

## 1.1. Water Permits Plan Change

<b>Prepared for:</b>	Council
<b>Report No.</b>	P&S1833
<b>Activity:</b>	Regulatory: Policy Development
<b>LGOIMA:</b>	48(1)(d), Sec 48(2)(a)(i)
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<b>Date:</b>	1 March 2020

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### PURPOSE

- [1] To obtain approval for public notification of proposed Plan Change 7 - Water Permits to the Regional Plan: Water for Otago (the RPW).

### EXECUTIVE SUMMARY

- [2] Proposed Plan Change 7 (Attachment 1) is consistent with the Minister for the Environment's recommendation to Council that by 31 March 2020, Council prepares and notifies a plan change that will provide an adequate interim planning and consenting framework to manage fresh water until new discharge and allocation limits are set in line with the NPSFM.
- [3] On public notification, the rules in this plan change will have legal effect because those rules protect or relate to water.
- [4] The WPPC introduces a short term (6 year) controlled activity consent pathway for the replacement of deemed permits, and the replacement of water permits that will expire prior to 31 December 2025. It also introduces a substantially more burdensome pathway, as an alternative to the controlled activity pathway, for those applicants seeking a longer consent duration (out to 2035). Most applicants will only be able to satisfy the controlled activity rule.
- [5] The process for deciding the plan change is uncertain as Council has requested that the Minister for the Environment call in the proposal.
- [6] The most significant aspect of the plan change is that it incentivises short duration consents through the controlled activity pathway which offers greater certainty of outcome for applicants (consent must be granted). This has been done to encourage as many consent holders as possible to exercise the controlled activity option while a comprehensive fit for purpose planning regime for freshwater management in Otago in accordance with the National Policy Statement for Freshwater Management 2014 (amended 2017) (NPSFM) is developed.

- [7] Long duration resource consents being issued prior to that planning regime could undermine the community outcomes established under the NPSFM, however, the plan change provides an alternative pathway where, if the applicant can demonstrate no more than minor effects on the hydrology and ecology of the freshwater body from which the abstraction will occur, consent may be granted. Under this pathway, a longer duration can be sought, and may be granted or refused.
- [8] The WPPC has concluded its pre-notification statutory consultations and is now ready for Council approval to be publicly notified. Provided Council approval is granted, then the plan change enters the public phase of the plan development process, and any person or party can make a submission.

## RECOMMENDATION

*That the Council:*

- 1) **Receives** this report.
- 2) **Adopts** proposed Plan Change 7 (Water Permits Plan Change) to the Regional Plan: Water for Otago, and the Section 32 Evaluation Report.
- 3) **Approves** proposed Plan Change 7 (Water Permits Plan Change) to the Regional Plan: Water for Otago and the Section 32 Evaluation Report for public notification on 18 March 2020.
- 4) **Notes** that the rules contained in proposed Plan Change 7 will have immediate legal effect in accordance with Section 86B(3)(a) of the Resource Management Act 1991 from the date of public notification because those rules protect or relate to water.

## BACKGROUND

- [9] In late 2018, Council approved the commencement of a full review of the Regional Plan: Water for Otago and publicly notified its Progressive Implementation Programme (PIP) setting out the various actions and timeframes for implementing the NPSFM. Together, these work programmes are intended to fully revise and replace the current Regional Plan: Water for Otago.
- [10] In 2019, a review of ORC's planning functions was initiated by the Minister for the Environment and undertaken by his appointee, Honorary Professor Peter Skelton. Professor Skelton's report highlighted that one immediate issue facing ORC was developing a fit for purpose planning framework ahead of the expiry of deemed water permits on 1 October 2021. After receiving Professor Skelton's report and recommendations, in November 2019 the Minister for the Environment made several recommendations to Council on the future of its freshwater planning framework. These recommendations specified the following, which were agreed by ORC:
- by 31 March 2020, prepare and notify a plan change that will provide an adequate interim planning and consenting framework to manage fresh water until new discharge and allocation limits are set in line with the NPSFM;
  - by November 2020, review the existing regional policy statement (RPS) and notify a new RPS; and

- by December 2023, notify a new regional plan for land and water resources (LWRP) in accordance with the requirements of the NPSFM (intended to be operative by 31 December 2025).

[11] The scope of the WPPC, in accordance with the Minister’s recommendations, is a short term, relatively low cost, simple solution to manage the replacement of deemed permits, which are due to expire on 1 October 2021, the replacement of all water permits to take and use surface water expiring prior to 31 December 2025, and specific policy guidance on an appropriate duration for all water permits granted. The WPPC also includes a consenting pathway, which is subject to two necessary restrictions, for applicants seeking a longer consent duration. The WPPC will capture all consents expiring prior to 31 December 2025, the date by which the new Otago Land and Water Regional Plan (LWRP) is expected to be made operative.

[12] The Council agreed to five key principles to be applied during the development of WPPC, and when deciding on options for the consenting framework, which were:

- The focus is to remain on the bigger picture – the Water Plan review – and consequently, the WPPC should be as concise as required to achieve a fit for purpose management regime;
- Water allocation is to be based on water use not paper allocation;
- There must be consideration of potential impacts on existing water abstractors, and existing priorities in deemed permits;
- Efficiency of time and cost for both Council applicants and other parties is important; and
- Opportunities for data gathering that will inform the Water Plan review should be pursued.

[13] These principles informed the outcomes Council agreed the WPPC should achieve:

- All water permit applications – replacement of deemed permits and replacements of existing water permits – are to be included;
- The term of any renewal should be no more than 7 years, during which time both the new RPS and LWRP will be operative;
- The maximum consented allocation permitted is to be based on an average of recorded water use over an identified time period;
- Resource consent application requirements must be clear; and
- Policies must provide clear guidance on both consent term and water volume which is currently unclear or unhelpful in the RPW.

[14] The WPPC has been developed with the above principles and outcomes in mind, and since its drafting, it has been evaluated against the above criteria. The evaluation, which is set out in Attachment 3, shows a strong correlation with the criteria.

[15] Public engagement on WPPC has been undertaken at various times prior to the pre notification consultations. Between 5th and 15th December 2019, an online feedback survey was undertaken, with 96 responses received. The survey provided some key messages, including:

- Generally, there is support for short term resource consents;
- The quantity of water allocated should be limited to what is needed to efficiently irrigate land;

- Irrigation areas should be able to be expanded if water is used more efficiently;
- Generally, support for setting residual flows and minimum flows on new consents exists, and
- There is support for a permitted activity framework.

[16] A public forum was held on 7<sup>th</sup> January 2020 and over 20 individuals and groups were represented, including resource management consultants, Forest and Bird, the Department of Conservation, Fish and Game and individual farmers and irrigators. Some key themes that resulted from the forum include:

- Efforts need to stay focussed on the full Water Plan review, while work on completing draft management plans for the Manuherekia, Arrow and Cardrona catchments is progressing.
- ORC needs to apply consistency in decision-making and provide transparency and certainty for stakeholders.
- The scope of the plan change should be kept narrow.
- An interim management consenting framework should:
  - Recognise past and current efforts in establishing community/catchment groups and undertaking community-based environmental mitigation initiatives;
  - Recognise specific or local circumstances (not a one-size-fits-all approach);
  - Prioritise environmental health; and
  - Ensure no further loss of biodiversity values.
  - Provide an alternative pathway where longer-term consents may be granted subject to specific conditions.
- The consent terms for any future consents should recognise time required for preparation and processing of consent applications in accordance with the new LWRP.
- The plan change proposal poses a challenge for existing current consent holders as short-term consents limit potential for future investment and generate extra costs associated with repeated consent renewal processes.

[17] The final engagement was a focus group held in Lawrence on Thursday 16<sup>th</sup> January 2020. This was attended by two water users, nga rūnanga and environmental group representatives, a resource management consultant and staff from the policy and consents departments at ORC. The focus group generally agreed that, if they had to choose between a one-size-fits-all approach that was less expensive, or a variable approach that took into account individual or group circumstances that was more expensive, a one-size-fits-all approach would be preferable. It was also preferred if the one-size-fits-all approach had an alternative pathway available for consenting to provide for a longer duration, or for other circumstances that did not meet the controlled activity criteria.

## ISSUE

[18] The development of a planning and consenting framework to transition deemed permits to an RMA water permit, and to replace existing expiring RMA permits to manage water takes until the new fit for purpose planning framework is in place is the main focus of the WPPC.

- [19] The WPPC is important because if it is not in place, giving effect to the RMA and achieving the environmental outcomes set out in current national direction will be significantly frustrated, if not rendered impossible. Put simply, issuing long term consents until a robust planning framework has been developed is not considered appropriate, primarily because it risks ongoing management issues for freshwater over substantial periods of time.
- [20] To establish environmental, community, cultural and economic outcomes, developed in accordance with the NPSFM, requires an ability to bring resource use into line with those outcomes quickly and efficiently. The most effective and efficient method for achieving those outcomes is to have all permissions to use natural resources able to be reconsidered and aligned with the new expectations within the 10-year life of the new regional plan.

## **DISCUSSION**

### ***The Proposed Plan Change***

- [21] The WPPC is the first step towards achieving a fit for purpose planning regime to sustainably manage freshwater within Otago. It will provide a straightforward consent pathway to transition from deemed permits to RMA water permits, and to replace expiring RMA water permits, while a long-term sustainable framework is prepared.
- [22] The plan change itself comprises the following elements:
- One new objective to signal Council's intent in respect of the plan change itself. The objective also notes that the plan change is one step in the transition from the current Water Plan to a new fit for purpose planning regime for the management of freshwater;
  - Three new policies that place clear constraints on the water permits captured under the plan change; and the consent duration an applicant can expect;
  - Two new rules to implement the policies; and
  - A new schedule which clearly establishes how Council will determine actual water use.
- [23] The objective is necessary to provide a specific outcome context for the plan change. While many of the objectives in the operative Water Plan continue to retain their relevance, none is directed at the immediate issue nor the method for resolving that issue. Rather than amend a number of objectives it was considered more effective and efficient to propose a specific new objective.
- [24] The new policies are essential guidance for both applicants and Council's Consents Team, particularly in terms of consent duration, and understanding which consents apply to each application to take water.
- [25] The rule framework has been designed specifically to achieve a simple and efficient interim regime. Where the specified 'entry conditions' are met, an application to replace a deemed permit or an expiring water permit will be classified as a controlled activity.

- [26] Council must grant an application for a controlled activity and may only impose conditions on that consent in respect of the matters it has identified in the rule. There are nine matters over which Council has reserved its control listed in the proposed rule.
- [27] For ease of use reasons, the Water Permits Plan Change has been drafted as a new stand-alone section to be inserted into the operative Water Plan. This approach to the drafting also promotes ease of understanding and was endorsed by the Consents Team.
- [28] The plan change also includes a number of consequential amendments to the operative Water Plan – updating page numbers, footers, the title page, the Chronical of Events, and the section entitled “Process of plan preparation”.
- [29] Particular attention is drawn to the language contained in the new provisions. In the policies, the use of the word ‘irrespective’ is critical to establishing the priority of these policies over all others in the Water Plan. The policies also deliberately use the word ‘avoid’ (which means ‘prevent’ or ‘do not’) to ensure both applicants and the consents team have certainty around the outcome sought.
- [30] The first policy has two essential components:
- It applies only to the replacement of deemed water permits and existing water permits that are due to expire prior to 31 December 2025 – the date the reviewed land and water regional plan will be made operative; and,
  - It directs Council to grant consent in situations only where all specified circumstances are met (there are 5 such circumstances set out in the policy).
- [31] Specified circumstances, the most controversial of which is anticipated to be when abstractions are for irrigation purposes, must all be achieved. Under the WPPC, the area under irrigation will not be able to be expanded, even if the activity is being undertaken efficiently. Expanding the area under irrigation ignores the potential effects on water quality arising from a greater land area under irrigation, and actual or potential effects on biodiversity, landscape and amenity. Until an integrated robust planning framework that reflects the values developed through consultation with the community and gives effect to the outcomes sought by the NPSFM, has been developed, it is appropriate that activities are managed to their current levels. To not do so would hinder achievement of a fit for purpose planning framework.
- [32] It is unclear whether any particular person or party has committed to expenditure on new irrigation infrastructure and who therefore would be adversely affected by this restriction. The restriction sends a clear message that continued expansion of areas under irrigation might not be appropriate and is a matter that will be considered in the reviewed land and water regional plan.
- [33] The other circumstances concern rates of abstraction, the application of minimum and residual flow and flow cessation conditions and ensuring that the permit being replaced is a valid permit.

- [34] The second policy directs that the term of any new water permit (where the applicant is not replacing an existing water permit or a deemed permit) is not more than 6 years. This is to prevent consent durations being too far out of step with the new planning framework to be developed to give effect to the NSPFM. It also provides short term certainty and equity in the management of freshwater resources.
- [35] It is noted that this duration differs from that contained in Council's agreed outcomes for the WPPC. The reason for this is that nga rūnanga have made it very clear during consultation that their support for the plan change, and in particular the non-notification aspect of it, would not be forthcoming if the duration remained at 7 years. Further, the six-year duration is closer to the 'be for a maximum of 5 years' expressed by the Minister for the Environment. Finally, a six-year duration will provide for these water permits to be brought within the freshwater flow and allocation regime established in the new LWRP because they will expire during the normal 'life' of that Plan.
- [36] The third policy provides clear direction on consent duration for resource consents that replace deemed permits or expiring water permits (six years), except where the alternative pathway is engaged. The alternative pathway is available as a non-complying activity (in order to capture true exceptions) and this policy establishes the framework against which any such application is to be assessed.
- [37] The WPPC includes two new rules, being a controlled activity rule for replacements of deemed permits and expiring water permits – subject to six 'entry conditions' being met, and a non-complying activity 'drop-out' rule if the applicant cannot meet, or chooses not to meet one or more of the controlled activity entry conditions.
- [38] The 'entry conditions' for the controlled activity rule reflect, with more precise and certain language, the five specified circumstances set out in one of the new policies.
- [39] The controlled activity rule sets out, the matters over which Council has reserved control. This is required to be done in order that Council has control over the conditions it can impose on any consent granted. All but one of these matters are considered typical for this type of rule. The one matter that is not typical is the inclusion of consideration of the rules or operating procedures of a water allocation committee, where relevant. This has been included to reserve an opportunity to consider any relevant rules or operating procedures where they have a direct bearing on the exercise of any water permit.
- [40] The final part of the package is the proposed schedule which sets out the methods for calculating actual usage for surface water takes for irrigation purposes. These methods are currently used by Council's Consents Team, but they are not embedded in the RPW which creates uncertainty and debate for each consent application. Their inclusion in the plan change removes some of the time and cost currently associated with consenting by eliminating uncertainty and debate over the methods for making these calculations.

- [41] As part of the plan change development, the package of plan provisions has been applied to various 'real world' circumstances. The Consents Team assisted with worked examples of hypothetical individual take and use permits. These examples demonstrated that the more difficult group of activities to consider were those associated with infrastructure established and operated under deemed permits or expiring water permits.
- [42] The difficulty arises from the general lack of detail in respect of the infrastructure provided for in each of the deemed permits. It also arises because, in the absence of a comprehensive consideration of flow and allocation regimes in the context of all relevant freshwater body values, it would be inequitable and not sound planning to provide longer duration consents. In short, this issue arises from a current planning regime that is not fit for purpose.

### ***Pre-notification Consultation***

- [43] In addition to non-statutory pre-consultation, The Resource Management Act requires Council to undertake two separate sets of pre-notification consultation. The first is Clause 3 consultation which must be undertaken with specified Ministers of the Crown, local authorities, tangata whenua (through iwi authorities), and anyone else the Council considers should be consulted. In this instance, and because of the very narrow focus of the proposed plan change, the consultation was only undertaken with the mandatory parties. Council received comments from the Director General of Conservation (DGC) and Aukaha (on behalf of Nga Rūnanga and Te Rūnanga o Ngai Tahu) in response to the first round of consultation.
- [44] The DGC requested several amendments to the draft proposed plan change and made a number of suggestions. The feedback that was not incorporated from the DGC was left out because it would have resulted in an expansion in the scope of the proposed plan change, introduced additional complexity, or altered the drafting style. While there was real merit in some of the DGC feedback, for this process it was considered inappropriate and could result in more areas for litigation and less alignment with the Ministerial review outcomes. The suggestions and comments are, nonetheless, relevant to the yet to be drafted LWRP.
- [45] The feedback from Aukaha was focussed on improving the drafting of the proposed provisions. In all but one instance (a requested amendment to the Schedule), the amendments have been incorporated in the proposed plan change.
- [46] The second round of required consultation, Clause 4A, is with iwi authorities. Council is required to have particular regard to any advice received on a draft proposed policy statement or plan from those iwi authorities. This consultation is on the draft proposal, inclusive of any amendment made following the Clause 3 consultation.
- [47] Feedback was again received from Aukaha and highlighted three concerns or points for consideration. The first was to reintroduce fish passage as a matter over which Council has exercised control. Staff had earlier omitted it on the advice of the DGC who identified it as a duplication of authority, but Aukaha make a good point regarding what



regional councils may include in their regional plans and therefore fish passage has been reintroduced into this final version.

[48] The second matter was a minor drafting and language change which had already been addressed.

[49] The third matter is more substantive and focuses on the notification status of the consent applications and term of consent. Nga Rūnanga have expressed concerns at a seven-year consent term. They have advised that they were prepared to accept controlled activity consents being non-notified and with no affected parties, provided the term of consent was five years. On reflection they would also accept a term of no more than 6 years. The current term of 7 years creates considerable difficulty for nga rūnanga and they have advised, should the term of 7 years be retained, they would seek that all applications be fully publicly notified.

[50] On the basis of this, staff have recommended that the term be reverted to six years, and the non-notification and no affected parties clauses be retained. Staff are of the opinion that a controlled activity consent for 6 years without written approvals will be more attractive than a 7-year term that is fully publicly notified, more expensive and time consuming to process.

### ***Section 32 Evaluation Report***

[51] As required by section 32 of the Act, an evaluation report on the proposed plan change has been prepared and is attached as Attachment 2 to this report.

[52] The s32 report sets out the background and context for the proposed plan change, the consultation undertaken (and Council's response to that consultation) and an evaluation of the effectiveness and efficiency of the proposal. The report concludes that proposed Plan Change 7 is the most effective and efficient way of achieving the objective of the proposal.

### ***Other Matters***

[53] There are four other matters to be taken into consideration at this time. These are:

- Understanding that the rules will have legal effect upon public notification;
- Noting that the Consents Team is updating its processes to adequately manage any new applications
- Noting Council's communications plan which is attached as Attachment 4; and
- Noting the content of legal advice received from Buddle Finlay regarding best practice for preparation of plan changes – Refer Attachment 5

[54] With regard to the rules having immediate legal effect, this is a function of s86B(3)(a) of the RMA. That subsection simply states that rules that protect or relate to water have immediate legal effect. As has been explained earlier, and because of the potential implications of this proposed plan change for the management of the freshwater resource within Otago, it is appropriate that this is the case.

- [55] What this means in practice is that, from the date of notification, when considering an application for a water permit, a consents planner will be required to consider both the rules that are in the Operative Plan, and any rules notified in the WPPC.
- [56] The key components of the implementation of the WPPC are:
- updating of the checklist for determining if an application is complete, consent application forms, deemed permit guidance note and report templates;
  - training staff on the new provisions;
  - forums with stakeholders and communication with consent applicants and their agents.
- [57] In parallel to this, work is being undertaken on assessing the feasibility of a fixed fee for applications processed only under the WPPC (once operative). This work will feed into the Long-Term Plan.
- [58] The communications plan aims to inform key stakeholders and the wider community about how ORC is approaching the replacement of expiring deemed permits and water permits while the “bigger picture” planning framework is being developed. It will also inform key stakeholders and the wider community how to have input (through the submission process) to the proposed water permits plan change.

## **OPTIONS**

- [59] As previously discussed, when the timetable for this plan change was provided to Councillors, there are very limited options for change to what is proposed that would not impact Otago Regional Council’s commitments to the Minister for the Environment.
- [60] Essentially, Council has three basic options in respect of this matter:
1. Adopt the draft plan change and the section 32 Evaluation Report and proceed with public notification;
  2. Seek amendments to the draft plan change and Section 32 Report; or
  3. Not proceed with the plan change and instead rely on the operative provisions of the Regional Plan: Water for Otago.
- [61] Proceeding with Option A fulfils one of the Ministerial recommendations as contained in his letter of November 2019 and gives effect to part of the resolutions of Council in response to those recommendations. Option A achieves the requirement that this plan change is publicly notified by 31 March 2020.
- [62] While amending the proposed plan change at this time is technically feasible, it would also require additional work on the Section 32 Evaluation Report and it would require recommencement of the statutory consultation. The overall effect would be a significant delay in the work programme and a failure to achieve the timeframe committed to by Council in its response to the Minister for the Environment.
- [63] Not proceeding with the proposed plan change would mean that the ORC must rely on its existing RPW to manage the transition to deemed permits. As has previously been noted, the existing plan is not fit for purpose and will not deliver suitable outcomes. In

addition, not proceeding with the proposed plan change will place ORC at risk in terms of further Ministerial intervention.

## **CONSIDERATIONS**

### **Policy Considerations**

[64] The plan change is part of a transition towards a new freshwater management framework to be set in the new LWRP. The current work programme is intending to have an operative LWRP by 31 December 2025 which will achieve full compliance with the relevant regulations, statutes and higher order planning instruments.

[65] The purpose of this plan change is to give effect to Minister Parker's recommendations, which require a short-term, simple, and relatively low-cost consent process that is consistent with the NPSFM 2014 (amended 2017) to enable deemed permits and soon to be expiring water permits to be reconsented, while a new plan framework is developed.

### **Financial Considerations**

[66] The plan changes will be funded from existing Water Plan budgets and proposed annual plan budgets. The costs to-date have largely been staff time, with some consultant support. Going forward, there will be costs associated with notification, hearing costs and costs of managing any appeals that may result.

[63] Finally, it should be noted that the interim consenting framework introduced by the plan change seeks to introduce a consenting process that reduces the cost associated with the preparation and processing of resource consent applications. This benefits all parties when dealing with short-term provisions.

### **Significance and Engagement**

[64] Notifying a plan change that will provide an adequate interim planning and consenting framework to manage freshwater until the time that new flow and allocation limits are set in ORC's planning framework will trigger ORC's Significance and Engagement Policy (SEP) as this project is likely to have potentially significant impacts on many deemed permit and water permit holders across the region.

[65] The development of the plan change in its pre-notification stage and notification of the Plan Change proposal will be undertaken in accordance with the formal process prescribed by Schedule 1 of the Resource Management Act 1991 (RMA), through which our Iwi partners, other key stakeholders and affected or interested parties can participate in the pre-notification consultation, and then formally engage through submissions, hearing and appeal process. The First Schedule process satisfies the requirements of the Significance and Engagement Process. If the plan change is called-in by the Minister for the Environment the opportunity for appeals to the Environment Court is removed. A call-in, however, does not reduce the opportunities for people who make submissions to be heard in support of those submissions.

## **Legislative Considerations**

- [66] Many of the policies upon which the framework for managing freshwater and replacing water permits in Otago is based were introduced into the Water Plan through Plan Change 1C, which became operative in 2012.
- [67] Since 2012, there have been several changes to the legislative planning context, including amendments to the NPSFM in 2014 and 2017. Further changes to the legislative context have been announced recently, which includes a proposed new NPSFM and a new National Environmental Standard for Freshwater.
- [68] As a result of these legislative changes, the current Water Plan no longer gives effect to Central Government direction.
- [69] The proposed plan change will provide an interim consenting framework to manage freshwater up until the time that a new planning framework is introduced through the LWRP. The LWRP will give full effect to the requirements of the relevant higher-level planning documents, regulations and statutes. The proposed plan change will allow a more efficient and effective transition towards the future regime.

## **Risk Considerations**

- [70] The plan change process has several risks associated with it. The first risk to be addressed is achieving a plan change that is consistent with the Minister's recommendations, and timeframes. This can be mitigated by reinforcing, to all parties involved, that the focus needs to be on the long-term planning framework that will sit in the LWRP, rather than unduly focusing resources into the WPPC.
- [71] There is a significant risk of the proposed plan change being appealed to the Environment Court if the Minister for the Environment does not call in the proposal. There are limited opportunities to mitigate this, however the messaging as for the above point is that resources are best focused on the long-term plan framework and genuinely engaging in the development of the LWRP rather than litigating to achieve outcomes that are inconsistent with the Minister's recommendations.

## **NEXT STEPS**

- [72] Following adoption by Council of proposed Plan Change 7 and the Section 32 Evaluation Report, and approval to publicly notify this proposed plan change, the plan change will be publicly notified on 18 March 2020 and submissions on the proposal invited. The period for making submissions will close on 17 April 2020.
- [73] At the conclusion of the period for making submissions, Council is required to prepare a summary of the decisions requested, publicly notify the availability of that summary and call for further submissions (in support of or opposition to those original submissions). It is anticipated that the period for making further submissions will occur during May 2020.
- [74] The next step in the process is the preparation by Council of a report that evaluates the decisions sought through the submissions and makes recommendations regarding any appropriate amendments. This report becomes Council's evidence to the hearing panel.

[75] It is noted that Council has resolved to request that the Minister for the Environment exercise his discretion and call this plan change in. If that happens submissions and Council's evidence will be heard by either an independent Board of Inquiry or the Environment Court.

#### **ATTACHMENTS**

1. Proposed Plan Change 7 Final for Notification [**1.1.1** - 15 pages]
2. Section 32 Evaluation Report - Plan Change 7 ( Water Permits) Final [**1.1.2** - 42 pages]
3. Comparison Table P C 7 Final [**1.1.3** - 3 pages]
4. Water Permits Plan Change Communications Plan External - Final [**1.1.4** - 7 pages]

# **Regional Plan: Water for Otago**

## **Proposed Plan Change 7 (Water Permits)**



**18 March 2020**

- ii Proposed Plan Change 7 (Water Permits)  
to the Regional Plan: Water for Otago  
18 March 2020

## **Introduction**

The Otago Regional Council has prepared Proposed Plan Change 7 to the Regional Plan: Water for Otago.

Proposed Plan Change 7 (Water Permits) is intended to provide an interim regulatory framework for the assessment of applications to renew:

- deemed permits expiring in 2021
- any other water permits expiring prior to 31 December 2025, the date by which the new Regional Land and Water Plan (LWRP) is expected to be operative.

The Plan Change also establishes a requirement for short duration consents for all new water permits granted under the operative Water Plan rules.

The provisions will enable the assessment of applications and issuing of resource consents subject to conditions for a short duration during which time a new LWRP will be prepared.



*Insert the following text as two new paragraphs at the end of the section entitled 'How to Use the Regional Plan: Water'*

Applications for water permits to replace deemed permits or to replace water permits that expire before 31 December 2025 will be assessed in accordance with the objective, policies and rules set out in Chapter 10A of this Regional Plan: Water.

Applications for new water permits that are not replacing either a deemed permit or an existing water permit will be assessed in accordance with the provisions in Chapters 6, 12 and 20, except that the duration of any water permit will be determined in accordance with the policies in Chapter 10A.

*Insert the following new Chapter in the Water Plan immediately following Chapter 10*

Proposed Plan Change 7 (Water Permits) v  
to the Regional Plan: Water for Otago  
18 March 2020



# 10A

## Objective, Policies & Rules for Replacement Water Take & Use Permits



Proposed Plan Change 7 (Water Permits)  
to the Regional Plan: Water for Otago

1

18 March 2020

## 10A.1 Objective

**10A.1.1 Transition toward the long-term sustainable management of surface water resources in the Otago region by establishing an interim planning framework to manage new water permits, and the replacement of deemed permits and water permits to take and use surface water (including groundwater considered as surface water) where those water permits expire prior to 31 December 2025, until the new Land and Water Regional Plan is made operative.**

## 10A.2 Policies

**10A.2.1 Irrespective of any other policies in this Plan, avoid granting resource consents that replace deemed permits, or water permits to take and use surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) where those water permits expire prior to 31 December 2025, except where:**

- (a) The deemed permit or water permit that is being replaced is a valid permit; and**
- (b) There is no increase in the area under irrigation, if the abstracted water is used for irrigation; and**
- (c) There is no increase in the instantaneous rate of abstraction; and**
- (d) Any existing residual flow, minimum flow or take cessation condition is applied to the new permit; and**
- (e) There is a reduction in the volume of water allocated for abstraction.**

**10A.2.2 Irrespective of any other policies in this Plan concerning consent duration, only grant new resource consents for the take and use of water for a duration of no more than six years.**

**10A.2.3 Irrespective of any other policies in this Plan concerning consent duration, only grant new resource consents that replace deemed permits, or resource consents that replace water permits to take and use surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) where those water permits expire prior to 31 December 2025, for a duration of no more than six years, except where Rule 10A.3.2.1 applies and:**

- (a) The activity will have no more than minor adverse effects (including no more than minor cumulative effects) on the ecology and the hydrology of the surface water body (and any connected water body) from which the abstraction is to occur; and**
- (b) The resource consent granted will expire before 31 December 2035.**

### 10A.3        Rules

#### 10A.3.1    Controlled activity: Resource consent required

##### 10A.3.1.1    Despite any other rule or rules in this Plan;

- a) any activity that is currently authorised under a Deemed Permit; or
- b) the take and use of surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) that is currently authorised by an existing water permit where that water permit expires prior to 31 December 2025;

is a **controlled** activity provided the following conditions are met:

- (i) The consent duration sought is no more than six years; and
- (ii) The deemed permit or water permit that is being replaced is a valid permit; and
- (iii) The application demonstrates that the total land area under irrigation does not exceed that irrigated in the 2017-2018 irrigation season, if the abstracted water is used for irrigation; and
- (iv) The rate of take shall be no more than the average maximum rate of take limit recorded during the period 1 July 2012 – 30 June 2017 and calculated in accordance with the method in Schedule 10A.4; and
- (v) Any existing residual flow, minimum flow, or take cessation condition (whichever is applicable) is included in the application for resource consent; and
- (vi) The volume of water taken shall be no more than the average maximum of the daily volume limit, or monthly volume limit, or annual volume limit (whichever one or more are applicable) recorded during the period 1 July 2012 – 30 June 2017, and calculated in accordance with the method in Schedule 10A.4.

The Council reserves control over the following matters:

- (a) Intake method and flow rate controls to avoid or mitigate fish entrainment; and
- (b) The volume and rate of water taken, dammed, discharged or diverted, and the timing and frequency of the take or damming or diversion or discharge; and
- (c) Efficiency of water use and how that efficiency is to be sustained for the duration of the water permit; and
- (d) Provision of fish passage; and
- (e) The rules or operating procedures of any relevant water allocation committee that exists for the catchment; and
- (f) Minimum flow, residual flow or take cessation conditions; and
- (g) Review conditions; and
- (h) Compliance monitoring; and
- (i) The point and method of measurement and the method for transmitting recorded data to Council.

Pursuant to sections 95A and 95B of the RMA, an application for resource consent under this rule will be processed and considered without public or limited notification. Limited notification to affected order holders in terms of section 95F of the RMA will be necessary, where relevant, under Section 95B(3) of the RMA.

**Advice Note:** *If the application is for a new water permit (and not the replacement of a deemed permit or replacement of an expiring water permit) refer to the rules in Chapter 12 of this Plan.*

### **10A.3.2 Non-complying activity: Resource consent required**

#### 10A.3.2.1 Despite any other rule or rules in this Plan:

- a) any activity that is the replacement of an activity authorised under a Deemed Permit; or
- b) the take and use of surface water (including groundwater considered as surface water under policy 6.4.1A (a), (b) and (c) of this Plan) that is the replacement of a take and use authorised by an existing water permit where that water permit expires prior to 31 December 2025;

that does not meet any one or more of the conditions of Rule 10A.3.1.1 is a **non - complying** activity.

## **10A.4 Schedule: Methodology for calculating assessed actual usage for surface-water takes for irrigation purposes**

### **10A.4.1 Methodology for calculating 'Rate of Take Limit'**

The 'Rate of Take Limit' (litres per second – L/s) shall be determined by calculating the Average Maximum of the actual rate taken. In order to achieve this, the actual rate taken across the hydrological year (1 July to 30 June) will be analysed to determine the maximum rate taken at any time during that year. The maximum rate taken in each hydrological year will then be summed and divided by the number of years analysed.

#### **Methodology**

- (1) Where a water meter records the volume of water taken over a fixed period of time, the rate of take will be calculated by converting the volume taken in litres by the interval recorded by the meter. For example, 10 m<sup>3</sup> taken over a 15-minute period will equate to a rate of take of 11.11 l/s.
- (2) Any measurement that is at or below 0 l/s will be removed.
- (3) Any measurement that exceeds the authorised (consented) rate by less than the margin of error of the water meter is rounded down to the authorised rate.
- (4) Any measurement that exceeds the authorised rate of take by more than the margin of error of the water meter will be removed from the data and not considered further. This ensures that the following are excluded from any calculations:
  - a) Abstracting above the consented rate of take, and
  - b) errors caused by faulty equipment, and
  - c) abstraction rates that are high due to natural events such as floods.
- (5) The margin of error to be applied to any calculation will be either 5% or 10% depending on:
  - a) the margin of error specified in any consent or permit being replaced,  
or
  - b) the results of the last verification presented to the Otago Regional Council, or
  - c) the margin of error specified by the meter's manufacturer.
- (6) The maximum rate taken in each water year will be summed across the hydrological years analysed and divided by the number of hydrological years analysed.



#### **10A.4.2 Methodology for calculating Daily Volume Limit (m3)**

The 'Daily Volume Limit' shall be determined by calculating the Average Maximum of the actual 'Daily Volume' taken. In order to achieve this, the maximum 'Daily Volume' taken on any day in each water year (1 July to 30 June) will be calculated. The maximum 'Daily Volume' in each water year will then be summed across the hydrological years analysed and divided by the number of hydrological years analysed.

#### **Methodology**

- (1) Where a consent being replaced does not include a 'Daily Volume Limit', the authorised volume will be calculated based on the following formula:

$$\text{Daily Volume m}^3 = ((\text{Consented Rate of Take l/s}) \times 86,400) / 1,000$$

- (2) Any measurement that is at, or below, 0 m3 will be removed.
- (3) Any day that exceeds the authorised (consented) or calculated daily volume by less than the margin of error on the water meter is rounded down to the consented volume.
- (4) Any day where the volume taken exceeds the authorised (consented) or calculated volume by more than the margin of error of the water meter will be removed from the data and not considered further. This ensures that the following are excluded from any calculations:
- a) overtaking outside of existing authorised limits, and
  - b) errors caused by faulty equipment, and
  - c) overtaking caused by natural events such as floods.
- (5) The margin of error will be treated as being either 5% or 10% depending on:
- a) the margin of error specified in any consent or permit being replaced, or
  - b) the results of the last verification presented to the Otago Regional Council, or
  - c) the margin of error specified by the meter's manufacturer.
- (f) The maximum 'Daily Volume' taken in each water year will be summed across the hydrological years analysed and divided by the number of hydrological years analysed.

### **10A.4.3 Methodology for calculating Monthly Volume Limit (m3)**

The 'Monthly Volume Limit' shall be determined by calculating the Average Maximum of the actual 'Monthly Volume' taken. In order to achieve this, the maximum 'Monthly Volume' taken in any month in each water year (1 July to 30 June) will be calculated. The maximum 'Monthly Volume' in each water year will then be summed across the hydrological years analysed and divided by the number of hydrological years analysed.

#### **Methodology**

- (1) Where a consent being replaced does not include a 'Monthly Volume Limit' the authorised volume will be calculated based on the following formula;

$$\text{Monthly Limit} = (\text{Consent Daily Volume or Calculated Daily Volume}) \times 30.4$$

- (2) Actual Monthly volumes will be calculated based on the sum of the assessed Daily Volumes in each calendar month. For the purposes of this calculation Daily Volumes will be filtered using the same steps used when calculating the Maximum Daily Volume.
- (3) Any measurement that is at, or below, 0 m3 will be removed.
- (4) Any month where the volume taken exceeds the authorised or calculated volume by less than the margin of error on the water meter is rounded down to the consented volume.
- (5) Any month where the volume taken exceeds the authorised or calculated volume by more than the margin of error of the water meter will be removed from the data and not considered further. This ensures that the following are excluded from any calculations:
- a) overtaking outside of existing authorised limits, and
  - b) errors caused by faulty equipment, and
  - c) overtaking caused by natural events such as floods.
- (6) The margin of error to be applied to any calculation will be either 5% or 10% depending on:
- a) the margin of error specified in any consent or permit being replaced, or
  - b) the results of the last verification presented to the Otago Regional Council, or
  - c) the margin of error specified by the meter's manufacturer.
- (7) The maximum 'Monthly Volume' taken in each water year will be summed across the hydrological years analysed and divided by the number of hydrological years analysed.

**10A.4.4 Methodology for calculating Annual Volume Limit (m3)**

The 'Annual Volume Limit' shall be determined by calculating the average of the actual volumes taken each year.

**Methodology**

- (1) Where a consent or permit being replaced does not include an 'Annual Volume Limit' the authorised volume will be calculated based one of the following formula. The formula used will be whichever produces the lower calculated Annual Limit;

$$\text{Annual Limit} = \frac{(\text{Consent Daily Volume or Calculated Daily Volume}) \times 365.25}{\text{Months where water can be taken}}$$

$$\text{Annual Limit} = \frac{(\text{Consented Monthly Volume}) \times (\text{Months where water can be taken})}{\text{Months where water can be taken}}$$

Where the consent or permit being replaced specifies the months during which water can be taken, a count of those months will be used. Where the consent or permit being replaced does not specify the months during which water can be used the number used will be 12.

- (2) Actual Annual volumes will be calculated based on the sum of the assessed Daily Volumes in each water year. For the purposes of this calculation Daily Volumes will be filtered using the same steps used when calculating the Maximum Daily Volume.
- (3) Any measurement that is at or below 0 m3 will be removed.
- (4) Any year that exceeds the authorised or calculated volume is rounded down to the authorised volume.
- (5) The 'Annual Volume' taken in each water year will then be summed across the hydrological years analysed and divided by the number of hydrological years analysed.

## Table of minor and consequential changes

Plan Provision	Detail of proposed change			
Page numbers	Update page numbers.			
Footers	Change footer to read “ <u>Regional Plan: Water for Otago (Updated to &lt;date to be inserted&gt;)</u> ”.			
Title page	Change the date to read “ <u>Updated to &lt;date to be inserted&gt;</u> ”.			
ISBN number	Obtain new ISBN numbers for Regional Plan: Water for Otago.			
Chronicle of key events	Add the following to the end of table:			
	<b>Key event</b>	<b>Date notified</b>	<b>Date decisions released</b>	<b>Date operative</b>
	<u>Plan Change 7 (Water Permits) to the Regional Plan: Water</u>	<Date to be inserted>	<Date to be inserted>	<Date to be inserted>
Section 1.4	<p><u>Proposed Plan Change 7 (Water Permits) provides an interim regulatory framework for the assessment of applications to replace deemed permits expiring in 2021 and other water permits expiring prior to 31 December 2025, the date by which the new Land and water Regional Plan is expected to be operative. It was notified on ..., and a total of ... submissions and ... further submissions were received. Following the hearing, decisions on submissions received were released on ... . Plan Change 7 was made operative on ... .</u></p>			

# **Section 32 Evaluation Report**

## **Consideration of alternatives, benefits and costs**

Proposed Plan Change 7 to the Regional Plan: Water for Otago

*This Section 32 Evaluation Report should be read in conjunction with Proposed Plan Change 7 to the Regional Plan: Water for Otago*



**18 March 2020**

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## Executive Summary

As a result of the Ministerial investigation into freshwater management and allocation functions at Otago Regional Council (ORC), the ORC committed, by letter dated 16 December 2019, to undertake several actions, including the preparation of “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”.

Plan Change 7 (PC7) is intended to provide an interim planning and consenting framework for the assessment of resource consent applications to renew deemed permits expiring in 2021 and any other water permits expiring prior to 31 December 2025, the date by which the new Otago Land and Water Regional Plan (LWRP) is expected to be made operative. The provisions will enable the assessment of applications and issuing of all resource consents to abstract water for a short duration during which time the new LWRP will be prepared.

This report provides the evaluation of PC7 in accordance with section 32 of the Resource Management Act 1991 (RMA). PC7 is considered the most appropriate way to achieve the purpose of the RMA and sets out the most efficient and effective method to achieve the proposed new objective of the Water Plan. Overall, PC7 will improve the ability for ORC to achieve sustainable management of Otago’s water resources and will contribute to achieving the outcomes sought by the NPS-FM and the new RPS to be developed. In the short-term while PC7 does not fully give effect to the NPS-FM, PC7 seeks to manage water allocation based on actual use and retaining minimum flow, residual flow or take cessation conditions where imposed on an existing permit. PC7 will also ensure that as many water permits as practicable are brought within the ambit of the revised resource management regime to be established through the LWRP.

# 1. Introduction

## 1.1. Purpose

ORC is required to prepare an evaluation report for Plan Change 7 in accordance with section 32 of the RMA.<sup>1</sup> Section 32(1) sets out the requirements for an evaluation report, which are:

- Examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the RMA; and
- Examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by –
  - identifying other reasonably practicable options for achieving the objectives; and
  - assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
  - summarising the reasons for deciding on the provisions; and
- Contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the implementation of the proposal.

Section 32(2) states that an examination of the appropriateness of the provisions must:

- Identify and assess the benefits and costs of the environmental, economic, social and cultural effects anticipated from the implementation of the provisions, including the opportunities for:
  - Economic growth that are anticipated to be provided or reduced; and
  - Employment that are anticipated to be provided or reduced; and
- If practicable, quantify the benefits and costs; and
- Assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

The evaluation report must also summarise any advice on the proposal received from iwi authorities, including the Council's response to that advice and any provisions that are intended to give effect to the advice.

## 1.2. Background

In late 2018, ORC approved the commencement of a full review of the Water Plan and publicly notified its Progressive Implementation Programme (PIP) setting out the various actions and timeframes for implementing the NPS-FM. Together, these work programmes are intended to fully revise and replace the current Water Plan. In 2019, a review of ORC's planning functions was initiated by the Minister for the Environment and undertaken by his appointee, Honorary Professor Peter Skelton. Professor Skelton's report highlighted that one immediate issue facing ORC was developing a fit for purpose planning framework ahead of the expiry of deemed water permits on 1 October 2021.<sup>2</sup> After receiving Professor Skelton's report and recommendations, in November 2019 the Minister for the Environment

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<sup>1</sup> Clause 5, Schedule 1 to the RMA

<sup>2</sup> Skelton, Peter (2019) *Investigation of Freshwater Management and Allocation Functions at Otago Regional Council - Report to the Minister for the Environment*. Wellington: Ministry for the Environment.



made a number of recommendations to ORC on the future of its freshwater planning framework. These recommendations specified:

- By 31 March 2020, prepare a plan change that will provide an adequate interim planning and consenting framework to manage freshwater until new discharge and allocation limits are set in line with the NPS-FM;
- by November 2020, review the existing regional policy statement (RPS) and notify a new RPS; and
- by December 2023, notify a new regional plan for land and water resources (LWRP) in accordance with the requirements of the NPS-FM (intended to be operative by 31 December 2025).

The purpose of PC7 is to provide this interim regulatory framework for the assessment of applications to take and use surface water. Specifically, PC7 seeks to provide:

- for the renewal of deemed permits expiring in 2021; and
- for the renewal of any other water permits to take and use surface water (including groundwater managed as surface water under the Water Plan) expiring prior to 31 December 2025; and
- direction on the consent duration for all water permits to take and use water.

#### 1.2.1. Deemed Permits

Sections 413-417 of the RMA sets out the technical matters in relation to deemed permits. Deemed permits replaced the original mining privileges following the RMA being enacted. Mining privileges were licenses issued under the Mining Act 1926, subsequent amendments, and previous Acts for water races, dry races, branch races, tail races, main tail races, drainage races, bywashes, drainage areas, dams and special sites.<sup>3</sup> The most important of them are the water race licenses.

Under the Mining Act 1926, a water race license entitled the holder to cut, construct and maintain a race, or to use a natural channel as a race, on the land specified in the license. The license also entitled the holder to take a specified quantity<sup>4</sup> of water from a watercourse for the purpose of mining, domestic and irrigation supplies. In effect, the license gave:

- An easement over property for the construction and maintenance of the race;
- Permission to run a specified quantity of water in the race; and
- A right to take a specified quantity of natural water from a particular source.

Initially, mining privileges were issued to take water for the purpose of gold mining. Most gold mining methods relied on water, without which recovering gold was impossible. With the decline of gold mining and expansion of pastoral farming, later mining privileges were often issued for irrigation alone and on renewal many of the initial mining privileges changed use to irrigation of pasture and stock water supply.

With the introduction of the RMA, any current mining privilege and right granted under the Water and Soil Conservation Act 1967, in substitution of a mining privilege that was current immediately prior to

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<sup>3</sup> Statutes include the Gold Fields Act 1862, Gold Fields Act 1866, Public Works Act 1876, Mining Act 1891, Mining Act 1926.

<sup>4</sup> On a priority system, first licence holder was granted water applied for and any other licence holders were granted what was remaining in a time order priority.

the commencement of the RMA, would essentially be deemed to carry on under the provisions of the Water and Soil Conservation Amendment Act 1971 as if it was not repealed until the 30th anniversary of the RMA, and be known as a deemed permit.<sup>5</sup>

As of the 31 December 2019, there are approximately 1760 water permits in Otago, 1155 of which are permits for the taking of surface water and 605 of which are for the taking of groundwater. Of these, 340 are deemed permits which will expire on 1 October 2021 in accordance with section 413(3) of the RMA.<sup>6</sup>

Until the expiry date of the permit, the RMA requires decisions on any replacement resource consent to have regard to the previous deemed permit right. Prior to the expiry of the deemed permit any plan change which would have the effect of reducing a deemed permit water right may only be instigated with the consent of the permit holder<sup>7</sup>. Permit holders who consider their right has been infringed by Council can seek compensation up until the expiry date.<sup>8</sup> Plan Change 7 does not infringe any existing 'right' to abstract water; what it does is establish a pathway for transiting from the deemed permit to a water permit, and restrict the water allocated under that replacement water permit to a volume and rate of abstraction that has been used by the deemed permit holder.

The replacement of several hundred permits with resource consents took place in 2004 in the period leading up to the adoption of the Water Plan. In the absence of specific catchment flow and allocation limits, many of these consents were issued with relatively permissive conditions, often with terms of 30-35 years.<sup>9</sup> With the remaining 340 deemed permits expiring in 2021 and an additional 740 surface water and groundwater permits expiring between 31 December 2019 and 31 December 2025, current water permit holders could similarly expect replacement consents to be granted for a long duration. The current planning framework is relatively permissive of long-term resource consents and there is no rules or directive policy guidance to limit consent terms.<sup>10</sup>

Based on the current planning framework, assessing applications for the replacement of these deemed permits/resource consents would result in resource consents being assessed under the Water Plan's current policy framework which may not allow for adequate consideration of environmental effects or drive efficient resource use. Additionally, some permits are in allocation zones where the currently allocated volume of water exceeds the relevant allocation limit in the Water Plan. In combination with the expected pressure from permit holders to issue long-term consents, the current planning framework does not provide adequate guidance and may result in replacement consents inhibiting ORC's ability to effectively implement the outcomes of its reviewed Regional Policy Statement (RPS) and the new LWRP.

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<sup>5</sup> Section 413 of the RMA.

<sup>6</sup> 275 permits for surface water takes and 81 permits for groundwater abstraction

<sup>7</sup> Section 414 of the RMA

<sup>8</sup> Section 416 of the RMA

<sup>9</sup> Skelton, Peter (2019) *Investigation of Freshwater Management and Allocation Functions at Otago Regional Council - Report to the Minister for the Environment*. Wellington: Ministry for the Environment. Page 11.

<sup>10</sup> Policy 6.4.19

### 1.3. Plan Change 7

The purpose of Plan Change 7 is to provide an interim regulatory framework for the assessment of applications to renew:

- deemed permits expiring in 2021; and
- any other permit to take and use surface water (including groundwater managed as surface water) expiring prior to 31 December 2025; and<sup>11</sup>
- provide direction on the consent duration for all water permits to take and use water.

The provisions will enable the assessment of applications and issuing of resource consents subject to conditions for a short duration during which time a new LWRP will be prepared.<sup>12</sup> PC7 also provides the opportunity to collect water abstraction and use data to inform the development of the new LWRP. The LWRP will set out the long-term framework to give effect to the NPS-FM and a new RPS.

The scope of amendments to the Water Plan proposed by PC7 is limited to:

#### *Objective*

- New Objective 10.A.1.1

#### *Policies*

- New Policy 10.A.2.1
- New Policy 10.A.2.2
- New Policy 10.A.2.3

#### *Rules*

- New Rule 10A.3.1.1 – Controlled Activity
- New Rule 10A.3.2.1 – Non-Complying Activity

#### *Schedule*

- New Schedule 10A.4

#### *Consequential amendments*

- A number of minor and consequential amendments are proposed to describe PC7.

While PC7 is only intended as an interim measure, it is important to ensure that the Water Plan still delivers an effective and efficient water management framework, and that its implementation supports (and does not undermine) the full plan review and the objectives of the NPS-FM. A full assessment of the higher order statutory documents relevant to PC7, including the NPS-FM, is provided in Section 4 of this report.

This report outlines the purpose of PC7, and evaluates the plan change and alternative options as required by Section 32 of the RMA. It should be read in conjunction with Plan Change 7.

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<sup>11</sup>The new LWRP is expected to be operative by 31 December 2025.

<sup>12</sup> In accordance with Sections 88, 104, 108 of the RMA

## 1.4. Structure

Following this Introduction, this report has been structured as follows:

- Consultation
- Evaluation of Proposed Plan Change 7 to the Water Plan
- Planning context
- References

## 1.5. Abbreviations

The following lists the abbreviations used throughout this report.

ORC	Otago Regional Council
LWRP	New Land and Water Regional Plan (to be operative by 31 December 2025)
NPS-FM	National Policy Statement for Freshwater Management 2014 (amended 2017)
PORPS	Partially Operative Regional Policy Statement for Otago 2019
PRPS	Proposed RPS – Decisions version 2016
RPS	Regional Policy Statement for Otago 1998
RMA	Resource Management Act 1991
PC7	Proposed Plan Change 7 to the Water Plan
Water Plan	Regional Plan: Water for Otago
WCO	Water Conservation Order

## 2. Consultation

Due to the requirements for PC7 to be developed and notified in a short timeframe and its narrow scope, consultation with key stakeholders and the community has been targeted. This section of the report describes the informal and formal consultation that has been undertaken prior to the notification of PC7.

### 2.1. Development

During the drafting of PC7 key stakeholders and the general public have been provided an opportunity to provide input on the scope and content of the plan change.

In November and December 2019 an online feedback survey was undertaken. 96 responses were received, the key messages received from the survey were:

- There is support for short-term resource consents;
- The quantity of water allocated should be limited to what is needed to efficiently irrigate land;
- Irrigation areas should be able to be expanded if water is used more efficiently;
- General support for setting residual flows and minimum flows on new consents; and
- There is support for a permitted activity framework.

A public forum was held on the 7<sup>th</sup> of January 2020. A range of individuals and organisations were represented at the forum including resource management consultants, Forest and Bird, Department of Conservation, Fish and Game and individual farmers. The key themes from the forum included:

- Efforts need to stay focussed on full Water Plan review, while work on completing draft management plans for the Manuherekia, Arrow and Cardrona catchments is progressing.
- ORC needs to apply consistency in decision-making and provide transparency and certainty for stakeholders.
- The scope of the plan change should be kept narrow.
- An interim management consenting framework should:
  - Recognise past and current efforts in establishing community/catchment groups and undertaking community-based environmental mitigation initiatives;
  - Recognise specific or local circumstances (not a one-size-fits-all approach);
  - Prioritise environmental health; and
  - Ensure no further loss of biodiversity values.
- Provide an alternative pathway where longer-term consents may be granted subject to specific conditions.
- The consent terms for any future consents should recognise time required for preparation and processing of consent applications in accordance with the new LWRP.
- The plan change proposal poses a challenge for existing current consent holders as short-term consents limit potential for future investment and generate extra costs associated with repeated consent renewal processes.

A focus group was also held in Lawrence on Thursday 16<sup>th</sup> January 2020 and was attended by two water users, rūnanga and environmental group representatives, a resource management consultant and policy and consent staff from ORC. The focus group generally agreed that a one-size-fits all approach would be preferable if it resulted in a simpler and therefore more cost-effective consent process, and that this option also had an alternative pathway available for consenting.

## 2.2. Pre-notification consultation: Clause 3, Schedule 1

Clause 3(1), Schedule 1 to the RMA includes requirements to consult certain parties during the preparation of a proposed plan. In accordance with this, on 4 February 2020 a formal draft copy of PC7 was provided to the following parties for comment:

- Ministry for the Environment;
- Ministry for Conservation;
- Ministry for Primary Industries;
- Ministry for Economic Development;
- Central Otago District Council;
- Clutha District Council;
- Queenstown Lakes District Council;
- Dunedin City Council;
- Waitaki District Council;
- Te Rūnanga o Ōtākou (via Aukaha);
- Kati Huirapa Rūnaka ki Puketeraki (via Aukaha);

- Te Rūnanga o Moeraki (via Aukaha);
- Hokonui Rūnanga (via Aukaha and Te Ao Marama); and
- Te Rūnanga o Kāi Tahu

Written replies were received from Aukaha and the Department of Conservation (DOC). The key points and Council's comments are summarised in Table 1.

Table 1: Summary of Clause 3, Schedule 1 feedback and Council response

Respondent	Summary of feedback	Council response to feedback
Aukaha on behalf of Te Rūnanga o Waihao, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (Ngā Rūnanga)	Overall the plan change is generally in accordance with rūnanga kaupapa. Ngā Rūnanga are supportive of the 'alternative pathway' offered by the non-complying rule and supporting policy. Specific amendments have been sought to improve the clarity of the provisions.	<p>Council has adopted many of the changes suggested to improve clarity.</p> <p>Council considers it unnecessary to amend the provisions by inserting reference to Section 413 of the RMA to define deemed permits as the Water Plan Glossary already defines this term.</p> <p>No changes have been made to Schedule 17 as it is considered the methodology is clear.</p>
Department of Conservation	<p>DOC has raised the significance of Otago's freshwater biodiversity, being home to a number of nationally critical threatened, endangered and vulnerable species and the relevance of PC7 to protecting these species.</p> <p>DOC has provided a number of specific and general comments on the provisions to increase clarity and improve wording.</p> <p>Overall, DOC remain concerned that PC7 does not secure an interim life-supporting/minimum flow for instream ecosystems.</p>	<p>Council has considered the suggested amendments from DOC and notes many comments relate to drafting style and the plan structure and would increase the scope of the plan change. PC7 has an intentionally narrow scope and is intended to fit the current plan style. Some of DOC's comments would be more properly addressed in the full review of the Water Plan.</p> <p>DOC specifically raise the maximum duration being six years, not seven years as proposed. This amendment has been made because it better reflects Council's drafting instructions.</p> <p>Council has split the policy on consent duration into two separate policies to improve clarity. It has also deleted the matter of control in the controlled activity rule because DOC is the responsible authority.</p> <p>Further science investigations are necessary to establish appropriate flow controls for all waterbodies. Given the drivers for PC7 it is not considered appropriate to introduce such requirements.</p>

### 2.3. Pre-notification consultation: Clauses 3B (Consultation with iwi authorities) and 4A (Further pre-notification requirements concerning iwi authorities), Schedule 1

Clause 3B in Schedule 1 to the RMA outlines the requirements for consultation with an Iwi Authority. Clause 4A in Schedule 1 to the RMA requires a local authority to provide a copy of the proposed plan to the iwi authorities consulted under Clause 3(1)(d) Schedule 1 and allow adequate time and opportunity for the iwi authorities to consider the draft and provide advice on it. These sections enable an Iwi Authority to identify the resource management issues that are of concern to them, as well as providing guidance to the local authority on how these issues have been, or are to be, addressed.

A copy of PC7 was provided to the iwi authority, Te Rūnanga o Kāi Tahu, Aukaha and Te Ao Marama Inc for comment. Section 32(4A) of the RMA requires an evaluation report prepared under s32 to summarise all advice concerning the proposal received from iwi authorities under the relevant provisions of Schedule 1; and summarise the response to the advice, including any provisions of the proposal that are intended to give effect to the advice. A response was received from Aukaha on behalf of Te Rūnanga o Waihao, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (Ngā Rūnanga). The summary of this advice and Council's response to that advice is contained in Table 2.

Table 2: Summary of advice from Aukaha on behalf of Ngā Rūnanga and Council's response

Provision/topic	Iwi Advice	Council response	Amendments to provisions
Overview	Ngā Rūnanga consider the overall plan change is generally in accordance with their kaupapa. Ngā Rūnanga support the 'alternative pathway' being offered and the high threshold (non-complying activity).	This support is noted and appreciated.	
Consent duration (Policies 10A.2.2 and 10A.2.3 and Rule 10A.3.1.1)	Ngā Rūnanga are disappointed with the increase of consent term from 6 years to 7 years. 7 years is considered to be excessive and longer-term consents are detrimental to the environment and mana whenua values. Ngā Rūnanga would request that due to the increase in duration, that each application is fully notified.  Ngā Rūnanga support having two policies to direct consent duration.	The consent duration issue is a live one and Council is particularly conscious of the feedback provided, and in particular the reasons for not supporting 7 years. Council is also conscious of the implications of the suggested amendment to application notification provisions should the duration remain at 7 years. A shorter duration is considered preferable to a probable longer	The consent duration provisions have been amended to six years.

		time for applicants gaining consents.	
Separate chapter for provisions	Ngā Rūnanga support the provisions being contained in a separate chapter.		
Rule 10A.3.1.1 matter of control (a)	Amend wording as follows: “Intake method and flow rate <del>controls-measures</del> to avoid or mitigate fish entrainment.”	Council acknowledges that it had previously agreed to this requested amendment.	Amend the provision as requested.
Rule 10A.3.1.1 new matter of control	Ngā Rūnanga seek that the matter of control over “any requirement for fish passage” is reinstated. Ngā Rūnanga are concerned that fisheries regulations may not be enforced if DOC are unaware of the proposal. Without this matter of control, Ngā Rūnanga would request that each application is fully notified.	Council has considered the advice provided by Aukaha and accepts that fish passage is a matter over which Council can reserve control despite the fact that the Department of Conservation is responsible for fish passage regulations.	Any requirement for the provision of fish passage has been reinserted as a matter over which Council reserves control in proposed Rule 10A.3.1.1
Schedule 10A.4	The schedule is difficult to follow as the wording is unclear. Ngā Rūnanga suggest using examples of calculations to improve clarity.	Council does not share the concern expressed by Aukaha and does not believe worked examples would be of any real assistance.	A minor amendment to improve clarity of Schedule 10A.4.1 (5) and Schedule 10A.4.3 (6)

### 3. Proposed Plan Change 7 to the Water Plan

#### 3.1. Introduction

This section of the report evaluates the provisions of PC7 in accordance with the requirements of section 32 as set out in section 1.1 of this report. Under section 32(1)(b), ORC is required to examine the extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA. It is also required to examine whether the provisions in the proposal are the most appropriate way to achieve the objectives.

#### 3.2. Issues with the current Water Plan

In considering the options to develop PC7, it is useful to understand how the current Water Plan provides for the replacement of deemed permits and expiring water permits and any new resource consent applications to take and use surface water. A summary of the provisions that would apply to these applications is set out below followed by commentary on some of the issues arising from the current framework.



### 3.2.1. Provisions of the Water Plan currently applicable to the replacement of deemed permits and expiring water permits

The Water Plan sets out a number of objectives, policies and rules that apply to the taking and use of surface water, and the damming, diverting and discharging of water. The most relevant objectives in the Water Plan are:

- **5.3.1:** To maintain or enhance the natural and human use values, identified in Schedules 1A, 1B and 1C, that are supported by Otago's lakes and rivers;
- **5.3.2:** To maintain or enhance the spiritual and cultural beliefs, values and uses of significance to Kāi Tahu, identified in Schedule 1D, as these relate to Otago's lakes and rivers;
- **5.3.3:** To protect the natural character of Otago's lakes and rivers and their margins from inappropriate subdivision, use or development;
- **5.3.4:** To maintain or enhance the amenity values associated with Otago's lakes and rivers and their margins;
- **5.3.6:** To provide for the sustainable use and development of Otago's water bodies, and the beds and margins of Otago's lakes and rivers;
- **6.3.1:** To retain flows in rivers sufficient to maintain their life-supporting capacity for aquatic ecosystems, and their natural character;
- **6.3.2:** To provide for the water needs of Otago's primary and secondary industries, and community domestic water supplies;
- **6.3.3:** To minimise conflict among those taking water;
- **6.3.4:** To maximise the opportunity for diverse consumptive uses of water which is available for taking; and
- **6.3.6:** To minimise any adverse downstream effect of managed flows.

The Water Plan sets out policy guidance for defining allocation limits and associated minimum flow limits for surface water takes and then managing water abstractions to those limits.<sup>13</sup> Additional direction is provided to guide the allocation of water beyond primary allocation limits, known as supplementary allocation.<sup>14</sup> This water is taken at higher minimum flows than those applying to water permits within the primary allocation.

The Water Plan requires minimum flows to be applied to water permits located in catchments identified in Schedules 2A and 2B.<sup>15</sup> For catchments not identified in Schedules 2A or 2B, ORC will undertake investigations to develop a minimum flow and will apply that limit following a plan change process.

Regarding efficiency of water use, the Water Plan includes several policies that set out considerations for assessing efficiency and to inform consented allocation volumes.<sup>16</sup> When renewing existing permits to take and use water, Policy 6.4.2A directs that a consent is granted with a volume no greater than has been taken under an existing consent in at least the preceding 5 years.

With regards to consent durations for the take and use of water, Policy 6.4.19 sets out a number of matters to consider. The explanation for this policy conveys a preference for longer duration,

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<sup>13</sup> Policies 6.4.1 to 6.4.10

<sup>14</sup> Policy 6.4.9 and Policy 6.4.10

<sup>15</sup> Policies 6.4.3 to 6.4.6, 6.4.8, 6.4.9

<sup>16</sup> Policy 6.4.0A, Policy 6.4.0C, Policy 6.4.2A, Policy 6.4.2AA, Policy 6.6A.4, Policy 6.6A.5

specifically identifying that uncertainty about the future may be addressed using adaptive management provisions.

The Water Plan also sets out provisions for the damming and diverting of water.<sup>17</sup> Overall these provisions seek to control lake levels and manage the effects when managing flows.

Chapter 6 of the Water Plan contains provisions relating to the discharge contaminants and water that would apply to the renewal of deemed permits. Section 7.C sets out specific policies for discharges from consented dams. Policy 7.C.10 directs that the damming or diversion of water is to be avoided over contaminated land where it would result in contamination of water.

### 3.2.2. Summary of current issues

The Objectives in the Water Plan do not clearly provide for the outcome sought by PC7 with some of the current objectives being in conflict with the purpose of the plan change. As a result of the Ministerial investigation into the ORC's freshwater management functions, it is evident that the current Water Plan is insufficient to achieve these objectives. This creates the need for PC7 and within the plan change, a specific objective to clearly identify the outcome sought.

Under the current framework, it can be very difficult to reduce existing allocations where environmental values are significantly compromised as the Water Plan does not require reductions in allocations below actual use volumes. For catchments where allocations are based on consented volumes and no minimum flows have been set, there are few methods and little direction in the Water Plan on how to achieve the objectives, particularly Objective 6.3.1 when the required investigations have not been completed. For all applications, while there is some direction to only grant consent authorising rates of take, or volumes required for the intended use, there are no methods for determining what is reasonable for different water uses. Additionally, the policy guidance tends to be more encouraging than directive, making it more difficult to direct water users to improve practices or upgrade infrastructure to increase water use efficiency. Overall without specific amendments, there is a high probability that resources consents would be granted authorising unsustainable abstractions rates, with consented volumes higher than necessary for actual use and for long consent terms. The current Water Plan provisions therefore are likely to inhibit the ability for ORC to effectively implement the new LWRP which will give effect to the NPS-FM, by prolonging adverse ecological, social and cultural effects through the issuing of consents for long durations.

## 3.3. Development of Proposed Plan Change 7

The Council adopted the recommendations of the Minister for the Environment to prepare a plan change to provide *"an adequate interim planning and consenting framework to manage freshwater"* for the issuing of short-term consents until the new LWRP is in place. As a result, retaining the current Water Plan provisions is not considered a viable option. It is also considered a permitted activity framework for the short-term continuation of activities currently authorised under deemed permits or expiring water permits is not appropriate as this is inconsistent with the recommendation from the Minister. Additionally, it is noted that a permitted activity may not be sufficiently certain and achieve

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<sup>17</sup> Including Policy 6.5.2, Policy 6.5.3, Policy 6.5.4, Policy 6.5.5

the legal requirements to be a lawful provision. As neither of these options are viable, ORC has proceeded with developing a consenting framework.

In assessing and deciding on options for the consenting framework, the Council agreed to several key principles to inform the plan change. These principles were:

- The focus must remain on the bigger picture – the Water Plan review – the Water Permit plan change (PC7) should be as concise as required to achieve a fit for purpose management regime.
- Water allocation should be based on water use not paper allocation.
- There must be consideration of potential impacts on existing water abstractors, and existing priorities in deemed permits.
- Efficiency of time and cost for both Council applicants and other parties.
- Opportunities for data gathering that will inform the Water Plan review should be pursued.

These principles informed several outcomes the Council agreed PC7 should achieve, these were:

- All water permit applications – replacement of deemed permits and replacements of existing water permits – must be included.
- The term of any renewal should be no more than seven years, during which time the new RPS and LWRP will be operative.
- The maximum consented allocation permitted should be based on an average of recorded water use over an identified time period.
- Resource consent application requirements must be clear.
- Policies must provide strong guidance on the essential elements of consent term and water volume.

As described in Section 2 of this report, PC7 has been developed in consultation with stakeholders and the general public. During this consultation a range of options for consenting the replacement of deemed permits and expiring water permits were discussed. This consultation led to the development of three options for consideration by Council. These options are described in Table 3 below.

Table 3: Assessment of all options considered for PC7

Option	Description
<p><b>Option A</b> – One size fits all, with an alternative pathway</p>	<p>Option A provides for applications for short-term consent to be processed as a controlled activity. The controlled activity rule would include a number of targeted conditions to ensure the management of the water resource, as a minimum, ‘holds the line’ in terms of consented allocations and provides for some environmental benefit. A non-complying activity drop-out pathway is available where the controlled activity rule conditions are not met.</p> <p>The rule framework would be supported by a single new policy focused on the long-term sustainable management of surface water resources and specifically directing the avoidance of granting long-term consents, any expansion of irrigation areas or increase in the rate or volume of takes.</p>

<p><b>Option B</b> – Flexibility in specified circumstances</p>	<p>Option B includes all of Option A but provides a second consent pathway as a restricted discretionary activity for longer-term consents where there is sufficient information to demonstrate effects on the hydrology and ecology of the surface water body will be no more than minor. Where the conditions of the restricted discretionary rule are not complied with, resource consents would fall to be assessed under a non-complying activity drop out rule.</p> <p>An additional policy would be inserted to set out this alternative pathway and allow for the consideration of longer consent durations but not beyond 31 December 2035.</p>
<p><b>Option C</b> – Fully flexible (except duration)</p>	<p>Option C provides a discretionary activity rule allowing for the consideration of each application on a case by case basis with very little guidance. Option C would include a new policy focussing on the long-term sustainability of Otago’s surface water resources directing consents should not be granted beyond an expiry date of 31 December 2035.</p> <p>The conditions of the discretionary rule would be limited to holding a valid permit to be replaced, not increasing the area under irrigation or increasing the actual rate of take. Where the conditions of the rule are not complied with, resource consent applications would be assessed under a new non-complying activity rule.</p>

In determining the preferred option (PC7), Council developed a hybrid of Options A and B and included a new Objective. In accordance with Section 32(2), only the reasonably practicable option has been evaluated further in this report. ‘Reasonably practicable’ is not defined in the RMA but can include options that are:

- Regulatory and non-regulatory;
- Are targeted towards achieving the goal/objective;
- Are within the Council’s resources, duties and powers; and
- Represent a reasonable range of possible alternatives.

In identifying reasonably practicable options for PC7, there has been consideration of the matters listed above, the Council’s agreed principles and outcomes and the recommendations of the Minister for the Environment for a simple, low-cost and efficient re-consenting process.

A brief assessment of why Options A, B and C were not considered reasonably practicable is set out in Table 4 below.

*Table 4: Assessment of options as reasonably practicable*

Option	Assessment
<p><b>Option A</b> – One size fits all, with an alternative pathway</p>	<ul style="list-style-type: none"> <li>• Option A meets the Minister’s recommendation of being simple and providing for short duration consents (7 years).</li> </ul>

	<ul style="list-style-type: none"> <li>• Providing a controlled activity rule will also be low cost to consent applicants and addresses potential impacts on existing abstractors as resource consents must be granted.</li> <li>• Option A only provides a very limited opportunity to grant consents that do not meet controlled activity rule conditions, therefore there may be an adverse impact on abstractors who can demonstrate a longer consent term is appropriate.</li> <li>• A consent regime allows for on-gong monitoring of both the resource and the take.</li> </ul>
<b>Option B</b> – Flexibility in specified circumstances	<ul style="list-style-type: none"> <li>• Option 2 achieves a short-term consenting framework, with an exception pathway provided, but as a restricted discretionary activity this is likely to be more time consuming and expensive than Option A.</li> <li>• Option B is a more complex framework when compared to Option A as it provides for multiple consent pathways and greater information requirements which are not as clear as Option A.</li> <li>• This option could achieve the objective as consent duration is limited to 2035, however it would not provide for implementing the new LWRP as quickly as Option A.</li> </ul>
<b>Option C</b> – Fully flexible (except duration)	<ul style="list-style-type: none"> <li>• This option could achieve the objective as consent duration is limited to 2035, however it would not provide for implementing the new LWRP as quickly as Option A.</li> <li>• Option C is likely to be the most expensive option for consent applicant's as limited direction is provided.</li> <li>• This option does not meet the agreed outcomes for consent term or clearly specifying application requirements.</li> <li>• This option would not be simple or low cost as per the Minister's recommendation.</li> </ul>

PC7 is considered the only reasonably practicable option for achieving the objective, and the majority of the agreed outcomes of the Council and the Minister for the Environment. This option retains a simple rule framework that only consists of two rules but sets out policy direction that would enable a resource consent to be issued for a longer term where it is demonstrated any effects on the hydrology and ecology of the surface water body will be no more than minor.

### 3.4. Evaluation of the Objective of PC7

Section 32(1)(a) requires an evaluation of the extent to which the objectives of the proposal are the most appropriate way to achieve the purpose of the RMA. PC7 includes one new objective as follows:

*Transition toward the long-term sustainable management of surface water resources in the Otago region by establishing an interim planning framework to manage new water permits, and the replacement of deemed permits and water permits to take and use surface water (including groundwater considered as surface water) where those permits expire prior to 31 December 2025, until the new Land and Water Regional Plan is made operative.*

The objective is considered the most appropriate way to achieve the purpose of the Act because it will assist ORC to sustainably manage surface water (including groundwater considered as surface water) and the continued use of water to provide for social, economic and cultural wellbeing while also safeguarding the life-supporting capacity of ecosystems and avoiding, remedying and mitigation adverse effects. This objective and PC7 as a whole, is only an interim step to achieving the purpose of the RMA and giving effect to the NPS-FM, but it is a critical measure in order to achieve this purpose in a timely manner. Without the new objective, there is no driver for the policies and rules of PC7.

### 3.5. Evaluation of policies, rules and other methods of PC7

#### 3.5.1. Reasonably practicable option (PC7)

Section 32(1)(b)(i) requires an evaluation report to identify other reasonably practicable options for achieving the objectives of the amending proposal. Following assessment of the options set out above, only one reasonably practicable option has been identified to achieve the objective. This option (PC7) has been described in full below.

PC7 introduces a new objective, three new policies, rules and a schedule into the Water Plan that relate specifically to the replacement of deemed permits and water permits expiring prior to 31 December 2025 and any new application for a new consent for the take and use of water.

PC7 proposes three new policies 10A.2.1, 10A.2.2 and 10A.2.3. Policy 10A.2.1 directs that any water permits granted to replace deemed permits and water permits to take and use surface water expiring prior to 31 December 2025 will only be granted where:

- The permit being replaced is a valid permit;
- There is no increase in the area under irrigation, if water is used for irrigation;
- There is no increase in the instantaneous rate of abstraction and there is a reduction in the volume of water allocated for abstraction; and
- Any existing residual flow, minimum flow or take cessation condition is applied to the new permit.

Policies 10A.2.2 and 10A.2.3 together guide the consent durations for all new consents for the take and use of water, replacement deemed permits and existing water permits. Together these policies direct that consent durations will be no more than seven years. An exception is provided for the replacement of deemed permits and existing water permits to take and use surface water where the activity will have a no more than minor effect on the ecology and hydrology of the surface water body and the consent will expire before 31 December 2035.

PC7 proposes two new rules. Rule 10A.3.1.1 sets out a controlled activity rule for any activity currently authorised by a deemed permit or the take and use of surface water (including groundwater considered as surface water) that is currently authorised by an existing water permit that expires prior to 31 December 2025 where:

- The consent duration sought is no more than seven years;
- The permit being replaced is a valid permit;
- The application demonstrates the irrigation area (if relevant), is no greater than the area irrigated in the 2017-2018 season;

- The rate of take is no more than the average maximum take recorded between 1 July 2012 and 30 June 2017;
- Any existing residual flow, minimum flow or take cessation condition is included in the application for resource consent; and
- The volume of water taken is no more than the average maximum daily, monthly or annual volume limit (whichever one or more is applicable) recorded during the period of 1 July 2012 and 30 June 2017.

The matters of control are:

- Intake method and flow rate measures to avoid or mitigate fish entrainment; and
- The volume and rate of water taken, dammed, discharged or diverted, and the timing and frequency of the take or damming or diversion or discharge; and
- The proposed efficiency of water use and how that efficiency is to be sustained for the duration of the water permit; and
- Any requirement for the provision of fish passage; and
- The rules or operating procedures of any relevant water allocation committee that exists for the catchment; and
- The need for minimum flow, residual flow or take cessation conditions; and
- The need for a review condition; and
- Compliance monitoring; and
- The point of measurement and the method for transmitting recorded data to Council.

Resource consent applications lodged under Rule 10A.3.1.1 are to be processed and considered without public or limited notification.<sup>18</sup>

Where applications cannot comply with Rule 10A.3.1.1, the replacement of a deemed permit, or water permit to take and use surface water expiring prior to 31 December 2025 is a non-complying activity under Rule 10A.3.2.

PC7 proposes a new schedule, Schedule 10A.4 to be inserted into the Water Plan. Schedule 10A.4 describes the methodology for calculating assessed actual usage for surface water takes for irrigation purpose. Schedule 10A.4 comprises of 4 sections:

- 10A.4.1 Methodology for calculating ‘Rate of Take Limit’;
- 10A.4.2 Methodology for calculating Daily Volume Limit (m3);
- 10A.4.3 Methodology for calculating Monthly Volume Limit (m3); and
- 10A.4.3 Methodology for calculating Annual Volume Limit (m3).

The following minor and consequential amendments are also proposed:

Plan provision	Detail of proposed change
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<sup>18</sup> Limited notification to affected order holders in terms of Section 95F will be necessary, where relevant under Section 95B(3) of the RMA.

<b>Page numbers</b>	Update page numbers			
<b>Footers</b>	Change footer to read “Regional Plan: Water for Otago (Updated to <date to be inserted.>)”			
<b>Title page</b>	Change the date to read “Updated to <date to be inserted.>”			
<b>ISBN number</b>	Obtain new ISBN numbers for Regional Plan: Water for Otago			
<b>Chronicle of key events</b>	Add the following to the end of table:			
	<b>Key event</b>	<b>Date notified</b>	<b>Date decision released</b>	<b>Date operative</b>
	Plan Change 7 (Water Permits) to the Regional Plan: Water	<Date to be inserted>	<Date to be inserted>	<Date to be inserted>
<b>Section 1.4</b>	Proposed Plan Change 7 (Water Permits) provides an interim regulatory framework for the assessment of applications to replace deemed permits expiring in 2021, any other water permits and associated permits; and expiring prior to 31 December 2025, the date by which the new Land and water Regional Plan is expected to be operative. It was notified on <date to be inserted> and a total of <insert number> submissions and <insert number> further submissions were received. Following the hearing, decision on submissions received were released on <insert date> Plan Change 7 was made operative on <insert date>.			

In terms of flow and allocation, PC7 does not propose any changes to the methodology for determining the primary and supplementary allocations. The assessment of all water permits will continue in the same manner as already provided in the Water Plan, however Rules 10A.3.1 and 10A.3.2 will apply to the replacement of deemed permits and water permits expiring prior to 31 December 2025.

PC7 does not amend Policy 6.4.19 that sets out matters to consider when determining consent durations. Rather, PC7 provides an overriding policy to avoid the granting of any resource consents to take and use water for long consent terms.

PC7 does not introduce any additional provisions for the management of damming, diversion or discharge activities other than providing for the replacement of deemed permits that authorise those activities through Rules 10A.3.1 and 10A.3.2.

Overall, PC7 provides a clearer and simpler framework for assessing replacement deemed permits and water permits. PC7 is the first and a critical step in order to develop and implement a resource management framework to achieve the long-term sustainable management of Otago’s water resources. PC7 will ensure that the granting of resource consents in the short-term does not affect the timely implementation of the new RPS and new LWRP to be developed.

### 3.5.2. Efficiency and effectiveness evaluation

Section 32(1)(b)(ii) requires an evaluation report to assess the efficiency and effectiveness of the provisions (PC7) in achieving the objectives. Table 5 below identifies and assesses the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the changes proposed under PC7.



Table 5: Benefits and costs

BENEFITS	COSTS
<b>Environmental</b>	
<ul style="list-style-type: none"> <li>▪ In the short-term the environmental benefits may be minimal as a result of consented rates and volumes of take being determined by the historic water use. What it does achieve, however, is preventing the ramping up of actual water takes ahead of the comprehensive review of flow and allocation regimes as part of the Water Plan review. In other words, it will, as a minimum, see the line held firm.</li> <li>▪ PC7 will provide longer term and more significant benefits through enabling effective implementation of new LWRP, which is anticipated to fully give effect to the NPS-FM and address adverse effects of unsustainable water allocations.</li> <li>▪ The collection of data on water abstraction and use through the implementation of PC7 will enable a more informed review of the Water Plan and the development of the new LWRP to give effect to the NPS-FM.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Compared to the status quo, there are no direct environmental costs of PC7. However, some parties have identified that improvements currently underway as a part of re-consenting existing takes may be delayed.</li> </ul>
<b>Economic</b>	
<ul style="list-style-type: none"> <li>▪ PC7 provides a clearer regulatory framework which is likely to result in greater consistency in decision-making on applications for water permits which may also reduce consent processing fees.</li> <li>▪ PC7 provides a short-term transition period enabling water permit holders additional time to investigate their options to adapt to new limits that may be set under the LWRP. This may reduce overall costs to water permit holders.</li> <li>▪ PC7 does contain a pathway for achieving a longer duration permit but this is tied to ensuring environmental effects are minimised and knowledge is passed to Council on the waterbody.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Water permit holders may experience increased costs due to the requirement to obtain a short-term consent followed by additional costs for a permit under the new LWRP.</li> <li>▪ Existing monitoring and science programmes may need to be extended to inform future consent renewals.</li> <li>▪ Short-term consents may create challenges for existing consent holders as shorter consent terms might affect the ability to secure lending ("bankability") and this might impact on environmental gains (for example efficiency of water use).</li> </ul>
<b>Social</b>	
<ul style="list-style-type: none"> <li>▪ The transition period PC7 provides will have social benefits for rural communities as it allows for any adaptation that may be necessary to give effect to national directions and achieve compliance with new regional plan requirements.</li> <li>▪ There may be long-term benefits in terms of recreational uses associated with a more responsive adoption of new LWRP flow and allocation limits that better provide for recreational values.</li> <li>▪</li> </ul>	<ul style="list-style-type: none"> <li>▪ No social costs compared to status quo</li> </ul>

### Cultural

- There are no short-term cultural benefits.
- There may be long-term cultural benefits through a more responsive adoption of new LWRP flow and allocation limits that better provide for cultural values.
- No cultural costs compared to the status quo

Table 6 below assesses the effectiveness and efficiency of the proposed amendments in achieving the objectives of the proposal.

Table 6: Efficiency and effectiveness evaluation

<b>Efficiency</b>	<i>PC7 is efficient at achieving the objective of the proposal. While there are some costs to water permit holders as a result of potentially obtaining multiple consents in a short period, there does remain an option for longer duration consents. The overriding long-term benefits of the proposal outweigh those costs as PC7 enables the adoption of a new regulatory framework (LWRP) that gives effect to higher order instruments in a shorter time period. PC7 does also provide greater certainty to consent applicants of the expectations during the resource consent process and this greater certainty (via a controlled activity rule) will have an economic benefit. Overall PC7 is anticipated to ultimately result in significant environmental, social and cultural benefits for the Otago community through the efficient implementation of the new LWRP.</i>
<b>Effectiveness</b>	<i>PC7 is significantly more effective than the status quo in achieving the objective of the proposal through providing an interim framework to allow the replacement of water permits and a more responsive adoption of a new regulatory framework following the new LWRP becoming operative. In the short term, it is considered PC7 is an effective first step to the sustainable management of Otago's surface water resources as the framework allocates water on an actual use basis and ensures any minimum flow, residual flow or take cessation conditions are adhered to.</i>

### Overall evaluation of appropriateness

The cost-benefit and efficiency and effectiveness assessments above have shown that PC7 is an efficient and effective method to achieve the outcomes sought by the proposal and the new objective proposed. PC7 will, in the long-term, contribute to achieving the outcomes sought by the NPS-FM and will also mean the new RPS currently being developed will be given effect to in a shorter timeframe. While the RPS is being reviewed, it is considered PC7 will better give effect to the RPS 1998, PORPS 2016 and PORPS 2019, as well as the purpose of the RMA than the current Water Plan. In the short-term while the NPS-FM will not be fully given effect to, PC7 seeks to manage water allocation based on actual use and retaining minimum flow, residual flow or take cessation conditions on water permits.

### Risk of acting or not acting

Section 32(2)(c) of the RMA requires ORC to take into account the risk of acting or not acting if there is uncertain or insufficient information. In this case, there is not considered to be any uncertain or insufficient information. The risk of not acting is that replacement water permits could be granted for longer durations, inhibiting the ability for ORC to implement the new RPS and the LWRP in a timely manner. Not acting would also significantly impede Council's ability to address the recommendations

of the Minister for the Environment, and potentially deemed permits would expire without a tailor-made framework in place to manage the transition to water permits.

## 4. Planning context

PC7 has been prepared by ORC under the RMA. The RMA creates a hierarchy of planning instruments and directs the manner in which the provisions within these instruments must be considered when preparing a plan change. There are also a number of other statutes that are relevant to PC7. This section of the report outlines the planning context that is relevant to the development of PC7.

### 4.1. Resource Management Act 1991

The purpose of a regional plan is to assist a regional council to carry out its functions in order to achieve the purpose of the RMA.<sup>19</sup> The purpose and principles of the RMA, and the functions of ORC, are set out in the following sections of this report. ORC has been mindful of the responsibilities and obligations imposed by sections 5-8, 30, 63, 65-70 and Schedule 1 of the RMA when preparing PC7 to ensure all RMA requirements have been met. This section also sets out the relevant sections of the RMA relating to deemed permits.

#### 4.1.1. Part 2 – Purpose and Principles

The purpose of the RMA is set out in Part 2, section 5 of the RMA:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—*
  - (a) *sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
  - (b) *safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
  - (c) *avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

The RMA also sets out the following matters of national importance (in section 6), directing that all persons exercising functions and powers under the RMA recognise and provide for them:

- (a) *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) *the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga:*

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<sup>19</sup> Section 63(1), RMA

- (f) *the protection of historic heritage from inappropriate subdivision, use, and development:*
- (g) *the protection of protected customary rights:*
- (h) *the management of significant risks from natural hazards.*

Section 7 of the RMA sets out other matters to which all persons exercising functions and powers under the RMA are directed to have particular regard:

- (a) *kaitiakitanga:*
- (aa) *the ethic of stewardship:*
- (b) *the efficient use and development of natural and physical resources:*
- (ba) *the efficiency of the end use of energy:*
- (c) *the maintenance and enhancement of amenity values:*
- (d) *intrinsic values of ecosystems:*
- (f) *maintenance and enhancement of the quality of the environment:*
- (g) *any finite characteristics of natural and physical resources:*
- (h) *the protection of the habitat of trout and salmon:*
- (i) *the effects of climate change:*
- (j) *the benefits to be derived from the use and development of renewable energy.*

Section 8 of the RMA requires that persons exercising functions and powers under it shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). The Treaty principles are used in a number of statutes but are not defined in legislation. The principles relate to the obligations of the Crown under the Treaty of Waitangi and have been derived predominantly from Court of Appeal decisions in relation to cases under the State-Owned Enterprises Act 1986. The principles are:

- The two parties to the Treaty must act reasonably towards each other and in utmost faith;
- The Crown must make informed decisions (which will require consultation, but not invariably so);
- The Crown must not unreasonably impede its capacity to provide redress for proven grievances; and
- The Crown must actively protect Maori interests.

Sections 6-8 establish matters for consideration in decision-making under the RMA that contribute to the overall evaluation under section 5. There is a hierarchy across these sections, giving priority to matters of national importance under section 6 over the matters set out for consideration in sections 7 and 8. Section 6(a), (c) and (e) are particularly relevant to PC7 given the plan change manages water resources. Sections 7(a), (aa), (b), (d), (f) and (h) should also be considered alongside the Treaty principles when assessing PC7.

#### 4.1.2. Functions of ORC

Section 30 of the RMA sets out the functions of regional councils. It is extensive in nature, including a wide range of matters that relate to water. Those of relevance to PC7 include:

- Establishing, implementing and reviewing objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region (section 30(1)(a)); and

- Controlling the taking, use, damming and diversion of water, and the control of the quantity, level and flow in any water body (section 30(1)(e)); and
- Establishing rules in a regional plan to allocate the taking or use of water (other than open coastal water) (section 30(1)(fa)).

'Control' means the Council has statutory authority to regulate activities, and, if necessary, to enforce rules against individuals or organisations.

#### 4.1.3. Regional Plans

Section 63(1) of the RMA sets out the purpose of regional plans, being to assist the regional council to carry out its functions to achieve the purpose of the RMA. Sections 65 to 70 set out a number of technical and procedural matters to be followed in the preparation of a regional plan. Of most relevance are the following:

- Any change to a regional plan must be carried out in the manner set out in Schedule 1 (section 62(5)).
- When changing a regional plan, the Council must have regard to management plans and strategies prepared under other Acts, and take into account any relevant planning document recognised by an iwi authority, to the extent that their content has a bearing on the resource management issues of the region (section 66(2)(c)(i) and 66(2A)(a)).
- Regional plans must state objectives, policies, and rules (if any) (section 67(1)).
- A regional plan must give effect to any national policy statement, national planning standard, New Zealand Coastal Policy Statement and regional policy statement (section 67(3)).
- A regional plan must not be inconsistent with a water conservation order, or another regional plan for the region (section 67(4)).

Sections 68 - 70 contain specific requirements about the application of regional rules, including those related to water quality and discharges. Sections 86A - 86G specify when a rule in a proposed plan has legal effect.

#### 4.2. National Policy Statements

In accordance with section 67(3)(a) of the RMA, a regional plan must give effect to any national policy statement. Of the four<sup>20</sup> National Policy Statements that are in force, only the National Policy Statement for Freshwater Management 2014 (NPS-FM) and the National Policy Statement for Renewable Electricity Generation (NPSREG) are relevant to PC7. The relevant parts of the NPS-FM and NPSREG are set out below.

Similarly, in accordance with section 67(3)(b) of the RMA, a regional plan must give effect to any New Zealand Coastal Policy Statement. There is one New Zealand Coastal Policy Statement in force, the New Zealand Coastal Policy Statement 2010 (NZCPS). The NZCPS is not directly relevant to PC7.

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<sup>20</sup>National Policy Statement for Freshwater Management 2014 (as amended 2017; NPS-FM), National Policy Statement on Electricity Transmission (NPSET), National Policy Statement on Urban Development Capacity (NPSUDC), National Policy Statement for Renewable Electricity Generation (NPSREG).

#### 4.2.1. National Policy Statement for Freshwater Management 2014 (as amended 2017; NPS-FM)

The NPS-FM came into effect on 1 August 2014 and amendments made in August 2017 took effect on 7 September 2017. The matter of national significance that the NPS-FM relates to is the management of freshwater through a framework that considers and recognises Te Mana o Te Wai as an integral part of freshwater management.

Broadly, the NPS-FM sets the direction for freshwater quality and quantity management in New Zealand. Regional councils are directed under the RMA to give effect to the requirements of the NPS-FM when developing statutory plans and plan changes. The NPS-FM requires the management of freshwater quantity to avoid any further over-allocation<sup>21</sup> and phase out existing over-allocation within a defined timeframe.

The NPS-FM allows councils until 2025 (or 2030 in some circumstances) to fully implement all policies of the NPS-FM. ORC adopted a Progressive Implementation Programme (PIP) in October 2018, setting out a time-staged process for implementing the NPS-FM in the Otago region.<sup>22</sup> The PIP includes developing a new framework for water management in Otago, starting with establishing FMUs and a review of the Water Plan which according to the PIP is to be notified by December 2025. The Minister for the Environment has, however, provided recommendations, accepted by ORC, that a new LWRP is to be operative by 31 December 2025. The deadline of 31 December 2025 aligns with the timelines set out in the proposed NPS-FM 2019. The proposed NPS-FM 2019 however requires final decisions on policy statements and plans necessary to give effect to the proposed NPS-FM are publicly notified by 31 December 2025 rather than regional plans or plan changes being operative. Related to the NPS-FM 2019, the proposed Resource Management Amendment Bill 2019 sets out a separate process for freshwater planning (among other amendments) intended to provide a framework for regional councils to implement the NPS-FM 2019. The Bill provides for limited rights of appeal from decisions.

Table 7 below provides an assessment of PC7 against the NPS-FM provisions that are relevant given the narrow scope of proposed PC7.

Table 7: Assessment of NPS-FM

Provision(s)	Assessment
<p><b>Objective AA1</b> To consider and recognise Te Mana o te Wai in the management of fresh water.</p> <p><b>Policy AA1</b> By every regional council making or changing regional policy statements and plans to consider and recognise Te Mana o te Wai, noting that:</p> <p>a) te Mana o te Wai recognises the connection between water and the broader environment – Te Hauora o te Taiao (the health of the environment), Te Hauora o te Wai (the health of the waterbody) and Te Hauora o te Tangata (the health of the people); and</p>	<p>Te Mana o te Wai is the integrated and holistic well-being of a freshwater body. The NPS-FM anticipates that each community will decide what Te Mana o te Wai means to them at a freshwater management unit scale, based on their unique relationship with freshwater in their area.</p> <p>When recognising Te Mana o te Wai, the health and wellbeing of the waterbody is given first priority and is to be at the forefront of decision-making. Only when the health of the waterbody is sustained, can other out of stream uses be considered.</p>

<sup>21</sup> Defined in the NPS-FM as: *the situation where the resource a) has been allocated to users beyond a limit; or b) is being used to a point where a freshwater objective is no longer being met. This applies to both water quantity and quality.*

<sup>22</sup> Progressive Implementation Plan: <https://goodwaterinotago.org.govt.nz/national-policy-statements>

<p>b) values identified through engagement and discussion with the community, including tangata whenua, must inform the setting of freshwater objectives and limits.</p>	<p>The Water Plan does not currently recognise Te mana o Te Wai as it was prepared before the provisions relating to Te Mana o Te Wai were introduced to the NPS-FM. The narrow scope of PC7 does not enable the Water Plan to fully recognise Te Mana o Te Wai but does provide a first step. It is anticipated these provisions will be given full effect with the notification of the new LWRP by December 2023.</p>
<p><b>Objective A1</b> To safeguard:</p> <p>a) the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems, of fresh water; and</p> <p>b) the health of people and communities, as affected by contact with fresh water; in sustainably managing the use and development of land, and of discharges of contaminants.</p> <p><b>Objective A2</b> The overall quality of fresh water within a freshwater management unit is maintained or improved while:</p> <p>a) protecting the significant values of outstanding freshwater bodies;</p> <p>b) protecting the significant values of wetlands; and</p> <p>c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.</p> <p><b>Objective A3</b> The quality of fresh water within a freshwater management unit is improved so it is suitable for primary contact more often, unless:</p> <p>a) regional targets established under Policy A6(b) have been achieved; or</p> <p>b) naturally occurring processes mean further improvement is not possible.</p> <p><b>Objective A4</b> To enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing freshwater quality, within limits.</p> <p><b>Policy A3</b> By regional councils:</p> <p>a) <i>not applicable</i></p> <p>b) where permissible, making rules requiring the adoption of the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of any discharge of a contaminant into fresh water, or onto or into land in circumstances that may result in that contaminant (or, as a result of any natural process from the discharge of that contaminant, any other contaminant) entering fresh water.</p>	<p>The provisions of PC7 largely relate to water quantity rather than water quality, however some deemed permits authorise discharges, for example bywash water. Water quantity management also plays a role in water quality outcomes; therefore, ORC is required to be mindful in the management of water allocation to the capacity of waterbodies to absorb discharges.</p> <p>PC7 seeks to manage the abstraction of surface water flows by allocating water to water users on an actual use basis with the consented allocation to be reduced where is currently exceeds actual use. In addition, any residual, minimum flow or take cessation conditions on existing permits are to be carried over to new permits and this will contribute to preventing any further degradation of water quality. For the renewal of permits that authorise the discharge of water, PC7 does not propose any significant changes to the current framework, therefore the direction set out in the Water Plan will continue to apply.</p> <p>PC7 does not fully give effect to the NPS-FM as it is anticipated that these objectives and policies will be given full effect to as part of the longer-term work programme ORC is currently undertaking to notify a new LWRP. PC7 does however contribute to giving effect to the NPS-FM in the longer term by enabling a more responsive implementation of the new LWRP.</p>

<p><b>Policy A6</b> By every regional council considering, when giving effect to this national policy statement, how to enable communities to provide for their economic well-being, including productive economic opportunities, while managing within limits.</p>	
<p><b>Objective B1</b> To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the taking, using, damming, or diverting of fresh water.</p> <p><b>Objective B2</b> To avoid any further over-allocation of freshwater and phase out existing over-allocation.</p> <p><b>Objective B3</b> To improve and maximise the efficient allocation and efficient use of water.</p> <p><b>Objective B4</b> To protect significant values of wetlands and of outstanding freshwater bodies.</p> <p><b>Objective B5</b> To enable communities to provide for their economic well-being, including productive economic opportunities, in sustainably managing freshwater quantity, within limits.</p> <p><b>Policy B1</b> By every regional council making or changing regional plans to the extent needed to ensure the plans establish freshwater objectives in accordance with Policies CA1-CA4 and set environmental flows and/or levels for all freshwater management units in its region (except ponds and naturally ephemeral water bodies) to give effect to the objectives in this national policy statement, having regard to at least the following: a) the reasonably foreseeable impacts of climate change; b) the connection between water bodies; and c) the connections between freshwater bodies and coastal water.</p> <p><b>Policy B2</b> By every regional council making or changing regional plans to the extent needed to provide for the efficient allocation of fresh water to activities, within the limits set to give effect to Policy B1.</p> <p><b>Policy B4</b> By every regional council identifying methods in regional plans to encourage the efficient use of Water.</p>	<p>The current Water Plan does not give full effect to these provisions of the NPS-FM as not all waterbodies have environmental flow and allocation limits set to achieve Objective B1. The current framework does prohibit further allocation where the consented allocation exceeds the limit set in the Water Plan but the methods for reducing over-allocation are not effective. The Water Plan requires a reduction in allocation only to the point where consented allocation does not exceed actual use. There is also no timeframe for phasing out over-allocation. Therefore, enabling the replacement of deemed permits and expiring water permits is unlikely to give full effect to Objective B1, Policy B1 and Policy B6.</p> <p>However, it is expected that this objective and policies will be given effect to as part of the longer-term work programme to prepare a new regional plan. Without PC7, there are risks that replacement deemed permits and water permits could be granted for long durations authorising unsustainable abstractions and inhibiting the ability to give effect to the NPS-FM.</p> <p>The provisions of PC7 go some way to give effect to Policy B3 by requiring the replacement water permits to be issued subject to reduced allocation volumes and based on consented rate and volumes on actual use data. Again, Policy B3 will be given full effect through the new LWRP. PC7 provides for the economic wellbeing of the deemed permit holders by providing a clear regulatory framework enabling the replacement of deemed permits in a consistent fashion.</p>



<p><b>Policy B6</b> By every regional council setting a defined timeframe and methods in regional plans by which over-allocation must be phased out, including by reviewing water permits and consents to help ensure the total amount of water allocated in the freshwater management unit is reduced to the level set to give effect to Policy B1.</p> <p><b>Policy B8</b> By every regional council considering, when giving effect to this national policy statement, how to enable communities to provide for their economic well-being, including productive economic opportunities, while managing within limits.</p>	
<p><b>Objective C1</b> To improve integrated management of fresh water and the use and development of land in whole catchments, including the interactions between fresh water, land, associated ecosystems and the coastal environment.</p> <p><b>Policy C1</b> By every regional council: a) recognising the interactions, ki uta ki tai (from the mountains to the sea) between fresh water, land, associated ecosystems and the coastal environment; and b) managing fresh water and land use and development in catchments in an integrated and sustainable way to avoid, remedy or mitigate adverse effects, including cumulative effects.</p> <p><b>Policy C2</b> By every regional council making or changing regional policy statements to the extent needed to provide for the integrated management of the effects of the use and development of: a) land on fresh water, including encouraging the co-ordination and sequencing of regional and/or urban growth, land use and development and the provision of infrastructure; and b) land and fresh water on coastal water.</p>	<p>PC7 does not directly consider land uses. It is anticipated that these objectives and policies of the NPS-FM will be given effect to as part of the longer-term work programme ORC is currently undertaking to notify a new LWRP.</p>
<p><b>Objective CC1</b> To improve information on freshwater takes and sources of freshwater contaminants, in order to: a) ensure the necessary information is available for freshwater objective and limit setting and freshwater management under this national policy statement; and b) ensure information on resource availability is available for current and potential resource users.</p> <p><b>Policy CC1</b> By every regional council: a) establishing and operating a freshwater quality accounting system and a freshwater quantity accounting system for those freshwater</p>	<p>PC7 does not give full effect to these provisions but does require resource consent applicants to submit water usage data as part of their application to inform consented rates and volumes of abstraction. Additionally, the matters of control include the point of measurement and method for transmitting recorded data to Council. This information will aid in the review of the Water Plan and preparation of the LWRP.</p>

<p>management units where they are setting or reviewing freshwater objectives and limits in accordance with Policy A1, Policy B1, and Policies CA1-CA4; and</p> <p>b) maintaining a freshwater quality accounting system and a freshwater quantity accounting system at levels of detail that are commensurate with the significance of the freshwater quality and freshwater quantity issues, respectively, in each freshwater management unit.</p> <p><b>Policy CC2</b> By every regional council taking reasonable steps to ensure that information gathered in accordance with Policy CC1 is available to the public, regularly and in a suitable form, for the freshwater management units where they are setting or reviewing, and where they have set or reviewed, freshwater objectives and limits in accordance with Policy A1, Policy B1, and Policies CA1-CA4.</p>	
<p><b>Objective D1</b> To provide for the involvement of iwi and hapū, and to ensure that tangata whenua values and interests are identified and reflected in the management of fresh water including associated ecosystems, and decision-making regarding freshwater planning, including on how all other objectives of this national policy statement are given effect to.</p> <p><b>Policy D1</b> Local authorities shall take reasonable steps to:</p> <p>a) a) involve iwi and hapū in the management of fresh water and freshwater ecosystems in the region;</p> <p>b) work with iwi and hapū to identify tangata whenua values and interests in fresh water and freshwater ecosystems in the region; and</p> <p>c) reflect tangata whenua values and interests in the management of, and decision-making regarding, fresh water and freshwater ecosystems in the region.</p>	<p>Kāi Tahu, through Aukaha, have been involved in the preparation of this Plan Change. Section 2 of this report outlines the specific stages at which Kāi Tahu have been consulted prior to notification of PC7. Feedback from Aukaha has been taken into account when drafting provisions in particular.</p>

#### 4.2.2. National Policy Statement for Renewable Electricity Generation (NPSREG)

The National Policy Statement for Renewable Electricity Generation (NPSREG) came into effect on 12 May 2011 and its purpose is to recognise renewable electricity generation activities and the benefits of renewable electricity generation as matters of national significance under the RMA. The NPSREG sets out an objective and 12 policies that direct how renewable energy generation activities are to be recognised. Twenty-three resource consents related to power generation will expire between March 2020 and 31 December 2025. None of the PC7 provisions provide for power generation specifically, but PC7 provides the framework to renew those expiring resource consents used for hydroelectricity generation. The existing provisions of the Water Plan also do not consider renewable electricity

generation in significant detail other than some specific provisions related to hydroelectricity generation in the Waitaki catchment.

### 4.3. National Environmental Standards

In accordance with section 43B(3) of the RMA, a rule in a regional plan is unable to be more lenient than a national environmental standard unless the national environmental standard expressly states that a rule can be more lenient. There are currently six national environmental standards in force:

- National Environmental Standards for Air Quality 2004 (NESAQ);
- National Environmental Standard for Sources of Human Drinking Water 2007 (NESHWDW);
- National Environmental Standards for Telecommunication Facilities 2008 (NESTF);
- National Environmental Standard for Electricity Transmission Activities 2009 (NESETA);
- National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NESCS); and
- National Environmental Standards for Plantation Forestry (NESPF).

No national environmental standards are relevant to PC7.

### 4.4. National Planning Standards

Under section 67(3)(ba) of the RMA, a regional plan must give effect to a national planning standard. National planning standards have been introduced to improve the consistency of council plans and policy statements. The Minister for the Environment and the Minister of Conservation released the first set of national planning standards on 5 April 2019. The first set of national planning standards aim to provide national consistency for the structure, form, definitions and electronic accessibility of RMA plans and policy statements to make them more efficient and easier to prepare and use.

PC7 does not give effect to the national planning standards, as the standards apply to regional plans (not plan changes), and regional councils are not required to implement the standards until 10 years after their gazettal date (unless a regional plan is notified earlier).

### 4.5. Water Conservation Orders

Under section 67(4)(a), a regional plan must not be inconsistent with a Water Conservation Order (WCO). WCO are regulations made by the Government to recognise and sustain outstanding amenity or intrinsic values of waters. Once operative, WCO place restrictions on the granting of some types of resource consents where they affect the water body subject to the order. In Otago, there is one water conservation orders in force on the Kawarau River.

#### 4.5.1. Water Conservation (Kawarau) Order 1997

This order recognises that the Kawarau River and its tributaries have the following outstanding amenity and intrinsic values:

- natural and physical qualities and characteristics that contribute to:
  - people's appreciation of pleasantness of waters
  - aesthetic coherence

- cultural attributes
- recreational attributes
- biological and genetic diversity of ecosystems
- essential characteristics that determine the ecosystem's integrity, form, functioning and resilience

As the protected waters are considered to be in their natural state, they must be preserved as far as possible in that state. For waters not in their natural state, the order recognises that they still have the following outstanding characteristics:

- as a habitat for terrestrial and aquatic organisms
- as a fishery
- for its wild, scenic and other natural characteristics
- for scientific values
- for recreational or historical purposes
- for significance in accordance with tikanga Māori

The order places a number of restrictions on the damming, diversion and quality of water in the protected waters in order to preserve or protect the values above, which affects ORC's ability to grant resource consents for some activities. There are some exemptions for particular activities listed in the order.

Some expiring deemed permits and water permits are located in catchments where the WCO applies. PC7 does not introduce any changes that affect the consistency with the WCO which is already addressed under the current Water Plan. The full review of the Water Plan and development of the LWRP will provide an opportunity to consider the overall resource management framework for the Kawarau River and its tributaries to ensure the new regional plan is not inconsistent with the WCO.

#### 4.6. Lake Wanaka Preservation Act 1973

When exercising functions under the RMA, including the development of regional plans or plan changes, ORC is required to have regard to the purposes of the Lake Wanaka Preservation Act 1973 and shall give effect to the policy of the government in relation to those functions as communicated by the Minister of Conservation.<sup>23</sup>

The Lake Wanaka Preservation Act 1973 has the following purposes:

- To prevent the water in the body of the lake from being impounded or controlled by, or, as far as possible, obstructed by, any works except in an emergency;
- To prevent the natural rate of flow of lake water between the outlet of the lake which forms the source of the Clutha River and the confluence of that river and the Cadrona River from being varied or controlled by any works except in an emergency;
- To preserve, as far as possible, the water levels of the lake and its shoreline in their natural state; and
- To maintain and, as far as possible, to improve the quality of water in the lake.

As with the Kawarau River WCO, PC7 does not introduce any changes that affect the consistency with the Lake Wanaka Preservation Act. The full review of the RPS and Water Plan, provides an opportunity

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<sup>23</sup> Clause 8, Lake Wanaka Preservation 8.

to consider the overall resource management framework and whether any improvements are required to align with this legislation.

#### 4.7. Regional Policy Statements

Under section 67(3), a regional plan must give effect to any regional policy statement. Under section 66(2)(a), a regional council must also have regard to any proposed regional policy statement. In Otago, there are currently three relevant regional policy statements:

- Regional Policy Statement for Otago 1998 (RPS 1998);
- Proposed Otago Regional Policy Statement 2016 (PRPS); and
- Partially Operative Otago Regional Policy Statement 2019 (PORPS).

The RPS 1998 is partially operative as some provisions have been revoked and are replaced by provisions in the PORPS 2019. The PRPS 2016 and PORPS 2019 are two versions of the same document: the PORPS 2019 contains all of the provisions that are beyond challenge and have been made operative while the PORPS 2016 contains the provisions still subject to appeal and therefore not operative. Generally, the most relevant provisions for PC7 have not been made operative and so are contained in the RPS 1998 and the PRPS 2016. Greater weight should be afforded to the provisions of the PRPS 2016 given how far through the planning process it is (under appeal) and the fact that it will, in time, replace the RPS 1998 entirely.

##### 4.7.1. Regional Policy Statement for Otago 1998 (RPS 1998)

Chapter 6: Water is the only operative chapter of the RPS 1998 that is relevant to PC7. The applicable provisions and an assessment of PC7 against them is set out in Table 8 below. These provisions are operative and must be given effect to by PC7.

Table 8: Assessment of RPS 1998

Provision(s)	Assessment
<b>Chapter 6: Water</b>	
<p><b>Objective 6.4.1</b> To allocate Otago’s water resources in a sustainable manner which meets the present and reasonably foreseeable needs of Otago’s people and communities.</p> <p><b>Objective 6.4.2</b> To maintain and enhance the quality of Otago’s water resources in order to meet the present and reasonably foreseeable needs of Otago’s communities.</p> <p><b>Objective 6.4.3</b> To safeguard the life-supporting capacity of Otago’s water resources through protecting the quantity and quality of those resources.</p> <p><b>Objective 6.4.4</b> To maintain and enhance the ecological, intrinsic, amenity and cultural values of Otago’s water resources.</p> <p><b>Objective 6.4.8</b></p>	<p>PC7 provides an interim solution to ensure that there is effective future management of Otago’s water resources once the new LWRP is operative. The purpose of PC7 is to provide a framework to ensure that new and replacement water permits do not lock in unsustainable water allocations for a long time period.</p> <p>PC7 introduces provisions to guide decision making on allocating volumes of water for individual uses that are based on historical water use.</p> <p>PC7 does not set catchment flow and allocation limits.</p>

<p>To protect areas of natural character, outstanding natural features and landscapes and the associated values of Otago's wetlands, lakes, rivers and their margins.</p> <p><b>Policy 6.5.2</b> To allocate water in areas of Otago where there is or potentially will be insufficient water supplies through: (a) Considering the need to protect instream amenity and habitat values; and (b) Considering the needs of primary and secondary industry; and (c) <i>revoked</i> (d) Considering the extent to which adverse effects can be avoided, remedied or mitigated.</p> <p><b>Policy 6.5.3</b> To promote efficient consumptive water use through: (a) Promoting water user practices which minimise losses of water before, during and after application; and (b) Promoting water use practices which require less water; and (c) Promoting incentives for water users to use less water.</p> <p><b>Policy 6.5.4</b> To investigate and, where appropriate, set minimum flow levels and flow regimes for Otago water bodies and maximum and minimum lake levels to protect any of the following: (a) The needs of Otago's communities; (b) <i>revoked</i> (c) Lake margin stability; (d) The natural character of the water body; (e) Habitats of indigenous fauna and flora; (f) Amenity values; (g) Intrinsic values of ecosystems; (h) Salmon or trout habitat; (i) Outstanding natural features or landscapes.</p> <p><b>Policy 6.5.5</b> To promote a reduction in the adverse effects of contaminant discharges into Otago's water bodies through: (a) Adopting the existing water quality of Otago's water bodies as a minimum acceptable standard; and (b) Investigating and where appropriate, enhancing water quality so that as a minimum standard it is suitable for contact recreation and aquatic life where: (i) There is a high public interest in, or use of the water; or (ii) <i>Revoked</i> (iii) There is a particular value to be maintained or enhanced; or (iv) There is a direct discharge containing human sewage or wastes from commercial or industrial activities; and (c) Requiring that all discharges into Otago's water bodies maintain the standard for the receiving waters after reasonable mixing; and (d) Promoting discharges to land where practicable and where there are no significant adverse effects on groundwater or surface water resources, or soil; and</p>	
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<p>(e) Preparing contingency responses for accidental pollution spills; and</p> <p>(f) Investigating and addressing the effects of diffuse source discharges on water quality; while considering financial and technical constraints.</p> <p><b>Policy 6.5.6</b> To protect Otago’s remaining significant wetlands from the effects of any activity except:</p> <p>(a) Where such activities can be shown to have no significant adverse effects on:</p> <ul style="list-style-type: none"> <li>(i) Community needs; or</li> <li>(ii) <i>Revoked</i></li> <li>(iii) The natural hydrological characteristics of the wetland; or</li> <li>(iv) The natural character of the water body; or</li> <li>(v) Amenity values; or</li> <li>(vi) Intrinsic values of ecosystems or</li> <li>(vii) Salmon or trout habitat; or</li> </ul> <p>(b) Where alternative habitats of a similar or improved nature are provided in compensation for any loss of habitat.</p>	
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#### 4.7.2. Proposed Otago Regional Policy Statement 2016 (PRPS)

There is only one chapter of the PRPS (2016) that is relevant to PC7, Chapter 3: Otago has high quality natural resources and ecosystems.

The relevant provisions from Chapter 3 and an assessment of PC7 against them is set out in Table 9 below. These provisions are not yet operative and must be paid particular regard by ORC, however they have been subject to mediation on appeals and those agreements have been approved by the Environment Court.

Table 9: Assessment of PRPS 2016

Provision(s)	Assessment
<b>Chapter 3: Otago has high quality natural resources and ecosystems</b>	
<p><b>Objective 3.1</b> The values (including intrinsic values) of ecosystems and natural resources are recognised and maintained or enhanced where degraded.</p> <p><b>Policy 3.1.1</b> Safeguard the life-supporting capacity of fresh water and manage fresh water to:</p> <ul style="list-style-type: none"> <li>a) Maintain good quality water and enhance water quality where it is degraded, including for: <ul style="list-style-type: none"> <li>i. Important recreation values, including contact recreation; and</li> <li>ii. Existing drinking and stock water supplies;</li> </ul> </li> <li>b) Maintain or enhance aquatic: <ul style="list-style-type: none"> <li>i. Ecosystem health;</li> <li>ii. Indigenous habitats; and</li> <li>iii. Indigenous species and their migratory patterns;</li> </ul> </li> <li>c) Avoid aquifer compaction and seawater intrusion;</li> <li>d) Maintain or enhance, as far as practicable:</li> </ul>	<p>PC7 on its own will not give effect to these provisions of the PRPS. It does however enable ORC to ‘hold the line’ and will prevent locking in unsustainable resource use for long durations.</p>

<ul style="list-style-type: none"> <li>i. Natural functioning of rivers, lakes and wetlands, their riparian margins, and aquifers;</li> <li>ii. Coastal values supported by fresh water;</li> <li>iii. The habitat of trout and salmon unless detrimental to indigenous biological diversity; and</li> <li>iv. Amenity and landscape values of rivers, lakes and wetlands;</li> </ul> <p>e) Control the adverse effects of pest species, prevent their introduction and reduce their spread;</p> <p>f) Avoid, remedy or mitigate the adverse effects of natural hazards, including flooding and erosion; and</p> <p>g) Avoid, remedy or mitigate adverse effects on existing infrastructure that is reliant on fresh water.</p> <p><b>Policy 3.1.3</b> Ensure the efficient allocation and use of water by undertaking all of the following:</p> <p>a) Requiring that the volume of water allocated does not exceed what is necessary for its efficient use;</p> <p>b) Encouraging the development or upgrade of infrastructure that increases use efficiency.</p> <p><b>Policy 3.1.4</b> Manage for water shortage by undertaking all of the following:</p> <p>a) Encouraging collective coordination and rationing of the take and use of water when river flows or aquifer levels are lowering, to avoid breaching any minimum flow or aquifer level restriction;</p> <p>b) Encouraging water harvesting and storage, to reduce demand on water bodies during periods of low flows.</p>	
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#### 4.7.3. Partially Operative Otago Regional Policy Statement 2019 (PORPS)

There are four operative chapters of the PORPS that are relevant for PC7:

- Chapter 1: Resource Management in Otago is integrated;
- Chapter 2: Kāi Tahu values and interests are recognised and kaitiakitaka is expressed;
- Chapter 4: Communities in Otago are resilient, safe and healthy; and
- Chapter 5: People are able to use and enjoy Otago’s natural and built environment.

The relevant provisions from these chapters and an assessment of PC7 against them is set out in Table 10 below. These provisions are operative and must be given effect to by the Plan Changes.

Table 10: Assessment of PORPS 2019

Provision(s)	Assessment
<b>Chapter 1: Resource management in Otago is integrated</b>	
<p><b>Objective 1.1</b> Otago’s resource are used sustainably to promote economic, social and cultural wellbeing for its people and communities.</p> <p><b>Policy 1.1.1</b> Provide for the economic wellbeing of Otago’s people and communities by enabling the resilient and sustainable use and development of natural and physical resources.</p>	<p>PC7 is a narrow plan change to address a very specific issue. On its own it does not give effect to these policies; it does not however contradict the outcomes sought. PC7 balances cultural, social and economic values through providing a clear pathway to replace deemed permits whilst also addressing the</p>



<p><b>Policy 1.1.2</b> Provide for the social and cultural wellbeing and health and safety of Otago’s people and communities when undertaking the subdivision, use, development and protection of natural and physical resources by all of the following: a) Recognising and providing for Kāi Tahu values; b) Taking into account the values of other cultures; c) Taking into account the diverse needs of Otago’s people and communities d) Avoiding significant adverse effects of activities on human health; e) Promoting community resilience and the need to secure resources for the reasonable needs for human wellbeing; f) promoting good quality and accessible infrastructure and public services.</p> <p><b>Objective 1.2</b> Recognise and provide for the integrated management of natural and physical resources to support the wellbeing of people and communities in Otago.</p> <p><b>Policy 1.2.1</b> Achieve integrated management of Otago’s natural and physical resources, by all of the following: a) Coordinating the management of interconnected natural and physical resources; b) Taking into account the impacts of management of one natural or physical resource on the values of another, or on the environment; c) Recognising that the value and function of a natural or physical resource may extend beyond the immediate, or directly adjacent, area of interest; d) Ensuring that resource management approaches across administrative boundaries are consistent and complementary; e) Ensuring that effects of activities on the whole of a natural or physical resource are considered when that resource is managed as subunits f) Managing adverse effects of activities to give effect to the objectives and policies of the Regional Policy Statement. g) Promoting health ecosystems and ecosystem Services; h) Promoting methods that reduce or negate the risk of exceeding sustainable resource limits.</p>	<p>potential to ‘lock in’ unsustainable water allocation.</p>
<p><b>Chapter 2: Kāi Tahu values and interests are recognised and kaitiakitaka is expressed</b></p>	
<p><b>Objective 2.2</b> Kāi Tahu values, interests and customary resources are recognised and provided for.</p> <p><b>Policy 2.2.1</b> Manage the natural environment to support Kāi Tahu wellbeing by all of the following: (a) Recognising and providing for their customary uses and cultural values in Schedules 1A and B; and (b) Safe-guarding the life-supporting capacity of natural resources.</p>	<p>PC7 seeks to provide for the Kāi Tahu values in water by allowing a more responsive adoption of the new RPS and LWRP once developed.</p>
<p><b>Chapter 4: Communities in Otago are resilient, safe and healthy</b></p>	

<p><b>Objective 4.3</b> Infrastructure is managed and developed in a sustainable way.</p> <p><b>Policy 4.3.2</b> Recognise the national and regional significance of all of the following infrastructure:</p> <ul style="list-style-type: none"> <li>a. Renewable electricity generation activities, where they supply the National Grid or local distribution network;</li> <li>b. National Grid;</li> <li>c. Electricity sub-transmission infrastructure;</li> <li>d. Telecommunication and radiocommunication facilities;</li> <li>e. Roads classified as being of national or regional importance;</li> <li>f. Ports and airports and associated navigation infrastructure;</li> <li>g. Defence facilities;</li> <li>h. Rail infrastructure;</li> <li>i. Municipal infrastructure.</li> </ul> <p><b>Policy 4.3.3</b> Provide for the functional needs of infrastructure that has regional or national significance.</p>	<p>While PC7 does not specifically provide for renewable generation activities, the interim framework to renew existing consents for electricity generation is consistent with these provisions.</p>
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#### 4.8. Regional Plans

Under section 67(4)(b), a regional plan must not be inconsistent with any other regional plan for the region. There are four regional plans in place in Otago:

- Regional Plan: Water for Otago (the Water Plan);
- Regional Plan: Waste for Otago (the Waste Plan);
- Regional Plan: Air for Otago (the Air Plan); and
- Regional Plan: Coast for Otago (the Coast Plan).

##### 4.8.1. The Water Plan

The Water Plan manages all other aspects of freshwater use in Otago. PC7 seeks to provide for the specific management of deemed permits and replacement water permits expiring prior to 31 December 2025, with the provisions of PC7 to be inserted into the Water Plan. PC7 is therefore not inconsistent with the Water Plan.

##### 4.8.2. The Waste Plan

The Waste Plan was prepared to manage all aspects of waste in Otago. There are no matters in PC7 that relate to the management of waste, therefore none of the provisions are inconsistent with the Waste Plan.

#### 4.8.3. The Air Plan

The Air Plan contains provisions managing the discharge of contaminants to air. There are no matters in PC7 that relate to discharges to air, therefore none of the provisions are inconsistent with the Air Plan.

#### 4.8.4. The Coast Plan

The Coast Plan sets out the regulatory framework for the integrated and sustainable management of Otago's coastal marine area. There are no matters in PC7 that specifically relate to the coastal marine area, therefore none of the provisions are inconsistent with the Coast Plan.

### 4.9. Iwi Management Plans

Section 66(2A)(a) requires the regional council to take into account any relevant planning document that is recognised by an iwi authority and that is lodged with the regional council. There is one iwi management plan lodged with ORC: the Kāi Tahu ki Otago Natural Resources Management Plan 2005.

Section 5.3 of the Plan focuses on Wai Māori. Some of the issues of concern include:

- Lack of adequate minimum flows that provide for Kāi Tahu ki Otago cultural values;
- Setting of minimum flows may not appropriately consider social, biological and cultural needs;
- Inefficient irrigation methods and reluctance to consider alternatives;
- Volume of some extractions being more than is required;
- Cumulative effects of water extractions,
- Over-allocation of water resources;
- Mining privileges that allow for complete dewatering; and
- Long duration water take consents.

Section 5.3.3 contains the Wai Māori General Objectives, the following of which are relevant to PC7:

- The spiritual and cultural significance of water to Kāi Tahu ki Otago is recognised in all water management;
- The waters of the Otago Catchment are healthy and support Kāi Tahu ki Otago customs; and
- Flow regimes and water quality standard are consistent with the cultural values of Kāi Tahu ki Otago and are implemented throughout the Otago Region and lower Waitaki Catchment.

Section 5.3.4 contains the Wai Māori General Policies that include, of most relevance to PC7:

- To protect and restore the mauri of all water (Policy 4);
- To promote to the Otago Regional Council and Environment Canterbury minimum flow levels, flow regimes, lake levels and lake operating levels for lakes and rivers that recognise and provide for Kāi Tahu ki Otago cultural values and the healthy functioning of associated ecosystem (Policy 7);
- To require that resource consent applicants seek only the amount of water actually required for the purpose specified in the application (Policy 22);
- To require that all water takes are metered and reported on, and information be made available upon request to Kāi Tahu ki Otago (Policy 23);
- To oppose the granting of water take consents for 35 years. Consistent with a precautionary approach, either a review clause or a reduced term may be sought (Policy 25);

- To encourage those that extract water for irrigation to use the most efficient method of application. Flood irrigation, border dyke and contour techniques are less likely to be supported than spray irrigation techniques (Policy 26);
- To require that a consent term for water extraction for irrigation be of 5-10 years where Kā Papatipu Rūnaka considers the method of irrigation to be inefficient to allow for an upgrade to a more efficient method (Policy 27);
- To discourage over-watering (Policy 28); and
- To encourage irrigation to occur at times when winds are light and evaporation low (Policy 29).

The provisions of the Kāi Tahu ki Otago Natural Resources Management Plan have been taken into account when preparing PC7.

#### 4.10. Other Management Plans

Section 66(2)(c)(i) requires regional councils to have regard to any management plans and strategies prepared under other Acts.

##### 4.10.1. Otago Sports Fish and Game Management Plan 2015-2025

The Conservation Act 1987 requires each Fish and Game Council to prepare any sports fish and game management plans that are necessary for the management of sports fish and game birds within its region of jurisdiction, for approval by the Minister of Conservation. There is one Fish and Game Council that falls wholly within the Otago region: the Otago Fish and Game Council. There is one management plan produced for Otago: the Otago Sports Fish and Game Management Plan 2015-2025. Most relevant to PC7 is the outcome and the issues, objectives and policies for habitat protection and management. The outcome for this topic is:

*Water quality ranges between good and excellent in Otago rivers, lakes and wetlands. River flows and lake or wetland water levels combine with the natural characteristics of waterways to support natural ecosystems functioning at a level that supports productive and diverse fish and game populations. Rivers are swimmable, fishable, and safe for food gathering. Otago's wetlands are improving in terms of quality, diversity and species productivity and the overall area of wetlands is expanding, underpinned by the regional focus on protection of regionally significant and other smaller wetlands, as well as an active programme of wetland creation on private land. Degraded headwater wetlands have been restored and contribute to maintenance of summer low flows in catchments downstream. Overall, rivers and wetlands are highly valued by the public for their intrinsic qualities and amenity values. (p.35)*

Policy 6.2.8 specifically addresses the replacement resource consent process for deemed permits and states:

*The transition from mining privileges to RMA resource consents poses significant challenges to Otago Fish and Game and Otago Regional Council for some Central Otago catchments. A strategic and hands on approach to managing water allocation in these catchments if instream values are to be satisfactorily restored.*

Policy 6.4.19 specifically addresses resolving overallocation issues in relation to deemed permits and states:

*Place a priority on resolving over allocation issues in Central Otago rivers relating to deemed permits in order to restore habitats for sports fish. The potential of on-farm water storage should be considered in resolving over-allocation issues.*

This management plan has been given regard in the preparation of these Plan Changes, noting that it establishes management frameworks for Fish and Game and its staff to ensure the sustained use of sports fish and game bird resources for anglers and hunters in the region.

## 5. References

Skelton, Peter (2019) *Investigation of Freshwater Management and Allocation Functions at Otago Regional Council - Report to the Minister for the Environment*. Wellington: Ministry for the Environment.

**Attachment A**

**Comparison Between Council Agreed Principles<sup>1</sup>, Council Agreed Option A<sup>2</sup> & Proposed Plan Change 7**

<b>Council Agreed Principles</b>	<b>Proposed Plan Change 7 Response</b>
The focus must remain on the bigger picture – the Water Plan review – the Water Permit plan change should be as concise as required to achieve a fit for purpose management regime.	<b>Consistent.</b> The proposed Objective, along with the package of provisions, clearly set out that this is an interim measure.
Water allocation should be based on existing water use not paper allocation.	<b>Consistent.</b> Policy 10A.2.1, Rule 10A.3.1.1(vi) and Schedule 10A.4 all achieve this outcome.
Consideration of potential impacts on existing water abstractors, and existing priorities in deemed permits.	<b>Broadly consistent.</b> Impacts on existing water abstractors are considered in the s32 Evaluation Report. The deemed permits priority system is unable to be retained through the proposed plan provisions.  Looking to the future, informal priority systems may be possible through formalised water user group operating rules – something that will be considered for inclusion in the LWRP
Efficiency of time and cost for both Council applicants and other parties.	<b>Consistent.</b> Clear policy direction, controlled activity classification coupled with clear and certain ‘entry conditions’ result in applicant and Council time and cost efficiencies. In addition, non-notification and no affected parties ensures a more timely and efficient process.
Opportunities for data gathering that will inform the Water Plan review should be pursued.	<b>Consistent.</b> Rule 10A.3.1.1 reserves to Council control over “the point of measurement and the method for transmitting recorded data to Council”. This will be imposed as a condition on all replacement consents and require data to be provided to Council.

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<sup>1</sup> Council Minutes 27 November 2019

<sup>2</sup> Report P&S1813 Council 22 January 2020

Option A	Proposed Plan Change 7 Response
A single new policy focussed on the long-term sustainability of Otago's surface water resources and directing:	
<ul style="list-style-type: none"> <li>• The avoidance of transfers of water between sites (but not the ownership where ownership of the land changes).</li> </ul>	<p><b>Inconsistent.</b> The policy does not focus on this outcome. The clear direction is for granting replacement consents for actual water use and for a short duration; it is not considered necessary to also manage transfers. Further, including transfers in the policy would add complications and complexity to the policy and to this plan change because new rules to implement the policy would be required.</p>
<ul style="list-style-type: none"> <li>• Avoidance of granting: <ul style="list-style-type: none"> <li>o Long-term consents until reviewed land and water plan is operative</li> <li>o Any increase in the area under irrigation</li> <li>o Any expansion in the volume of take or rate of take</li> </ul> </li> </ul>	<p><b>Consistent.</b> The first of these is reflected in Policy 10A.2.2 and Policy 10A.2.3.</p> <p>Policy 10A.2.1 covers the area under irrigation and the volume/rate of take matters</p>
<ul style="list-style-type: none"> <li>• Requirement to reduce volume and rate of take from paper allocation to actual use (based on average of 98<sup>th</sup> percentiles recorded in each 12-month period over the 5-year period from 1 June 2012 to 31 May 2017)</li> </ul>	<p><b>Consistent.</b> Use of the 98<sup>th</sup> percentile proved difficult to implement and was assessed as giving no additional environmental gains when compared with using the adopted method of 'average maximum' recorded during the period 1 July 2012 to 30 June 2017.</p> <p>Reduction in volume is signalled in Policy 10A.2.1(e).</p>
<ul style="list-style-type: none"> <li>• The carrying over of any minimum or residual flow conditions where they exist on previously held permits.</li> </ul>	<p><b>Consistent.</b> This is signalled in Policy 10A.2.1(d)</p>
A single rule with the following features:	
<ul style="list-style-type: none"> <li>• Controlled activity where the following entry conditions apply:</li> </ul>	<p><b>Broadly consistent.</b> Each of these is set out in proposed Rule 10A.3.1.1 as an entry condition,</p>



<ul style="list-style-type: none"> <li>o The applicant holds a deemed water permit or a water permit</li> <li>o The consent duration does not exceed 7 years</li> <li>o Area under irrigation does not exceed that irrigated during the 2018-2019 irrigation season</li> <li>o The rate of take does not exceed the average of 98th percentiles recorded in each 12-month period over the 5-year period from 1 June 2012 to 31 May 2017</li> </ul>	<p>with the exception of the use of the 98<sup>th</sup> percentile.</p> <p>Non-compliance with any one or more of these entry conditions results in the application being classified as a non-complying activity.</p> <p>The Plan Change provides for a 6 year duration, in line with the Clause 4A comments from Aukaha, on behalf of nga runanga.</p>
<ul style="list-style-type: none"> <li>• Matters of control (and hence matters that can be subject to consent conditions) include: <ul style="list-style-type: none"> <li>o Compliance monitoring</li> <li>o Consent duration</li> <li>o The point of measurement and the method and frequency of data transmittal to Council</li> <li>o A review condition</li> <li>o Imposition of maximum volumes on a daily, monthly, seasonal basis</li> </ul> </li> </ul>	<p><b>Consistent.</b> The matters over which Council has reserved control are set out in Rule 10A.3.1.1. Each specific matter is covered as follows:</p> <ul style="list-style-type: none"> <li>• Compliance monitoring – Matter (g)</li> <li>• Consent duration – Rule entry condition</li> <li>• The point of measurement and the method and frequency of data transmittal to Council – Matter (h)</li> <li>• A review condition – Matter (f)</li> <li>• Imposition of maximum volumes on a daily, monthly, seasonal basis – Matter (b)</li> </ul>
<p>Applications under this rule will not require written approvals or notification.</p>	<p><b>Consistent.</b> There is a clause to Rule 10A.3.1.1 which gives effect to this.</p>
<p>A non-complying activity ‘drop-out’ rule where an applicant does not meet/wish to meet the entry conditions</p>	<p><b>Consistent.</b> Rule 10A.3.2.1 is the non-complying activity ‘drop-out’ rule</p>

# COMMUNICATIONS AND ENGAGEMENT PLAN

## Water permits plan change

*Created on:* 3 December 2019

*Updated on:* 2 December 2019

2 March 2019

### Background

ORC is preparing a plan change to meet the following recommendation from Minister Parker:

- For ORC to prepare a plan change by 31 March 2020 that provides an interim framework with short term consent provisions to manage freshwater until new discharge and allocation limits are set in line with the National Policy Statement for Freshwater Management.

Note: Minister Parker's other recommendations around ORC's water policy framework are included in an additional communications plan.

### Objective

- To inform key stakeholders and the wider community about how ORC is going to approach the replacement of expiring deemed permits while the "bigger picture" planning framework is being developed.
- To ensure key stakeholders and the wider community have input into the proposed water permits plan change.

### Audience

- Deemed permit holders and water permits users
- Iwi partner (Kai Tahu)
- Minister Parker and Ministry for the Environment
- Statutory stakeholders, including Fish & Game and DOC
- Territorial authorities: QLDC, CODC, SODC, DCC, WDC
- Catchment groups
- Industry organisations
- ORC staff and councillors
- Otago's rural community
- The wider Otago community

Note: The Schedule 1 process for plan making under the RMA requires consultation with the Minister for the Environment, other relevant ministers of the Crown, local authorities in the region and tangata whenua through iwi authorities. We may then determine anyone else to be consulted.

## Purpose

- To provide stakeholders and the wider community with opportunities to have input on the scope and content of the proposed Water Permits plan change, through both formal engagement required by the Resource Management Act and through other options, such as feedback online.
- To indicate to stakeholders and the community the time constraints this plan change is being prepared under and to place the plan change in the wider context of the planning framework reforms being undertaken by ORC.
- To undertake good engagement early in the process to reduce the number of submissions made at notification stage, and therefore streamline the planning process.

## Key messages

- The outcomes of an investigation initiated by Minister for the Environment David Parker were received by ORC on 18 November 2019, and the key finding was that the Otago region does not have a fit-for-purpose planning framework in place.
- There were three recommendations for creating this planning framework:
  1. That ORC develops a fit-for-purpose freshwater planning framework to assess all water consent applications, including those to replace deemed permits before they expire.
  2. Develop a work programme to achieve the following:
    - For ORC to notify a new Regional Policy Statement (RPS) by November 2020, to be operative by 1 April 2022
    - For ORC to notify a new Land and Water Regional Plan (LWRP) by 31 December 2023, to be operative by 31 December 2025.
  3. For ORC to prepare a plan change by 31 March 2020 that provides an interim framework to manage freshwater until new discharge and allocation limits are set in line with the National Policy Statement for Freshwater Management.
- To enable ORC to have a new planning framework in place, Minister Parker has recommended we develop a Water Permits Plan Change to provide an adequate planning and consenting framework to manage freshwater until new flow and allocation limits are set in ORC's planning framework.
- The proposed plan change will provide short-term water permits as an interim measure while the new, more long-term and "bigger picture" Regional Policy Statement and the Land and Water plan are being developed. A long-term approach to water management will be part of future work on a new RPS and LWRP, where we expect affected parties will put their focus.
- The community gave their input into the proposed Water Permits Plan Change online prior to Christmas 2019. Once the plan is notified in March 2020, the public has a further opportunity to be involved through the submission process.
- ORC will also consult with iwi, district councils and other key stakeholders as required under the Resource Management Act.
- To be compliant with the NPS-FM, when assessing water allocation, ORC will need to firstly be mindful of the river and what it needs. Then we will consider how much is being taken.

- ORC acknowledges that some deemed permit holders have already lodged their application for a new water permit. These will be considered under the existing Water Plan and the Water Permits Plan Change once it is notified. Provisions in the new Land and Water Plan will only be considered once it has been notified.
- The key principles behind the plan change are:
  1. The focus must remain on the bigger picture – the Water Plan review – the Water Permit plan change should be as concise as required to achieve a fit for purpose management regime.
  2. Water allocation should be based on water use not paper allocation.
  3. Consideration of potential impacts on existing water abstractors, and existing priorities in deemed permits.
  4. Efficiency of time and cost for both Council applicants and other parties.
  5. Opportunities for data gathering that will inform the Water Plan review should be pursued.

## Tactics/approach

Due to the short timeframes in which ORC has been asked to notify this plan change, the communication tactics and approach are focussed on targeted communications with those who we are statutorily required to consult with and key stakeholders, as well as online consultation to reach anyone else who may wish to have input while the proposed plan is being developed, and then a more formal consultation process through submissions after the plan change is notified.

The tactics below will be balanced by a new “friend of the submitter” role (commencing after the 7 January workshop for Councillors), who will be a dedicated resource available to answer questions of process, to advise on the overall programme of work for ORC and how this plan fits into it, and how to make a submission. This person will also provide updates to ORC councillors on matters arising in their constituencies and will assist them with any engagement they wish to have.

Channel
ORC website/Good Water in Otago website <ul style="list-style-type: none"> <li>- Information will be kept up to date, with links to web pages with online promotion</li> <li>- A Q&amp;A will be included on the website</li> <li>- Information about making a submission will be added after the proposed plan change is notified.</li> </ul>
YourSay <ul style="list-style-type: none"> <li>- Online consultation on the proposed Water Permits Plan Change online prior to Christmas 2019</li> </ul>
Social media <ul style="list-style-type: none"> <li>- Boosted Facebook campaign to encourage people to take part in the proposed Water Permits Plan Change online consultation.</li> <li>- A series of Facebook posts at notification and a link to a webpage about how to make a submission.</li> </ul>
Media Release <ul style="list-style-type: none"> <li>- Media release to promote the consultation and encourage people to give input.</li> <li>- Media release that the proposed plan has been notified and how the public can make a submission.</li> </ul>

Advertising	<ul style="list-style-type: none"> <li>- Public notices as per standard RMA process for making submissions on the notified plan change in February 2020.</li> <li>- An advert will be placed in community newspapers to let the community know that submissions are open and how to make a submission.</li> </ul>
Councillor involvement	<ul style="list-style-type: none"> <li>- Q&amp;A sheet to be used by councillors on their radio spots, blogs, and other direct engagement they wish to do with their constituents.</li> </ul>
On-Stream	<ul style="list-style-type: none"> <li>- Link to online consultation about proposed Water Permits Plan Change in a special edition</li> <li>- Article already included in November edition</li> <li>- February/March editions will encourage the public to make submissions on the notified proposed plan change.</li> </ul>
Direct emails/meetings	<ul style="list-style-type: none"> <li>- Direct contact with key stakeholders as required under the Resource Management Act (see Appendix).</li> <li>- Email direct to deemed permit holders and water permits holders explaining next steps and about the Water Permits Plan Change; and a second email to say that the plan change has been notified and that submissions are open.</li> <li>- Email to industry and catchment groups to ask them to promote the online consultation and then a second email asking them to share the news that the plan change is notified and submissions are open with their members.</li> </ul>
Internal comms (staff, exec, councillors)	<ul style="list-style-type: none"> <li>- Media releases and Q&amp;A shared with Councillors and staff</li> </ul>

## Timeline/activity calendar

Complete	Initial conversations with key stakeholders (see Appendix)
Pre-Christmas	YourSay online and promoted for input into the plan change
	Meet with relevant resource management consultants
7 January 2020	Councillor workshop
13-24 January 2020	Clause 3 First Schedule Consultation: <ul style="list-style-type: none"> <li>• Ministry for the Environment, Ministry for Conservation, Ministry for MPI, Ministry for Economic Development,</li> <li>• CODC, CDC, QLDC, DCC, WDC</li> <li>• Tangata whenua through Iwi authorities: Nga Runanga: Te Runanga o Otakou, Kati Huirapa ki Puketeraki, Te Runanga o Moeraki and Hokonui Runanga), Te Runanga o Ngai Tahu</li> </ul>
3-10 February 2020	Clause 4A First Schedule Consultation: Tangata whenua through Iwi authorities: Nga Runanga: Te Runanga o Otakou, Kati Huirapa ki Puketeraki, Te Runanga o Moeraki and Hokonui Runanga), Te Runanga o Ngai Tahu
11 March 2020	Council approval to notify plan change

18 March 2020	Plan change notified and submissions invited through comms channels
17 April 2020	Submissions close
Approx. May 2020	Further submissions close
Approx. July 2020	Hearing
Approx. Sept 2020	Decision
	Appeals
	Water Permits Plan Change is made operative

## Risks

The timing of the consultation just prior to Christmas.

- Mitigation: targeted online consultation

## Budget

\$4,000 for communications and engagement

## Measurement/review

- Views of the media releases and Q&A page on the ORC website and the GWIO site
- Uptake of the media releases by newspapers/radio
- Shares and comments on Facebook posts
- Clicks on On-Stream articles
- Number of people taking part in the online consultation
- Number of submissions received

## APPENDIX

### S24A RMA Investigation – Minister Parker response ORC Stakeholder Engagement 19-21<sup>st</sup> November

Stakeholder	Method of contact	Who
LGNZ Chief Executive, Malcolm Alexander	Phoned and email	Sarah Gardner
Iwi, Edward Ellison	Phoned and email	Sarah Gardner
Mayor CODC, Tim Cadogan	Face to face	Marian Hobbs
Catchment groups (with request to share with members)	Geoff Crutchley – phoned and email	Sarah Gardner Face to face with Andrew Newman later in week
Forest and Bird	Sue Maturin – phoned and email	Amanda Vercoe
Fish and Game	Ian Hadland – phoned and email	Sarah Gardner
Central Otago District Council	Sanchia Jacobs – phoned	Sarah Gardner
Queenstown Lakes District Council	Mike Theelen, - phoned	Sarah Gardner
Graham Martin	Phoned/face to face	Andrew Newman

#### Emails

Otago TA Chief Executives	Emailed	Sarah Gardner
Deemed Permit Holders	Emailed list with Regulatory	Richard Saunders
ORC Staff	Emailed	Sarah Gardner
On-Stream (687 subscribers)	Emailed	Lucy Summers

#### Face to Face

Manuherehia Reference Group Chair (with request to share with members)	Alec Neill – MRG meeting 19 November	Marian Hobbs/Gwyneth
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		Elsun/Andrew Newman
Technical Advisory Group (with request to share with members)	Face to face	Andrew Newman
Irrigators/Consultants group	Face to face	Andrew Newman
Mandy Bell (at the request of Marian/Sar		Andrew Newman

### Media Coverage

ORC-led:

<https://www.orc.govt.nz/news-and-events/news-and-media-releases/2019/november/regional-council-chair-accepts-ministerial-direction>

Print cover (from 21 – 27 November 2019):

<http://readnow.isentia.com/ReadNow.aspx?EOPlgTy2OTh2>

<http://readnow.isentia.com/ReadNow.aspx?EORj1fy2OXJJ>

<http://readnow.isentia.com/ReadNow.aspx?EOb1KOy2OkDE>