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

IS PREVENTION BETTER THAN THE CURE ?

The Otago Regional Council (“ORC”) has prepared Proposed Plan Change 7 (“PC7”) to the Regional Plan: Water for Otago.

PC7 has immediate effect from the date it was publicly notified for submissions on 18 March 2020. This means that all applications for renewals of and *new* surface water takes will need to have regard to the policy framework and new rules proposed to be introduced by PC7.

PC7 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 (being the date by which the new Regional Land and Water Plan “(LWRP)” is expected to be operative).

PC7 will also apply to any new surface water (or groundwater managed as surface water) consents granted prior to 31 December 2025 with respect to the duration (or term) those consents are issued for.

The fundamental and singular focus of PC7 is to put in place a requirement for **short duration consents** (a maximum of 6 years) for all (new and in renewal) water permits granted under the operative Water Plan pending a new *fit for purpose* Regional Land and Water Plan being prepared and made operative. The target date for the Regional Land and Water Plan to be operative (a process commencing with public notification, submissions, hearings and appeals – all of which must be heard and determined) is 31 December 2025. Special legislation with limited rights of appeal (limited to the High Court on points of law) is to be put in place to facilitate achieving the target date.

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 new Chapter 10A of the Regional Plan: Water.

Applications for new surface 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 . However the duration of any water permit will be determined in accordance with the policy framework in Chapter 10A.

[Summary of the Provisions of PC7](#)

In essence, PC7 imposes a regime whereby the consenting of *existing* permits/water takes is to be streamlined as a controlled activity where consent cannot be declined (subject to meeting the controlled standards, and where there is no notification – to the public at large or on a limited basis, unless customary rights apply). The quid pro quo for controlled activity status (more efficient processing at less cost and greater certainty of outcome) is that the duration of the consent **shall not exceed six years**. If any one of the criteria for controlled activity status is not met (such as duration/term of consent), then the status of the activity defaults to non-complying. The default non complying status while not impossible, is a significantly more uncertain and costly exercise to obtain consent.



The Objective

Part 10A has as a singular objective to transition toward a long term sustainable management of surface water in the Otago Region by establishing an interim planning framework to manage new and replacement permits until the new Land and Water Regional Plan is made operative.

While we do not offer any commentary as part of this article, concerns with ORC's implementation of national directives around consenting of water takes has been widely reported and criticised – see for example <https://www.odt.co.nz/news/dunedin/parker-frustrated-orcs-very-slow-work>.

Part 10A contains the following policies:

- **10A.2.1** – Avoid granting resource consents that replace deemed permits, or water permits to take and use surface water (including groundwater) where those permits expire prior to 31 Dec 2025 except where:
 - (a) The deemed permit is valid; and
 - (b) There is not increase in area of irrigation (if abstracted water is used for irrigation); and
 - (c) No increase in 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 for water allocated for abstraction.
- **10A.2.2.** – Consents for **NEW** take and use of water are only granted for a period of no more than 6 years.
- **10A.2.3** – Consents that **REPLACE** deemed permits, or resource consents that replace water permits that expire on or before 31 December 2025 are not to be granted for a period **more than 6 years** except where the activity would otherwise be a controlled activity, but does not meeting one or more of the controlled activity criteria (under Rule 10A.3.1) and:
 - (a) the activity will have no more than minor effects on the ecology and hydrology of the body from where abstraction is to occur
 - (b) The resource consent will expire prior to 31 December 2035.

The following rules are proposed to be introduced by PC7.

Rule 10A.3.1 – Controlled Activity – Resource consent required

Any activity that is currently authorised under a deemed permit or an existing water permit where that permit expires prior to 31 December 2025 – is a controlled activity provided:

- (i) Consent duration sought is no more than 6 years;
- (ii) Permit being replaced is valid;

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- (iii) The total land area under irrigation does not exceed that irrigated in the 2017-18 irrigation season (if permit used for irrigation);
- (iv) The rate of take shall be no more than the average maximum rate of take recorded during the period of 1 July 2012 – 30 June 2017 ;
- (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

The Council reserves control over:

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

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 (protected customary right) of the RMA will be necessary, where relevant, under Section 95B(3) of the RMA.

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

Any activity that is the replacement of an activity authorised under deemed permit or the replacement of 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.

PC7 also introduces the methodology for calculating the following:

- Daily volume limit
- Monthly volume limit
- Annual volume limit

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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 average will be calculated by summing all days and divided by the number days over the hydraulic years analysed.

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

Monthly Volume Limit

The average will be calculated by summing all months and divided by the number months over the hydraulic years analysed.

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

Annual Limit

The 'Annual Volume Limit' shall be determined by calculating the average of the actual volumes taken each year. The average will be calculated by summing all years and divided by the number of hydraulic years analysed. The formula used shall be whichever of the following that produce the lower value:

$$\text{Annual Limit} = (\text{Consent Daily Volume or Calculated Daily Volume}) \times 365.25$$

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

Submissions can be made to PC7 up until close of business on [Monday 4 May 2020](#). For further information and/or a discussion about how PC7 affects you, or to discuss lodging a submission or further submission please contact Jayne Macdonald (jmacdonald@mactodd.co.nz) or Oliver Jolly (ojolly@mactodd.co.nz) from our Resource Management team.



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