots are actions recommended to be undertaken first as they have the most ecological benefit and are easier to deliver.

[27] The proposed potential projects are listed below and correspond to the numbers shown in Figure 6 below.

1. Water quality testing programme
2. Landowner funding scheme - riparian buffer zones and wetland rehabilitation
3. Citizen science WQ programme
4. Hydrological investigation
5. Catchment plan (including riparian planting plan) and implementation
6. Increased support/advice and resources for landowners to restore ecosystems
7. Pest and weed programme
8. Mussel breeding research and support to retain and maintain native fish populations
9. Fish passage/habitat assessment
10. Native fish protection plan
11. Catchment group extended
12. Nursery
13. Collaborative research projects
14. Access and walking track upgrades including carpark and signage
15. Ecological assessment
16. Feasibility study into use of ORC land

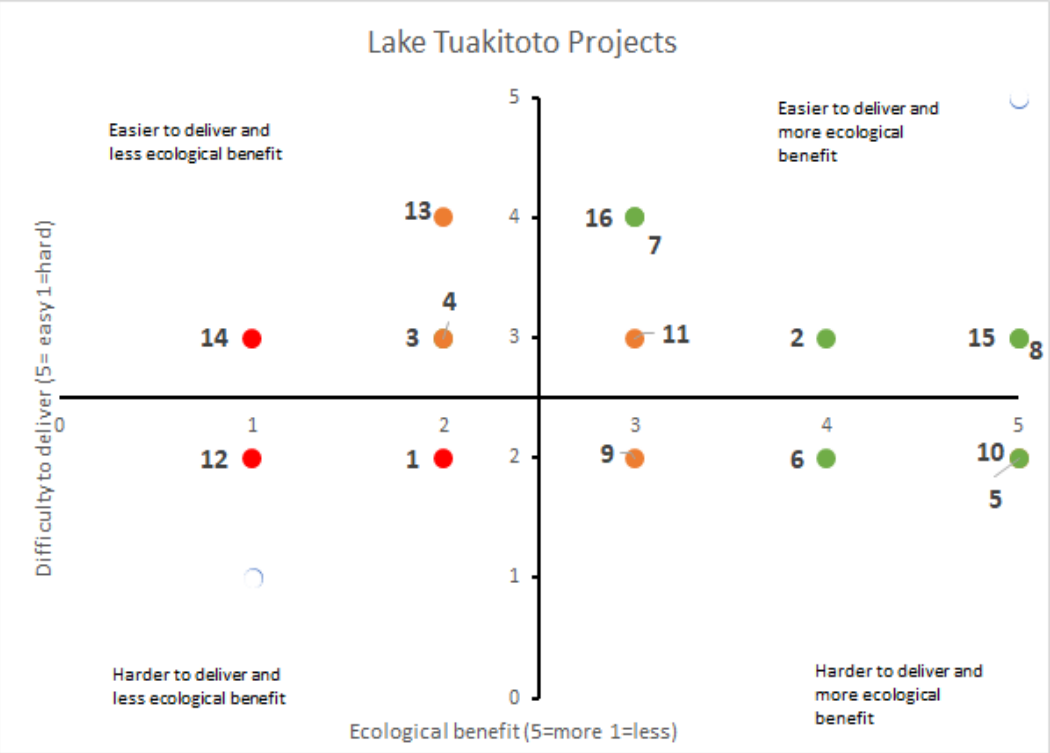


Figure 6: Scatter graph showing 16 potential projects for Lake Tuakitoto and plotting these from an ease of delivery vs ecological benefit perspective.

[28] The orange spots in Figure 6 are the projects which should proceed after the green projects are underway/have been delivered and the red spots are the projects which should proceed after the other projects are underway/delivered as these have less ecological benefit and are more difficult to deliver.

[29] The ecological benefits criteria has factored in the ability of the project to:

a. Support the protection and restoration of the environment
b. Long term viability
c. Environmental outcomes achieved on the ground
d. The influence of the project on future environmental outcomes/delivery
e. Incorporation of integrated catchment benefits i.e. Water, biodiversity, biosecurity, air quality, climate change resilience.

[30] The difficulty to deliver criteria has factored in:

a. Cost
b. Amount of community engagement and community delivery required
c. Time and effort to establish and deliver the project.

[31] It is important to note that the scatter graph in Figure 3 portrays ORC staff perspectives on which projects could be delivered first and that further consultation and engagement with the community is required to ensure that their views and opinions on what projects should be prioritised is captured. The scatter graph and staff expertise will provide context and information to the community around the benefits and limitations of each of the projects so informed decisions can be made.

CONSIDERATIONS

Strategic Framework and Policy Considerations

[32] Our strategic directions commit ORC to delivering integrated environmental management, engaging communities and collaborating to deliver and this work is consistent with those commitments. Where water quality is degrading, ORC is required to implement an action plan to address the degradation. This work is an early example of such a plan.

Financial Considerations

[33] The sum of $100,000 is included in the Draft 2021-2031 Long Term Plan for the 2021/22 Financial Year for projects to improve biodiversity and water quality within the Lake Tuakitoto catchment. The sum of $82,000 has been provided in 2022/23 and $84,000 in 2023/2024.

Significance and Engagement Considerations

[34] The recommendations of this report are consistent with the council's Significance and Engagement Policy.

Legislative and Risk Considerations

[35] This paper does not trigger legislative or risk considerations.

Climate Change Considerations

[36] Lake Tuakitoto plays a significant role as a catchment ponding area during flood events in the Lower Clutha flood control and drainage scheme.

Communications Considerations

[37] This paper does not trigger communications considerations

NEXT STEPS

[38] Following a final Council decision with the community on proceeding with the prioritisation of projects within the Lake Tuakitoto catchment and subject to confirmation of LTP funding, staff will arrange to meet with key stakeholders to work to prioritise actions and projects for implementation starting in 2021/2022.

[39] Following the completion of prioritisation, ORC staff will complete a costing analysis of the highest priority projects and develop and deliver a comprehensive implementation plan.

REFERENCES

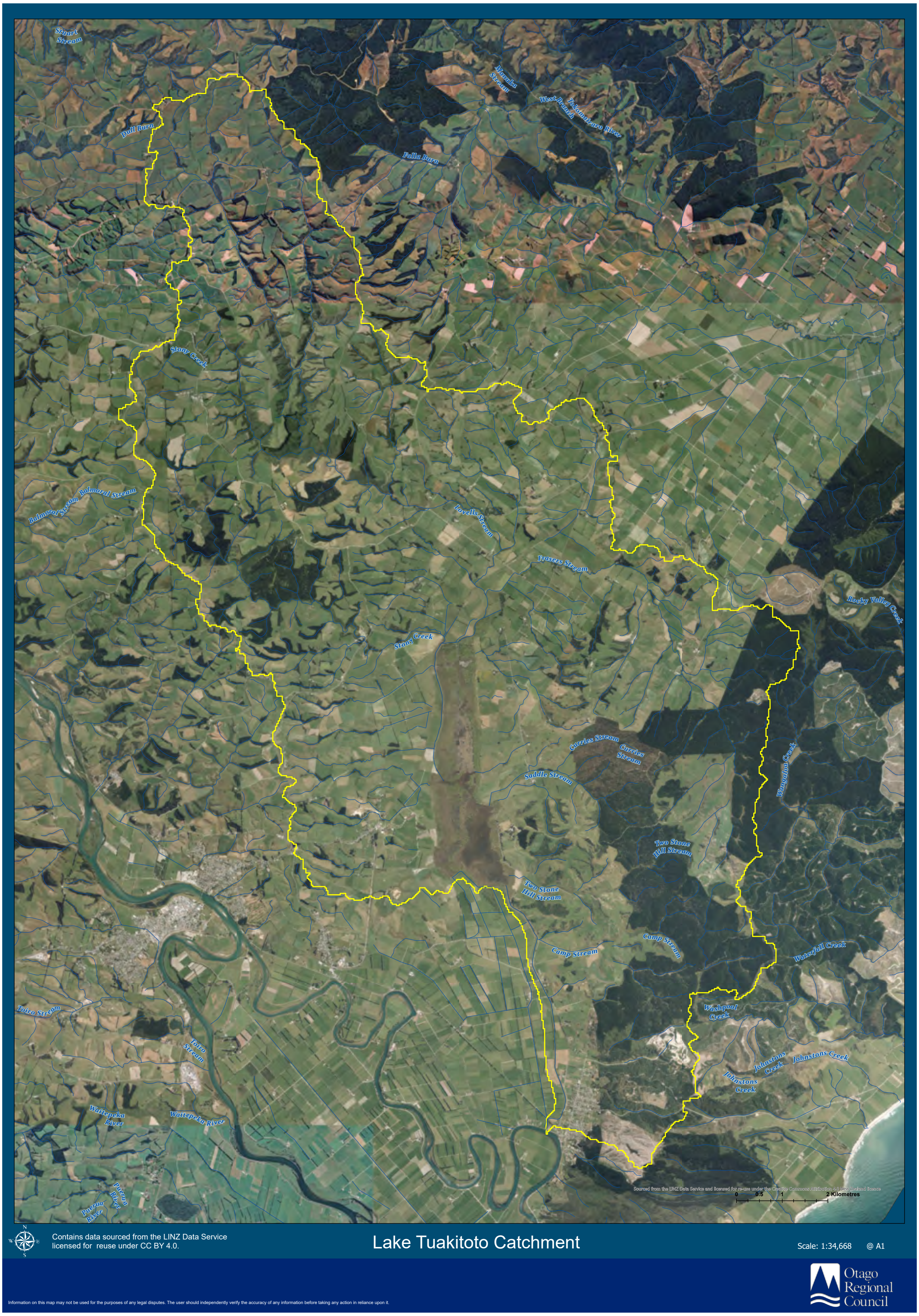
Ogilvie, S. & Mitchell, S. (1995). A model of mussel filtration in a shallow New Zealand lake, with reference to eutrophication control. Archives of Hydrobiology 133 (4), 471-481.

Otago Regional Council (2004) Regional Plan: Water for Otago. Published by the Otago Regional Council, Dunedin.

Otago Regional Council (2021) State and Trends of River and Lake Quality in the Otago Region 2000-2020. Draft.

ATTACHMENTS

1. ORC Lake Tuakitoto Catchment [**7.1.1** - 1 page]
2. Lake Tuakitoto [AGA8] [**7.1.2** - 5 pages]
3. 2021-03-10 Infographic Robson Lagoon CR project [**7.1.3** - 1 page]


Bull Burn
Falls Burn
Stony Creek
Powells Stream
Fosters Stream
Rocky Valley Creek
Saddle Stream
Two Stone Hill Stream
Camp Stream
Waterfall Creek
Washpool Creek
Johnstons Creek
Waitepeka River
Contains data sourced from the LINZ Data Service licensed for reuse under CC BY 4.0.
Lake Tuakitoto Catchment
Scale: 1:34,668 @ A1
Otago Regional Council
Information on this map may not be used for the purposes of any legal disputes. The user should independently verify the accuracy of any information before taking any action in reliance upon it.

Draft Lake Tuakitoto Catchment Management Plan version 1

Vision

A thriving Lake Tuakitoto catchment, where water quality and biodiversity are enhanced through community action to contribute to a healthy ecosystem for all to enjoy.

Values

- The natural environment and ecosystem of Lake Tuakitoto and it's catchment are to be protected and enhanced
    - Land use within the catchment has been altered over time with the removal of native vegetation with associated increased sedimentation and contamination within the catchment. There are both historic and current causes to these issues and finding a balanced solution in some cases will be complex. The health of the catchment as a whole is important and links to how it is functioning and enjoyed.
    - Lake Tuakitoto is a regionally significant wetland as it provides roosting, feeding and breeding habitat for Banded Dotterel, Marsh Crake, Spotless Crake and the South Island Fernbird as well as habitat for giant kokopu, swamp nettle and *Isolepis basilaris.* There is also important habitat for waterfowl, waders and swamp birds including supporting a significant proportion of the population and breeding of Mallard, New Zealand Shoveller/Kuruwhengi, Black Swan and Grey Teal. It is considered a nationally important freshwater fishery habitat which supports longfin eel, shortfin eel, whitebait/inanga, common bully and giant kokopu.
    - There is a high diversity of indigenous flora and fauna. Exceptionally high diversity of bird life present with over 50 species of bird recorded.
    - To preserve and protect the wetlands, rivers and streams and their margins that there is no further loss or degradation within the catchment

- Recreational uses of Lake Tuakitoto are enabled.
    - Lake Tuakitoto has many recreational assets such as fishing, walking, bird watching and hunting. By improving public access the recreational capacity and ability of people to enjoy the lagoon is enhanced. It is important that the impacts that recreation has on the environment, the values of mana whenua and property rights are managed carefully. A connection between the environment, the local community and visitors to the area is important. There may be times, such as in duck shooting season where the area is not suitable for recreational activities such as walking to be undertaken and this is important to note.

- Mana whenua values are protected and enhanced.
    - Highly valued by Kāi Tahu for cultural and spiritual beliefs, values and uses including mahika kai and waahi taoka. Important for its historical associations and as a traditional food gathering area.

- Hydrological values in regards to maintaining water quality and low flows as well as reducing flood flows.

- Lake Tuakitoto and surround wetlands perform a valuable hydrological function. Serves as a flood ponding area and is an integral art of the Lower Clutha Flood Control and Drainage Scheme.

Issues

- Flooding –the ideal lake level
- Water quality (Nutrient levels are high)
- Impacts on the freshwater mussel population
- Boundary location – ORC vs Private landowners
- Sedimentation
- Degraded habitat for Giant kōkapu, īnanga
- Fish Passage restrictions due to infrastructure

Objectives

- To improve the water quality and meet the National Freshwater and Otago Regional Council Land and Water Plan standards in Lake Tuakitoto and the catchment which feeds this for environmental, mana whenua, and recreational uses
- To improve biodiversity within the catchment
- Support a healthy ecosystem which sustains and enables mahika kai
- Improve water quality to support recreational fishing.
- To preserve and protect the wetlands, rivers and streams, their margins and the saline environment so that there is no further loss or degradation within the catchment
- To encourage and support soil conservation to minimise sedimentation
- To maintain and enhance public access around Lake Tuakitoto
- To ensure that the existing mussel beds present in the lake are enhanced and managed effectively
- To promote Lake Tuakitoto and encourage people to visit and use the lake.
- The management of the Lake is influenced by good quality science.
- To manage flood risk and land drainage for adjacent land

Robsons Lagoon Climate Resilience Project - Delivered by ORC

This project will upgrade infrastructure to assist with the flood management within and adjacent to the Robson Lagoon, whilst protecting its natural and ecological values. Robson Lagoon is part of the regionally significant Lake Tuakitoto Wetland complex and the project is to replace flow management structures to allow sustainable water levels for habitat and during flood events as well as providing for native fish passage.

Potential Projects

Catchment Wide projects:

Ecological Assessment

- Investigate the balance between the needs of human interaction with the wildlife (hydrological function, ecology, wildlife, walking tracks, flood hazard etc). Include assessment of what the limits are for the system in this catchment (tipping point). What are the key stressors and how resilient is the catchment. What actions do we need to undertake to make the catchment more resilient.

Water Quality Improvements

- Water Quality Data is relevant and influences management of the lake. Introduce a water testing programme including locations around the lake and within the catchment to assist with identifying sources of poor water quality.
- Funding scheme provided for landowners to restore buffer/riparian zones and recreate wetlands in the upper catchment (including fencing).
- Citizen science
  Support ongoing water quality monitoring programme as a way to generate data for the catchment and as an important community engagement tool.

Hydrology

- Investigate the impacts of flooding within the catchment and further research to ensure that the current lake levels are sufficient to support environmental enhancement, flood protection and recreation.

Improve Biodiversity

- Facilitate a riparian planting plan for the catchment (include community planting days)
- Ecosystems restored
  Support, advice and resources provided to aid landowners with riparian planting projects to restore the ecosystem. Riparian planting and wetland restoration. Sediment traps/filter strips/wetlands in place to stop sediment entering the lake.
- Pest and weed programme
  Support and provide resources to assist neighbours to form groups to tackle weed and pest species in a combined and aligned effort. The aim is to control predators of birds and to minimise impacts on the native forest in the area and to control weeds where fast growing exotic species out compete natives. Weed species include crack willow, glyceria and rank grass
- Retain and maintain native fish populations such as Giant kōkapu, īnanga and kākahi (freshwater mussels). Need further research into mussel breeding and investigate the possibility of mussel spat ropes in place in culverts.

Fish Passage assessment and remediation/creation of habitat where required.

- Create deeper areas in the lake for fish refuge and where they can stay cool.
- Develop a fish passage management strategy
  Examine fish passage issues within the catchment and develop a plan to prioritise these and how to implement changes to rectify these.

Community Outcomes

- Catchment group formed and supported
- Nursery - Support existing or support creation of a new nursery.
  To provide locally grown plants for planting within the catchment
- Collaborative research projects with Telford, University of Otago, local schools. Field trips to this area.
- Communications plan to promote the Lake.

Lake specific projects:

Access and Walking track improvement

- Survey the location of the regionally significant wetland
- To maintain and develop public access around Lake Tuakitoto
  Better signage directing people to the lake, maintain walking track and upgrade so suitable for cyclists and walkers. Identify opportunities with DoC and private landowners for sections surrounding the lagoon to be restored and developed for public access.
- Carpark needs maintained/upgraded.
  Entry to be upgraded and set off the road for safety.
- Some short tracks off the main track as the main track is quite long. Include viewing points for bird watching, picnic tables/benches, jetty or boat access, interactive elements for kids eg. Climbing structures

Otago Regional Council owned land

- Undertake a feasibility study in consultation with the community about the use of ORC owned land and what the best use for this land is.

Indicators of success

- Number and size (area) of riparian enhancement projects completed each year.
- Metres of riparian margin fenced each year
- Metres of riparian margin planted each year
- Water quality indicators
- Number of and quality of public access points
- Community surveys
- Count of number of people who use the area
- Number of fish barriers rectified
- Egg counts for Inanga following habitat restoration to measure impact of restoration.
- Fish surveys to show thriving populations

Opportunities

The restoration of Lake Tuakitoto will require the collaboration of partners and stakeholders working together.

- Collaboration with neighbouring catchment groups
- Biosecurity programmes incorporated
- Community planting programmes
- Million Metres crowd funding campaign
- Walkway
- Motivated property owners

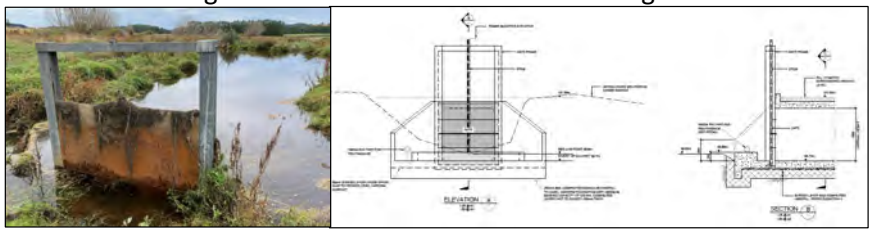
Catchment Map

Robson Lagoon – Flow Control Structures Upgrade

Project Scope:

- This project will upgrade infrastructure to assist with the flood management within and adjacent to the Robson Lagoon, whilst protecting its natural and ecological values.
- Robson Lagoon is part of the regionally significant Lake Tuakitoto Wetland complex and falls within the catchment of the Lower Clutha Flood Protection and Drainage Scheme.
- The replacement flow management structures will allow sustainable habitat water levels and flows during flood events and provide for the passage of native fish.

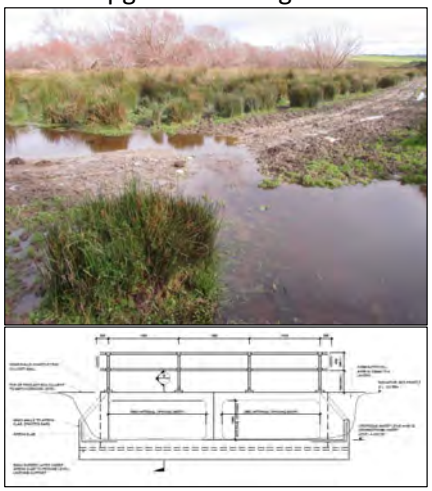
Remove gated culvert and install new control gate



What will be done?

- Removal of the old gated culvert and associated structures
- Construction of an automatic gate at the location of the existing gate
- Upgrade the crossing
- Upgrade the existing sandbag weir
- Install a flap gate culvert at the Stony Creek confluence

Upgrade crossing



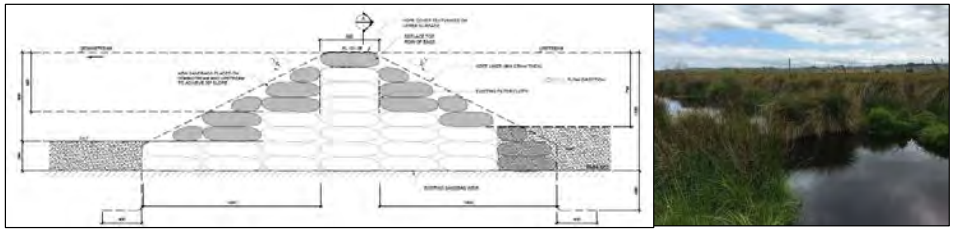
Why is this needed?

- To provide certainty in maintaining a minimum water level for the wetland
- Provide adequate land drainage
- Provide consistent operation of the structures
- Provide ecological and environmental enhancement

What environmental enhancement will be achieved?

- Water level and temperature will be remotely monitored in real time.
- Gate operation records and ecological observations will be monitored for adaptive management.
- Improvements to fish passage. The effectiveness of fish passage will be informed by fish surveys at 6 yearly intervals and an assessment after 12 years.

Upgrade sandbag weir



Timing:

- Structures will be prepared during 2021 for installation in early 2022 and 2023.
- Windows of opportunity to install the structure are dictated by consent condition. The available windows are: Jan/Feb 2022 and Jan/Feb 2023
- Ongoing monitoring will follow completion of the structure installation.

7.2. Biosecurity Compliance Policy

Prepared for:	Implementation Committee
Report No.	BIO2110
Activity:	Environmental: Land Environmental: Water
Author:	Murray Boardman, Performance and Delivery Specialist Andrea Howard, Manager Biosecurity and Rural Liaison
Endorsed by:	Gavin Palmer, General Manager Operations
Date:	9 June 2021

PURPOSE

[1] The Otago Regional Council (ORC) is responsible for compliance monitoring and enforcement of legislation and related statutory instruments pertaining to the Biosecurity Act (1993) (BSA).

[2] As part of this responsibility, ORC has developed the Otago Regional Pest Management Plan (RPMP) which establishes rules to manage pests under the authority of the BSA.

[3] This report seeks the adoption of the Biosecurity Compliance and Enforcement Policy that covers the requirements for both the BSA and RPMP.

EXECUTIVE SUMMARY

[4] The proposed Biosecurity Compliance and Enforcement Policy ('the Policy') sets out the approach and principles by which the ORC promotes and undertakes compliance and enforcement under the BSA and RPMP. This policy outlines how the compliance and enforcement of the BSA and RPMP is managed to ensure a consistent and integrated approach..

[5] The Policy is based on the statutory requirements of the BSA and the operational requirements of the RPMP. It is consistent with ORC's RMA Compliance and Enforcement, the Regional Sector Strategic Compliance Framework, case law direction and a review of sector best practice for compliance and enforcement activities and policies.

RECOMMENDATION

That the Committee:

1) ***Receives*** *this report.*
2) ***Approves and adopts*** *the Otago Regional Council Biosecurity Compliance and Enforcement Policy.*

BACKGROUND

[6] Under the BSA, the ORC is responsible for regulating activities related to pest management to promote biodiversity, protect the environment and enhance economic

outcomes. Compliance monitoring and enforcement is a critical tool to achieve these biosecurity objectives.

[7] Councils have a responsibility to implement the BSA and have considerable discretion in how they fulfil their statutory functions. This discretion is reflected in the development of the Otago Regional Pest Management Plan (RPMP) as the principal tool to enact the intentions of the BSA.

[8] The BSA does not prescribe how councils should carry out compliance monitoring and enforcement activities, however the BSA does provide the legal framework for such activities.

[9] Many of the compliance and enforcement approaches by regional councils are driven by the Resource Management Act (1991) (RMA). In comparison, there is little national direction on compliance and enforcement of the BSA. While all regional councils have compliance and enforcement polices for the RMA, there are no specific policies related to compliance and enforcement for the BSA.[1] A specific biosecurity compliance and enforcement policy for the ORC would appear to be unique. However, ORC is striving for best practice in the implementation of its RPMP and a policy is an essential part of achieving that.

[10] While there are similar principles to compliance and enforcement between the RMA and BSA, there are enough differences to validate having a separate compliance and enforcement policy. One key difference is that a significant focus of RMA compliance and enforcement is related to consents whereas biosecurity is not consents-based. Secondly, there are specific differences in how compliance, and especially, enforcement, is dealt with between the two acts. Enforcement through the RMA is more prosecution driven whereas biosecurity focuses on default work that is charged to the occupier or landowners

[11] For organisational consistency, this Policy has been based on the recent ORC RMA compliance and enforcement policy.[2] This latter policy is based on the Ministry for the Environment (MfE) 'Best Practice Guidelines for Compliance Monitoring and Enforcement' to support councils in regulating their responsibilities under the RMA. Of note, the MfE Best Practice Guidelines states that "all councils should have an operational enforcement policy, which the council uses to determine what enforcement action (if any) to take in response to non-compliance". This guidance is equally relevant for the compliance and enforcement of the BSA.

ISSUE

[12] With the establishment of the rule-based RPMP, there has been the creation of compliant and non-compliant classifications as to the management of pests. Ensuring

[1] From a review of Regional Council documents, it would seem BSA-focused enforcement policies are largely embedded or inferred through the respective RPMP rather than being specific. In Environment Canterbury's enforcement policy, it states that *"The majority of Environment Canterbury enforcement work relates to the Resource Management Act (RMA) and this is the primary focus of this Policy. Notwithstanding this, the principles underpinning this Policy may be applied to other areas of enforcement, e.g. the Biosecurity Act 1993…".*

[2] As presented to the Otago Regional Council's Regulatory Committee on 11 March 2021

there is a consistent and transparent application of compliance and enforcement is seen as being an essential practice for ORC engagement with landowners and occupiers. This is best addressed by adopting a policy that provides clear guidance on ORC's approach to non-compliance and, if needed, the consequential enforcement of pest management rules in the Otago region.

DISCUSSION

[13] The Biosecurity Compliance and Enforcement Policy (the Policy) is based on the statutory requirements of the BSA and the operational requirements of the RPMP. It is consistent with ORC's RMA Compliance and Enforcement, the Regional Sector Strategic Compliance Framework, case law direction and a review of best sector practice for compliance and enforcement activities and policies.

[14] The Policy sets out the approach and principles by which the ORC promotes and enforces compliance and enforcement with respect to the BSA and RPMP. This policy outlines how compliance and enforcement will be managed and implemented. The Policy is intended to ensure a consistent and integrated approach to compliance and enforcement by ORC.

[15] The Policy outlines the ORC's spectrum approach to encouraging and ensuring compliance through the 'Four Es' of Engage, Educate, Enable and Enforce.

[16] The Policy outlines the principles underlying the ORC's approach to compliance and enforcement action, drawn from the Regional Sector Strategic Compliance Framework. These being:

a. transparency
b. consistency of process
c. taking a fair, reasonable and proportional approach
d. evidence-based and informed
e. collaborative
f. being lawful, ethical, and accountable
g. targeted
h. responsive and effective

This is consistent with ORC's RMA Compliance and Enforcement Policy.

[17] The Policy describes the investigation and enforcement decision process, including:

- Gathering data in keeping with best practice detailed in *Basic Investigative Skills for Local Government.*
- Factors for considering enforcement action based on case law direction; and
- Factors for considering prosecution, based on the 'prosecution test' outlined in the Solicitor-General's Prosecution Guidelines.

[18] The Policy describes enforcement options available to deal with non-compliance, including informal actions, directive actions and punitive actions. The Policy provides guidance on when enforcement tools may be appropriate and the potential impacts for the liable party.

[19] The focus of the compliance and enforcement policy is to clearly set out the critical expectations for occupiers and landowners to be compliant. As such, this policy sets a

more directive position on pest management to ensure necessary actions have been taken to ensure compliance with the BSA and RPMP. This is particularly important when dealing with priority and challenging pests, such as rabbits and wallabies.

[20] Where it is deemed necessary, the proposed policy allows for the acceleration of the compliance process when responding to significant need (e.g., rapid increase in wallaby sightings, accompanied by landowner apathy, or to curtail the increase in a priority pest, such as rabbits). An accelerated compliance process[3] would be mindful of the burden, while also considering risk to environmental, economic and landscape values.

OPTIONS

[21] Option 1 – Approve the proposed Biosecurity Compliance and Enforcement Policy.

[22] Option 2 – Do not approve proposed Biosecurity Compliance and Enforcement Policy and continue to undertake compliance and enforcement activity in the absence of policy guidance.

[23] Option 1 is recommended as it ensures that compliance and enforcement activity is consistent and that ORC's approach to enforcement and compliance is transparent. Option 1 reduces the risk of legal challenge over process issues.

CONSIDERATIONS

Strategic Framework and Policy Considerations

[24] This report considers the adoption of the Biosecurity Compliance and Enforcement Policy which supports ORC's vision for Otago by working towards an environment that supports healthy people and ecosystems and community resilience in the face of risk, such as biosecurity risk.

Financial Considerations

[25] While there are no financial costs to adopting the policy, the policy does outline cost recovery for persistent non-compliance.

Significance and Engagement Considerations

[26] There are no implications for significance and engagement.

Legislative and Risk Considerations

[27] Compliance, monitoring, and enforcement activities are a mandatory function under the BSA, and case law has provided guidance and direction on factors to consider when considering enforcement action. The Biosecurity Compliance and Enforcement Policy is based on case law guidance and BSA requirements.

[28] A policy on compliance and enforcement reduces the risk of legal challenge over process issues.

[3] Following a property inspection that resulted in non-compliance, an accelerated process would see Council bypass the informal steps (request for work and then warning letter) to automatically enact the Notice of Direction stage. This more directive approach is used by Environment Canterbury when dealing with feral rabbit densities exceeding the allowable level.

Climate Change Considerations

[29] There are no implications for climate change.

Communications Considerations

[30] Once adopted, the policy will be made available publicly on the Council's website.

NEXT STEPS

[31] Standard operating procedures will be updated to reflect the Council direction on non-compliance and enforcement activities within biosecurity.

ATTACHMENTS

1. ORC Biosecurity Compliance Enforcement Policy v1 [**7.2.1** - 11 pages]

Otago Regional Council

Biosecurity Compliance and Enforcement Policy

Biosecurity Act (1993)

Otago Regional Pest Management Plan 2019-29

Date approved	
Review date	March 2024
Policy owner	Manager Biosecurity and Rural Liaison
Version	1.0

1. INTRODUCTION

The Otago region covers 12% of New Zealand's land area and is the second largest region in New Zealand. The region has a high level of endemism, where species are only found in the region a wide range of geography and ecosystems, from alpine regions, glacial lakes, grasslands, forests, and a dramatic coastline. This leads to Otago being one of the most biodiverse regions in New Zealand. The indigenous biodiversity contributes to our health, our economy, and our social and cultural wellbeing. The Otago landscapes and geography are a key attraction to those who visit the region and supports the agriculture sector as a key basis of Otago's economic development.

Broadly, the environment encompasses the ecosystems that include people and their communities, natural and physical resources and the resulting amenity values. These, in turn, influence, and are influenced by, the prevailing aesthetic, cultural, economic, and social conditions. However, the environment of the region is increasingly under threat by harmful organisms. These organisms have a detrimental effect and impact on the environment and human wellbeing.

Land occupiers are responsible for are responsible for effectively managing the spread of animal and plant pests to ensure the environment supports the social and economic pursuits of the community. Under the Biosecurity Act (1993) (BSA), the Otago Regional Council (ORC) is empowered to enforce action to ensure pests are managed appropriately. To achieve this, the Otago Regional Pest Management Plan 2019-2029 (RPMP), under the provisions of the BSA, provides the scope to undertake inspections to ensure compliance with given regulations.

This policy sets out the approach and principles by which the ORC approaches compliance with the RPMP as provided by the BSA. This policy is intended to ensure a consistent approach to compliance and enforcement by ORC.

2. PRINCIPLES TO ACHIEVING EFFECTIVE COMPLIANCE

This policy defines non-compliance as 'any breach in a rule as stated in the RPMP, for which an exemption has not been given'. Non-compliance is enforceable under the provisions of the BSA. The BSA does not provide guidance on the scale, or threshold, of non-compliance. Therefore, non-compliance is, in effect, any breach of a RPMP rule, irrespective of scale. For clarification, a breach of a RPMP rule does not have to be widespread across a property and may relate to a single location (or a defined area) within a property to be deemed non-compliant.

ORC's preferred approach is to use informal means to achieve compliance (e.g. through education, consultation, request for work and negotiation). The emphasis here is to foster voluntary cooperation for a common goal. This is, ultimately, the most cost-effective approach for occupiers and landowners.

When informal options have not led to compliance, ORC will progressively, yet fairly and reasonably, undertake legally binding enforcement action as permitted under the BSA. The provisions of the BSA are clear and straightforward. By following standard processes, the enforcement actions have proven to be robust and able to withstand legal challenge.

The Eight Principles of Compliance and Enforcement

The underlying principles to ORC's approach to compliance and enforcement action are:[1].

Transparency – We will provide clear information and explanations to the community, and those being regulated, about the standards and requirements for compliance. We will ensure that the community has access to information about the actions taken by us to address biosecurity issues and non-compliance.

Consistency of process– Our actions will be consistent with the legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances. We will ensure that our staff have the necessary skills and are appropriately trained, and that there are effective systems and policies in place to support them.

Fair, reasonable and proportional approach – We will apply regulatory interventions and actions appropriate for the situation. We will use our discretion justifiably and ensure our decisions are appropriate to the circumstances, and that our interventions and actions will be proportionate to the seriousness of the non-compliance and the risks posed to people and the environment.

Evidence-based and informed – We will use an evidence-based approach to our decision making. Our decisions will be informed by a range of sources, including sound science, the regulated parties, information received from other regulators, members of the community, industry and interest groups.

Collaborative – We will work with and, where possible, share information with other regulators (e.g. Ministry for Primary Industries) and stakeholders to ensure the best compliance outcomes for our region. We will engage with the community, those we regulate and government to explain and promote biosecurity requirements and achieve better community outcomes.

Lawful, ethical and accountable – We will conduct ourselves lawfully and impartially and in accordance with these principles and relevant policies and guidance. We will document and take responsibility for our regulatory decisions and actions. We will measure and report on our regulatory performance.

Targeted – We will focus on the most important issues and problems to achieve the best biosecurity outcomes. We will target our regulatory intervention at non-compliance that pose the greatest risk to biosecurity. We will apply the right tool for the right problem at the right time.

Responsive and effective – We will consider all alleged non-compliances to determine the necessary interventions and action to minimise impacts on the community and maximise deterrence. We will respond in an effective and timely manner in accordance with legislative and organisational obligations.

[1] These principles are adapted from the Compliance and Enforcement Special Interest Group (CESIG) Regional Sector Strategic Compliance Framework 2019-2024.

3. METHODS TO ACHIEVE COMPLIANCE

The ORC has a 'spectrum' approach to encouraging positive behaviour change and ensuring the highest levels of compliance possible. The ORC's approach to ensuring compliance with the RPMP is based on '4Es model'[2] of Enable, Engage, Educate and Enforce:

- **Enable** – provide opportunities for occupiers and landowners to be exposed to best practice and regulatory requirements. Link regulated parties with appropriate pest management industry.
- **Engage** – consult with occupiers and landowners, stakeholders and community on matters that may affect them. This will require maintaining relationships and communication until final outcomes are reached. This will facilitate greater understanding of challenges and constraints, engender support and identify opportunities to work with others.
- **Educate** – alert occupiers and landowners to what is required to be compliant and where the onus lies to be compliant. Education should also be utilised to inform community and stakeholders about what regulations are in place around them, so that they will better understand what is compliant and what is not.
- **Enforce** – when non-compliance is identified then enforcement tools and actions are available to ensure the RPMP intentions are achieved. Enforcement outcomes should be proportional to individual circumstances of the breach and culpability of the party.

When non-compliance with the RPMP is observed, ORC will inform the occupiers and landowners of the work required. This proactive approach is to encourage compliance, however the BSA is a robust law that provides for significant enforcement action should non-compliance be persistent. ORC's approach and use of enforcement actions depends on the issue, context and seriousness of the breach as illustrated below[3]:

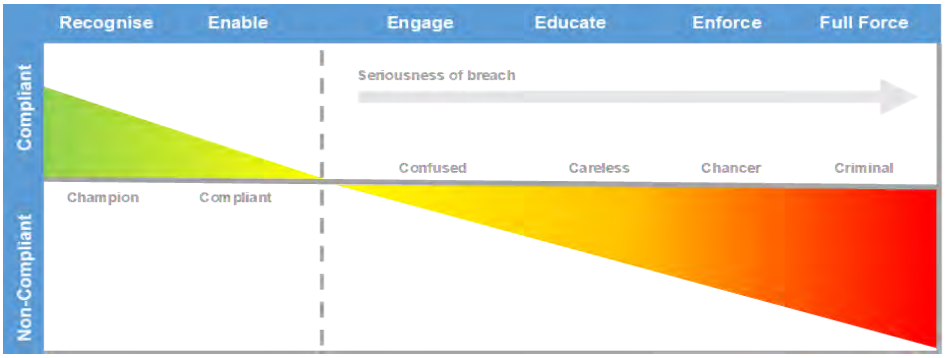


Figure 1: Enforcement Progression

[2] The 4Es model is adapted from the CESIG Regional Sector Strategic Compliance Framework 2019-2024.

[3] Influencing behaviour change is based on the CESIG Regional Sector Strategic Compliance Framework

4. THE COMPLIANCE AND ENFORCEMENT PROCESS

The Chief Executive Officer of the ORC has the authority to issue staff with warrants of authority. A warranted enforcement officer is permitted to enter private property (excluding a house or marae) for the purpose of assessing compliance with the BSA and RPMP. Warranted staff receive specific training and are familiar with their statutory obligations before carrying out any enforcement functions.[4]

The initial phase of the compliance and enforcement is to undertake an inspection. Inspections can be scheduled, responding to a complaint or based on professional observation. When inspecting a private property, the rights of the occupier and landowner will be respected. ORC staff must ensure that all entry to private property is done so lawfully. However, inspections can be undertaken without providing prior notice to the occupier or landowner.

If the occurrence or density of pest infestation exceeds the rules as set out in the RPMP, then compliance and enforcement action will be implemented to ensure compliance to the RPMP rules. If a property is deemed to be non-compliant, occupiers and landowners will have a given timeframe to undertake the required work before a re-inspection is be carried. A re-inspection is undertaken to ascertain that compliance has been achieved to the rules of the RPMP and to determine if any further actions are required. Re-inspections can occur throughout the compliance and enforcement process until compliance is achieved.

Informal and Formal Actions

The options for enforcement action will depend on the pest species in question and the individual circumstances of each case. Informal actions (not covered in the Act) to encourage compliance include verbal and written advice. Formal actions are available by law through the enforcement mechanisms prescribed in the BSA. The administrative approaches taken with respect to compliance and enforcement will follow the standard operating practices detailed in the ORC Biosecurity Compliance Procedures Manual.

In brief, the compliance and enforcement options that follow a non-compliant inspection are:

1. **Informal Actions** are focused on providing education and incentive-based responses to allow the occupier or landowner to become better informed and develop their own means to achieve compliance. Informal actions will be detailed through a 'Request for Work' letter.
2. **Formal Actions** are forward looking to provide clear direction and righting the wrong. Formal actions will be detailed through:
    a. Legal notices (e.g., Notice of Direction), followed by, if needed,
    b. Default action or Prosecution

Figure 2 shows the progression of compliance and enforcement while Table 1 describes the Compliance and Enforcement actions in more detail. With respect to legal enforcement, while prosecution remains an option, the most common action will be default action.

[4] Warranted ORC staff gather data and information in keeping with best practice detailed in *Basic Investigative Skills for Local Government*

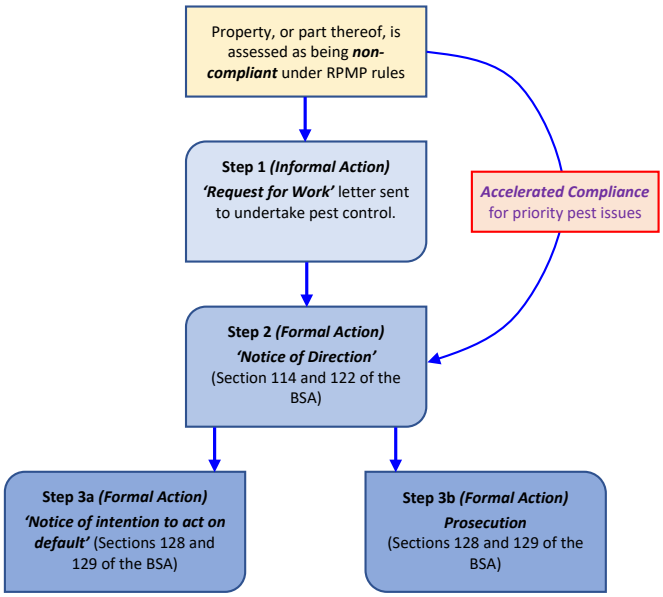


Figure 2: Sequence of primary actions for compliance and enforcement under the BSA

Table 1: Description of Compliance and Enforcement Actions

	Description of action	Potential impacts for the liable party	When this action is appropriate
Informal actions	**Request for Work Letter** Following an initial inspection, this letter alerts occupiers and/or landowners to the pest issue, providing an opening for dialogue and negotiation on timeframes and expectations. This letter provides the opportunity to proactively prevent further spread, to remedy or mitigate the effects of non-compliance. The Council can provide guidance around rules and regulations or help enable parties to achieve compliance. If needed, a reminder letter can also be issued to ensure the request for work is progressing as required.	This is a non-formal process and as such has no legal implication. However, it does start the path towards possible formal action if the request for work is not completed as required.	This letter is provided after the initial inspection when a property is deemed non-compliant.[5] This is normally the extent of an action when dealing with cooperative parties, who are motivated to do the right thing but lack the knowledge or skills necessary to achieve and maintain compliance.
Formal actions	**Notice of direction (NOD)** Under the BSA, an authorised person has the power to give directions to control pests. This is enacted though a Notice of Direction (NOD). A NOD is the first level of formal enforcement action under the BSA. Once issued a NOD can be extended, varied or cancelled depending on circumstances and actions taken.	A NOD requires a person to take action to address plant and animal pest problems that breaches a rule in an RPMP. The NOD is the formal acknowledgement of non-compliance.	A NOD is issued: 1. when there has been no (or ineffective) action to rectify a state of non-compliance following informal actions. 2. after the initial inspection where a priority pest issue needs to be addressed using the accelerated compliance process as described in Section 5.

[5] A request for work letter does not apply if the non-compliance is being dealt to through the accelerated compliance path (see Section 5).

	Description of action	Potential impacts for the liable party	When this action is appropriate
	Compliance orders Under the BSA, an authorised person may make a compliance order against a person, requiring them to cease doing something or prohibit the person from starting something, doing something again or having something done that will contravene biosecurity law.	A direction given through a compliance order is legally enforceable. To breach a compliance order is to commit an offence against the BSA and make liable parties open to punitive actions.	A compliance order may be appropriate any time that there is a continual risk of further breaches of the BSA due to non-compliance.
	Default Work Under the BSA, the regional council has the power to undertake default action when a NOD or a compliance order has not been complied with. Default action occurs when the ORC legally undertakes the necessary work to ensure the pest non-compliance has been dealt to. Except for the most extreme cases, this will be the most punitive action taken to enforce the BSA.	This is legally enforceable action and requires the occupier/landowner to provide access for the work as directed, arranged and costed by the ORC. The action to undertake default work does not need court approval. All costs will be charged to the occupier/landowners. Non-payment of costs will lead to a statutory land charge being placed on the property. More details on cost recovery are given in Section 7.	This action occurs when a Notice of Direction (NOD) and/or a compliance order (and any related instructions) has been persistently not complied with.
	Prosecution A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions. BSA matters are heard by a District Court Judge. All evidential rules and standards must be met in a BSA prosecution.	A successful prosecution will generally result in a conviction, a penalty imposed and consideration to costs of the Investigation. A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.	A prosecution may be considered appropriate when the factors listed in Section 6 indicate that the matter is sufficiently serious to warrant the intervention of the criminal law.

Additional Enforcement

There are two further formal enforcement options available:

- **Declaration of a restricted place:** The BSA provides the ability to issue a Restricted Place Notice, to prevent the removal or introduction of any organism or good to any place and may

direct that specified organisms and goods be isolated, confined or stored and identified. A Restricted Place Notice is useful and relevant for RPMP work, where for example, the movement of gravel from a place containing pests to a non-infested place needs to be stopped to avoid the pests spreading.

- **Declaration of a controlled area:** The BSA provides the ability to publicly declare a specified area to be controlled. The notice may restrict, regulate or prohibit the movement into, within or from the controlled area of specified organisms, organic material, risk goods or other goods and/or require the goods be treated or subject to specified processes. While this enforcement power exists for regional councils, it has limited relevance for RPMP compliance.

5. ACCELERATED COMPLIANCE PROCESS

When there is need to respond to a significant pest management issue (e.g. rapid increase in wallaby sightings, accompanied by landowner apathy, or to curtail the increase in a priority pest, such as rabbits), this policy provides for the compliance process to be accelerated. An accelerated compliance process means that if a property is deemed to be non-compliant following a first inspection, the Council can bypass the informal action (Step 1 in Figure 2) to automatically issue a Notice of Direction (Step 2 in Figure 2).

Accelerated compliance will apply to priority pests (as identified in the current Biosecurity Operational Plan) and to any current or potential exclusion programmes. An accelerated compliance process prioritises the risk to environmental, economic and landscape values while being mindful of the increased operational requirements.

6. ENFORCEMENT DECISION

The ORC takes a rational and principled approach to regulation. In general, the ORC advocates a policy of education and co-operation towards compliance. However, the ORC recognises that there are times when the use of punitive measures is necessary.

Enforcement action of biosecurity non-compliance is clearly laid out in the BSA. The robustness of enforcement decisions is strong BSA, with only one known case filed.[6] This found in favour of the regional council in question as they had shown good process, accurate documentation, the taking of relevant photographs and keeping good clear records.

While the BSA maybe viewed as being less visible than the Resource Management Act, it could lead to greater penalties for those who are persistently non-compliant.

Some factors to take into account when considering enforcement action:

- What were, or are, the actual adverse effects on the environment?
- What were, or are, the potential adverse effects on the environment?
- What is the value or sensitivity of the environment or area affected?
- Is the non-compliance a result of deliberate, negligent, or careless action?
- What degree of due care was taken and how foreseeable was the non-compliance?
- Was there a failure to act on prior instructions, advice or notice?
- What efforts have been made to achieve compliance?

[6] Hayes v Environment Waikato, District Court Manukau CIV-2009-057-000319, 21 March 2011.

- What has been the effectiveness of those efforts?
- Is this persistent non-compliance or has there been previous enforcement action taken against the landowner or occupier?
- Is the non-compliance manifestly different to other observations of non-compliance?
- Are there any extenuating factors that has led to the non-compliance?

The factors leading to an enforcement decision will be context dependent as each non-compliance situation will be unique. Individual circumstances will also be considered to achieve a fair and reasonable outcome.

The discretion to take enforcement action, or not, sits solely with those delegated to make decisions in the regulatory agency[7], including:

- The appropriate defendant to pursue;
- The appropriate enforcement tools to use in the circumstances; and
- Withdrawal of an enforcement action that has been commenced.

ORC is required to exercise this discretion in a way that is reasonable and consistent with the principles of the BSA and the requirements of natural justice.

The prosecution test:

The Solicitor-General's Prosecution Guidelines provides direction on what factors should be considered before a decision to prosecute is made. The first part of the test is the **evidential test** for prosecution and requires a legal assessment of whether:

- The evidence relates to an identifiable person (whether natural or legal).
- The evidence is credible.
- The Council can produce the evidence before the court and it is likely it will be admitted by the court.
- The evidence can reasonably be expected to satisfy an impartial jury (or judge), beyond a reasonable doubt, that the individual has committed a criminal offence; the individual has given any explanations and, if so, whether the court is likely to find the explanations credible in the light of the evidence as a whole.
- There is any other evidence the Council should seek out which may support or detract from the case.

Once it has been established that there is sufficient evidence to provide a reasonable prospect of conviction, the test for prosecution requires a consideration of whether the **public interest** requires a criminal prosecution. Prosecution is required in the public interest, with the predominant consideration being the seriousness of the offence – the Public Interest Test.

7. COST RECOVERY

The BSA gives the power for ORC to recover the costs associated with its compliance monitoring obligations. This is provided for under section 135(3) and section 129 of the BSA. Charges currently do not apply to informal actions, including a scheduled inspection or re-inspection if the property

[7] New Zealand Law Commission 'Prosecution decisions and the discretion to prosecute' http://www.nzlii.org/nz/other/nzlc/report/R66/R66-5.html

has become compliant. Cost recovery fees and charges are listed in the current Long-Term Plan or Annual Plan and are reviewed annually.

Recovery of Non-Compliance Costs

Councils, as management authorities, have the statutory right to use a variety of charges to recover costs incurred in administrating the RPMP. This can include fixed charges for issuing notices, hourly rates, estimates of advanced work and reasonable costs. How the ORC recovers its costs are detailed in its LTP or Annual Plan each year. In setting its cost recovery model ORC is conscious that costs associated with monitoring should fall onto those resource users who are subject to monitoring, as opposed to the general ratepayer.

Recovery of Default Work Costs

The actual and reasonable cost of default work is to be recovered by the Regional Council. This is normally done through an invoice. However, when this is not paid, a statutory land charge may be placed on property to recover the costs of default work. This means the costs incurred will be paid if the property is sold or re-financed.