



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

Form 5, Clause 6 of Schedule 1, Resource Management Act 1991

Office use only

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Central Otago District Council does **wish** to be heard in support of its further submission.

Central Otago District Council could not gain an advantage in trade competition from this submission.

This submission relates to Proposed Plan Change 7 and opposes the proposed plan change.

4 May 2020

Otago Regional Council
Private Bag 1954
Dunedin 9054

To Whom it may concern,

Proposed Water Permits Plan Change (Plan Change 7) – Central Otago District Council Submission

Central Otago District Council (CODC) represents the district most impacted by this proposed plan change, being home to the vast majority of deemed permits and hundreds of other water permits affected by these proposals. Central Otago District Council itself holds a number of water permits, mostly for community water supply, including at least one deemed permit.

The Central Otago community is diverse and values its waterways for a wide range of environmental, economic, social and cultural reasons. Central Otago's waterways are renowned for many recreational uses and are also home to a range of unique native species, some of which are endangered.

Horticulture, agriculture and viticulture, all dependent on irrigation, account for a considerable proportion of Central Otago's economy and land area. Central Otago District Council makes this submission with this breadth of community importance in mind.

We note that the Otago Regional Council (ORC) has prepared Plan Change 7 in a short period of time. In recognising the importance of this plan change, we felt it necessary to lodge a submission and we make the following recommendations and comments.

Recommendation 1:

We ask the Environment Court to give careful consideration to whether a new and different interim consenting regime, is the best way to transition from the present situation to a further unknown new planning framework in 2025 (once the Regional Policy Statement has been again reviewed and a new Land and Water Regional Plan developed).

Unfortunately, any short-term consent will not provide water users with the security of supply to move forward with investment in water efficiency improvements and will stall the environmental progress being made under the current framework. It also leaves an inequitable and incongruous situation where those who have already had long-term consents issued are effectively operating under a different regime from those left in this interim process, with both operating within the same catchments.

If permit replacements are not to be processed under the full range of considerations covered in the current framework during the next few years, then our preference is for existing deemed permits to be extended so they can be considered under the new framework.

This could either be done by either:

- (1) issuing short duration consents under the current water plan rules until the new planning framework is ready; or
- (2) making compliance with terms of existing permits a permitted activity until the new planning framework is ready; or
- (3) issuing replacement permits on the same terms as existing permits, as a controlled activity, until the new planning framework is ready.

Reasons

Professor Skelton, in his 2019 *Investigation of freshwater management and allocation functions at Otago Regional Council: Report to the Minister for the Environment* (the Skelton Report) recommended that the existing deemed permits be extended so that they can be considered under the new rules.

“A new planning framework is required for Otago. This framework, amongst other things, needs to provide a robust process for assessing any applications that are made to replace the deemed permits and set plan provisions, as guided by national direction, especially the NPS-FM.

...I consider that the only way to ensure that new and replacement consent applications will be assessed under the new planning framework is to defer the expiry date for deemed permits in Otago to a period when it can reasonably be expected that the new land and water plan will be in place.” (pp35-36)

- Until this occurs, Professor Skelton recommends that any deemed permits renewed under the current Water Plan be for short term permits of 5-10 years.
- In the absence of a Resource Management Act amendment, the most straightforward way to do this would be to roll over permits, either by issuing interim replacement permits on the same terms as currently, or make compliance with these permits a permitted activity for a short duration.
- The first option does not appear to have been considered by Otago Regional Council and the second is dismissed without real consideration in its section 32 report.
- In addition to the issues raised in the recommendations below, we have several reservations about this approach, and the specific rules, policies and scope of potential conditions under Plan Change 7. These include:
 - Environmental improvements currently underway as a part of re-consenting existing takes under the current Plan will be delayed because Otago Regional Council will not have the scope to set environmental conditions as under the current plan.
 - It is unclear whether any new minimum flows or residual flows may be added to consents. On the one hand Plan Change 7 arguably provides for it, but the section 32 report seems to indicate this is not intended.
 - Leaving flows in creeks voluntarily appears to be disincentivised, as users will have less flexibility to use water when available and ration during low flows. Sharing water is also not provided for.
 - It is unclear how dam consent renewals will be dealt with under Plan Change 7.

If the neither the current framework, nor the approach recommended in the Skelton Report are followed leaving Plan Change 7 to proceed, we make a number of additional recommendations which follow.

Recommendation 2:

Rather than apply an average over a 5 year period, cap use at the maximum allowed actual use recorded for the relevant period. For example, the actual annual volume limit should reflect the actual volume of water used in the year when the most water was used.

Reasons:

- This would achieve Otago Regional Council's aim of providing interim consents more accurately based on actual use rather than paper allocation.
- Using an average across seasons fails to reflect what is required (and has historically been lawfully used) and removes flexibility in drier years when irrigation matters most.
- Capping takes based on maximum annual actual use is more consistent with the Regional Plan for Water and Regional Policy Statement for Water.
- To give an analogy, a careful gardener, watering only as much as required to maintain the garden, will water the garden more during a dry summer, than in a wet summer when rainfall may be nearly sufficient. If water use were averaged between the wet and dry summers, it would be less than what is required in a dry summer.
- The section 32 analysis looking at economic impacts does not acknowledge that Plan Change 7 will inevitably reduce actual use through the prescribed methodology. It may be that Otago Regional Council has not realised the implications of applying a cap based on average use across seasons.
- If the Council did realise that using averages would result in reduction of actual use, then this could be seen as reduction by stealth. This is arguably in conflict with the process sought by Minister Parker in his letter to Council following the release of the Skelton report. At recommendation 5 of that Report, Professor Skelton recommended "that the Minister initiates the necessary legislative process to change the date for expiry of the deemed permits in section 413(3) of the RMA, from 1 October 2021 to 31 December 2025." In his letter of 18 November 2019, Minister Parker states in his recommendation that he did not favour extending the RMA date but that the ORC "takes steps to resolve the matter rather than taking up the time of Parliament". In essence, the Minister endorsed the outcome of Professor Skelton's fifth recommendation, being that the then current usage continued in the interim, but disagreed with the process. Whether by design or accident, the Otago Regional Council has usurped the intent of the recommendations of both the Minister and the Professor. We further note that, in neither the Skelton Report nor the Ministerial letter were reductions in take recommended or discussed.

Relevant Plan and Policy Statement provisions

- The Regional Policy Statement for Otago 1998, Objective 6.4.1 Requires Otago Regional Council:
"To allocate Otago's water resources in a sustainable manner which meets the present and reasonably foreseeable needs of Otago's people and communities."
This provision is operative and must be given effect to by Plan Change 7.
- The Partially Operative Otago Regional Policy Statement 2019 Objective 1.1 states:
"Otago's resources are used sustainably to promote economic, social and cultural wellbeing for its people and communities."
- Policy 1.1.1 states:
"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."

Recommendation 3

Plan Change 7 should be consistent with the Regional Water Plan which provides for anticipated population growth in community drinking water allowances. Plan Change 7 currently does not provide for this. The methodology for calculating takes and volumes of limits for community water takes should be adapted with this in mind.

Reasons

- Policy 10A.2.1 requires a reduction in the volume of water allocated.
- Rule 10A.3.1.1 requires that the rate of take, and volume of water taken, be reduced to the average takes and volumes recorded during the 2012-mid 2017 period.
- These amounts are outdated based on Central Otago's growth (the third highest in the country in the 2018 census) and will continue to do so over the coming years when they may be renewed. It is essential that flexibility is provided to account for actual and anticipated population growth.
- Community drinking water takes are required to be assessed using the methodology in the Schedule entitled "Methodology for calculating assessed actual usage for surface-water takes *for irrigation purposes*" [emphasis added]. This methodology is not appropriate for calculating the water required for a community water supply.

Relevant Plan and Policy Statement provisions

- The current regional plan for water states:
"6.4.2A Where an application is received to take water and Policy 6.4.2(b) applies to the catchment, to grant from within primary allocation no more water than has been taken under the existing consent in at least the preceding five years, except in the case of a registered community drinking water supply where an allowance may be made for growth that is reasonably anticipated."
- The Partially Operative Otago Regional Policy Statement 2019 states:
*"Policy 1.1.2 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: ...
e) Promoting community resilience and the need to secure resources for the reasonable needs for human wellbeing;"*

Recommendation 4

Provide greater flexibility in the land eligible for irrigation under the interim permits. This could be by extending the timeframe beyond 2017-18 for a two or three year period.

Reasons

- Plan Change 7 proposes using a single season, 2017-18, to determine which land areas may be irrigated under the interim permits.
- There are several reasons why this season may not be appropriate. Land may have been in rotation or under development and not irrigated during that season. As a result, areas that were irrigated before that season, and are irrigated now, may be excluded.
- 2017-2018 was a particularly dry year for many, so this may also have influenced irrigation areas that year.

Recommendation 5

More recent datasets should be included in the 5 year period for assessing take limits, so long as there is no evidence of intentional wastage.

Reasons

- Plan Change 7 currently only allows data from mid-2012 – mid-2017 to be included, even though some of these data sets may be incomplete and more recent data is available.
- Water users have operated on the understanding that the relevant 5 years were those leading up to consent application, which for deemed permits needed to be by 31 March 2021. Some water users have already invested and implemented planting plans on that basis.
- The 2017-2018 data set is already required for the consent application and is more recent. It is more relevant than the preceding data, more likely to be complete, and should be included for volume calculations also.

Recommendation 6

We suggest that the approach of rounding any measured exceedances down to the authorised take in 10A.4.1(3), 10A.4.2(3), 10A.4.3(4) and 10A.4.4(4) not be limited to exceedances within the estimated margin of error of 5-10%.

Reasons

- Water data is crucial to sound decision making. Removing the best available data creates misleading gaps in datasets.
- Water measurement is difficult and can be prone to errors beyond 5-10%.
- Plan Change 7 proposes that any measured exceedances beyond 5-10% will result in the data for the relevant period being removed. Completely removing this data will lead to an inaccurate picture of water usage. It would be better to take a consistent approach and round down to the authorised amount.

Recommendation 7

Make provision for conditions protecting indigenous biodiversity, in particular native fish species such as galaxiids.

Reasons

- Plan Change 7 enables conditions to be made for fish passage but does not specifically address indigenous biodiversity.
- Central Otago is a noted hotspot of diversity for endemic galaxiids, with 13 described and undescribed taxa recognised. Remaining populations of non-migratory galaxiids are highly fragmented, typically occurring in smaller tributary streams and wetlands. As noted in the Skelton report:
“In some river catchments, flow and habitat changes, together with the ingress of trout, have had a severe impact on endemic non-migratory galaxiids, several of which are threatened or endangered.”
- Providing protection for galaxiids and other indigenous biodiversity would be consistent with Policy 3.1.1 of the Proposed Otago Regional Policy Statement 2016:
*“Safeguard the life-supporting capacity of fresh water and manage fresh water to...
b) Maintain or enhance aquatic:
i. Ecosystem health;
ii. Indigenous habitats; and
iii. Indigenous species and their migratory patterns;”*

Recommendation 8

Remove the requirement in Policy 10A.2.1(e) that Council shall avoid granting resource consents to replace existing permits “unless there is a reduction in the water allocated for abstraction.”

Reasons

- Allocation is reduced arbitrarily rather than because of an allocation having an adverse effect on a waterway. If an allocation is adversely affecting a waterway, there is no ability to consider whether effects can be mitigated in some other way.
- This requirement should be removed, or at least some discretion provided for.
- In the case of a community drinking water supply for a growing population, it is an inappropriate requirement.
- As noted above, in neither the Skelton Report nor the Ministerial letter were reductions in take recommended or discussed.

Recommendation 9

Make interim provision for water management groups.

Reasons

- Plan Change 7 makes no provision for water management groups, which are encouraged in the water plan as an important way for communities to work together to share and ration water in times of low flow.
- Water users have invested considerable time and resources in recent years working out how they will work together to efficiently manage and share water under water management groups to achieve both better efficiency and improved environmental outcomes after 2021. This visionary approach is widely seen as crucial to effective water management in Central Otago given the unique and complex nature of irrigation here. Anecdotally, those water management groups already in place are working well together.
- Plan Change 7 does recognise water allocation committees, however. This is despite Otago Regional Council having previously indicated that its preference is for water users to form water management groups.
- As Plan Change 7 is currently drafted, individual water permits will be considered on an ad hoc basis, without scope for group management proposals to be considered as a whole.
- The Skelton Report states:
“Further, all the deemed permits within a sub-catchment should be considered together as a ‘block.’ Ad-hoc or individual processing of consents in advance of a robust policy and rule framework should be avoided.”

Relevant Plan and Policy Statement Provisions

- The Water Plan makes several references to encouraging and supporting collective coordination and rationing by water users. These include:
*“6.4.12A To promote, approve and support water management groups to assist the Council in the management of water by the exercise of at least one of the following functions:
(a) Coordinating the take and use of water authorised by resource consent.*

(b) Rationing the take and use of water to comply with relevant regulatory requirements.

(c) Recording and reporting information to the Council on the exercise of resource consents as required by consent conditions and other regulatory requirements, including matters requiring enforcement.”

- Policies 6.4.12B, 6.4.12C, 6.4.13 also provide for the functioning of water management groups and rationing plans within the water plan.
- The Proposed Otago Regional Policy Statement 2016 similarly states:

“Policy 3.1.4

Manage for water shortage by undertaking all of the following:

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;”

Summary

We believe that Plan Change 7 should be rejected in its entirety due to the shortcomings identified in the proposed plan. The plan change attempts to impose an interim framework that is different from the status quo and tries to bridge the transition to an unknown future. Shifting to an interim system runs the risk of creating unnecessary cost and pre-empts the development of the new Land and Water Regional Plan. If consents are not to be processed under the current framework, then to reflect the work that we and many permit holders have carried out to date, our preference is for the expiry of existing deemed permits to be extended to align with the introduction of the new Land and Water Regional Plan in 2025.

We feel that this approach would give all parties a level of certainty and allow focus on the development of the new Land and Water Regional Plan. If the adoption of Plan Change 7 is unavoidable, the recommendations contained in this submission should be incorporated into the final plan change to provide a more pragmatic and equitable system for permit holders.

Yours sincerely,

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Economic Development Manager