



Memorandum

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Subject	Draft Land and Water Regional Plan: Comments for QLDC Roding and Transport

The Otago Regional Council (ORC) released the draft Land and Water Regional Plan for Otago in October 2023, seeking feedback from the public before 6 November 2023. This current 'early engagement' is Queenstown Lakes District Council's (QLDC) initial opportunity to provide feedback to the ORC on key themes that are relevant to its operational requirements as a network utility operator / road controlling authority.

QLDC has asked WSP Ltd via Downer Ltd to provide some advice and comments regarding the draft LWRP in relation to their Transport and Roding operations, specifically relating to the following Chapters of the draft LWRP:

- Beds of Lakes and Rivers
- Damming and Diversion
- Earthworks and Drilling.

It is noted that there may be other Chapters of the draft LWRP relevant to QLDC (such as stormwater provisions) but these have not been assessed as they were not considered part of the scope of work. These provisions may still affect some transport infrastructure where stormwater management falls within the transport asset and maintenance responsibilities.

We note also that the Regional Policy Statement (RPS) provisions, as these come through the statutory plan making process, will need to be flow on through to the regional plan objectives, policies and rules framework. There are key transport infrastructure-related topics and submissions points from the RPS proceedings, which may be of particular interest to QLDC and /or guide QLDC's participation in the regional plan policy-making process.

The ORC is aiming to notify the Proposed LWRP in June 2024, where formal submissions on the entirety of the proposed LWRP will be able to be made.



1 Beds of Lakes and Rivers

The following changes are considered relevant to QLDC Roothing and Transport operations:

Rule / provision change	WSP Comments
<p>The existing permitted activity rules relating to structures (use, placement, repair, replacement, removal); disturbance and discharge of the bed of a waterbody; bank reinstatement; and vegetation planting will largely remain the same, but they will be refined and simplified as the current rules are very extensive / duplicate.</p>	<p>Support the simplification as the existing rules as sometimes require multiple consents under several different rules.</p> <p>It is noted that the existing rules are quite permissive, which is good for asset owners such as QLDC. This permissive structure should be retained to provide for and enable the ongoing operation, maintenance and repair of the local road transport network.</p>
<p>The use of existing structures in the bed of a waterbody (i.e. bridge, culvert) will be permitted, provided:</p> <ul style="list-style-type: none"> • They are lawfully established • They are actively used • If a change in use of the structure occurs, the effects of the new use are the same or similar in character, intensity, and scale as the preceding use • They are maintained in a state of good repair • They are not identified in an action plan as requiring remediation to provide for fish passage 	<p>This new permitted activity rule appears reasonable and not resulting in anything untoward, noting further that it contains relatively standard conditions commonly applied to this type of policy. In principle, it shouldn't cause an issue for existing QLDC structures that are in use (i.e. bridges / culverts) but we still need to see the detail of the rule(s) to more clearly advise on potential implications.</p> <p>Second sub-clause bullet point: "...<i>they are actively used</i>" – there are a number of heritage structures in waterways that not 'actively used'. These include historic bridge structures some of which are tourist attractions (or pause points) throughout Otago. It's not clear whether these sub-clauses are all required to be met either. As in – <i>a bridge is a permitted activity if it is lawfully established <u>and</u> actively used and is maintained in a state of good repair...</i> or just needs to meet one of these sub-clauses.</p> <p>Fourth sub-clause bullet point: What is an "<i>action plan</i>" requiring remediation of culverts – is this an NES-FW matter or a policy to be revealed in the proposed plan? This may be a question for the Regional Council as this may result in requiring a substantial number of culverts do be replaced or upgraded. Secondly, would the plan include consultation with asset owners when identifying what can be done to improve fish passage?.</p>

<ul style="list-style-type: none"> Any build-up of debris against the structure which may adversely affect flood risk, drainage capacity or bed or bank stability is removed as soon as practicable. 	<p>Fourth sub-clause bullet point: "...requiring remediation to provide for fish passage..." – this may be in a potential conflict with rules in the NES-FW which exempts existing structures from meeting fish passage requirements. The regional plan rules should be consistent with national environmental standards and policy statements.</p>
<p>No consent required for some bank reshaping (i.e. to repair flood damage). The new provision for bank reshaping will make it simpler to understand and provides greater clarity for how the activity should be completed.</p>	<p>This is a good approach in principle and could be supported by QLDC as it will enable some bank reshaping to occur without a consent. However, we would need to see the detail of the rule(s) relating to this topic.</p> <p>Secondly, this provision could also cover bank reshaping to protect an existing asset, such as when a river naturally alters its flow and shape, which may mean an asset is being damaged from the different flow / velocities and a network utility owner needs to go in and reshape the channel to retrain the flow away from the existing asset.</p> <p>Further, bank reshaping may mean returning the bank to some past state - which is what? e.g, may have had a slow erosion over a number of years.</p>
<p>Currently, when activities do not comply with permitted activity rules, they are generally restricted discretionary activities. This will change to become discretionary activities.</p> <p>The LWRP will also provide stronger policy guidance to inform decision-making regarding several activities (including managing recovery from natural hazards; maintenance of drains and modified waterbodies; providing for the removal of vegetation in particular situations etc).</p>	<p>Discretionary activity consents will mean the Council has unlimited discretion when they consider the consent application; the list of matters they are currently restricted to is quite long anyway.</p> <p>It would be worth for the QLDC to focus on objectives and policy wording to ensure these are infrastructure-enabling rules. Defaulting from restricted discretionary to discretionary activity status require specific tests to be met. Where the 'effects' can be deemed to be fairly confined, quantifiable and/or anticipated, the restricted discretionary activity status provides for a clearer assessment framework overall. A discretionary or non-complying activity status would result in a more onerous assessment against rules and effects or outcomes.</p> <p>The additional policy direction looks encouragingly positive, particularly in terms of managing recovery from natural hazards, but it's difficult to know without seeing the detail of the provisions themselves. Suggest more details should be sought from the ORC about the policy outcomes intentions of this proposed approach.</p>

<p>Include specific policy and rule pathways for flood protection and drainage infrastructure works (both those undertaken by ORC and other persons)</p>	<p>The additional policy direction seems appropriate, particularly in terms of managing recovery from natural hazards or enabling resilience improvements. Notably, it's difficult to advise with any greater clarity without seeing the detail of the proposed rules at this stage.</p>
<p>Gravel extraction: Reduce the volume for permitted gravel extractions from 20m³ to 5m³ in all rivers and lakes. Discretionary activity required for all other extraction activities.</p>	<p>Some concerns with this proposal, noting that a more enabling framework may be considered for infrastructure where undertaken by a network utility operator – or in this case the road controlling authority:</p> <ul style="list-style-type: none"> • This threshold may be appropriate for general extraction. However, this rule could be more catchment specific as the effects from extracting 5m³ from a small narrow creek would generally be vastly different from extracting 5m³ from a larger stream, river or alluvial fan. It could be more effects-based or outcomes-based, site- or area-specific and relevant to the particular context, rather than one limit for all areas. • There also could be some allowance for the extraction of gravel and debris after storm events when a quick response is necessary, or to maintain structures in good condition, as this is a condition of the permitted activity rule for existing structures (that <i>“any build-up of debris against the structure which may adversely affect flood risk, drainage capacity or bed or bank stability is removed as soon as practicable.”</i>) • Secondly, it's potentially unlikely or rare for QLDC to need to remove such a small volume of gravel at any given time – so this provision would not provide any greater flexibility for network utility operators (maintaining critical infrastructure that have a functional need to be located within the beds of rivers and streams). • The last bullet point in the ORC explanation is very important and should be supported: <ul style="list-style-type: none"> ○ <i>“Either the extraction is for the purpose of protecting or maintaining nationally or regionally significant infrastructure and local transport infrastructure that is in the bed and that there are no other reasonable alternatives to protect or maintain the nationally or regionally significant infrastructure or local transport infrastructure, or for flood hazard mitigation and it is undertaken by or on behalf of ORC exercising its powers under legislation in relation to flood control, or the application demonstrates the functional need and operational need for the extraction and that there are no other practical alternatives.”</i>

2 Damming and Diversion

The following changes are considered relevant to QLDC Roothing and Transport operations:

Rule / provision change	Comments
<p>There will be new, separate rules for off-stream and in-stream dams and weirs; also separate rules for temporary and longer-term damming</p>	<p>It is understood damming is not an activity that QLDC Transport engages in, particularly off-stream dams (as these are more for irrigation) or in-stream dams as construction within a waterbody would more likely involve temporary diversion.</p>
<p>There will now be separate rules for diversions, and the rules will distinguish between diversion of water outside of the bed (i.e. to alleviate flooding) and those within the waterbody (i.e. to facilitate temporary works on a structure).</p> <p>Diverting water outside the bed will now be a take and discharge of water rather than a diversion (even if it's non-consumptive).</p> <p>Diversions inside the bed will still be permitted with conditions (i.e. don't impede passage of desired fish species; do not exacerbate flooding / erosion; enable temporary works associated with a lawfully established structure; and returned to its natural course after completion, no later than a week).</p> <p>If these conditions cannot be met, a discretionary activity consent is required.</p>	<p>It is understood QLDC Transport generally does not undertake diversion of water outside of the bed.</p> <p>In terms of temporary diversions (such as during the construction of structures), it only allows for the diversion to occur for a week, and the temporary works are associated with a lawfully established structure. So temporary diversion associated with new structures (i.e. a culvert or gabion basket) would likely require resource consent. A lot of diversions occurring under the existing Regional Plan for Water also require consents so this may be considered to be a insubstantial change.</p>

3 Earthworks and Drilling

The following changes are considered relevant to QLDC Roothing and Transport operations:

Rule / provision change	Comments
<p>The existing permitted activity rule for earthworks will now also apply to commercial and industrial development (as well as residential development).</p>	<p>This change shouldn't affect QLDC Transport's operations.</p>
<p>The drilling of land for purposes other than the construction of a bore is still permitted, there are just some additional conditions in there:</p> <ul style="list-style-type: none"> • does not penetrate an aquifer • is more than 10 metres from a wetland • is not on contaminated land • is above the water table • complies with the NZS 4411:2001 Environmental Standard for Drilling of Soil and Rock. 	<p>The conditions in the new rule are a little more stringent than the existing rule (such as the drilling can't be on contaminated land, can't penetrate an aquifer). These conditions generally appear reasonable, but then it may be in contrast with the site investigations on contaminated land rule below, which allows site investigations as a permitted activity. However, this rule means any drilling on contaminated land would require consent. These rules may contradict each other.</p> <p>There may be some operational nuances to be mindful of. For example, contractor may encounter contamination while drilling OR the drilling is required to test for contamination – does that mean a retrospective consent needs to be obtained or works stop to allow time to obtain consents? The drilling to test for contamination would be better provided for as a permitted activity with conditions / performance standards e.g. such as dealing with unexpected contamination.</p>
<p>Drilling of a new bore is still a controlled activity and the conditions are very similar:</p> <ul style="list-style-type: none"> • the bore is not located in the bed of lake or river, within 10 metre of a natural inland wetland or on contaminated land • the bore does not damage or destroy threatened species habitat or places of significance to mana whenua • the drilling is in accordance with NZS 4411:2001 Environmental Standard for Drilling of Soil and Rock 	<p>Historically, the definition of a "bore" within the Otago Regional Plan for Water has included:</p> <p><i>"Every device or means, including any well or pit, which is drilled or constructed for the purpose of taking groundwater, or which results in groundwater being taken, other than piezometers or other monitoring devices used for water sampling purposes only."</i></p> <p>This has meant that wells or pits that have been constructed for the purpose of taking groundwater is a "bore" under the Regional Plan for Water and consent was required. The Glossary with the Draft LWRP does not include a definition for a "bore" and therefore it should be understood whether this is still the case.</p> <p>Overall, the conditions of the new rule appear relatively standard and could easily be met.</p>

<ul style="list-style-type: none"> • there is no mixing of water from different aquifers. 	
<p>New rule regarding identification and recording of contaminated land (including site investigations) – permitted activity with some conditions:</p> <ul style="list-style-type: none"> • Undertaken in line with the Contaminated Land Management Guidelines No. 1: Reporting on Contaminated Sites in New Zealand, (Ministry for the Environment, 2021), and are reported to ORC within 2 months of completion. 	<p>The rule appears standard – generally one wouldn't require a consent for site investigations on contaminated land provided the investigations are under the Contaminated Land Management Guidelines, and the investigations are reported to ORC within 2 months of completion.</p>



4 Stormwater

The following changes are considered relevant to QLDC Rooding and Transport operations:

Rule / provision change	Comments
<p>Non-network discharges:</p> <p>Previously, it was permitted to discharge stormwater from a road which was not connected to a stormwater system.</p> <p>Now, stormwater discharges from roads / carparks / roofs and other modified surface will be permitted if:</p> <ul style="list-style-type: none"> • Firstly, the stormwater discharges must be connected to a stormwater network if there is one available • Secondly, the discharge will not: <ul style="list-style-type: none"> ○ Cause flooding ○ Come from contaminated land ○ Occur in a drinking water protection zone ○ Come from land used for industrial or commercial activities ○ Exceed quality requirements 	<p>There was a lot of discussion during the Regional Policy Statement hearings on when a stormwater network is available – the words in LF-FW-P15 were subsequently changed to <i>“where one is made available by the operator of the reticulated system, unless alternative treatment and disposal methods will result in improved outcomes for fresh water”</i>.</p> <p>QLDC could again make this point that there may be a stormwater network available, but the operator of the system (i.e. QLDC) must also accept the stormwater discharge (i.e. confirm they have capacity and are able to). That discharge can often be conveyed via the transport network.</p> <p>The new rule contains conditions similar to the existing rule, except that the discharge will not come from contaminated land – this may mean some discharges now require resource consent, even if it is discharged into a stormwater network. This rule is very similar to Environment Canterbury’s stormwater rules and does mean more stormwater discharges require resource consent; historically, not many stormwater discharges in the Otago region have required resource consent. So this will be more stringent, which we’re not surprised to see given national policy direction.</p> <p>Second sub-clause / bullet point: <i>“Come from contaminated land”</i> – How are road controlling authorities going to know if stormwater draining from the road originally drains from contaminated land or not? What does this mean for rural roads – where there is either no or basic swales for s/w runoff?</p> <p>Last sub-clause / bullet point: What are the <i>“quality requirements”</i>? This isn’t clear. Not able to determine how compliance is achieved, or how stringent these requirements are likely to be.</p>

Network discharges:

Previously, it has been a permitted activity to discharge stormwater from a reticulated system to water.

However, there are key changes in this regard:

- Owners/operators of reticulated stormwater systems will require a 5-year consent [controlled activity] to continue discharging stormwater from an existing reticulated system into water
- Owner/operators of reticulated stormwater systems will have 5 years to map their network and put in place a monitoring programme before applying for a network consent [discretionary]
- Network consent conditions will require progressive network upgrades until water quality outcomes are met, as a matter of discretion
- Network consent conditions will require a stormwater management plan to manage the quality and quantity of stormwater being discharged, as a matter of discretion.

There are some key changes here for reticulated stormwater operators, which is probably more suited to be addressed by the QLDC 3 Waters team. However, we wanted to bring the changes to QLDC's attention.



5 Recommendations

The proposed key changes in the draft LWRP are generally high-level and in principle do not appear to be of particular consequence to the QLDC Transport team. However, at this stage there are no details on the objectives, policies or methods which would flow on from the Regional Policy Statement, and there are some questions regarding the proposed changes. Some key items of themes for QLDC Transport to raise in their feedback:

- Support the simplification of provisions as the existing rules applying to works within the beds of lakes and rivers in perhaps frequent circumstances require multiple consents under several different rules; e.g. repair and replace structures and associated bed disturbance);
- Support the approach for some bank reshaping to occur without a consent, but need to see the details – this should cover bank reshaping to protect an existing asset as well as bank reshaping to repair flood damage;
- The new gravel extraction rule – the reduced threshold volume is very small (5m³). From an infrastructure maintenance perspective, this type of provision could be more catchment-specific in terms of how a threshold is defined. The rule could also allow for gravel extraction to protect existing assets, and after storm events / flood damage.

If the aim of the ORC is to gather more information on how much gravel extraction is occurring and where in the region (which they may not fully understand currently), network utility operators could offer to provide this information as a permitted activity rule condition, or a controlled activity rule condition. This would allow the work to keep occurring without the need for a discretionary activity consent, but would allow the ORC to have more insight into how much gravel extraction is occurring and where.

In principle, infrastructure maintenance jobs involving gravel extraction should be keeping a record of their activities regardless – be it for the purpose of demonstrating compliance or because they may be operating under a global consent;

- Bore rule – could consider seeking to confirm that the definition will still include activities such as trenching, e.g. if the hole or well is dug to abstract water.
- Stormwater discharges - there are some key changes here for reticulated stormwater operators, which is probably more suited to be addressed by the QLDC 3 Waters team. However, we wanted to bring the changes to QLDC's attention.

It is recommended that QLDC meets with the ORC Policy team to discuss potential changes and implications before the draft LWRP is notified, so any changes can be sought before the LWRP is notified.