

Decisions on the proposed Otago Regional Policy Statement 2021

Otago Regional Council (ORC) has released its [decisions](#) on the freshwater and non-freshwater parts of the proposed Otago Regional Policy Statement 2021 (pORPS).

Background

Regional councils are required to prepare regional policy statements under the Resource Management Act 1991 (RMA). Regional policy statements provide an overview of the resource management issues of the region. They do not contain rules. However, regional and district plans, which do contain rules, must "give effect" to them.

In October 2019, the Minister for the Environment appointed Honorary Professor Peter Skelton to investigate whether ORC was on track to adequately perform its functions under the RMA in relation to freshwater management and allocation of resources. The investigation determined that ORC's freshwater management framework did not give effect to the National Policy Statement for Freshwater Management (NPS-FM) 2014 (amended 2019) and was not compliant with the new National Planning Standards. Following the investigation, the Minister for the Environment made a series of recommendations to ORC including that it undertake a complete review of its notified (now operative) Otago Regional Policy Statement 2019 (ORPS)

In July 2020, the Labour Government amended the RMA to establish a new process for the creation of freshwater plans and policy statements (**freshwater planning instruments/FPIs**). The new process starts with notification of the FPI, public submissions, and a hearing in front of an independent freshwater hearings panel (**Freshwater Hearings Panel**) that makes recommendations to the regional council. Appeal rights are limited compared to the normal RMA process:

- there are "question of law" appeals to the High Court where the council has accepted the Freshwater Hearing Panel's recommendations;
- there are "merits" appeals to the Environment Court where the council has rejected the Freshwater Hearing Panel's recommendations.

The NPS-FM 2020 replaced the NPS-FM 2014 on 3 September 2020. The NPS-FM 2020 clarifies the guiding concept of Te Mana o te Wai with clearer direction on how it should be applied when managing freshwater. In particular, it requires every regional council to give effect to Te Mana o te Wai by applying a hierarchy of obligations by prioritising:

- a. first, the health and well-being of water bodies and freshwater ecosystems;
- b. second, the health needs of people (such as drinking water);
- c. third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

The pORPS has had a rather tortured, time consuming and expensive path to date. ORC notified it as a freshwater planning instrument on 26 June 2021. ORC then applied to the High Court for declarations that it was a freshwater planning instrument in its entirety in response to concerns raised by Forest and Bird that "only the parts of freshwater instruments that relate to freshwater can go through the freshwater planning process". The High Court determined it was only those parts of the pORPS that relate **directly** to the maintenance or enhancement of freshwater quality or quantity that could be treated as parts of a freshwater planning instrument. It directed ORC to reconsider which parts relate to freshwater and to renotify those parts.

ORC therefore re-notified the parts of the pORPS which relate to freshwater and comprise a freshwater planning instrument on 30 September 2022. The balance of the pORPS was processed in accordance with the normal

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Schedule 1 process.

Submissions and hearings

A range of iwi representatives, developers, agriculturists, horticulturists, viticulturists, energy and infrastructure providers, local authorities and environmental organisations lodged submissions on the freshwater and non-freshwater parts of the RPS. Key themes in submissions by and on behalf of farmers and rural landowners included:

- the pORPS should recognise essential human health needs such as food production within the second priority of the Te Mana o te Wai hierarchy of obligations;
- the pORPS should recognise food production, food supply and food security as issues to be promoted and considered alongside other uses for essential human health;
- the pORPS should afford greater recognition to the importance of the primary sector and food production;
- the pORPS should recognise appropriate diversification of the rural land resource beyond primary production.

The non-freshwater and freshwater hearings commenced in January 2023 and August 2023 respectively. The identically comprised Freshwater and Non-Freshwater Hearing Panels completed their [Report and Recommendations](#) to ORC on 21 March 2024.

ORC councillors voted to [adopt](#) the recommendations of the Panel on the non-freshwater parts of the pORPS and [accept each recommendation](#) of the Panel on the freshwater part at their [whole council meeting on 27 March 2024](#). ORC served notice of the decisions on submitters on 28 March 2024 and publicly notified them on 30 March 2024.

Significant developments for farmers and rural landowners

The Panel rejected submissions by agriculturists, horticulturists and viticulturists seeking that the second priority in the hierarchy of obligations, being the health needs of people relating to water (such as drinking water and direct physical contact), be broadened to include particular activity types such as food production and hydro electricity generation. It considered issues of prioritisation and allocation of freshwater relating to those types of activities should instead be left to the development of the land and water plan.

The current coalition government has announced its intention to "rebalance Te Mana o te Wai to better reflect interests of all water users" meaning there are likely to be further developments as the government works on its promised reforms to the NPSFM.

The Panel recommended all references to "highly valued natural features and landscapes" (as distinguished from outstanding natural features and landscapes) be deleted from the pORPS. It cited the disproportionate impact and the "large number of challenges" these landscape overlays have on rural communities as justification for these deletions. Practically speaking, this means it may become easier to undertake subdivision, development and land uses in rural areas outside of outstanding natural features and landscapes. It will be interesting to see whether territorial authorities, and in particular, Queenstown Lakes District Council which tends to treat subdivision and development as inappropriate in many parts of its "Rural Character Landscapes", appeal this part of the decision.

The Panel also recommended several changes in regards to reverse sensitivity in a rural context. SRMR-I4 "Poorly managed urban and residential growth affects productive land, treasured natural assets, rural industry, infrastructure and community well-being" now specifically acknowledges that urban growth within rural areas can have reverse sensitivity effects on existing primary production activities and related rural based

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activities, because urban activities can be sensitive to the effects generated by primary production activities and related rural based activities. Similarly, AIR-P4 "Managing certain discharges" and M3 "Territorial authorities" have been amended to require new sensitive activities be located and managed to avoid potential reverse sensitivity effects from and in relation to existing consented or permitted discharges to air.

The Panel refused to take a protectionist/prioritisation approach to Highly Productive Land (**HPL**). It expressed concern over the inclusion of land use capability class 3 land in the National Policy Statement for HPL and disagreed with HortNZ that the definition for HPL should be extended to include land use capability classes 4 and 5 land.

Other notable developments include:

- The decision amends the definition for Regionally Significant Infrastructure to include "established community-scale irrigation and stockwater infrastructure" as sought by Federated Farmers and Waitaki Irrigators. This means established community-scale irrigation and stockwater infrastructure will enjoy some of the same protections and exemptions as infrastructure such as roads, public transport and airports including from reverse sensitivity effects.
- The decision amends the definition for Significant Natural Area (**SNA**) to have the same meaning as the National Policy Statement for Indigenous Biodiversity 2023 (**NPSIB**). The current coalition government is going to suspend the requirement for district councils to identify SNAs in their plans (currently required to be notified in a plan change by 2028) in its upcoming Resource Management Amendment Bill, while it works to repeal and replace the RMA.

Rights of appeal

The deadline to appeal the freshwater decision to the High Court was Monday 22 April 2024. As at the date of

writing five submitters had lodged appeals against the freshwater parts of the pORPS (**Freshwater Appeals**), as follows:

- [Forest & Bird](#) appealed ORC's decision in respect of Objective LF- FW-O9 "Wetlands", Policy LF-FW-P10A "Managing wetlands" and Policy LF-LS-P21 "Land use and freshwater". It considers ORC's reference to "no net decrease" of wetlands would allow wetland extent to be lost provided there is a matching increase elsewhere. It seeks the word "net" be deleted from Objective LF- FW-O9 and other amendments to protect wetlands including relating to infrastructure and stock exclusion.
- [Ngāi Tahu](#) appealed ORC's decision in respect of Objective LF-VW-O2 "the Clutha (Mata-au) FMU Vision", Objective LF-VM-O4 "the Taiari FMU Vision objective", Policy LF-FW-P10A "Managing wetlands" and Policy LF-LS-P21 "Land use and freshwater". It opposes ORC's provision for potential further development of hydro-electricity generation schemes within the Clutha (Mata-au) and Taiari catchments. It also seeks that LFW-P10A be amended to refer to Māori freshwater values and amenity values and that LF-LS-P21 be amended to include reference to improvement of water bodies, where those water bodies are degraded.
- [Queenstown Lakes District Council](#) appealed ORC's decision in respect of Policy LF-FW-P16 "Discharges containing animal effluent, sewage, greywater and industrial and trade waste" and LF-WAI-P1 "Prioritisation". It opposes ORC's policy requiring that all new discharges containing sewage or industrial and trade waste to be to land and seeks that water for sanitation be included within the second priority in the hierarchy of obligations in LF-WAI-P1.

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- [Oceana Gold](#) appealed ORC's decision in respect of various objectives and policies. It considers ORC has adopted more stringent measures in respect of wetlands than is required by the NPS-FM and that these measures have no evidential basis. It also opposes ORC's policy requiring that all new discharges be to land.
- [Otago and Central South Island Fish and Game Councils \(Fish and Game\)](#) appealed ORC's decision not to include the Vision Objectives Fish and Game sought relevant to trout and salmon habitat and harvesting food. Fish and Game are seeking greater protection for the habitat of trout and salmon in the pORPS.

The deadline for submitters to give notice of their intention to join other Freshwater Appeals is Tuesday 7 May 2024.

The deadline to appeal the non-freshwater decision to the Environment Court is Tuesday 14 May 2024.

Want to know more?

If you have any questions about the pORPS 2021, or need assistance in lodging an appeal against the non-freshwater decision, please contact our specialist [Environment, Planning and Natural Resources Team](#).