

BEFORE THE OTAGO REGIONAL COUNCIL

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**IN THE MATTER** of the Resource Management Act  
1991

AND

**IN THE MATTER** of RM19.339 being an application  
to Replace Deemed Permit 96208

By  
**Hawkdun Pastoral Limited**

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**SUBMISSIONS OF PETER DYMCK**  
FOR THE APPLICANT

December 2020

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## Introduction

1. My name is **Peter Langdon Dymock**. Until recently, I was a partner in the multi-disciplinary firm of Paterson Pitts Limited Partnership, which has offices throughout the lower South Island. I have sold my partnership interest and am now employed by the firm as a Senior Consultant.
2. My technical qualifications are B.Sc, Dip Mgt, RP Surv, CSNZ and member of S & SNZ.
3. I have been practicing in the field of resource management ever since the Resource Management Act 1991 came into force and have since then made over 1,000 resource consent applications for mainly private clients for a wide variety of consents to regional and territorial authorities throughout Otago and Southland, including consents to take and use ground and surface water and to replace deemed permits.
4. I have seen through six successful private plan change re-zoning Requests to the Central Otago District Plan and made innumerable submissions to local territorial and regional councils on District and Regional Plan reviews on behalf of my clients.
5. However, I emphasise that these submissions are advocacy on behalf of the applicant, **Hawkdun Pastoral Ltd** and do not purport to be independent expert planning evidence to the Commissioner.
6. With me is **Mr Hamish Cavanagh** who represents the applicant. Mr Cavanagh will not be presenting formal submissions, but will be happy to answer questions from the Commissioner.

## The Application

7. This is an application to replace a "deemed permit" (mining privilege under Sec 413 RMA91) for a small take on a minor alpine tributary of the Manuherikia River, (Mata Creek) originally issued by the Naseby Registry of the Mining Warden's Court in 1926. As

the Commissioner is no doubt aware, deemed permits, which had formerly been regarded as inalienable property rights, were taken away by legislative decree and now all expire in October 2021, unless replaced by normal water take permits under the RMA91.

8. The take has been traditionally exercised for over 90 years with a residual flow of approximately one "government sluice head" (1ft<sup>3</sup>/sec or 28L/s) being maintained at all times with no apparent adverse effect on the stream's ecology, given that recent fish surveys of Mata Creek have shown a healthy population of small trout and "abundant" bullies (native fish).

This flow ensures a clean, weed free, gravel bed and "connected" flow downstream to the St Bathans Loop Road bridge, a gaining reach as evidenced by visual observation and confirmed by NIWA's "Shiny" computer modelling.

9. The applicant has recently replaced the former flood irrigation system with an efficient spray irrigation system ('K' line pods) and is proposing to replace the by washing of stock and domestic drinking water via a continuously flowing open race with a fully piped reticulation system.
10. The application and the modifications to it as a result of the submissions of and further negotiations with Fish and Game, Aukaha and the Department of Conservation are well set out in the "Sec 42A" recommending report and is adopted as evidence for the applicant.
11. Until recently, an application to renew a deemed permit to the Otago Regional Council was inferred to include a right to divert water from the stream into the open "head" race that conveys water to the irrigation application area. However, it has now been clarified that a diversion permit is required. The application was further modified accordingly and the submitters indicated no concerns with this.

## Regulatory Framework

12. The planner's report fully covers this and is accepted by the applicant, save for the analysis of the term of the consent. That the report is over 57 pages long and that it has taken 14 months to get to this hearing from the initial pre-application contact with the Otago Regional Council and the submitters for such a minor take is, I believe, an indictment of the process to transition from deemed permits. It is common for applications to take up to 2 years to get this far.

13. The consenting goalposts have been constantly moved throughout this application:

- We started out with an Operative Regional Plan: Water prepared under a Regional Policy Statement (now partially operative), but we are told are not consistent with the National Policy Statement on Freshwater Management 2017.
- Then we had a partially operative Regional Policy Statement 2019, the relevant part of which (natural resources) is still subject to legal action and is not fully operative and is supposedly not consistent with the National Policy Statement on Freshwater Management 2020.
- Then we had the "Skelton Report" on the transition from Deemed Permits which found that the current regulatory environment was "not fit for purpose".
- Then we had proposed Plan Change 7 which is intended to provide a supposedly simple controlled activity "roll-over" of deemed permits for only 6 years. This has been referred to the EPA and there has been a major push back by the whole Central Otago Community with something like 200 submissions in opposition. The majority of regional councillors were opposed to Plan Change 7 and one councillor has even lodge a personal submission in opposition to Plan Change 7. All of Central Otago's territorial authority have also submitted in opposition. It

appears very likely that Plan Change 7 is going to be mired in litigation for years.

- Then we were hit with the National Policy Statement on Freshwater Management 2020 and the National Environmental Standards for Freshwater (Regulations) 2020.

14. As a result of a policy directive by the Ministry of the Environment, the proposed Regional Policy Statement 2019 (still subject to litigation) is under further review to allow it to be operative by 1 April 2022 to be in place in time for the review of the Regional Plan: Water, scheduled to be notified as the Land & Water Regional Plan by the end of 2023.

15. Quite frankly, the regulatory regime around the replacement of deemed permits is a shambles which everybody, including ORC Councillors and staff, the irrigators and the wider Central Otago Community is struggling with. With this in mind, in my view, the document that has the most weight when considering this application is the Operative Regional Plan: Water, which I believe does contain a robust and coherent process to manage the transition from deemed permits.

16. In particular I believe that proposed Plan Change 7 can have very little weight in relation to this application, which was made well before Plan Change 7 was notified.

The case law on the weighting of proposed plan changes in consideration of resource consent applications is that the closer the proposed plan comes to its final content, the more regard is held to it. ([9] *Queenstown Central Ltd v QLDC* [243] NZHC 815).

Where a proposed plan (or change) is at an early stage and objections have not been heard, the provisions of the plan are largely inchoate and cannot yet be regarded as a rule of the proposed plan (*Stevens vs Tasman District Council W043/92 & Banks v Nelson City Council W105/93*).

17. Submissions have only just closed on Plan Change 7 and have not been heard, let alone decided on and there has been a major push back by the Central Otago Community against Plan Change 7. This is understandable as irrigation is the economic life blood of the region and has been for almost a century. Central Otago has the driest climate in New Zealand and it is simply not possible to conduct horticulture, viticulture or grow high producing pasture without irrigation in Central Otago. Long term security of irrigation water supply is critical to individual land owners, such as Hawkdun Pastoral, and for the economic and social welfare of the whole region.

#### Term of the Consent

18. This is the only significant point of contention with this application, as all parties appear to accept a residual flow of 28L/s. The conditions proposed by your reporting planner are all acceptable to the applicant.
19. The applicant is somewhat confused with the final Sec 42A report (received on 24 November 2020) on this:
- In the "Summary of Recommendations" (page 2) a consent period of **15 years** is recommended.
  - In Sec (12) "Recommendations" a term of **15 years** is recommended.
  - In Sec (13) "Term of Consent" a term of **10 years** is recommended.
  - In the Draft Water Permit a term of **10 years** is provided for.
20. A draft of the Sec 42A report dated 10 July 2020 was received for comment.
- The "Summary of Recommendations" provided for a term of **15 years**.
  - The "Reasons for Recommendations" recommend a term of **25 years**.
  - Under Sec (12) the report mentions recommended durations of both 15 & 25

years, but the overall assessment is for **25 years**.

21. Another draft Sec 42A was received on 18 August 2020.
  - The “Summary of Recommendations” provided for a term of **15 years**.
  - Sec (9) “Recommendation” provides for a term of **15 years**.
  - Sec (10) “Term of Consent” provides for a term of **15 years**.
22. So in the space of four months we have gone from a recommended 25 year term (possibly 15 years) to 15 years to 10 years (possibly 15 years).
23. Nothing has changed over these four months and I note the justifications in the reports used for the recommended term remain totally unchanged from report to report, only the term recommended changes. It is very difficult to see why the recommended term should be changed, given the assessment criteria used to support the report's conclusions remain unchanged.
24. In my view, it appears undue reliance has been placed on the “Skelton Report” and on proposed Plan Change 7 in arriving at this moveable feast of the duration of the consent. The Skelton Report is not a statutory instrument and proposed Plan Change 7 has only just begun its journey and is unlikely to survive in its current form and can carry little weight in determining the term of this consent, which was lodged before Plan Change 7 was notified. I cannot see how a proposed plan change with 200 objections from such a wide spectrum of the Central Otago community, which have not even begun to be considered, can possibly have much weight.
25. The crux of the matter at stake with the Skelton Report and Plan Change 7 is dealing with the issue of over allocation in the Manuherikia Catchment, arising out of historic deemed permits. However, in this instance the applicant has volunteered a

condition that the consent will be subject to whatever allocation regime for the Manuherikia Catchment (including setting or revising a minimum flow) eventuates during the term of the consent and this has been encapsulated in the proposed review condition (11) of the draft permit. Recent decisions of the Otago Regional Council (Luggate, Wainui Creek and Glenavy) have concluded that review provisions to implement minimum flow and allocation regimes can be used effectively and without leading to the activity becoming unviable (section 131 (1) (a) RMA91).

26. Many of the submissions in opposition to Plan Change 7 included objections to the short duration (6 years) of consents granted under Plan Change 7. The issues raised include:

- It is likely the LWRP plan will not be operative at the end of a short term consent, creating a period of limbo for water users.
- A short term consent places unreasonable demand on applicants, as they are required to prepare yet another full application only 5 ½ years after the cost and resources spent in preparing an application for a replacement permit on the condition that this effort would support applying for a suitable long term consent.
- Short term water permits do not provide sufficient security for financiers, meaning borrowing for upgrades or infrastructure improvements on the farm will be inhibited. This will have wide adverse repercussions impacting on the economy of Central Otago and restrict development that will have positive economic, social and environmental outcomes.
- The rules in Plan Change 7 for a controlled activity are far from simple or cost effective and actually require the same costly, detailed and technical documents and supporting information as an application under the existing



Regional Plan: Water. In fact, most irrigators will not be able to comply with Plan Change 7 and applications will be non-complying in any case (the Ministry of Environment has actually submitted that in this case the application should be a prohibited activity – an extreme stance which will be the economic ruin of Central Otago).

- Plan Change 7 is favouring short term bureaucratic relief over environmental protection and may extend negative impacts on the environment by a further six years, rather than resolving negative impacts imminently through the exiting RPW frame work – i.e. it does not provide a suitable and fit for purpose framework for the transition from deemed periods.
- Applications made under the current RPW have to consider the NPSFM 2020 in any case, in accordance with Sec 104 RMA91.

27. Policy 10A.2.3 of PC7 does however provide that:

*“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**.”*

28. In this application, (a) is satisfied, therefore consideration of the term of consent should at the very least be for a term of 15 years. However, consideration of the term should defer to the dominant planning document, the Regional Plan: Water, with the starting point being the default period in the RMA91 of 35 years.
29. I believe that the provisions of RPW justify a term of 25 years, as originally proposed by your reporting planner. The Otago Regional Council has recently granted many very recent consents under the Regional Plan: Water, with period varying from 25 to 35 years, with suitable residual flows and other environmental considerations and Sec 128 review conditions. These applications have been granted on the basis of previous use records, not "paper" allocations and the takes are justified in terms of the Otago Regional Council's "Aqualinc" Report as reasonable and efficient water use. This application is no different and has been made in good faith under the planning framework at the time the consent was lodged.
30. The Council is also required to take into account the value of the consent holders existing investment when considering the term of the investment (and in considering the application as a whole) in accordance with Sec104 (2A)RMA91. The applicant has a substantial investment that cannot be amortised over a consent period as short as 10 years. A discounted cash flow analysis results in a minimum term of 25 years to effectively recover the investment.

### Conclusion

31. This application is for a renewal of a deemed permit that has been responsibly exercised for many years while providing for a suitable residual flow that maintains a healthy in-stream environment in Mata Creek.

32. The application has positive benefits by a substantial reduction in the "paper allocation" of the deemed permit to appropriate levels for efficient use of the water resource and the ending of by washing of stock and drinking water.

33. A suitable review condition will deal with any issues of over allocation in the wider Manuherikia Catchment.

34. Given these factors and the value of the applicant's existing investment in irrigation, plus the fact that a term of 25 years is consistent with the Regional Plan: Water, on behalf of the applicant I ask that you approve this consent, subject to the conditions proposed by the reporting planner for a term of 25 years.

P L DYMOCK (FOR THE APPLICANT)  
December 2020

#### APPENDICIES

- *Sec 42A report extracts dated 10 July 2020*
- *Sec 42A report extracts dated 18 August 2020*
- *Sec 42A report extracts dated 24 November 2020*
- *Summary of submissions on pPC7*

Section 42A 10 July 2020



**OTAGO REGIONAL COUNCIL DEEMED PERMIT REPLACEMENT  
SECTION 42A REPORT**

**ID Ref:** A1343144  
**Application No(s):** RM19.399.01  
**Prepared For:** Hearings Panel  
**Prepared By:** Kirstyn Lindsay, Consultant Planner  
**Date:** 10 July 2020  
**Subject:** Section 42A Recommending Report – Limited-notified Deemed Permit Replacement by Hawkdun Pastoral Limited

**1. Summary of Recommendation**

Hawkdun Pastoral Limited have applied for a water permit (RM19.399.01) to replace a deemed permit to take and use water from Mata Creek in the Manuherikia catchment. After assessing the actual and potential effects of the applications, considering submissions, and considering all of the matters in section 104 of the Resource Management Act 1991, I recommend that this application be granted for a period of 15 years, subject to the conditions listed at the end of this report.

Please note that this report contains the recommendations of the Consent Officer and represents the opinion of the writer. It is not a decision on the application.

**2. Purpose**

This report has been prepared under Section 42A of the Resource Management Act 1991 (RMA) to assist in the hearing of the application for resource consent made by Hawkdun Pastoral Limited. Local authorities may commission a consultant to prepare the Section 42A report and may consider the report at any hearing. The purpose of the report is to assist the Hearing Panel in making a decision on the applications.

The report assesses the application in accordance with Sections 104 and 104 C of the Resource Management Act 1991 and makes a recommendation as to whether the application should be granted, and, if granted, a recommendation on the duration of the consent and appropriate conditions.

This report contains the recommendations of the Consent Officer and is not a decision on the application. The recommendations of the report are not binding on the Hearing Commissioners. The report is evidence and will be considered along with any other evidence that the Hearing Commissioners will hear.

**3. Report Author**

**Kirstyn Lindsay – Consultant Planner, Southern Planning Solutions Limited**

I am the sole director and independent consultant planner of Southern Planning Solutions Limited. I hold a Masters in Planning with Distinction from the University of Otago. I have over 17 years'

## 11. Recommendation

### 11.1 Reason for Recommendation

It is recommended that this consent application is approved for the following reasons:

1. The water take is assessed as primary allocation.
2. Mata Creek is not identified in any of the RPW schedules.
3. The applicant offers to maintain a residual flow of 28 l/s in Mata Creek.
4. The applicant offers to cease the by-wash to Station Creek.
5. The applicant offers to exercise the consent in accordance with any minimum flow or water management regime imposed on the Manuherikia Catchment.
6. The use of water is considered to be an efficient use of water.
7. The applicant offers to install a fish screen as close to the point of take as possible.
8. A term of 25 years will provide some economic security and well as providing for the uncertainty of the current and future planning framework.
9. The effects of the water take and use are assessed as no more than minor.
10. No matters have arisen in the assessment of the application that would indicate the application should have been publicly notified.
11. The proposal is assessed as consistent with all of the relevant planning instruments.

## 12. Term of Consent (Section 123)

The application seeks a term of 25 years to provide for financial security. The submitters seek a lesser term citing uncertainty around the changes required to the planning framework to meet the NPS-FM and that a longer term consent may undermine or pre-empt this work.

In reaching this recommendation I have considered the following factors, distilled from case law, which are relevant to the Council's determination of the duration of a resource consent:

- The duration of a resource consent should be decided in a manner which meets the RMA's purpose of sustainable management;
- Whether adverse effects would be likely to increase or vary during the term of the consent;
- Whether there is an expectation that new information regarding mitigation would become available during the term of the consent;
- Whether the impact of the duration could hinder implementation of an integrated management plan (including a new plan);

- That conditions may be imposed requiring adoption of the best practicable option, requiring supply of information relating to the exercise of the consent, and requiring observance of minimum standards of quality in the receiving environment;
- Whether review conditions are able to control adverse effects;
- Whether the relevant plan addresses the question of the duration of a consent;
- The life expectancy of the asset for which consents are sought;
- Whether there was significant capital investment in the activity/asset; and
- Whether a particular period of duration would better achieve administrative efficiency.

Under the operative RPW, Policy 6.4.19 provides direction when setting the duration of a consent:

6.4.19 *When setting the duration of a resource consent to take and use water, to consider:*

- The duration of the purpose of use;*
- The presence of a catchment minimum flow or aquifer restriction level;*
- Climatic variability and consequent changes in local demand for water;*
- The extent to which the risk of potentially significant, adverse effects arising from the activity may be adequately managed through review conditions;*
- Conditions that allow for adaptive management of the take and use of water;*
- The value of the investment in infrastructure; and*
- Use of industry best practice.*

Policy 6.4.19 of the RPWO addresses consent duration for consents to take and use water. It does not recommend actual durations but instead contains seven criteria for to consider. In this case:

- The proposed purposes of the abstractions are enduring, being irrigation, stock water, and domestic use (criteria (a)).
- The applicant has offered to operate in accordance with any future minimum flows set for the catchment (criteria (b)).
- Climatic variability is certain to occur but no detailed evidence of its relevance has been supplied (criteria (c)).
- Potential adverse effects (such as inadequate residual flows or downstream minimum flow) can be addressed through robust review conditions. The applicant offers a review condition however, it is noted that a review clause must not frustrate the use of the consent, which is a possibility depending on the outcome of the plan change (criteria (d)).
- The applicant has not proposed adaptive management (criteria (e)), although review conditions will allow allocation and residual flow matters to be addressed in the future should the need arise.
- The applicant has invested in the existing irrigation infrastructure and will need to continue to invest (i.e. installation of the new pipeline for domestic and stock water to reduce the by wash to Station Creek) (criteria f)).
- There is use of inefficient practices such as the current method of stock and domestic water delivery but the applicant has proposed the alternative delivery method. (criteria (g)).

Overall, the recommended duration of 25 years will provide security to the Applicants and will reduce risks which is consistent with Policy 6.4.19.

The Kai Tahu ki Otago Natural Resource Management Plan 2005 oppose consents granted for up to 35 years. Therefore, the recommended term of 25 years is consistent with the iwi management plan.

As noted in Section 8.10, the following policy in relation to the duration of new resource consents that replace deemed permits has been proposed through Plan Change 7:

*Policy 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.*

Policy 10A.2.3 of PPC7 directs that new consents to replace deemed permits only be granted for no more than 6 years except where there are no more than minor adverse effects (including 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. This is irrespective of any other policies in the Plan concerning consent duration, i.e. Policy 6.4.19. Considering this direction, granting the consent duration sought by the applicants would be contrary to the provisions of PPC7. Given my conclusion that the adverse effects (including cumulative effects) on aquatic ecology and hydrology are no more than minor I consider that a duration of 15 years would be consistent with Policy 10A.2.3. As discussed in Section 8.10 I consider that some, but not full weight should be given to PC7 due to it recently being notified and not yet tested and the application already being in the system at the time of notification. On that basis, it is appropriate to still give weight to Policy 6.4.19 of the RPW.

While a duration of 15 (rather than 6 years) years may be justifiable under PC7, I consider that in this instance, a duration of 25 years is appropriate on the basis that:

- PC7 is just at the start of the process and the weight given to this will increase further through the process;
- The application was in the system before the notification of the plan change and the applicant have not had the benefit of applying for a short term consent as a controlled activity;
- The advice from the applicant regarding the level of investment and rate of return on that investment is generally accepted and, as such, the term is required to provide ongoing financial security investment for the applicants;
- The applicant offers to exercise the consent in accordance with any future minimum flow or water management regime imposed on the Manuherikia Catchment
- The applicant proposes to take and use water from a single point of take and is the last take on Mata Creek; and
- There is one user upstream whose consents expire in 2023;
- The applicant's use is considered to be an efficient use of water; and

- have proposed a seasonal volume that is less than the current consented limits;
- The effects of the proposed takes are no more than minor, subject to compliance with recommended conditions of consent.

Overall, based on my assessment as outlined above, I consider that a duration of 25 years is appropriate. A 25-year duration will provide the applicant with security of access to surface water resources, assists in minimising costs associated with implementing the consent, ensures efficient use of water and safeguards the life-sustaining capacity of the watercourses. I consider that a term of 25 years strikes an appropriate balance between the original term sought by the applicant of 35 years and the significant shift in Council policy under PPC7 to have interim measures in place to provide for short term consents until the new regional policy statement and land and water regional plan are completed.

### 13. Lapse Period (Section 125)

The application seeks a lapse period of 5 years.

A lapse period of 2 years is recommended given that this is a replacement consent for a permit that expires in October 2021 and involves the continuation of water take and use authorised by that consent.

Appended: Recommended Conditions of Consent

Appended: Decision on Resource Consent Application Document reference AXXX.



See cover 18 August



**OTAGO REGIONAL COUNCIL DEEMED PERMIT REPLACEMENT  
SECTION 42A REPORT**

**ID Ref:** A1343144  
**Application No(s):** RM19.399.01  
**Prepared For:** Hearings Panel  
**Prepared By:** Kirstyn Lindsay, Consultant Planner  
**Date:** 18 August 2020  
**Subject:** Section 42A Recommending Report – Limited-notified Deemed Permit Replacement by Hawkdun Pastoral Limited

**1. Summary of Recommendation**

Hawkdun Pastoral Limited have applied for a water permit (RM19.399.01) to replace a deemed permit to take and use water from Mata Creek in the Manuherikia catchment. After assessing the actual and potential effects of the applications, considering submissions, and considering all of the matters in section 104 of the Resource Management Act 1991, I recommend that this application be **granted** for a period of **15 years**, subject to the conditions listed at the end of this report.

Please note that this report contains the recommendations of the Consent Officer and represents the opinion of the writer. It is not a decision on the application.

**2. Purpose**

This report has been prepared under Section 42A of the Resource Management Act 1991 (RMA) to assist in the hearing of the application for resource consent made by Hawkdun Pastoral Limited. Local authorities may commission a consultant to prepare the Section 42A report and may consider the report at any hearing. The purpose of the report is to assist the Hearing Panel in making a decision on the applications.

The report assesses the application in accordance with Sections 104 and 104 B of the Resource Management Act 1991 and makes a recommendation as to whether the application should be granted, and, if granted, a recommendation on the duration of the consent and appropriate conditions.

This report contains the recommendations of the Consent Officer and is not a decision on the application. The recommendations of the report are not binding on the Hearing Commissioners. The report is evidence and will be considered along with any other evidence that the Hearing Commissioners will hear.

**3. Report Author**

**Kirstyn Lindsay – Consultant Planner, Southern Planning Solutions Limited**

I am the sole director and independent consultant planner of Southern Planning Solutions Limited. I hold a Masters in Planning with Distinction from the University of Otago. I have over 17 years'

It is recommended that this consent application is approved for the following reasons:

1. The water take is assessed as primary allocation.
2. Mata Creek is not identified in any of the RPW schedules.
3. The applicant offers to maintain a visual residual flow of 28 l/s in Mata Creek.
4. The applicant offers to cease the by-wash to Station Creek.
5. The applicant offers to exercise the consent in accordance with any minimum flow or water management regime imposed on the Manuherikia Catchment.
6. The use of water is considered to be an efficient use of water.
7. The applicant offers to install a fish screen as close to the point of take as possible.
8. A term of 15 years will provide some economic security and well as providing for the uncertainty of the current and future planning framework.
9. The effects of the water take and use are assessed as no more than minor.
10. No matters have arisen in the assessment of the application that would indicate the application should have been publicly notified.
11. The proposal is assessed as consistent with all of the relevant planning instruments.

#### 10. Term of Consent (Section 123)

The application seeks a term of 25 years to provide for financial security. The submitters seek a lesser term citing uncertainty around the changes required to the planning framework to meet the NPS-FM and that a longer term consent may undermine or pre-empt this work.

In reaching this recommendation I have considered the following factors, distilled from case law, which are relevant to the Council's determination of the duration of a resource consent:

- The duration of a resource consent should be decided in a manner which meets the RMA's purpose of sustainable management;
- Whether adverse effects would be likely to increase or vary during the term of the consent;
- Whether there is an expectation that new information regarding mitigation would become available during the term of the consent;
- Whether the impact of the duration could hinder implementation of an integrated management plan (including a new plan);
- That conditions may be imposed requiring adoption of the best practicable option, requiring supply of information relating to the exercise of the consent, and requiring observance of minimum standards of quality in the receiving environment;
- Whether review conditions are able to control adverse effects;
- Whether the relevant plan addresses the question of the duration of a consent;

- Criteria (b) - The applicant has offered to operate in accordance with any future minimum flows set for the catchment.
- Criteria (c) - Climatic variability is certain to occur but no detailed evidence of its relevance has been supplied
- Criteria (d) - Potential adverse effects (such as inadequate residual flows or downstream minimum flow) can be addressed through robust review conditions. The applicant offers a review condition however, it is noted that a review clause must not frustrate the use of the consent, which is a possibility depending on the outcome of the plan change. However, there are limitations on how the Council can deal with allocation through the review of consent conditions and the extent of changes that can be made given that the effect of the change of conditions on the continued viability of the activity must be considered as part of any review. It is not yet known what the outcome of the Council's future planning programme may be and therefore the extent of changes required to conditions to bring the consent into line with the new planning framework. As such, a longer term of 25 years which relies on a review condition to manage effects is not considered appropriate.
- Criteria (e)- The applicant has not proposed adaptive management although review conditions will allow allocation and residual flow matters to be addressed in the future should the need arise.
- Criteria (f) - The applicant has invested in the existing irrigation infrastructure and will need to continue to invest (i.e. installation of the new pipeline for domestic and stock water to reduce the by wash to Station Creek)
- Criteria (g) -There is use of inefficient practices such as the current method of stock and domestic water delivery but the applicant has proposed the alternative delivery method.

Overall, the recommended duration of 15 years will provide security to the applicants and will reduce risks which is consistent with Policy 6.4.19.

The Kai Tahu ki Otago Natural Resource Management Plan 2005 oppose consents granted for up to 35 years. Aukaha in their submission have sought 6 years primarily on the inadequacy of the current planning framework. The recommended term of 15 years is consistent with the relevant iwi management plans and is in accordance with PPC7, which is the first step by Council to align the planning framework with the NPS-FM 2014 (amended 2017).

As noted in Section 8.10, the following policy in relation to the duration of new resource consents that replace deemed permits has been proposed through Plan Change 7:

- Policy 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.*

Policy 10A.2.3 of PPC7 directs that new consents to replace deemed permits only be granted for no more than 6 years except where there are no more than minor adverse effects (including

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. This is irrespective of any other policies in the Plan concerning consent duration, i.e. Policy 6.4.19. Considering this direction, granting the consent duration sought by the applicants would be contrary to the provisions of PPC7. Given my conclusion that the adverse effects (including cumulative effects) on aquatic ecology and hydrology are no more than minor I consider that a duration of 15 years would be consistent with Policy 10A.2.3. As discussed in Section 8.10 I consider that some, but not full weight should be given to PC7 due to it recently being notified and not yet tested and the application already being in the system at the time of notification. On that basis, it is appropriate to still give weight to Policy 6.4.19 of the RPW.

While a duration of 15 (rather than 6 years) years may be justifiable under PC7, I consider that in this instance, a duration of 15 years is appropriate on the basis that:

- PC7 is just at the start of the process and the weight given to this will increase further through the process;
- The application was in the system before the notification of the plan change and the applicant have not had the benefit of applying for a short term consent as a controlled activity;
- The advice from the applicant regarding the level of investment and rate of return on that investment is generally accepted and, as such, the term is required to provide ongoing financial security investment for the applicants;
- The applicant offers to exercise the consent in accordance with any future minimum flow or water management regime imposed on the Manuherikia Catchment
- The applicant proposes to take and use water from a single point of take and is the last take on Mata Creek; and
- There is one user upstream whose consents expire in 2023;
- The applicant's use is considered to be an efficient use of water; and
- have proposed a seasonal volume that is less than the current consented limits;
- The effects of the proposed takes are no more than minor, subject to compliance with recommended conditions of consent.

Overall, based on my assessment as outlined above, I consider that a duration of 15 years is appropriate. A 15-year duration will provide the applicant with security of access to surface water resources, assists in minimising costs associated with implementing the consent, ensures efficient use of water and safeguards the life-sustaining capacity of the watercourses. I consider that a term of 15 years strikes an appropriate balance between the term sought by the applicant of 25 years and the significant shift in Council policy under PPC7 to have interim measures in place to provide for short term consents until the new regional policy statement and land and water regional plan are completed.

### 13. Lapse Period (Section 125)

The application seeks a lapse period of 5 years.

A lapse period of 2 years is recommended given that this is a replacement consent for a permit that expires in October 2021 and involves the continuation of water take and use authorised by that consent.

SC4A 25 November 2020

**OTAGO REGIONAL COUNCIL DEEMED PERMIT REPLACEMENT  
SECTION 42A REPORT**

**ID Ref:** A1413058  
**Application No(s):** RM19.399.01 and RM19.399.02  
**Prepared For:** Hearings Panel  
**Prepared By:** Kirstyn Lindsay, Consultant Planner  
**Date:** 24 November 2020  
**Subject:** Section 42A Recommending Report – Limited-notified Deemed Permit Replacement and diversion permit by Hawkdun Pastoral Limited, Manuherehia catchment

**1. Summary of Recommendation**

Hawkdun Pastoral Limited (the applicant) has applied for a water permit (RM19.399.01) to replace a deemed permit to take and use water from Mata Creek which is a tributary of the Manuherehia River and a water permit to divert the flow of Mata Creek above the intake point. After assessing the actual and potential effects of the applications, considering submissions, and considering all of the matters in section 104 of the Resource Management Act 1991, I recommend that this application be granted for a period of 15 years, subject to the conditions listed at the end of this report.

Please note that this report contains the recommendations of the Consent Officer and represents the opinion of the writer. It is not a decision on the application.

**2. Purpose**

This report has been prepared under Section 42A of the Resource Management Act 1991 (RMA) to assist in the hearing of the application for resource consent made by Hawkdun Pastoral Limited. Local authorities may commission a consultant to prepare the Section 42A report and may consider the report at any hearing. The purpose of the report is to assist the Hearing Panel in making a decision on the applications.

The report assesses the application in accordance with Sections 104, 104C and 104B of the Resource Management Act 1991 and makes a recommendation as to whether the applications should be granted, and, if granted, a recommendation on the duration of the consents and appropriate conditions.

This report contains the recommendations of the Consent Officer and is not a decision on the application. The recommendations of the report are not binding on the Hearing Commissioner. The report is evidence and will be considered along with any other evidence that the Hearing Commissioner will hear.

1. The water take is assessed as primary allocation.
2. Mata Creek is not identified in any of the RPW schedules.
3. The applicant offers to maintain a residual flow of 28 L/s in Mata Creek.
4. The applicant offers to cease the by-wash to Station Creek.
5. The applicant offers to exercise the consent in accordance with any minimum flow or water management regime imposed on the Manuherekia Catchment.
6. The use of water is considered to be an efficient use of water.
7. The applicant offers to install a fish screen as close to the point of take as possible.
8. A term of 15 years will provide some economic security and well as providing for the uncertainty of the current and future planning framework.
9. The effects of the water take and use are assessed as no more than minor.
10. No matters have arisen in the assessment of the application that would indicate the application should have been publicly notified.
11. The proposal is assessed as consistent with all of the relevant planning instruments.

### 13. Term of Consent (Section 123)

The application seeks a term of 25 years to provide for financial security (revised down from 35 years originally sought). The submitters seek lesser terms of between 6 and 7 years, citing uncertainty around the changes required to the planning framework to meet the NPS-FM and that a longer-term consent may undermine or pre-empt this work.

I recommend a term of 10 years. In reaching this recommendation I have considered the following factors, distilled from case law, which are relevant to the Council's determination of the duration of a resource consent:

- The duration of a resource consent should be decided in a manner which meets the RMA's purpose of sustainable management;
- Whether adverse effects would be likely to increase or vary during the term of the consent;
- Whether there is an expectation that new information regarding mitigation would become available during the term of the consent;
- Whether the impact of the duration could hinder implementation of an integrated management plan (including a new plan);
- That conditions may be imposed requiring adoption of the best practicable option, requiring supply of information relating to the exercise of the consent, and requiring observance of minimum standards of quality in the receiving environment;
- Whether review conditions are able to control adverse effects;
- Whether the relevant plan addresses the question of the duration of a consent;

Our Reference: A1377802

Consent No. RM19.399.01

### WATER PERMIT

Pursuant to Section 104C of the Resource Management Act 1991, the Otago Regional Council grants consent to:

Name: Hawkdun Pastoral Limited

Address: C/- Hamish Cavanagh, 2173 St Bathans Loop Road, RD 1, Oturehua

To take and use surface water from Mata Creek and to retake and use water from races and reservoirs for the purpose of irrigation, domestic and stock water supply

For a term expiring 31 December 2030

Location of Point of Abstraction: Mata Creek, 4.5 kilometres (km) upstream of the St Bathans Loop Road Bridge and 380 metres (m) west of Hawkdun Road.

Legal Description of land at point of abstraction: RUN 585 Block 7 St Bathans SD

Legal Description of lands where water is to be used:

Sec 7 Blk III St Bathans SD
Sec 10 Blk III St Bathans SD
Sec 8 Blk III St Bathans SD
Sec 9 Blk III St Bathans SD
Sec 12 Blk III St Bathans SD Sec 5 SO 24231

Map Reference at point of abstraction: NZTM 2000 E1350209 N5028771

### Conditions

#### Specific

1. The take and use of surface water as primary allocation from Mata Creek at the above location and the retake of primary allocation from races and reservoirs for domestic water, stock water and irrigation of 90 hectares of land on the land legally described as above must be carried out in accordance with the plans and all information submitted with the application, detailed below, and all referenced by the Consent Authority as consent number RM 19.399:
  - a) Application form, and assessment of environmental effects prepared by Peter Dymock, Paterson Pitts Group dated 16 December 2019; and
  - b) Email advice from Peter Dymock amending the application on 24 April 2020.

REPORT

SUMMARY OF SUBMISSIONS ON THE WATER  
PERMITS PLAN CHANGE - PLAN CHANGE 7 -  
REGIONAL PLAN: WATER FOR OTAGO

PREPARED FOR ENVIRONMENTAL PROTECTION AUTHORITY

September 2020





## QUALITY STATEMENT

### PROJECT MANAGER

Frances Lojkine

### PROJECT TECHNICAL LEAD

Frances Lojkine

### PREPARED BY

Annika Swanberg



...

16 Sept 2020

### CHECKED BY

Janan Dunning



16 Sept 2020

### REVIEWED BY

Janan Dunning



16 Sept 2020

### APPROVED FOR ISSUE BY

Frances Lojkine



16 Sept 2020

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## REVISION SCHEDULE

Rev No.	Date	Description	Signature or Typed Name (documentation on file)			
			Prepared by	Checked by	Reviewed by	Approved by
1	14/9/20	Drafft for client	SS	JD	JD	FL
2	16/9/20	Final	SS	JD	JD	FL

# Environmental Protection Authority

## Summary of submissions on the Water Permits Plan Change - Plan Change 7 - Regional Plan: Water for Otago

### CONTENTS

1.	Introduction.....	1
2.	Methodology .....	1
3.	Analysis of submissions .....	2
3.1	Number of submissions received.....	2
3.2	Position on the plan change expressed in submissions .....	2
3.3	Request to be heard .....	2
3.4	Provisions submitted on.....	2
4.	Key themes in submissions.....	3

### LIST OF TABLES

Table 3-1: Submissions by position on the plan change .....	2
Table 3-2: Submissions by provision .....	2
Table 4-1: Submissions by key theme .....	4

# 1. Introduction

On 8 April 2020, the Minister for the Environment issued a direction under section 142(2) of the Resource Management Act 1991 (RMA) to call in the Otago Regional Council's Water Permits Plan Change - Plan Change 7 (WPPC) and refer it to the Environment Court for decision.

The plan change introduces an objective, policies and rules that manage the replacement of deemed permits (also known as mining privileges) expiring in 2021 and any other water permits expiring prior to 31 December 2025 (the date by which a new Regional Land and Water Plan is expected to be operative). The plan change also introduces a new policy regarding the duration of new water permits.

Prior to the Minister's direction, the Otago Regional Council notified this plan change on 18 March 2020 and, under section 86B(3) of the RMA, the plan change provisions had legal effect from 18 March 2020. The submissions received by the Otago Regional Council during this notification period have been passed on to the Environmental Protection Authority and are included in this Report.

This Report provides a high level analysis of some statistics and themes arising from the submissions. This Report is not a summary of the content of the submissions, which is provided in a separate summary spreadsheet.

# 2. Methodology

The following methodology has been used to develop the summary spreadsheet:

- All submissions received have been summarised by provision number, or coded to 'Plan Change 7' if they are submissions on the whole plan change
- Each submission point has a unique identifying number to assist further submitters to identify particular parts of a submission they would like to further submit on
- Where decisions requested were on the whole plan change, but the material included in the submission meant that it was possible to identify particular provisions, submission points on the provisions have been included in the summary spreadsheet
- Where a submitter identified that they supported or opposed a provision 'in part' that has been reflected in the summary spreadsheet
- Submitters who supported or opposed provisions but suggested amendments have been coded as either 'support' or 'oppose'. For those submissions in general the decision requested makes it clear that the submitter had sought amendment to the provision
- This report, the summary spreadsheet and the original submissions form a package and where necessary all should be consulted. This approach has avoided the risk of misinterpreting the reasons for a particular submitter's position, which are often complex and best explained in the original submission.

The summary spreadsheet has been prepared so that the content can be sorted by provision or by submitter.

## 3. Analysis of submissions

### 3.1 Number of submissions received

A total of 290 submissions were received on Plan Change 7.

### 3.2 Position on the plan change expressed in submissions

Percentages of submissions in support, opposition or not stated to the plan change are outlined in Table 3-1.

Table 3-1: Submissions by position on the plan change

Category	Number of submissions	Percentage
Support	20	7%
Oppose	208	72%
Not stated/Other	62	21%

### 3.3 Request to be heard

A total of 193 submitters have requested to be heard on Plan Change 7. Of these submitters, 160 will consider presenting a joint case.

### 3.4 Provisions submitted on

Table 3-2 shows the number of submissions received on each provision, including the number of submissions on the whole plan change, and the number of submissions in support or opposition to each provision.

Table 3-2: Submissions by provision

Provision	Total submissions	Support	Oppose	Support in part	Oppose in part	Not stated
Not specified	3	0	1	0	0	2
Plan Change 7	272	17	211	6	3	35
Objective 10A.1.1	30	7	19	2	2	0
Policy 10A.2	1	0	1	0	0	0
Policy 10A.2.1	41	5	26	7	1	2
Policy 10A.2.1 (a)	2	2	0	0	0	0
Policy 10A.2.1 (b)	52	2	45	0	1	4
Policy 10A.2.1 (c)	4	2	1	1	0	0
Policy 10A.2.1 (d)	5	2	1	2	0	0
Policy 10A.2.1 (e)	18	1	13	1	0	3
Policy 10A.2.2	90	3	74	5	1	7
Policy 10A.2.3	169	4	140	5	4	16
Policy 10A.2.3 (a)	1	0	0	1	0	0
Policy 10A.2.3 (b)	6	1	4	1	0	0
Rule 10A.3.1	10	1	4	0	0	5
Rule 10A.3.1.1	47	2	24	11	4	4
Rule 10A.3.1.1 (a)	1	1	0	0	0	0
Rule 10A.3.1.1 (b)	2	1	1	0	0	0
Rule 10A.3.1.1 (c)	2	1	1	0	0	0
Rule 10A.3.1.1 (d)	1	1	0	0	0	0
Rule 10A.3.1.1 (e)	2	2	0	0	0	0

Provision	Total submissions	Support	Oppose	Support in part	Oppose in part	Not stated
Rule 10A.3.1.1 (f)	2	1	1	0	0	0
Rule 10A.3.1.1 (i)	148	2	134	1	1	10
Rule 10A.3.1.1 (ii)	3	0	2	1	0	0
Rule 10A.3.1.1 (iii)	98	0	92	1	1	4
Rule 10A.3.1.1 (iv)	97	1	85	3	3	5
Rule 10A.3.1.1 (v)	2	0	1	1	0	0
Rule 10A.3.1.1 (vi)	74	0	66	2	2	4
Rule 10A.3.1.1 (vii)	3	0	3	0	0	0
Rule 10A.3.1.2	1	1	0	0	0	0
Rule 10A.3.2	16	1	13	1	1	0
Rule 10A.3.2.1	21	1	12	6	2	0
Schedule 10A.4	55	4	48	1	0	2
Schedule 10A.4.1	6	2	3	0	1	0
Schedule 10A.4.1 (5)	1	1	0	0	0	0
Schedule 10A.4.2	2	1	0	0	1	0
Schedule 10A.4.3	3	1	1	0	1	0
Schedule 10A.4.4	4	1	2	0	1	0
Table of minor and consequential changes	2	1	1	0	0	0
How to Use the Regional Plan: Water	1	1	0	0	0	0
Introduction	2	1	1	0	0	0
New Definition	2	1	0	0	0	1

## 4. Key themes in submissions

A number of key themes are recurrent in submissions on Plan Change 7 as identified below:

- Opposition to the entire plan change and requests for it to be withdrawn completely
- Opposition to a six year term of consent for replacement consents for existing water takes and for new water take consents
- Opposition to Policy 10A.2.1 that existing water takes will not be granted consent unless the irrigated area is not increased and there is a reduction in the volume of the take (with requests to continue to "roll over" existing consents)
- Request to consider rules being based on catchment areas rather than region-wide standards
- Opposition to water takes being required to have "no more than minor" adverse effects
- General opposition to restrictions around obtaining consent as a controlled activity for water takes
- Opposition to restrictions on the area to be irrigated not exceeding the area irrigated in the 2017-18 irrigation season, particularly:
  - That the irrigation area cannot be more than the area in 2017-2018
  - That the rate of water take cannot be more than the averages between 2012 and 2017
  - That the volume of water take cannot be more than the averages between 2012 and 2017
- Requests, including specific amendments sought, to make the wording of the plan clearer or more simple
- Requests to enforce minimum flows (and some opposition to minimum flows)

- General opposition to the data/science used to inform the plan change and rules
- Opposition to the replacement of existing consents expiring prior to 25 December 2025 being non-complying activities if they cannot meet the controlled activity rule
- Opposition to the methods for calculating actual usage for surface water takes.

Table 4-1 records the number of submissions on each key theme.

Table 4-1: Submissions by key theme

Key Theme	Number of submissions
Support for plan change	12
Decline the plan change	121
Consent terms to be longer than 6 years	51
Catchment approach or plan rather than interim framework	30
Rollover existing consents	29
Irrigation: Oppose rule requirement to not increase area	25
Provide for suction dredge mining takes as permitted or controlled activities	21
Oppose methodology for calculating average water takes	17
Minimum flows should be imposed	12
Make plan clearer	11
Need better data/science	7
Time period for calculating averages over	12
Align with NPS	6
General concern about changes	5

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