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# **Technical Review of Policy and Plan Frameworks**

**Addendum to Literature Review: Upper Clutha Water  
Quality Investigation**

Prepared for WAI Wānaka

**Prepared For**

WAI Wānaka

**Prepared By**

Landpro Ltd  
13 Pinot Noir Drive  
PO Box 302  
Cromwell  
Tel +64 3 445 9905

## QUALITY INFORMATION

### Reference:

Bright, C.E., and Perkins, C. (2021). Technical Review of Policy and Plan Frameworks. Addendum to Literature Review: Upper Clutha Water Quality Investigation. Prepared for Wai Wānaka. Landpro. p. 12.

**Date:** 1 February 2022  
**Prepared by:** Christina Bright & Claire Perkins  
**Reviewed by:**  
**Client Review:** WAI Wānaka  
**Version Number:** 01

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# 1. INTRODUCTION

## 1.1 Background

Landpro Ltd (Landpro) was engaged by WAI Wānaka, the then Upper Clutha Lakes Trust (UCLT) to prepare an Integrated Catchment Management Plan (ICMP). In 2019, as part of the development of the ICMP there was a need to understand the background state of the environment, risks and pressures the catchment was, and is facing, and subsequently gaps in background data that currently exist. A Literature Review was completed in 2019 and informed the development of the ICMP, now titled the Community Catchment Plan (CCP) that was published in March 2020.

The literature review and CCP were published during the public consultation period for the revised National Policy Statement for Freshwater Management (2020) (NPSFM) and associated National Environmental Standards (NES) and stock exclusion regulations that made up the New Zealand Government's Action for Healthy Waterways package.

It is now applicable to review the National Policy Statement and Environmental Standards, and any associated proposed plan changes to the Regional Plan: Water for Otago, to ensure the literature review is up to date and can be used to inform Version B of the CCP.

## 1.2 Document Overview

The following sections of this report comment on the following documents:

- Resource Management Act 1991
- National Policy Statement for Freshwater Management (NPSFM)
- National Environmental Standard for Freshwater Management (NESF)
- National Environmental Standard (Stock Exclusion)
- Otago Regional Policy Statement
- Regional Plan: Water for Otago

# 2. Policy and Plan Direction

## 2.1 Resource Management Act 1991 and National Direction

Management of water resources in New Zealand is ultimately guided by the Resource Management Act 1991 (RMA). This is the principal resource management legislation in New Zealand with the purpose of sustainable management of natural and physical resources including land, air, and water.

The RMA provides for national policy statements and national environmental standards to be developed for matters of national significance. Freshwater management is one such matter that has been addressed at a national level with the National Policy Statement for Freshwater Management (NPSFM) (2014) providing

direction on how local authorities should carry out their responsibilities under the RMA. A revised version came into force on 3 September 2020.

Regional Councils are also required to develop plans for integrated management of natural resources and physical resources and are responsible for making decisions about discharges of contaminants, to land, air or water, water quality and quantity.

Reform of the RMA has been signalled by the current Government, and it is expected that following the RMA review completed in 2020, the current RMA will be repealed and replaced.

The Ministry for the Environment, and Minister David Parker have confirmed the replacement will include three new Acts:

1. Natural and Built Environments Act (NBA) to provide for land use and environmental regulation (this would be the primary replacement for the RMA);
2. Strategic Planning Act (SPA) to integrate with other legislation relevant to development, and require long-term regional spatial strategies; and
3. Climate Change Adaptation Act (CAA) to address complex issues associated with managed retreat and funding and financing adaptation.

Other key changes include direction on there being one single combined plan for each regulatory region across New Zealand, rather than the multiple policy and planning documents that currently exist. This means that further regional plan development can be expected beyond implementation of the three new Acts.

The Government released their "Action for Healthy Waters" direction in September 2019 and included a proposed update to the then 2014 (amended 2017) NPSFM, a new proposed NESF, and proposed new Stock Exclusion Regulations. Regional plans, such as the Otago Regional Council's (ORC) Regional Plan: Water for Otago need to give effect to the NPSFM and the Government has given direction to regional councils on the timeframe for implementation. Plan Change 6A was implemented in 2014 by the ORC and includes matters related to those covered in the NPSFM and NESF, but there are some inconsistencies that will require review by the ORC. Therefore, to accommodate this review, timeframes for Plan Change 6A have been extended via Plan Change 6AA which pushes out the timeframes for water quality rules to 2026. In this time, a new water and land plan will be notified by the ORC and this plan will be consistent with the NPSFM and NESF. The ORC's review of the Regional Plan: Water for Otago is outlined below.

The implementation and plan change process that the ORC will have to follow to give effect to the amendments to the NPSFM is likely to take some time as it will follow the standard public submission, further submission, and hearing process. Furthermore, the ORC is undergoing a complete review of their Regional Plan: Water for Otago on direction from the Minister for Environment that was signalled in 2019, and this will also add time to ORC's standard processes as they work through the notification of a plan change. Therefore, due to the time constraints on preparing a fully NPSFM compliant regional planning framework, the government as part of the "Action for Healthy Waters" package proposed interim measures under the NESF.

The NESF came into force in September 2020 and controls the impacts of land use activities until such time as regional councils can fully implement NPSFM changes. The implementation of the NESF means that some activities that have not required resource consent under the previous regional plan framework will require a resource consent under the proposed NESF, for example, intensive winter grazing. Other measures will cover the requirement for fencing of waterways and seek to control the change of land use. These matters are further explored below.

## 2.2 National Policy Statement for Freshwater Management

The National Policy Statement for Freshwater Management was introduced in 2011. It was updated and replaced in 2014 and amended in 2017. A New National Policy Statement for Freshwater Management (NPSFM 2020) came into force on 3 September and replaces the National Policy Statement for Freshwater Management 2014 (amended 2017).

The NPSFM 2020 is issued by government and directs local government about how to carry out their responsibilities under the RMA 1991 when it comes to matters of national significance.

As in the previous NPSFM 2014, the new NPSFM (2020) sets out central government's objectives for freshwater management. This includes mandatory minimum freshwater standards and a requirement to maintain or improve water quality.

The fundamental concept underpinning the NPSFM (2020) is Te Mana o te Wai, recognising the fundamental importance of water and the health of water in protecting the health and well-being of the wider environment. Within the context of the NPSFM this encompasses 6 principles relating to the roles of tangata whenua and New Zealand in the management of freshwater and the implementation of the NPSFM.

These principles are set out in Part 1 of the NPSFM at 1.3(4)) as:

*“(a) **Mana whakahaere:** the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater*

*(b) **Kaitiakitanga:** the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations*

*(c) **Manaakitanga:** the process by which tangata whenua show respect, generosity, and care for freshwater and for others*

*(d) **Governance:** the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future*

*(e) **Stewardship:** the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations*

*(f) **Care and respect:** the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.”*

The NPSFM (2020) also sets out (at 1.3(5) and at Objective 2.1) a hierarchy of obligations and an objective for Te Mana o Te Wai that prioritises:

*“(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.”*

Policies for freshwater management to achieve Te Mana o Te Wai and Objective 2.1 are listed in Part 2 of the NPSFM at Section 2.2.

The Action for Healthy Waterways package and the focus on Te Mana o Te Wai has shaped the development of the CCP. The CCP recognises Te Mana o Te Wai and has ensured that the CCP incorporates objectives that work towards the protection of the mauri of the water and requires that Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the water bodies), and Te Hauora o te Tangata (the health of the people) are all provided for.

## **2.3 Resource Management (National Environmental Standards for Freshwater) Regulations 2020**

The NESF regulates activities that pose risk to the health of freshwater and freshwater ecosystems. The NESF come into force on 3 September 2020, although clauses relating to intensive winter grazing, stocking holding areas other than feedlots and the application of synthetic nitrogen fertiliser to pastoral land come into force in mid-2021, with some now deferred further to mid-2022.

The NESF imposes significant new controls on further agricultural intensification until the end of 2024, until regional councils can give effect to changes under the NPSFM. This applies to:

- conversion of farmland to dairy by more than 10ha;
- increase in irrigated pasture for dairy of more than 10ha;
- conversion of more than 10ha from plantation forestry to dairy farming; and
- increase dairy support activities above the highest annual amount in the previous five years.

The NESF sets minimum requirements for feedlots and other stockholding areas and these policies take effect from July 2021.

Under the NESF, a requirement for resource consent for intensive winter grazing (IWG) of forage crops will take legal effect from May 2022, however consultation has recently closed on a recommendation by MfE to amend this timeframe to 1 November 2022. A resource consent will be required under the NESF if the

maximum area for IWG is greater than 50 ha or 10% of the area of the farm, whichever is greater, and no greater than the area that existed during 2014 – 2019. These requirements will be in force until 1 January 2025 when it is expected that regional plans will have been publicly notified that give effect to the NPSFM 2020.

Further controls on IWG activities includes controls on the slope of land where IWG occurs, pugging, and buffers between crops and waterways. The current regulations as well as MfE recommendations to amend these are:

- The mean slope of the paddock is 10 degrees or less – recommendations to amend this to a maximum slope rather than mean.
- Pugging is no deeper than 20cm at any one point and pugging of any depth must cover less than 50% of the paddock.
- Buffers between crops and waterways are 5m or more.

The NESF limits the discharge of synthetic nitrogen fertiliser to pastoral land to no more than 190kg per hectare per year and will require reporting of fertiliser use that is to take effect from July 2021.

Part 3 of the NESF, Subpart 1 sets out regulations to manage activities in and around natural wetlands. Natural wetlands do not include wetlands constructed by artificial means; or areas of improved pasture dominated by introduced pasture species and subject to temporary rain derived water pooling. The controls are limited to vegetation clearance, earthworks, drainage or taking, damming, or diverting water in or around natural wetlands except in certain circumstances, for example, for science research or restoration. Some of these matters will also be addressed at an Otago specific scale through ORC's Proposed Plan Change 8.

The NESF includes requirements to manage instream structures to deal with the effects of fish passage, and the relevant clause only applies to new structures.

## **2.4 Resource Management (Stock Exclusion) Regulations 2020**

As part of the freshwater package, Stock Exclusion Regulations have been introduced. The regulations apply only to waterways that are greater than 1 m wide, and the level of regulation will depend on the slope of the surrounding land, i.e., low-slope or non-low slope. Fencing of waterbodies will apply to dairy, beef cattle, pigs, and dairy only, and not sheep; setbacks will have a required width of 5 metres on all waterways greater than 1 metre wide.

These regulations will have effect from 2023. However, for waterbodies and rivers greater than 1 metre wide that are already fenced but not compliant with the proposed regulation (setback of 5m), these can remain in place until 2025, unless the average width of existing setback is 2m for entire length and no less than 1 m at any point, in which case the fencing regulations will not apply until 2035.

The Stock Exclusion Regulations apply to anyone who owns or controls cattle, deer, or pigs (stock). Under

these regulations:

- All stock must be excluded from natural wetlands that are identified in a regional or district plan from 1 July 2023.
- All stock must be excluded from natural wetlands (not identified in a regional or district plan) that contain threatened species or are on low slope land from 1 July 2025.
- Dairy and dairy support cattle, and pigs must be excluded from water bodies. Dairy cattle and pigs in a new pastoral system must be excluded from the 3 September 2020. All other dairy cattle and pigs must be excluded from 1 July 2023.
- Beef cattle and deer must be excluded from water bodies (over a metre wide) whatever the terrain if they are break feeding, grazing annual forage crops, or irrigated pasture, by 1 July 2023. Otherwise, these Regulations apply to beef cattle and deer and water bodies over a metre wide only on mapped low slope land from 1 July 2025.
- Stock must be excluded from the beds of lakes, rivers, and wetlands, and must not be on land closer than three metres to the bed of rivers and lakes. However, stock do not need to be excluded from land within three metres of the bed if there is a permanent fence already in place.
- Stock (except deer) must cross a river or lake by using a dedicated bridge or culvert unless they cross no more than twice in any month. There are specific circumstances when cattle and pigs can cross without a dedicated culvert or bridge.

These regulations do not apply to sheep.

## 2.5 Regional Policy Statement for Otago

As part of the review of the Otago Planning Framework, Minister for the Environment David Parker directed that the ORC prepares and notifies a new RPS. The RPS was notified on 26 June 2021. The RPS will set the overarching timeframes for implementation of the NPSFM in Otago via a new land and water plan for each FMU within Otago.

ORC consulted communities around the region in October and November 2020 to help develop Freshwater Visions for each FMU in Otago. Developing community-driven freshwater visions is a requirement of the NPSFM. The RPS will set the values and expectations of each FMU and is a high-level policy framework for the sustainable integrated management of resources, identifying regionally significant issues, the objectives and policies that direct how natural and physical resources are to be managed and setting out how this will be implemented by the region's local authorities.

This document is relevant to the CCP as the RPS sets values, and vision for the Clutha FMU and Upper Lakes Rohe, which the CCP will need to reflect in future, and/or will support the implementation of the CCP objectives and actions within the notified RPS.

At this stage, submissions, and further submissions on the RPS have been received by ORC, with hearings

set to get underway in early 2022. The RPS includes a wide-ranging set of provisions that address integrated management, air, coastal environment, land and freshwater, ecosystems and indigenous biodiversity, energy, infrastructure and transport, hazards and risks, historical and cultural values, natural features and landscapes and urban form and development. The current draft provision that sets out the Clutha Mata-au FMU vision is LF-VM-O2.

*"In the Clutha Mata-au FMU:*

- 1) *management of the FMU recognises that:*
  - a. *the Clutha Mata-au is a single connected system ki uta ki tai, and*
  - b. *the source of the wai is pure, coming directly from Tawhirimatea to the top of the mauka and into the awa,*
- 2) *fresh water is managed in accordance with the LF-WAI objectives and policies,*
- 3) *the ongoing relationship of Kāi Tahu with wāhi tūpuna is sustained,*
- 4) *water bodies support thriving mahika kai and Kāi Tahu whānui have access to mahika kai,*
- 5) *indigenous species migrate easily and as naturally as possible along and within the river system,*
- 6) *the national significance of the Clutha hydro-electricity generation scheme is recognised,*
- 7) *in addition to (1) to (6) above:*
  - a. *in the Upper Lakes rohe, the high-quality waters of the lakes and their tributaries are protected, recognising the significance of the purity of these waters to Kāi Tahu and to the wider community,*

....
- 8) *the outcomes sought in (7) are to be achieved within the following timeframes:*
  - a. *by 2030 in the Upper Lakes rohe,*

...."

## 2.6 Regional Plan: Water for Otago

The original literature review summarised the Regional Plan: Water for Otago (the Water Plan) from the perspective of the Water Plan's history and plan changes that have been made operative over time. The ORC has committed to a full review of the Water Plan by 2025 in order to implement the NPSFM and create a tailored approach to water management. Subsequently, the original literature review introduced some of the smaller plan changes that at the time of preparing the literature review had not been notified. Since then, Plan Change 7 and Plan Change 8 (part of the Omnibus Plan Change that includes Plan Change 1) have been notified, and a decision released on Plan Change 7.

Plan Change 7, the Water Permits Plan Change, now adds objectives, policies, and rules to the current Regional Plan: Water or Otago to manage the replacement of expiring deemed permits and water permits.

Plan Change 8 includes strengthening rules relating to on farm effluent management, clarifying rules relating to discharges and those relating to nitrogen leaching rates.

### 2.6.1 Plan Change 7

A final decision was released on Plan Change 7 (PC7) in November 2021. PC7 provides a mechanism for the ORC to only issue short term replacement consents for the large number of water permits expiring between 2020 and 2025, and the deemed permits that expired on 1 October 2021. The intent of this is to ensure that the majority of water permits are brought in line with the new land and water plan soon after the new plan has been made operative. The key long-term outcome will be to achieve NPSFM compliant outcomes that will be outlined in that new regional planning framework, that includes the new RPS, however in the meantime, consents will effectively be rolled over under their current conditions but tied to historic irrigation areas, rates, and volumes of take.

### 2.6.2 Plan Change 8

The intent of proposed Plan Change 8 (PPC8) is to bring Otago into line with other jurisdictions in New Zealand with respect to effluent management and discharge requirements to ensure best practice when it comes to the storage and discharge of effluent (animal waste), with a specific emphasis on the management of dairy shed effluent, its storage and discharge to land. It also includes a number of rules and policies relating to minimum standards and good management practices for farming activities. PPC8 also includes provisions related to the discharge of sediment associated with subdivision and residential development.

The ORC has introduced new sections to the Regional Plan: Water for Otago (RPW) relating to good farming practices through PPC8. This includes new policies, which requires farming activities to reduce adverse environmental effects, through the implementation of good management practices, as well as managing stock access to water bodies, through fencing. There is new policy that sets minimum standards for intensive grazing, as well as limiting areas and duration of exposed soils and identification and management of critical source areas.

## 3. Conclusions

The purpose of this addendum to the document titled "Literature Review: Upper Clutha Water Quality" (first published 2019) is to provide a 2021 status update to the Policy and Plan Direction section that was included to inform the development of the CCP. The CCP is set for review with Version B scheduled for development in 2021.

This report has provided an overview of the signalled RMA reform package, recently gazetted National Policy Statement for Freshwater Management (2020), National Environmental Standard for Freshwater Management (2020), and the National Environmental Standard (Stock Exclusion) (2020), including the current plan changes notified by the Otago Regional Council. This updated overview of the statutory framework will be used by WAI Wānaka to understand risks and pressures the catchments are facing to ensure the key set of principles that guide the CCP objectives and the projects it carries out that will continue to improve and maintain the long-term environmental health of the wider Upper Clutha catchment area including Lake Wānaka, Lake Hāwea and the Clutha/Mata-au, Hāwea and Cardrona Rivers, while also ensuring the four

wellbeing's (cultural, social, environmental and economic) of the community are maintained and enhanced.