Dear Sir/Madam

Otago Regional Council: Submission on Action for healthy waterways – A discussion document on national direction for our essential freshwater

Introduction

1. Otago Regional Council (ORC) appreciates the opportunity to provide feedback on the Action for healthy waterways proposal (the proposal), which sets out a national direction for New Zealand’s freshwater resources and which includes the following proposals:
   - Draft National Environmental Standards for Freshwater (NES-FW)
   - A draft National Policy Statement for Freshwater Management (NPS-FM); and
   - Section 360 Draft Stock Exclusion Regulations

2. ORC acknowledges that the current proposal builds on foundations laid by the Land and Water Forum (2011) and the current NPS-FM 2014 (amended 2017) and is an important step in implementing the Government’s 2018’s Essential Freshwater work programme to protect and restore fresh water in New Zealand.

3. Despite having their roots in the current NPS-FM, the new regulatory proposals mark a paradigm shift in freshwater management, which will affect all New Zealanders, and signals one of the most significant changes to the New Zealand’s freshwater management since the Resource Management Act 1991 (RMA) was enacted.

4. It is important that all New Zealanders, irrespective of where they live and how they interact with water, play a part in improving our water quality.

5. ORC staff provided an overview of the proposal to ORC’s Councillors before the triennium ended in October 2019. This submission incorporates the views of the Council at that time, who endorsed the key messages discussed in Part I below.

6. ORC has also considered the draft version of the Local Government New Zealand Submission, and supports its key points:
• Overall support for the intent to improve water quality and ecosystem health and the Te Mana o te Wai framework;

• Greater recognition of local authorities’ responsibility under the Local Government Act and Part II of the RMA to manage land and fresh water in a way and at a rate that enables people and communities to provide for their social, economic, environmental and cultural wellbeing;

• Need for acknowledgment of the commitments to halt decline and secure improvements in water quality and ecosystem health already reflected in work programmes of local authorities; and

• Greater recognition of the cost for local authorities and communities to implement the proposals.

7. In general, ORC supports the overall direction set by the proposal and its intention to improve the health of water bodies. However, ORC has some concerns around specific aspects of the proposed new regulations, and requests that the Ministry for the Environment (MfE) consider suggestions for amendments or alternative approaches to some of the proposed measures as a means to achieving benefits for water quality and quantity.

Background

8. The Otago region comprises about 32,000 km² and is the second largest region in New Zealand. It is characterised by very diverse climate and topography, which support a variety of ecosystems and land uses.

9. Agriculture is the basis of Otago’s economic development and continues to be a major source of revenue, as does mining for gold and other minerals, and education. Tourism now provides more than a quarter of Otago’s Gross Domestic Product which is the highest proportion for any region in New Zealand.

10. While the diversity in landscapes and ecosystems is widely valued by local communities and a growing number of domestic and international visitors, agricultural development and intensification as well as rapid urban growth in the region’s larger population centres (E.g. Dunedin, Queenstown, Cromwell and Alexandra) is a significant pressure on the landscape and the health of the region’s natural resources and ecosystems.

11. Otago’s primary planning instrument for managing the region’s freshwater resources, the Regional Plan: Water for Otago (Water Plan) was notified in 1998 and made operative in 2004. Through the Water Plan, ORC currently manages approximately forty different aquifers and a large number of catchments, some of which discharge to the sea, while others are part of the larger catchments of the Clutha/Mata-Au and its iconic source lakes - Lake Wanaka, Lake Wakatipu and Lake Hawea.
12. On 31 October 2018, ORC adopted a Progressive Implementation Plan (PIP), which outlines the staged implementation of actions the ORC will take to implement the NPS-FM 2014 (amended 2017). As part of the PIP, ORC committed to undertaking a full review of the Water Plan under Section 79 of the Resource Management Act 1991. The PIP provides for the review of the Water Plan to be fully completed by 31 December 2025, by which date a new Water Plan is to be publicly notified. The PIP is attached to this submission as Appendix A.

13. In accordance with the PIP, ORC completed the first stage of its plan review process in April 2019, when Council adopted a Freshwater Management Unit (FMU) framework for the region. This framework provided for the setting of FMUs at two levels. At the highest level the region is divided into five FMUs: Mata-au, Taieri, North Otago, Dunedin Coastal and Catlins. At a lower level the Mata-au FMU has been further divided into five smaller units or ‘rohe’. A map of the Otago region’s FMU framework is attached as Appendix B.

Scope and structure of the ORC submission

14. This submission focuses primarily on the consultation drafts for the following proposals:

- Proposed National Environmental Standards for Freshwater (NES-FW)
- A draft National Policy Statement for Freshwater Management (NPS-FM)
- Section 360 Regulations for Draft Stock Exclusion

15. In addition, this submission includes feedback on other initiatives that have been outlined in *Action for healthy waterways – A discussion document national direction for our freshwater* and that are likely to be part of future proposals for reforming freshwater management and the wider resource management system.

16. This submission comprises three parts:

- The first part of the submission provides an overview and discussion of ORC’s key messages and comments on the wider principles and broader implications of the suite of proposals.
- The second part of the submission, which is included as a table, includes more detail on submission points on specific aspects of the three consultation drafts.
- A summary of ORC’s position and concluding remarks are outlined in the third, and final part of the submission.
PART 1: Key messages

Overview

17. ORC has reviewed the “Essential Freshwater” draft proposals and has engaged in discussions on these proposals with MfE officials, our Iwi partners, key stakeholders and community representatives.

18. Following the review and discussions ORC:

- Supports the overall intent of the proposal to improve the health and wellbeing of the region’s freshwater resources and associated ecosystems.
- Considers that incorporating tangata whenua values and interests in the planning and decision-making process will positively contribute to the health of fresh water and wellbeing of communities.
- Welcomes the clarity in direction and expectations that is generally being provided in the proposal.
- Supports the intent to maintain the health and wellbeing of our fresh water and supported ecosystems, stop any further degradation, and where appropriate reverse past damage.
- Acknowledges the hierarchy of obligations proposed under the new NPS-FM marks a substantial departure from the ‘four wellbeings’ approach (ecological, social, cultural, economic). ORC submits that the proposals should provide for practical and effective environmental management practices and implementation timeframes that seek to avoid long term harm to the economic resilience and social fabric of New Zealand’s communities.
- Is aware that the cost for ORC and its communities to fully meet the proposed new requirements in terms of plan development, monitoring and reporting is likely to be significant. There are currently capacity constraints to ORC’s ability to respond to the changes introduced under the proposal. ORC also believes that the proposed changes and implementation timeframes will result in significant capacity constraints across New Zealand.
- Considers some of the measures and regulations proposed under the new regulations are rather prescriptive, and their rigid implementation could well stifle innovation or halt projects and processes that have been previously initiated to fully achieve the objectives of NPS-FM 2014 (amended 2017) within Otago.
- Considers some proposed attribute states (e.g. nutrient limits) may not directly correlate to good environmental outcomes while others (e.g. Dissolved Inorganic Nitrogen and Dissolved Reactive Phosphorus) are likely to be unachievable in parts of the Otago region.
Support for the overarching principle of Te Mana o te Wai

19. As stated above, ORC supports the current proposal’s overall direction, and concepts therein, which are largely consistent with the strategic directions set in NPS-FM 2014 (amended 2017) and with the views of our communities, who want to be able to enjoy our rivers, lakes and wetlands and have access to clean water for contact recreation, drinking and irrigation.

20. Te Mana o te Wai establishes a three-tiered hierarchy of obligations, elevating the health of water as the first and absolute priority, above essential human health needs (second priority) and other consumptive and non-consumptive uses (third priority).

21. ORC acknowledges that the proposed hierarchy of obligations will pose significant challenges to individuals, businesses and communities relying on abstractive use of waters for domestic and communal supplies and economic activities (this is discussed in more detail in paragraphs 32 to 41 of this submission). However, ORC also recognises that looking after our water resources in accordance with the principle of Te Mana o te Wai will ultimately contribute to the long-term health, and social and cultural wellbeing, of Otago’s communities.

22. ORC supports the overarching principle of Te Mana o te Wai as it:
   - embodies a more comprehensive long-term view on resource management, recognising that intergenerational social and economic wellbeing depend on current generations of resource users living within environmental limits; and
   - assists decision-making through the prioritisation of values and uses.

Support for strengthening the requirements to consider tangata whenua values

23. Fresh water supports a wide array of Kāi Tahu values and sites and resources used by Kāi Tahu that are throughout Otago.

24. ORC supports the Kāi Tahu philosophy of holistic resource management, ki uta ki tai – “from the mountains to the sea” and has adopted this concept as a guiding principle within the planning framework of its Partially Operative Proposed Regional Policy Statement (POPRPS), and also in determining the boundaries for our FMU’s

25. ORC supports the introduction of the concept of Te Mana o te Wai and the strengthened requirements to incorporate tangata whenua values and interests into freshwater planning processes, because this will contribute to the sustainable management of our freshwater resources and wider environment, and the long-term wellbeing of our diverse communities.

Maintaining the health of fresh water and improving it where appropriate,

26. Since the inception of the RMA, and further strengthened by the introduction of the first NPS-FM in 2011, maintaining the health of water bodies and improving the quality of fresh water in water bodies degraded by human activities, has been a fundamental aspect of ORC’s role and responsibilities in freshwater management.

27. ORC has endorsed this approach, which is already apparent in its Water Plan, through Plan Change 6A (Water Quality) and its POPRPS.
28. ORC continues to support the intent to maintain the health and wellbeing of our freshwater bodies and their associated ecosystems, stop any further degradation, and where appropriate reverse past damage.

A clear direction, but uncertainty around the detail

29. The proposed new NPS-FM sets a clear direction by reducing the number of objectives from 12, under the current NPS-FM, to 1. The proposed NPS-FM also applies a much more streamlined structure though the integration of distinct sections on Te Mana o te Wai, Water Quality, Water Quantity and Integrated Management.

30. Similarly, the proposed NES-FW is generally clear in terms of the activities it seeks to manage and the standards and limits that it proposes to set for these activities.

31. Overall, the proposed regulations signal what the Government expects in terms of actions from regulators and water users and resulting environmental outcomes. This degree of clarity is supported by ORC as it is likely to provide for a strong focus for plan development and increase efficiency in decision-making.

32. However, some of the terminology in the provisions for the proposed regulations is uncertain in terms of expectations, outcomes or both, and improvement to the clarity of certain aspects of these proposals would assist all parties. A more comprehensive overview of the proposed provisions or principles within the draft proposals that would benefit from further clarification is provided in Part 2 of this submission.

A changing stance on the four-wellbeing approach

33. The hierarchy of obligations established under the principle of Te Mana o te Wai will assist with clarifying ORC’s obligations under Part II of the RMA, highlighting the primacy of environmental limits which underpin intergenerational economic, social and cultural wellbeing. However, while ORC acknowledges that healthy ecosystems contribute to the overall wellbeing of communities, we caution against an approach that is solely aimed at ensuring the health of fresh water and its ecosystem, without recognising the wider needs and aspirations of people and communities.

34. Looking after the natural environment, while a priority, cannot always be done at ‘no expense’. Planning is a human-centric instrument to allow resources to be used sustainably. Therefore, the freshwater planning framework must also provide, to the extent possible, for the social and economic wellbeing of communities.

35. ORC believes that this can be done in accordance with the principle of Te Mana o te wai, by recognising the synergies between the four well-beings, and encouraging regional councils to actively pursue planning regulations and measures that seek to achieve all four well-beings at the first instance, and only resort to approaches that favour ecological enhancement at the expense of communities’ well-being and economic resilience, where it is not possible to achieve both.
36. Swift action is needed to avoid further degradation of fresh water and delays by regional councils to respond to this risk will result in further uncertainty for land users. Therefore, the process for developing new regional plans and policy statements and introducing new national environmental standards and other regulations must be carried out in a timely manner.

37. However, ORC considers that, depending on the complexity, cost and scale of improvements needed, the new regulations, whether set at regional or national level, there must be time provided to allow people and communities to transition and adapt to those provisions. ORC is aware that doing more earlier will be more cost efficient in the long term but is mindful that expecting too much too soon could have the opposite effect in terms of water quality outcomes.

38. The development of non-regulatory tools, including the provision of educational campaigns, implementation guidance, funding and other incentives, by both local and central government will be equally important to ensure that communities can make a relatively smooth transition to meeting new standards and implementing new land management practices. Furthermore, these tools often also positively influence behaviour change and increase the speed at which regulatory changes can be implemented.

39. As for many other parts of New Zealand, Otago has seen a steady increase in catchment groups, whose aims include improving their understanding of catchment hydrology, implementing on farm improvements, fostering community connections and improving water quality. These groups do and will play a critical role in long term improvements in water quality and land management.

40. For these reasons, ORC calls upon central government and the MfE to assist with the development of these non-regulatory tools and incentives and allow for adequate implementation timeframes when introducing new national environmental standards and regulations

Capacity constraints

41. The increased scope of ORC’s responsibilities and functional activities and stringent timeframes required under the proposal, are likely to generate the need for significant increases in resourcing and investment in additional staff, equipment and systems.

42. The proposal will require a significant increase in efforts from ORC in the following areas:

- updating plans and policy statements to meet the requirements of the proposed NPS-FM, including monitoring and data analysis under the new National Objectives Framework (While ORC made a commitment to update its Water Plan, the current proposal has shortened the time frame for undertaking this work);
- adapting data management systems and increasing staffing to respond to increased consenting requirements and administer compliance with new regulations proposed under the NES-FW;
• developing action plans for the adaptive management of freshwater bodies where specified attribute states are showing a declining trend or are below national bottom-lines; and

• engaging with industry groups, community groups and individuals to help with transitioning towards new land management and resource use practices

43. In addition, the implementation timelines set out in the proposed NPS-FM and NES-FW and cumulative effect of a staged introduction of legislative changes pose a significant challenge for ORC in terms of resourcing.

44. ORC expects these resourcing impacts will be common to all regional councils, which creates a further and more intractable problem: there is likely to be a shortage of suitably qualified and experienced professionals to assist regional councils as well as individual landholders, industry and stakeholder groups (e.g. due to the requirement to prepare and audit certified Farm Management Plans) with this transition towards, and longer term implementation of, the proposals. This challenge is likely to be more significant for smaller councils and organisations, especially when these are located outside the main population centres and could generate competition between councils and industry or sector groups on the job market.

45. ORC considers that there are several options for addressing the risk of capacity constraints across the public and private sectors:

• **Prioritisation and focus efforts on areas subject to the highest risk.** Significant improvements in the health and well-being of fresh water and associated ecosystems can still be achieved by focussing immediate efforts on improving the health of regional ‘hotspots’ (i.e. degraded or at-risk water bodies/ecosystems) and outstanding water bodies, while applying a more practical approach to monitoring less sensitive areas. For example, by reducing monitoring requirements of areas where there is little risk of degradation or allowing monitoring of FMUs to be rostered on an annual cycle, reporting and development of management programmes (including action plans) can be undertaken in a more cost effective and comprehensive manner.

• **Establish a national data management system for receiving, storing and reporting on monitoring data.** A national data management system would allow for a more cost-effective approach to data management, than if this were to be undertaken at the level of individual councils.

• **Cooperation between regional councils.** Increased cooperation between regional councils, facilitated by central government funding, can reduce resourcing requirements through the sharing of information and the development and dissemination of best practice across the country.

• **Retain the ability to adopt a PIP.** Regional councils that have made significant progress toward improving the health of fresh water but are unable to meet the 31 December 2025 deadline for having new plans in place, should continue to be able to adopt a (new) PIP for giving full effect to the proposed NPS-FM.
46. Finally, ORC is concerned that the timeframes set by the proposal provide limited time or ability to develop meaningful partnerships between council, industry groups and communities. Time and capacity constraints also are more likely to provoke competition instead of engendering cooperation between stakeholders.

47. ORC considers that a key step towards implementing the proposed regulations in a cost-efficient and effective way involves the creation of stakeholder partnerships. These will allow for the strengthening of social connections, fostering of understanding and sharing of information, and sharing the costs of implementing the proposed measures and actions to achieve the improvements needed. ORC submits that the proposal should encourage the formation of these relationships and should provide sufficient time for these relationships to be developed. ORC's position is that, long term, these relationships will ensure enduring investment and commitment by a wider group to freshwater health and ecosystem diversity.

**Supporting communities by providing flexibility and encouraging innovation**

48. Feedback from the rural farming sector and local communities suggests widespread concern that certain aspects of the proposed NES-FW, NPS-FM and stock exclusion regulations, specifically those addressing land management, are overly prescriptive, do not provide for exceptions, and are not always practical. The proposal also promotes a rather prescriptive approach to undertaking processes that inform the development of a planning framework.

49. The use of a rigid planning framework can stifle innovation and contravenes the strategic direction set by the National Objectives Framework (NOF) that was introduced in 2014, which sought to recognise local differences and work with communities to develop tailored responses to local issues and pressures (as opposed to a one size fits all approach). Stringent and prescriptive regulation also creates a risk that resources are often focused on ensuring compliance, rather than delivering good outcomes.

50. To address the lack of flexibility provided by some aspects of the proposed measures ORC welcomes further refinement of the proposals to:

   i. provide landholders with greater flexibility in terms of the management practices they need to implement to achieve the environmental outcomes envisaged;

   ii. allow individuals and community groups to continue to build on the work that has been initiated previously to mitigate the impacts of their activities; and

   iii. allow local authorities to continue their work programmes already committed.

51. An example of this flexibility can be seen in managing contaminant loads on land. The current proposals require stock exclusion, which ORC supports, but having flexibility to identify and manage critical source areas, which often carry a greater load of contaminants, could result in better water quality outcomes than stock exclusion. The flexibility to identify, on farm, the most appropriate method, is ORC's preferred approach.
52. National level support for matters such as critical source area management can be achieved through central government adoption of LiDar, to better enable on site management. This is an example of the type of practical implementation support that the Ministry should support.

53. ORC considers that effective and proactive management of the environment involves the development and implementation of a wide range of management tools, both regulatory and non-regulatory.

54. While ORC is about to embark on a comprehensive review of its Water Plan, we want to work together with iwi partners, communities and stakeholders to develop non-regulatory tools, such as educational programmes and the provision of financial support, that encourage people or organisations to seek for innovative approaches to managing the impacts of their activities on the environment. The ORC’s ECO fund (Environment. Community. Otago) is one such initiative. For further information about this, see Otago Example 1.

55. ORC is supportive of the work that has already been done by community groups and is committed to continue working in partnership with these groups, providing funding for projects, science support where required, and in-kind support for education and best practice initiatives. One initiative where ORC has assisted community groups through the provision of science support is the water quality project undertaken by the Pomahaka Water Care Group. For further information about this, see Otago Example 2.

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**Otago Example 1: Water quality projects supported by ORC’s ECO fund**

**Waiau Rea Kaihiku Farmer Led Watercare Group** received two separate grants of $2,517 to plant a riparian strip on the Waiau Rea Stream with the local school and $2,500 towards the trial of silt fences on 14 farmer’s land in the catchment to reduce sediment runoff into the Waiau Rea and Kaihiku steams. This group was created as the result of the Clutha Water Project (now Otago South River Care) which received a total of $29,000 towards work to establish farmer leaders and developing catchment groups in the Lower Clutha Catchment.

**Outcome:** Support for sharing of local knowledge and development of innovative solutions that can reduce the effect of non-point discharge sources on water quality.

**The Wanaka Water Project** received $12,500 towards the costs of a project leader. The Wanaka Water Project undertakes strategic riparian planting, research on the effects of urban stormwater in partnership with the University of Otago and the development of a community-led integrated catchment management plan.

**Outcome:** Bringing together science and local knowledge to develop community initiatives that will lead to improving water quality.

**NZ Landcare Trust** received $3,361 to purchase a HACH DR 900 colorimeter to test nitrogen, phosphorus and ammonia in water. The instrument has been used by catchment groups, individual farmers, school groups and staff from other organisations to help determine and explain water quality and stream health. This has helped to inform landowners about the quality of the water and has encouraged a greater understanding of water quality.

**Outcome:** Gathering and sharing data to inform and educate about water quality and identify possible causes and innovative solutions.

development and implementation of a wide range of management tools, both regulatory and non-regulatory.
Since the release of the *Action for healthy waterways – A discussion document national direction for our freshwater* ORC has been working with Otago communities to help them understand the proposal’s intentions and potential implications, and how to engage in the process. Many landowners, managers and industry representatives have expressed concern about how aspects of the proposal will affect their lifestyle, viability of their business and wellbeing. For further information about this, see Otago Example 3

**Relevance and achievability of proposed target attribute states.**

57. The proposed NPS-FM currently contains 23 attributes that require limits. ORC considers that large parts of the Otago region are likely to meet the proposed limits for key attributes but is concerned that the target attribute states for Dissolved Inorganic Nitrogen (DIN) and Dissolved Reactive Phosphorus (DRP) may be difficult to achieve in some parts of the region.
58. Meeting the DIN and DRP attribute states set out in the proposed NPS-FM may not necessarily always be a good indicator of a tangible improvement in ecological health.

59. Furthermore, improvements to ecological health are less likely to be achieved through tight nutrient limits, rather than through controlling sediment runoff from the agricultural landscape, measured through the deposited sediment and suspended solids attributes of the NPS-FM.

60. Finally, the existing NPS-FM provides scientifically accepted controls of ammonia toxicity, periphyton and nitrate toxicity which could be amended so they can be applied by regional authorities in an effects-based manner. It would be necessary to enable these controls to be customised to specific regional conditions. This is in line with current nutrient management practices.
PART II: Comprehensive overview of submission points