



Attorney-General

Associate Minister of Finance

Minister for the Environment

Minister for Trade and Export Growth

Chair and Councillors of Otago Regional Council

CC: Sarah Gardner, CEO, Otago Regional Council

Dear Hon Marian Hobbs and Councillors

**Section 24A Report: Investigation of Freshwater Management and Allocation Functions at Otago Regional Council under section 24A of the Resource Management Act 1991**

I am pleased to enclose the Report of Professor Peter Skelton resulting from his investigation under section 24A of the Resource Management Act 1991 (RMA). This was on whether Otago Regional Council (ORC) is adequately carrying out its functions under the RMA in relation to freshwater management and allocation of resources (the Report).

I would like to thank ORC for their willing contribution to the investigation process. I again record that the current predicament has been many years in the making, and that this letter should not be seen as a criticism of the current council or staff.

The main message from the Report is that the Otago region does not have a fit for purpose planning framework in place to appropriately manage applications for new water permits before 1 October 2021, when all deemed permits and a number of other water permits expire. This will also be the case for some other water permits that expire before the end of 2025.

Three important matters from the Report, accompanied by my specific recommendations on each, are set out below.

*Inadequacy of the planning framework generally*

The Report highlights the importance of ORC prioritising and accelerating work towards a new Regional Policy Statement (RPS) to be operative by 1 April 2022, and a new Land and Water Regional Plan (LWRP) to be operative by 31 December 2025.

Professor Skelton identified that these new planning documents are critical for the ability of ORC to give effect to the national directions.

Views expressed by a wide range of the people Professor Skelton spoke with – including Council staff; stakeholders; and Aukaha, representing Kāi Tahu – supported the need to overhaul the entire planning framework for the Otago region.

Similar views on the planning framework have recently been expressed by Judge Jon Jackson. In two recent Environment Court judgements<sup>1</sup>, he described the RPS as *prima facie* not giving effect to the RMA, and the Regional Water Plan as one which:

*can barely be said to make any effort to manage water volumes in many Otago catchments (including the Lindis River) because in most cases the primary allocation of water for irrigation is simply set as the sum of all existing water takes granted in the catchment.*<sup>2</sup>

With this context in mind, I have given careful thought to the recommendations made by Professor Skelton and how I can best support ORC going forward.

### *Recommendations*

In line with Professor Skelton's recommendations, I formally recommend, under section 24A of the RMA, that ORC:

1. take all necessary steps to develop a fit for purpose freshwater management planning regime that gives effect to the relevant national instruments and sets a coherent framework for assessing all water consent applications, including those that are to replace any deemed permits
2. develop and adopt a programme of work to achieve the following:
  - by November 2020, a complete review of the current RPS that is publicly notified, with the intention that it be made operative before the review of its LWRP is notified
  - by 31 December 2023, a new LWRP for Otago that includes region-wide objectives, strategic policies, region-wide activity policies, and provisions for each of the Freshwater Management Units, covering all the catchments within the region.

### *Rollover of deemed permits*

Professor Skelton's report also recommended that I begin a process to initiate the necessary legislative process to change the date for expiry of the deemed permits in section 413(3) of the RMA, from 1 October 2021 to 31 December 2025 (being the date by which ORC's new LWRP is expected to be operative).

### *Recommendations*

I am not in favour of changing the RMA to extend the date for expiry of the deemed permits. A 30-year transition period was already provided to manage this issue. I prefer that ORC takes steps to resolve the matter rather than taking up the time of Parliament.

### *Urgent need for interim planning framework*

While the comprehensive overhaul of the ORC planning framework is underway, there is an urgent need to ensure that an interim framework is in place between now and 31 December 2025.

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<sup>1</sup> *Alliance Group Limited v Otago Regional Council* [2019] NZEnvC 042.

<sup>2</sup> *Lindis Catchment Group Incorporated v Otago Regional Council* [2019] NZEnvC 166 – (RE PC5A to the Otago Regional Water Plan).

This is necessary to manage approximately 400 to 600 future consent applications in over allocated catchments.

The possibility of up to 600 consents being granted under the current planning and consenting framework is problematic.

I understand that around 70 per cent of ORC's currently issued water permits are for durations of 25-35 years, with various expiry dates. This includes over 50 permits that expire in 2050 or later, eight of which are 35 year permits issued this year. I am advised that there is a strong expectation from deemed and RMA water permit holders that their new consents will be for similarly long terms, and that the Council is likely to come under strong pressure to meet these expectations.

In my view, long terms for these new consents would be unwise, as they would lock in unsustainable water use, inhibiting the council from effectively implementing the outcomes of its intended new RPS and LWRP.

#### *Recommendations*

Professor Skelton highlights the importance of having robust interim measures in place to provide for short-term consents until the new RPS and LWRP are completed. In line with his recommendations, I formally recommend, under section 24A of the RMA, that ORC:

3. prepare a plan change by 31 March 2020 that will provide an adequate interim planning and consenting framework to manage freshwater up until the time that new discharge and allocation limits are set, in line with the requirements in the National Policy Statement for Freshwater Management.

It is important that these interim measures manage the processing of resource consents (including those to replace the deemed permits). I would encourage you to consider a narrow plan change that provides for the relatively low cost, and fast issuing of new consents on a short-term basis, as an interim measure until sustainable allocation rules are in place. Those consents could, for example, be for a maximum term of five years, or until the new LWRP becomes operative, whichever comes first. It may be beneficial to include these provisions in a stand-alone plan change.

I will need you to keep me informed regularly of progress on the above planning processes.

#### Next steps

In line with Professor Skelton's recommendations, I formally require, under section 27 of the RMA that ORC provide me with six-monthly reports in relation to the following matters:

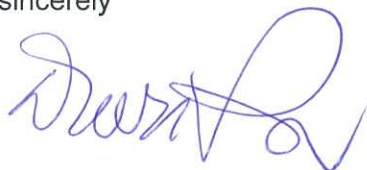
- progress made in developing science, planning, consenting, monitoring and enforcement, and land management organisational capability and capacity
- progress in achieving the above recommendations 1, 2 and 3
- a summary of freshwater resource consenting activity for the reporting period.

I require the first report to be provided to me by 30 April 2020 and the reporting to continue on the six-monthly basis until the end of 2025.

I recognise that ORC is already working towards the recommended plan changes. I would like to meet with you to discuss how I can best assist you to lead your council forward to achieve the plan changes within the recommended timeframes.

I also request your formal response to my recommendations above, including an outline of how you intend to achieve the planning framework changes, by **24 December 2019**.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'David Parker', with a stylized flourish at the end.

Hon David Parker  
**Minister for the Environment**