



# 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

Full name of submitter: **Joint submission on behalf of specific Territorial Authorities in the Otago Region. Contact: Mr Gerald Peter Essenberg, Clutha District Council.**

Name of organisation (if applicable): **Clutha District Council and Waitaki District Council**

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I wish / ~~do not wish~~ (circle preference) to be heard in support of my further submission.

If others made a similar submission, I **will** consider presenting a joint case with them at a hearing. (Delete if you would not consider presenting a joint case)

**Trade competitor’s declaration** (if applicable)

I ~~could~~ / could not (circle one) gain an advantage in trade competition from this submission

I am / ~~am not~~ (circle one) directly affected by an effect of the plan change that

- (a) Adversely affects the environment; and
- (b) Does not relate to trade competition or the effects of trade competition.

Signature of submitter: **Not required**

Date: **30 April 2020**

(Or person authorised to sign on behalf of person making submission.

Signature not required if you make your submission by electronic means)

**Please note that all submissions are made available for public inspection.**

**Background to Submission:**

This joint submission is being made on behalf of specific Territorial Authorities (TA’s) in the Otago Region and shall be referred to as the “submitter” within this submission document. Other TA’s in the Otago Region (Dunedin City Council, Central Otago District Council and Queenstown-Lakes District Council), initially indicated their participation with this joint submission. However, due to the absence of any Plan Change consultation or follow up, and with the current Covid-19 situation and time constraints, the other TA’s have otherwise instead sought the option of preparing either alternative submissions or submissions to the Environmental Protection Agency (EPA) when/if the Plan Change is re-notified. Whilst this submission identifies concerns with the Plan Change as notified, and requests removal of all or part of the Plan Change, alternatives are provided to assist the Otago Regional Council (ORC) or EPA with this process and provide for an acceptable outcome(s) on behalf of the submitter.

Plan Change 7 (PC7) provides a holding pattern to enable the ORC to develop a 'fit for purpose' freshwater management regime under the NPS-FM. PC7 does not give effect to the NPS-FM itself and significantly, does not remove any of the provisions of the operative Regional Plan: Water for Otago (RPW). PC 7 applies to replacement of deemed permits and water permits to take and use surface water where those water permits expire prior to 31 December 2025, which is the case with replacement (or new) consents sought by the submitter, and also any existing consent applications currently in process.

Where these permits are sought for a duration of no more than 6-years and do not seek to change the allocation and rates of take (rather accept a statistical reduction in take), they are identified as controlled activities. Where the controlled activity conditions are not met, the permits are deemed to be non-complying activities, which would most likely be the case under PC7 for community water supply as well as irrigation and other commercial water takes. Resource consent reapplication for Scheduled community water supplies are otherwise currently deemed to be controlled activities under the RPW.

### **Consultation:**

The ORC specifically utilised a targeted consultation approach which included public forum and focus group meetings held in respect of PC7. Additionally, ORC emailed the submitter on 4 February 2020 with a draft for comment copy of PC7. This allowed up to six working days to respond to the draft. There were no responses identified by ORC from the submitter.

The concern with the targeted consultation used by ORC is that the email sent on 4 February 2020 was the only (single) communication mechanism utilised for this process for the submitter. Additionally, the email was not necessarily sent to the correct or appropriate recipient, which resulted in no feedback being presented in respect of PC7 by the submitter. There was also no follow up by ORC within this process, and the result is that the submitter was effectively not given appropriate opportunity for input to PC7 through the consultation process.

### **Section 32 Report Comments:**

It is unclear whether the new provisions of PC7 may implement a coherent pattern of objectives and policies. The Plan Change is an interim measure and is to provide for an effective and efficient water management framework. However, the Plan Change is rather unusual in that it sits in its own section of the RPW, rather than being integrated within the relevant provisions of Section 6 (Water Quantity) and Section 12 (the water takes, use and management rules). PC7 provisions are inconsistent with the provisions of the operative RPW that relate to community water takes. The key policy in relation to the duration of water take, Policy 6.4.19, has not been deleted or amended to reflect the objective of the Plan Change. These provisions remain relevant. On this basis, PC7 does not appear to implement of coherent set of objectives and policies.

PC7 constitutes a significant shift in ORC policy (by directing shorter consent terms), and it is unclear that the new provisions are in accordance with Part 2 of the Act. An arbitrary 6-year consent duration would not appear to enable the social, economic, and cultural well-being, nor the health and safety of people and communities in circumstances where the potential of natural and physical resources is sustained to meet the reasonably foreseeable needs of future generations; and the life-supporting capacity of air, water, soil, and ecosystems has been safeguarded; and any adverse environmental effects of the takes have been avoided, remedied, or mitigated (the Section 5 purpose of the Resource Management Act). This is particularly evident when the permit is specifically to provide for the health and safety of a community, to provide a secure and reliable water source for communities, and where the cost of investment is high, demanding a longer-term consent duration. These issues were also apparent within the cost benefit analysis of options identified by PC7, of which appears to insufficiently provide for social, cultural, environmental and financial requirements.

### **General Comments:**

The RPW recognises the importance of Community Water Supply in Schedules 1B and 3B. This approach is supported and it is appropriate for community water supplies to continue to be recognised and provided for. PC7 is silent regarding community water supplies and also does not recognise the many small community water takes that are not scheduled in the RPW and that are currently consented.

Any scheduled community takes currently in process or expiring before 2025 would not get appropriate recognition from the current Water Plan. Additionally, any new alternative or additional surface water take or riparian groundwater take would be restricted or disadvantaged by PC7 in relation to the current provisions in the RPW. This also includes irrigation, industrial and commercial water takes within the region.

The 6-year duration proposed for all replacement resource consents is overly restrictive and does not consider each application on its own merits, particularly where there are no risks to any over allocation of the resource. PC7 does not provide a suitable mechanism for provision of longer-term consents being subject to specific conditions, that are not otherwise dealt with as a non-complying activity. This is evident with PC7 restrictions being not limited only to overallocated catchments. This means that water permits or applications within catchments where there are no identified allocation issues will face restrictions for which there appears to be little justification.

If delays were to occur with the proposed review of the Water Plan and development of the Water and Land Plan, consent holders may have to apply for additional resource consents in the transitional period. Provision for transitional consents with a longer duration and/or subject to an appropriate review clause, will allow for the development of the new plan to be completed and for consent holders to have adequate time to prepare new applications in accordance with new provisions. The use of a review clause was identified by PC7 as an appropriate tool for management of resource consents and of which was supported by Iwi.

The requirement for no increase in the rate of take (and particularly a statistical reduction in take), may cause some difficulty for applicants to achieve the scale of activity already consented under the current RPW. The restrictions preventing increases in irrigated land area fail to encourage efficiencies in irrigation methodology or water use. Consent holders should be encouraged to use efficient irrigation methods which may either result in the taking of less water or an allowance to efficiently use water allocation to irrigate additional land, thereby increasing land productivity. These are two areas of PC7 where there is little supporting information surrounding the justification for such measures and correspondingly there is no apparent technical assessment and underlying science provided by the Plan Change. PC7 also openly identifies that required investigations on water management have not yet been completed and this is acknowledged due to the size and variability of the regional water resource.

**State what your submission relates to and if you support, oppose, or want it amended:**

*(e.g. support rule 'x', or amend policy 'y')*

Oppose PC7 in its entirety in relation to general irrigation and commercial water uses, Schedules 1B, 3B and associated water supply takes and values, and seek that it be either amended or removed. ....

Oppose Policy 10A.2.1, (b) and (e), and request they be amended or removed. Oppose Policy 10A.2.2 and request it be amended or removed. Oppose Policy 10A.2.3 and request it be amended or removed.

Oppose Rule 10A.3.1.1 (i), (iii), (iv), and (vi), and request they be amended or removed.....

Oppose Rule 10A.3.2.1 and request it be amended or removed. ....

Oppose Schedule 10A.4 and request it be amended or removed.

**State what decision you want the Otago Regional Council to make:**

*(e.g. amend policy 'y' to say....)*

Request the Policies and Rules within PC7 to be amended to not apply to any Schedule 1B or 3B water take, or any associated water supply take. Additionally, request that the Policies and Rules within PC7 be amended to appropriately address any replacement or new water permit (or replacement deemed permit) applications for the taking of water.

Amend Policy 10A.2.1 to not apply to any Schedule 1B or 3B water take or any associated water supply take, and remove (b) any increase in area under irrigation, and (e) amend from a "reduction" in water allocation to "no increase" in water allocation. ....

Amend Policy 10A.2.2 to not apply to any Schedule 1B or 3B water take or any associated water supply take. Amend Policy 10A.2.2 to remove reference to a “duration of consent of no more than six years”, and alternatively replace with a specific “PC7 review clause” to apply by 31 December 2025 or thereafter, on any new water permit to address the relevant provisions of the new operative Land and Water Regional Plan. ....

Amend Policy 10A.2.3 to not apply to any Schedule 1B or 3B water take or any associated water supply take. Amend Policy 10A.2.3 to remove reference to a “duration of consent of no more than six years”, and alternatively replace with a specific “PC7 review clause” to apply by 31 December 2025 or thereafter, on any replacement water permit to address the relevant provisions of the new operative Land and Water Regional Plan. Note that all replaced deemed permits will become water permits. ....

Amend Rule 10A.3.1.1 (i) to not apply to any Schedule 1B or 3B water take or any associated water take and to remove reference to “consent duration sought is no more than six years”, and alternatively replace with “adoption of a specific PC7 review clause to apply by 31 December 2025 or thereafter”, remove (iii) reference to land area under irrigation, amend (iv) to include the rate of take as being the rate taken under the exercise of the current or existing resource consent up to and not exceeding the existing authorised rate of take, and remove reference to the method outlined in Schedule 10A.4, and (vi) to include the daily, monthly and annual limit of take as being that taken under the exercise of the current or existing resource consent with allowance for climatic variability and seasonal extremes, up to and not exceeding the existing authorised daily, monthly and annual limit of take, and remove reference to the method outlined in Schedule 10A.4.

Amend Rule 10A.3.2.1 from a non-complying activity to a discretionary activity. ....

Remove Schedule 10A.4 methodology as it currently stands. ....

**Give reasons for the decision you want made:**

*(e.g. I want policy 'y' changed because...)*

PC7 in its entirety assumes that the intended LWRP can be applicable by 31 December 2025. This affects replacement water permits within that period and potentially thereafter. PC7 also affects new water permit applications as being subject to (relevant) Policies in Chapter 10. The requested removal of any duration of replacement or new consent of “six years” under PC7, and the alternative provision of a specific PC7 review clause will allow the consent authority greater flexibility in dealing with timelines and implementation of any requirements of a new operative Land and Water Regional Plan. Whilst the specific review clause maintains full functionality with respect to implementation of the new operative Land and Water Regional Plan, authorised durations of replacement or new water permits (including deemed permits that are converted to water permits), may consider each activity, effects, and the receiving environment on an individual or cumulative basis.....

PC7 provides no consideration of Schedule 1B or 3B takes, or associated water supply takes and values. Water permits for Schedule 1B and 3B or associated water supply takes require sufficient duration to enable surety, continuity and quality of water provided to consumers under the RMA and the Public Health Act.....

Policy 10A.2.1 (b) provides no basis for restriction of any area under irrigation. Any effects of irrigation area or use of the water are encapsulated by the provisions of Plan Change 6A, and (e) there is no apparent basis for the requirement of a reduction in the volume of water allocated for abstraction. Existing lawful water takes are based on an efficient water allocation for the purpose or use of that water. Requiring a reduction in efficiently allocated water risks a shortage of water during peak demand periods. The policy also discourages additional efficiencies in the use of water.

Policy 10A.2.2 is deficient in consideration of adequate viability for irrigation water takes and water supply values for scheme domestic, scheme stock-water, dairy shed, industrial-commercial and other water uses. A term of 6-years is insufficient to adequately provide viability for irrigation water takes, and to provide surety, continuity and quality of water provided for other uses under the RMA and the Public Health Act. Policy 10A.2.2 does not consider water supply values for Schedule 1B and 3B water takes and any associated water takes.

Policy 10A.2.3 is deficient in consideration of adequate viability for irrigation water takes and water supply values for scheme domestic, scheme stock-water, dairy shed, industrial-commercial and other water uses. A term of 6-years is insufficient to adequately provide viability for irrigation water takes, and to provide surety, continuity and quality of water provided for other uses under the RMA and the Public Health Act. Policy 10A.2.3 does not consider water supply values for Schedule 1B and 3B water takes and any associated water takes.

Rule 10A.3.1.1 (i) is deficient in consideration of adequate viability for irrigation water takes and water supply values for scheme domestic, scheme stock-water, dairy shed, industrial-commercial and other water uses. Rule 10A.3.1.1 (i) does not consider water supply values for Schedule 1B and 3B water takes and any associated water takes. A term of 6-years is insufficient to adequately provide viability for irrigation water takes, and to provide surety, continuity and quality of water provided for other uses under the RMA and the Public Health Act, (iii) provides no basis for restriction of any area under irrigation. Any effects of irrigation area or use of the water are encapsulated by the provisions of Plan Change 6A. The 2017 – 2018 irrigation season is not representative for the purposes of determining maximum irrigable areas from existing consented water takes for irrigation purposes, (iv) the method outlined in Schedule 10A.4 does not account for climatic variability and seasonal extremes when determining the rate and volume of take, and risks a reduction in efficiently allocated water with a consequential shortage of water during peak demand periods, and (vi) the method outlined in Schedule 10A.4 does not account for climatic variability and seasonal extremes when determining the daily, monthly and annual volume of take, and risks a reduction in efficiently allocated water with a consequential shortage of water during peak demand periods.

Rule 10A.3.2.1 provides no basis for the activity status to default to non-complying when it may not meet the relevant conditions of Rule 10A.3.1.1 (being a controlled activity).

The Schedule 10A.4 methodology applied statistically reduces the maximum rate of take, and daily, monthly and annual volumes of take for no apparent reason. The methodology does not account for climatic variability and seasonal extremes when determining the rate and volume(s) of take, and risks a reduction in efficiently allocated water with a consequential shortage of water during peak demand periods. This will leave existing water takes (water users) short of water with associated health, efficiency and economic impacts. The 6-year control period utilised (2012 – 2017) does not provide for a suitable representation of percentile irrigation or other water use seasons. By applying the “average maximum” water taken over the 2012 – 2017 year period, as per Schedule 10A.4, the resulting water permit allocation becomes (at least) for monthly and annual volumes, approximately a 25-percentile reduction in efficient water allocation for that purpose or use. PC7 considers that the methodology utilised in Schedule 10A.4 represents an allocation of water based on “actual use”. However, the instantaneous, daily, monthly and annual averaging of actual (measured) water use is inapplicable during times of peak use, and thus does not represent an efficient actual use during those times of high demand. Typically the allocation of water within a water permit or deemed permit is the maximum rate or volume taken for a specific purpose or use. Whilst the maximum rate or volume may not be taken at all times, it remains an efficient allocation for use during peak periods.

**Please attach any additional information.**

## **SUBMISSIONS MUST BE RECEIVED BY 5.00 PM ON Monday 4 May 2020**

Post to Otago Regional Council  
Private Bag 1954  
Dunedin 9054

Email to [policy@orc.govt.nz](mailto:policy@orc.govt.nz)

Deliver to Otago Regional Council offices at:

- 70 Stafford Street, Dunedin
- William Fraser Building, Dunorling Street, Alexandra
- Terrace Junction, 1092 Frankton Road, Queenstown

Online at [www.orc.govt.nz](http://www.orc.govt.nz)

### **Please note:**

Please note that your submission (or part of your submission) may be struck out if the authority is satisfied that at least 1 of the following applies to the submission (or part of the submission):

- it is frivolous or vexatious:
- it discloses no reasonable or relevant case:
- it would be an abuse of the hearing process to allow the submission (or the part) to be taken further:
- it contains offensive language:
- it is supported only by material that purports to be independent expert evidence but has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert advice on the matter.