

SUBMISSION	
TO:	Otago Regional Council
DATE:	4 May 2020
PLAN CHANGE:	Proposed Plan Change 7 (Water Permits) to the Regional Plan: Water for Otago
KĀI TAHU KI OTAGO PAPANUI RŪNAKA	Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga (collectively mana whenua)
TRADE COMPETITION:	Mana whenua could not gain an advantage in trade competition through this submission
<p>Mana whenua support Proposed Plan Change Plan 7 to the Regional Plan: Water for Otago (the Plan Change).</p> <p>Mana whenua do wish to be heard in support of this submission at a hearing and request an opportunity to expand on this submission. If others make a similar submission, we will consider presenting a joint case with them.</p>	

1. Introduction

- 1.1 Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou and Hokonui Rūnanga are mana whenua within the Otago region.
- 1.2 The takiwā of Te Rūnanga o Moeraki is based at Moeraki and extends from the Waitaki River to the Waihemo (Shag) River. The takiwā of Kāti Huirapa Rūnaka ki Puketeraki centres on Karitāne and extends from the Waihemo River (Shag River) to Purehurehu Point (north of Heyward Point). The takiwā of Te Rūnanga o Ōtākou centres on Ōtākou and extends from Purehurehu Point to Te Matau (the Clutha River). The takiwā of Hokonui Rūnanga centres on the Hokonui region and includes a shared interest in the lakes and mountains between Whakatipu-Waitai and Tawhitarere with other Murihiku Rūnanga and those located from Waihemo southwards.

1.3 This submission is supported by Te Rūnanga o Ngāi Tahu (Te Rūnanga). The submission should be read in conjunction with the submission of Te Rūnanga o Ngāi Tahu on behalf of Ngāi Tahu Whānui as a whole, and the submission of Te Ao Marama Incorporated on behalf of Murihiku Papatipu Rūnaka.

1.4 As kaitiaki exercising rakatirataka over the water of the Otago region, mana whenua have both a responsibility and a right to ensure that decision-making puts the interests of the water first. Mana whenua have therefore decided to support the Plan Change, on the basis that this interim approach is a step towards improving the mauri of our freshwater resources.

Mana whenua in respect of the Otago region and water

1.5 Two historical deeds are important in the Otago region. The Otago Deed was signed at Koputai (Port Chalmers) on 31 July 1844 for the purchase of half a million acres of coastal Otago for £2,400. On 12 June 1848, the Canterbury Deed of Purchase (otherwise known as ‘Kemp’s Deed’) was signed aboard the warship Fly in Akaroa Harbour. This Deed saw the Crown purchase twenty million acres of land in Canterbury and inland Otago for £2000. The 150-year history of the Kāi Tahu¹ claims founded in the deeds and Te Tiriti o Waitangi clearly demonstrate that both the deeds and Te Tiriti did not alter Kāi Tahu rights and rangatiratanga over freshwater.

1.6 On this basis, all water permits, but particularly deemed permits, have been granted in contravention of Kāi Tahu water rights. Recognition of Kāi Tahu rangatiratanga over freshwater is an issue that requires separate but urgent discussion with the Crown.

1.7 Regardless, the historical context emphasises:

- a. the importance of the Crown and Otago Regional Council in actively recognising and protecting Kāi Tahu rights;
- b. the Kāi Tahu perspective on water rights in the Otago region; and
- c. the way in which deemed permits fall foul of Kāi Tahu rangatiratanga over freshwater.

¹ The southern Māori Kāi Tahu dialect uses a ‘k’ interchangeably with ‘ng’. The preference for mana whenua is to use a ‘k’. In this document, the ‘k’ will be used except for names and references to legislation, except for the tribal entity, Te Rūnanga o Ngāi Tahu, or the wider Ngāi Tahu whānui.

Tino Rakatirataka recognised under the Ngāi Tahu Settlement

1.8 The Ngāi Tahu Claims Settlement Act 1998 (Settlement Act) gives effect to the Deed of Settlement signed by the Crown and Te Rūnanga o Ngāi Tahu on 21 November 1997. The purpose of these documents was to:

- confirm the Treaty relationship, obligations and responsibilities between Kāi Tahu and the Crown. The settlement marked the beginning of a “*a new age of co-operation*” between Kāi Tahu and the Crown. The Otago Regional Council must work in partnership with Te Rūnanga and Papatipu Rūnanga.
- achieve a final settlement of Kāi Tahu historical claims against the Crown as outlined in the settlement; and
- confirm Kāi Tahu tino rakatirataka. This includes an express acknowledgement (in both the Settlement Act and the earlier Deed) that:

“The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.”

1.9 The Deed of Settlement and Settlement Act also acknowledge the requirement for Kāi Tahu to express its traditional relationship with the natural environment and to exercise its kaitiaki responsibilities.

Kaitiakitaka

1.10 All fresh water is of great significance to Kāi Tahu. Mana whenua have responsibilities through whakapapa to act as kaitiaki and care for catchments as a whole. The right of Kāi Tahu to oversee land, resources, aspirations and wellbeing was protected under the Te Tiriti o Waitangi, and this right still exists today, as recognised by the Kāi Tahu Settlement.

- 1.11 Section 2 of the Resource Management Act 1991 (**RMA**) provides the interpretation of tikaka/tikanga² and kaitiakitaka/kaitiakitanga for the purposes of the RMA:

tikanga Māori means Māori customary values and practices

kaitiakitanga means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship

- 1.12 Tikaka values and practises associated with kaitiakitaka are dependent on, and reflect, the exercise of rakatirataka. Kāi Tahu tikaka is an intergenerational source of mātauraka that gives insight into customary views and practices and how they have evolved over time.
- 1.13 Section 7 of the RMA requires consent authorities to have ‘particular regard’ to kaitiakitaka in a manner that respects and accounts for tikaka unique to each iwi exercising kaitiakitaka within their rohe.
- 1.14 The Kāi Tahu ki Otago Natural Resource Management Plans 1995 and 2005 and the Waitaki Iwi Management Plan 2019 are the principal resource management planning documents for Kāi Tahu ki Otago and the embodiment of Kāi Tahu rakatirataka and kaitiakitaka. The kaupapa of the plans is ‘Ki Uta ki Tai’ (Mountains to the Sea), which reflects the holistic Kāi Tahu ki Otago philosophy of resource management.
- 1.15 The plans express Kāi Tahu ki Otago values, knowledge and perspectives on natural resource and environmental management issues. While the plans are first and foremost planning documents to assist Kāi Tahu ki Otago in carrying out their kaitiaki roles and responsibilities, they are also intended to assist others in understanding tākata whenua values and policies.
- 1.16 Mana whenua are concerned about the extent of over-allocation in the Otago region, which has degraded the mauri of waterways. Abstractions of water that alters the natural elements of a catchment undermine the role of mana whenua as rakatira and kaitiaki of all natural resources.
- 1.17 Mana whenua request that this submission is afforded status and weight appropriate to recognise their rakatirataka and exercise of kaitiakitaka over the Otago region, and fresh water in particular.

2.0 Consultation with Mana whenua

2.1 Mana whenua acknowledge the work that was undertaken by the Otago Regional Council to work with staff at Aukaha on drafting this plan change. This included two Kāi Tahu mana whenua representatives attending meetings held by the Strategy and Planning Committee and attending Council workshops in an advisory role to provide feedback and to be included in discussions.

3.0 General submission

3.1 Mana whenua recognise that an interim solution is necessary to ensure that there is time to develop an appropriate management framework for water allocation, which will address water management issues in the region. The current planning framework is insufficient, as it fails to address issues with over-allocation, is inconsistent with the RMA and National Policy Statement for Freshwater Management 2014 (amended 2017) (**NPSFM**) and fails to have sufficient regard to Kāi Tahu rakatirataka and kaitiakitaka.

3.2 Mana whenua have first-hand experience of the failings and inadequacies of the current planning framework, and have been concerned for some time that this framework is inadequate. Mana whenua expressed these concerns to Professor Peter Skelton which are reflected in his report that informed the development of the Plan Change.³ These concerns of mana whenua about the current framework are outlined in that report and include:⁴

- a. the piecemeal processing of resource consents with no assessment of cumulative effects;
- b. inadequate provision for ecological and cultural values, including:
 - i. the lack of a natural ecological baseline for water flows when determining the “existing environment”; and

³ 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.

⁴ Page 29.

- ii. the acceptance of consent applications for water use that do not address ecological values, fish habitat and species distribution;
- c. the “use it or lose it” policy that has incentivised permit holders to ramp up their metered water use in order to create a false history of inflated use when applying for new consents; and
- d. the “efficiency gains” policy which, instead of saving river water, perversely incentivises greater use of it, leading to more intensive farming and greater economic dependence on irrigation.

3.3 The Plan Change does not address these concerns. Rather mana whenua recognise it as an interim approach that will ensure that new and replacement water permits do not lock in unsustainable water allocations for a long time period.

4.0 Specific Submissions

- 4.1 Mana whenua seek that the plan change is retained as notified.
- 4.2 Mana whenua submissions specific to each provision is shown in Appendix 1.
- 4.3 If other submitters seek to change any provisions, we retain an interest across the entire Plan Change.

Nahaku noa, nā



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Appendix 1: Mana whanua submission Regional Plan: Water (Plan Change 7)


Chapter / Provision	Support/oppose	Relief sought	Reason/comment
<p>Introduction</p> <p>The Otago Regional Council has prepared Proposed Plan Change 7 to the Regional Plan: Water for Otago.</p> <p>Proposed Plan Change 7 (Water Permits) is intended to provide an interim regulatory framework for the assessment of applications to renew:</p> <ul style="list-style-type: none"> • 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. <p>The Plan Change also establishes a requirement for short duration consents for all new water permits granted under the operative Water Plan rules.</p> <p>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.</p>	Support	Retain as notified	Mana whenua support the scope of the Plan Change.
<p>‘How to Use the Regional Plan: Water’</p> <p>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.</p>	Support	Retain as notified	Mana whenua support this amendment to the ‘How to Use’ section of the Plan, and consider that the scope of the application of Chapter 10A is appropriate.


<p>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.</p>			
<p>Objective 10A.1.1</p> <p><i>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.</i></p>	<p>Support</p>	<p>Retain as notified</p>	<p>Mana whenua are supportive of this Objective, including the requirement for a transition to sustainable management.</p> <p>Sustainable management is a core value to the mana whenua environmental management paradigm. Water resources have not been managed in a sustainable manner in the region to date. This failure to ensure sustainability has negatively impacted on recognised mana whenua values such as mauri of water and mahika kai sites and resources.</p>
<p>10A.2 Policies</p>			
<p>10A.2.1</p> <p><i>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:</i></p>	<p>Support</p>	<p>Retain as notified</p>	<p>Mana whenua support the avoidance of granting resource consents unless (a) – (e) are met.</p> <p>Mana whenua also support the specific requirements in each of (a) – (e), and consider that these are necessary and appropriate.</p> <p>The inclusion of conditions that clearly outline which types of applications are suitable is necessary and appropriate for this transitional regime.</p>

<p>(a) <i>The deemed permit or water permit that is being replaced is a valid permit; and</i></p> <p>(b) <i>There is no increase in the area under irrigation, if the abstracted water is used for irrigation; and</i></p> <p>(c) <i>There is no increase in the instantaneous rate of abstraction; and</i></p> <p>(d) <i>Any existing residual flow, minimum flow or take cessation condition is applied to the new permit; and</i></p> <p>(e) <i>There is a reduction in the volume of water allocated for abstraction.</i></p>			<p>In particular, increasing areas for irrigation is inappropriate until issues with over-allocation are addressed.</p> <p>Long consent terms are not considered appropriate for the management of the water in the Otago region, especially when the NPSFM is not given effect to in the planning framework that would enable long consent terms.</p> <p>At this point in time, there is insufficient science and data on water quantity and effects of allocation levels on mana whenua values in the Otago region. If minimum and residual flows were placed on the replacement deemed permits and other consents now, this would be in a piecemeal fashion, and would not be done in a way that is consistent with the Treaty partnership and mana whenua values.</p>
<p>10A.2.2</p> <p><i>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.</i></p>	<p>Support</p>	<p>Retain as notified</p>	<p>Mana whenua support excluding any other policy in the plan that concerns consent duration. This includes replacement consents and new consents.</p> <p>The current policy framework for consent terms favours long consent terms but lacks direction, in which case this is appropriate. This means that currently, long consent terms are likely to be granted for all permits, even in over-allocated catchments. This is inconsistent with the purpose of the RMA and the NPSFM, as well as the rakatirataka and kaitiakitaka exercised by mana whenua.</p>

<p>10A.2.3</p> <p><i>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:</i></p> <p><i>(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</i></p> <p><i>(b) The resource consent granted will expire before 31 December 2035.</i></p>	<p>Support</p>	<p>Retain as notified</p>	<p>Mana whenua support granting resource consents for short terms. Mana whenua agree that 6 years is a suitable length of time as a maximum term.</p> <p>Mana whenua support that where activities trigger Rule 10A.3.2.1 (non-complying activity), a longer consent term can be granted but will be no more than 15 years.</p> <p>Mana whenua agreed with Professor Skelton and Minister Parker’s suggestion of consent terms being short term, for example, five years. In discussions with the ORC and stakeholders it was identified that a five year consent term would not provide enough certainty for applicants to re-apply under the new or proposed water plan. A consent term of six years has therefore been agreed to as a compromise between providing sufficient time for applicants to be certain of the provisions in any new, proposed or notified plan for water, and ensuring that issues of over-allocation of water and consents that are inconsistent with the NPSFM are not extended for an unnecessary length of time.</p> <p>From a mana whenua perspective, a maximum six year period is particularly generous for water users, and is to the detriment of the fresh water and the people that value and rely on our waterways.</p> <p>The longer consent term of 15 years for those applications that comply with the criteria listed in policies of this plan change will ensure the</p>
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			<p>application and supporting information will have a minimal impact on the environment.</p> <p>Consent durations up to 15 years is cautiously supported by mana whenua. This is only because it is for the transition phase and where there is enough credible evidence to indicate abstraction has no more than minor adverse effects, including cumulative effects.</p> <p>Mana whenua understand that the potential 15 year consent term is associated with a non-complying activity status, because the controlled activity criteria in Rule 10A.3.1 cannot be met. Mana whenua consider that a consent term of longer than 6 years should not cause any increase in adverse environmental effects, including cumulative effects, throughout the transitional period.</p> <p>Ensuring all water consents expire by December 2035 will result in all replacement water permits being 'caught' by any new, proposed or notified plan for water. It is anticipated that the LWRP will give effect to all legislative requirements and will be created in a manner consistent with Treaty Partnership.</p>
10A.3 Rules			
<p>10A.3.1</p> <p><i>Despite any other rule or rules in this Plan;</i></p> <p><i>a) any activity that is currently authorised under a Deemed Permit; or</i></p>	Support	Retain as notified	<p>Mana whenua support this rule including the incorporation of controls outlined in the objectives and policies into the rule. This ensures this section of the plan is consistent between the objectives, policies and rules.</p>

<p><i>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;</i></p> <p><i>is a controlled activity provided the following conditions are met:</i></p> <ul style="list-style-type: none"> <i>i. The consent duration sought is no more than six years; and</i> <i>ii. The deemed permit or water permit that is being replaced is a valid permit; and</i> <i>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</i> <i>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</i> <i>v. Any existing residual flow, minimum flow, or take cessation condition (whichever is applicable) is included in the application for resource consent; and</i> <i>vi. The volume of water taken shall be no more than the average maximum of the daily volume limit, or monthly</i> 		<p>The controls over which Council has discretion is also supported. See reasons listed for corresponding objectives and policies above.</p> <p>In addition to the above comments, the average rate of take and the average volume of water is considered an appropriate compromise to ensure that actual water needed is being replaced. This will reduce the ‘paper allocation’, meaning the volume allocated on the permits and consent but not actually used.</p> <p>The controls and conditions that are included in this rule will ensure mana whenua values are maintained in the short term. In the long term, mana whenua would like values to be protected or enhanced, however in the interests of ensuring that there is sufficient time for an appropriate framework to be developed and implemented, mana whenua understand and appreciate that this is not a discussion for this plan change.</p> <p>Council control methods include ensuring fish are not trapped as a result of the activity and providing fish passage. The connectivity within whole catchments, from inland to the coastal environment, and the free movement of indigenous fish are important to mana whenua. This contributes to the mauri of the waterbody, and it ensures mahika kai resources and sites can be replenished and used.</p>
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<p><i>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.</i></p> <p><i>The Council reserves control over the following matters:</i></p> <ul style="list-style-type: none"> <i>a) Intake method and flow rate controls to avoid or mitigate fish entrainment; and</i> <i>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</i> <i>c) Efficiency of water use and how that efficiency is to be sustained for the duration of the water permit; and</i> <i>d) Provision of fish passage; and</i> <i>e) The rules or operating procedures of any relevant water allocation committee that exists for the catchment; and</i> <i>f) Minimum flow, residual flow or take cessation conditions; and</i> <i>g) Review conditions; and</i> <i>h) Compliance monitoring; and</i> 		<p>The consideration of the efficiency of water use will ensure that the volume and rate of water abstracted is what is reasonably needed for the operation, rather than having the ability to abstract much more than what is actually used or needed. This will ensure water allocation is reduced by removing the ‘paper’ allocation. This is the first step to ensuring that waterways have sufficient water to enhance mahika kai resources and mauri of the waterways, among other values.</p>
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<p>i) <i>The point and method of measurement and the method for transmitting recorded data to Council.</i></p> <p><i>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.</i></p>			
<p>10A.3.2</p> <p><i>Despite any other rule or rules in this Plan:</i></p> <p><i>a) any activity that is the replacement of an activity authorised under a Deemed Permit; or</i></p> <p><i>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;</i></p> <p><i>that does not meet any one or more of the conditions of Rule 10A.3.1.1 is a non-complying activity.</i></p>	Support	Retain as notified	Mana whenua support non-complying activity status, which it considers appropriate and suitable for the nature of the activity and particularly the term. Mana whenua would not support a lesser activity status.
<p>10A.4 Schedule: Methodology for calculating assessed actual usage for surface-water takes for irrigation purposes</p>	Support	Retain as notified	Mana whenua generally support the entire Plan Change for the reasons outlined above.

			<p>Mana whenua are, however, concerned about reports that some permit holders have increased rates of abstraction during the calculation period to intentionally inflate maximum rates of take in the data record, as referenced during the Ministerial Inquiry process. The efficiency test will be important during the transitional period and is consistent with the mana whenua approach to water abstractions.</p>
Table of minor and consequential changes	Support	Retain as notified	<p>Mana whenua generally support the entire Plan Change for the reasons outlined above.</p>