



Department of  
Conservation  
*Te Papa Atawhai*

DOCDM-6254402

4 May 2020

Regulatory Manager  
Otago Regional Council  
70 Stafford St  
Private Bag 1954  
DUNEDIN 9054

Attention: Gwyneth Elsom

Kia Ora Gwyneth,

**ORC Plan Change 7:**

Please find enclosed the submission by the Director-General of Conservation in respect of Proposed Plan Change 7 (Water Permits). The submission identifies the Director-General's concerns and the relief sought.

Please contact Herb Familton in the first instance if you wish to discuss any of the matters raised in this submission at the RMA Shared Services at Skype, Teams, or email on [hfamilton@doc.govt.nz](mailto:hfamilton@doc.govt.nz) or 027 5367037.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Herb Familton'.

Herb Familton  
Resource Management Act Planner  
For Director-General of Conservation

## RESOURCE MANAGEMENT ACT 1991

### SUBMISSION ON A PROPOSED PLAN CHANGE TO THE REGIONAL PLAN: WATER FOR OTAGO

**TO:** Otago Regional Council

**SUBMISSION ON:** **Proposed Plan Change 7 (Water Permits):**

**NAME:** Lou Sanson  
Director-General of Conservation / *Tumuaki Ahurei*

**ADDRESS:** RMA Shared Services  
Department of Conservation  
Attn: Herb Familton  
[hfamilton@doc.govt.nz](mailto:hfamilton@doc.govt.nz) (email, teams or skype)  
or (027) 536 7037

#### STATEMENT OF SUBMISSION BY THE DIRECTOR-GENERAL / TUMUAKI AHUREI

Pursuant to clause 6 of the First Schedule of the Resource Management Act 1991 (RMA), I, Aaron Fleming, Director Operations / Kaihautū, Matarautaki, Southern South Island, acting upon delegated authority from the Director-General of Conservation / Tumuaki Ahurei (Director-General), make the following submission in respect of the Proposed Plan Change Plan Change 7 (Water Permits) to the Regional Plan: Water for Otago.

1. I support in part Proposed Plan Change 7 (Water Permits) (the Plan Change) to the Regional Plan: Water for Otago.
2. I am not a trade competitor in this matter and, as the Director-General / Tumuaki Ahurei I have specific regulatory and management roles under the Conservation Act 1987, Wildlife Act 1953, and Freshwater Fisheries Regulations 1983 to manage native freshwater biodiversity, wildlife, and fish passage / screening.
3. The specific provisions of the Plan Change that my submission relates to are set out in Attachment 1 to this submission. The decisions sought in this submission are required to ensure that the Regional Plan: Water:
  - a. Gives effect to the National Policy Statement for Freshwater Management (2014 as amended 2017) (NPSFM); and
  - b. Recognises and provides for the matters of national importance listed in section 6 of the Resource Management Act 1991 (RMA); and
  - c. Has particular regard to the other matters in section 7 of the Act; and
  - d. Gives effect to the partially operative Otago Regional Policy Statement; and
  - e. Has regard to the Otago Conservation Management Strategy; and
  - f. Has regard for the New Zealand non-migratory galaxiid fishes' recovery plan 2003-2014 (2004); and New Zealand migratory galaxiid recovery plan 2003-2013 (2004); and
  - g. Protects the life supporting capacity of freshwater for invertebrate species including *kākahi* / freshwater mussels and *koura* / crayfish; and

- h. Protects the life supporting capacity of freshwater for braided river bird species; and
  - i. Promotes the sustainable management of natural and physical resources; and
  - j. Gives effect to the RMA issues raised in the Skelton Report (2019); and
  - k. The changes sought are necessary, appropriate, and sound resource management practice.
4. I seek the following decisions from Council:
- 4.1 That the overall intent of the Plan Change (which is to develop a plan framework to permit a transition from Deemed Permits to RMA permits) is supported. The Plan Change will enable the long-term sustainable management of surface water in Otago and provide adequate time for the preparation of a reviewed Regional Plan: Water for Otago. This process will ensure that the Regional Plan will give effect to the NPSFM and address the RMA issues raised in the Skelton Report (2019). The Director-General's submission is intended to ensure that once adopted, the Plan Change will achieve the overall intent and can be able to be successfully implemented by Council consent staff.
  - 4.2 That the provisions of Proposed Plan Change 7 that I support, as identified in Attachment 1, are retained.
  - 4.3 That the amendments, additions and deletions to Proposed Plan Change 7 sought in Attachments 1 are made.
  - 4.4 Further or alternative relief to give effect to that sought in 4.1 – 4.3 above.
5. I wish to be heard in support of my submission. If others make a similar submission, I will consider presenting a joint case with them at the hearing.
6. I consider that caucusing of technical experts, followed by caucusing planning experts prior to any hearing, would be particularly useful in this case.



Aaron Fleming  
Operations Director/ *Kaihautū Matarautaki*  
Southern South Island  
Queenstown  
Pursuant to delegated authority<sup>1</sup>  
On behalf of Lou Sanson

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<sup>1</sup> Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House / *Whare Kaupapa Atawhai*, 18/32 Manners Street, Wellington 6011.

Director-General of Conservation / *Tumuaki Ahurei*  
Date: 4 May 2020

**ATTACHMENT 1:**

**PROPOSED PLAN CHANGE 7 (WATER PERMITS) – REGIONAL PLAN WATER  
SUBMISSION BY THE DIRECTOR-GENERAL OF CONSERVATION**

The specific provisions that my submission relates to are set out in Attachment 1. My submissions are set out immediately following these headings, together with the reason and the decision I seek from the Council.

The decision that has been requested may suggest new or revised wording for identified sections of the plan change. This wording is intended to be helpful but alternative wording to like effect may be equally acceptable. Text quoted from Proposed Plan Change 7 (Water Permits) (the Plan Change) of the Regional Plan: Water for Otago is shown in *Italics*. The wording of decisions sought shows new text sought as *underlined [italic]* and original text to be deleted as ~~*strikethrough*~~.

Unless specified in each submission point my reasons for supporting are that the policies are consistent with the purposes and principles of the Resource Management Act 1991 (RMA) and the National Policy Statement for Freshwater Management (2014 as amended 2017) (NPSFM).

PC REF	PLAN PROVISION	POSITION AND REASON	RELIEF SOUGHT
All Pages	Objective 10A.1.1 Policies 10A2.1-3 Rules 10A3.1. and 10A3.2 Schedules 10A4.1-4	<p><i>Overall Intent</i></p> <p>That the overall intent of the Plan Change is supported (which is to develop a plan framework to permit a transition from Deemed Permits to RMA permits).</p> <p>The Plan Change will enable the long-term sustainable management of surface water in Otago and provide adequate time for the</p>	Retain provisions unless altered by any specific, general, or consequential relief sought below.

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		<p>preparation of a full review of the Regional Plan: Water for Otago.</p> <p>This planning process will ensure that the Regional Plan will give effect to NPSFM and address the RMA issues raised in the Skelton Report (2019).</p>	
Pages 2 and 3	Policy 10A2.1 and Schedule 2A	<p>The existing RPW has a schedule of minimum flows, Schedule 2A, which include Taieri catchment and Manuherekia catchment minimum flows that were, in the explanation to Policy 6.4.5, to apply if the deemed permit holders agreed or on the expiry of their deemed permits on 2 October 2021.</p> <p><i>Reasons</i></p> <p>Notified Plan Change 7 Policy 10A.2.1 and associated rules and section 32 analysis does not mention Schedule 2A minimum flows. The public would have every reason to believe these minimum flows <u>will</u> be applied from 2 October 2021 in the Taieri and Manuherekia catchments as this is Regional Plan: Water for Otago (RPW) policy, and Plan Change 7 largely addresses consent term. The public would therefore have</p>	<p>Reword Policy 10A 2.1. (d) to:</p> <p>Any existing residual flow, minimum flow, or take cessation condition, or <u>relevant Schedule 2A minimum flow</u> (whichever is applicable) <del>included in the application for the resource consent</del> included as a condition in the application.</p> <p>Reword Rule 10A.3.1.1):</p> <p>Any existing residual flow, minimum flow, or take cessation condition, or <u>relevant Schedule 2A minimum flow</u> (whichever is applicable) <del>included in the application for the resource consent</del> included as a condition in the application.</p>

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		<p>expectations that Schedule 2A minimum flow will apply.</p> <p>Where there is no minimum flow set in the plan is no point applying an unknown and uncertain minimum flow regime for the rest of these permits when the Land and Water plan review process will set minimum flows and limits consistent with the under the National Policy Statement (Freshwater) (NPS (FM)) within five years.</p> <p>Without an explicit reference in Policy 10A 2 .1, the Schedule 2A RPW minimum flows for the Taieri and Manuherekia catchments <u>will not be applied to the short-term consents</u> (my emphasis).</p> <p>This would result in a worse environmental outcome than under the acknowledged deficient and “not fit for purpose” Skelton (2019) comments on the RPW. That is because the Schedule 2A minimum flows will not be applied under Plan Change 7.</p>	

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Pages 2 and 3	Policy 10A.2.1 and Rule 10A3.1.1	<p><i>Deemed permit priorities and hydrological implications</i></p> <p>Deemed permits have priorities to take water. This means that some deemed permits have a higher priority compared to more “junior” permits, which can only take after “senior” permits have abstracted their allocation. The Plan Change does not address the possible instream and out of stream effects of removing these priorities.</p> <p>The ORC section 32 analysis does not reference any hydrological evaluation whether there will be adverse environmental effects from the loss of priority for deemed permits and the consequential downstream implications for minimum and residual flows and life supporting capacity for freshwater ecosystems.</p> <p><i>Reasons</i></p> <p>The Plan Change does not consider the effects of changing the existing deemed permit water priorities amongst consents. This will likely change the flow of water down a river as it is taken. The changes have the potential to cause negative effects on life supporting capacity for freshwater ecosystems.</p>	<p>Apply “banding” or some other suitable a flow trigger that signals when the different priority takes can operate to the short-term consents that enables them to retain their current deemed permit priority in Policy 10A.2.1 and Rule 10A3.1.1, as follows or to like effect as follows:</p> <p>Policy 10A.2.1, add new paragraph (f)</p> <p><u><i>(f) Flow triggers or bands are established to enable short term consents to retain their previous deemed permit priorities; and</i></u></p> <p>Rule 10A3.1.1, add new condition (vii)</p> <p><u><i>(vii) Flow triggers or bands are established to enable short term consents to maintain their previous deemed permit priorities.</i></u></p> <p>Undertake hydrological studies to ascertain the effects of removing consent priority on consents and their effects on residual or minimum flows, and consequent effects on life supporting capacity for instream fauna and ecosystems.</p>



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		<p>For example, the Manuherekia Irrigation Company (MIC) currently has the highest priority on the Manuherekia River with its water take down stream of Ophir. Under the Plan Change, consents above the MIC take will be able to take water at the same priority as the MIC, with consequent:</p> <ul style="list-style-type: none"> <li>• Loss of flows upstream for instream values; and</li> <li>• Losses of reliability for MIC.</li> </ul> <p>The environmental outcomes may be adverse for instream fauna. Additionally, this Plan Change may mean that some irrigators may gain in reliability, and others may suffer reduced reliability from the status quo, which could cause friction between water users.</p> <p>The Plan Change does not discuss the possible application of “banding” of consents or some other method to retain consent priority to avoid these effects. Banding of consents means that within the primary allocation block, the consents are granted a priority equivalent to the current deemed permit priority. Banding of consents</p>	

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		<p>currently occurs on the Rakaia River in Canterbury.</p> <p>In the future, I would expect under a NPSFM compliant plan that all consent holders in a catchment would share water under a water-users group to share the available water as a collective, without banding, within the rules set by the new water plan.</p>	
Pages 2-4	Policies and Rules	<p><i>Native Freshwater Values</i></p> <p>Lack of reference to non-migratory Galaxiid (NMGs) and other freshwater values in the Policy and matter for control in the rules means that it is not clear that they should be explicitly considered in decision making.</p> <p>The national importance of Otago's freshwater biodiversity and their habitats for Threatened and At-Risk species cannot be overstated, including the importance of NMGs which was</p>	<p>Include instream values in Policy 10A.2.1 by adding additional paragraphs (g) and (h):</p> <p><i><u>(g) Providing for the life supporting capacity of non-migratory galaxiid species, native and endemic migratory fishes, kākahi / freshwater mussels, koura / crayfish, freshwater invertebrates, and braided riverbed bedbirds; and</u></i></p> <p><i><u>(h) Protection of significant habitats of threatened freshwater fishes<sup>2</sup>, invertebrates<sup>3</sup> and braided</u></i></p>

<sup>1</sup> Conservation status of New Zealand freshwater fishes, 2017 (Dunn *et al.* 2018),

<sup>2</sup> Conservation status of New Zealand freshwater invertebrates, 2018 (Grainger *et al.* 2018),

<sup>3</sup> Conservation status of New Zealand birds 2012 (Robertson *et al.* 2013).

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		<p>stressed in the Director- General’s previous first schedule consultation response.</p> <p><i>Reasons</i></p> <p>Non migratory galaxias species and their Conservation Status are not addressed in Plan Change 7, which means ORC consent officers will consider consent applications under the old and out of date RPW provisions. These provisions do not give adequate attention to Threatened and At-Risk species, which is a matter of national importance under Section 6 (c) of the RMA.</p> <p>This is seen as a key weakness of Plan Change 7 from a DOC perspective. The existing RPW is weaker than what we would like to see in a modern water plan in that it does not protect NMG habitat as we now know much more about their distribution. DOC and ORC now have far more information on NMGs than when the plan was approved, approximately 20 years ago.</p> <p>It is important that fish screening and fish passage are addressed in consent deliberations so that where appropriate, sport fish can be</p>	<p><u>riverbed birds<sup>4</sup>, including nationally critical, endangered, vulnerable and At Risk-Declining species; and</u></p> <p>Rule 10A.3.1.1</p> <p>Retain matters of control (a) and (d), and;</p> <p>Add additional matters of control (j), (k) and (l):</p> <p><u>(j) Protection of non-migratory galaxias species and their habitat from sports fish; and</u></p> <p><u>(k) Avoiding galaxias interspecies interaction.”, and</u></p> <p><u>(l) Maintain habitat diversity”</u></p>

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		<p>excluded. Such actions will maintain and enhance NMG habitat, so that populations can thrive in the absence of sports fish.</p> <p>Fish screening and passage will also benefit Ngai Tahu interests for migratory fishes such as eel / <i>tuna</i> and lamprey / <i>kanekane</i> and are addressed as matter for control in rule 10A3.1. Note that under this rule, DOC will not be considered an affected party and will not be involved in these short-term consents. This means our planning effort should now focus more on ensuring the RPW review plan framework provides for native instream needs, rather that address each consent on a case by case basis as currently occurs.</p>	
Pages 2 and 4	Policy 10A.2.3 and Rule 10A3.2	<p><i>Non-Complying Policy 10A.2.3 lacks Detail</i></p> <p>As written, the Policy 10A.2.3 and associated non-complying rule 10A.3.2 does not give much direction and clarity as to when a longer consent term may be considered above and beyond the normal 'test' under section 104D of the RMA</p>	Support Policy 10A.2.3, but add more criteria to give better direction for future consent decision-making, including, but not limited to new paragraphs (d), (e), (f), (g), (h) and (i):

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		<p>that the proposal is consistent with the Objectives and Policies of the plan <u>or</u> that the effects are minor.</p> <p>Rule 10A.3.2 provides for up to a 15 year term, but the basic rationale for this rule appears to be that it is at the end of the term of the future reviewed regional water plan. The justification from an RMA effects basis is not strong.</p> <p>More detail could be added in Policy 10A.2.3 to align these applications that would be consistent with Minister Parker’s position on shorter term consents and better environmental outcomes. Additionally, section 68(7) of the RMA could be used to require any catchment wide consents granted under Plan Change 7 to be reviewed in accordance with a future RPW flow and allocation regime, as applied in the Waitaki Regional Water Plan.</p> <p>To assist with achieving this position, more Policy requirements to restrict grouped consents to only catchment wide applications that have completed significant evaluations for their instream effects and reliability effects on their and other irrigators in the catchment would be recommended. Otherwise, the Plan Change</p>	<p><i>(d) <u>Where a fit for purpose in-stream survey has been undertaken to identify the instream values and their significance in the water body downstream of the proposed take(s); and</u></i></p> <p><i>(e) <u>Where an appropriate series of hydrological gaugings in various flow conditions and a visual inspection has been undertaken<sup>5</sup> to capture fit for purpose information on flow gaining, losing, or critical reaches; and the consequential effects on aquatic ecosystems and natural character; and</u></i></p> <p><i>(f) <u>Where all remaining deemed permits and resource consents that expire prior to 31 December 2025 to take water in that particular catchment are included in the application; and</u></i></p> <p><i>(g) <u>Where all deemed permit and resource consent holders included in (f) above in that particular catchment have agreed to form either a Water Management Committee or Water Management Group under Policies</u></i></p>

<sup>5</sup> Between the upper point of any proposed take in a catchment and downstream of the last point of any proposed take, until its confluence with a larger water body.

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		<p>would allow an individual opportunistic deemed permit holder to make an application that may be inconsistent with the broader catchment needs and those of other consent holders.</p> <p>The justification in the Plan Change and accompanying section 32 report is weak on the rationale for shorter term consents, especially for the justification for 15 year terms in the Policy 10A.2.3 and non-complying activity rule 10A.3.2.</p> <p><i>Reasons</i></p> <p>Policy 10A.2.3 direction could be much improved by adding criteria, including, but not limited to;</p> <ul style="list-style-type: none"> <li>• where all remaining deemed permit and other consent holders have jointly applied within a catchment with a detailed proposal; and</li> <li>• An adequate assessment of the environmental effects on instream values and reliability effects on out of stream users to a satisfactory standard.; and</li> </ul>	<p><u>6.4.12 or 6.4.12A to share the available water at times flow restriction; and</u></p> <p><u>(h) Where an appropriate minimum flow has been established for that catchment in Schedule 2A; and</u></p> <p><u>(i) Where sufficient hydrological information can establish that the values protected by all residual flows established under Policy 6.4.7 in that catchment can be sustained and managed by a flow relationship to a Schedule 2A minimum flow; and</u></p> <p>Additionally, add to Rule 10A.3.2.1 a new paragraph (c):</p> <p><u>(c) Under section 68(7) of the RMA, any catchment-wide consents granted under Plan Change 7 shall be reviewed in accordance within three years of a</u></p>

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		<ul style="list-style-type: none"> <li>• Where adequate hydrological information has been established; and</li> <li>• Where Schedule 2A minimum flows have been established; and</li> <li>• where there is adequate hydrological information to manage residuals by reference to the catchment minimum flow.</li> </ul> <p>If the shorter terms cannot be justified, then we revert to Professor Skelton’s “planning by consent”, which would undermine all the benefits of the proposed shorter term in rules 10A.3.1 (controlled activity - 6 years) and 10A.3.2 (non-complying activity - up to 15 years).</p> <p>There are a range of higher order documents that provide a rationale for a shorter term and these documents should be outlined as part of a case that expounds further on this matter. For example, the ORC Proposed Implementation Plan, the recent partially operative Otago Regional Policy Statement (RPS) review, and NPSFM to justify the proposed shorter terms of consents in the Plan change.</p>	<p><u>future NPSFM compliant Regional Plan becoming operative.</u></p>
All	Objective 10.1.1, Policies 10A.2.1-3, and Rules	<i>Definitions</i>	<i>Definitions</i>

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	<p>10A.3.1 and 10A3.2 and Schedules10A.4.1-4.</p>	<p>There are a few definitions and contradictory matters that need tidying up on the Plan Change to ensure consistent implementation.</p> <p><i>Structure and Drafting</i></p> <p>Objective 10A.1.1 includes a Policy method.</p> <p>Policies 10A2.1-3 are not clear and overlap in policy content between the six years and the fifteen years consent terms.</p> <p><i>Reasons</i></p> <p>Improvements to the definitions and structure of Plan Change 7 are needed for consistent plan implementation by consents officers and to assist with interpretation by the general public.</p> <p>The current structure and clarity of Objective 10A1.1 and Policies 10A.2.1-3 could be improved to make the Polices more specific and cogent. Objective 10A.2.1 includes Policy content, i.e. methods, that are best placed in Policies 10A.2.1-3</p>	<p>For example, there is the use of:</p> <ul style="list-style-type: none"> <li>• “hydrological” year compared to “water” year in Schedule 10A.4.1, and</li> <li>• “irrespective of any other plan Policies” used in all Policies 10A.2.1-3 is potentially confusing and it is unclear which Policies will apply in the controlled or non-complying activity Rules 10A.3.1 and 10A.3.2.</li> </ul> <p><i>Structure and Drafting</i></p> <p>Refine and simplify Objective 10A.1.1 to be the outcome sought only, and consequentially include any method content within Policies 10A.2.1-3, and</p> <p>Refine and simplify Policies 10A.2.1-3 so that there are clear policies that address the following interim planning framework as follows or to like effect:</p> <ul style="list-style-type: none"> <li>i) An enabling Policy for a six-year term; (that will be reflected in Rule 10A.3.1.1 - controlled activity); and</li> <li>ii) A restrictive Policy for a term not exceeding 31 December 2035 (that will be reflected in non-complying activity</li> </ul>



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		<p>It is difficult to write a policy that addresses both a controlled and a non-complying activity. Policy 10A.2.3 does not provide much more guidance beyond what section 104 (d) of the RMA. It would be clearer if they were separated out as different Policies.</p> <p>Policy 6.4.19 is the only current RPW Policy that addresses term, it may be clearer to create a Policy term exemption based on this specific policy rather than the use of “irrespective of other policies in this Plan” terminology.</p> <p>All Otago RMA permits to take and use water that were not replacements for deemed permits will be caught by the Plan Change. It is the Director-General’s understanding that Plan Change should be restricted to only affect deemed permits, and RMA permits that expire prior to 31 December 2025 that replaced deemed permits.</p>	<p>Rule 10.3.1.2) that could meet an exception test; and</p> <p>iii) The circumstances under which each Policy (and consequent Rule) may apply; and</p> <p>iv) Restrict the application of the Plan Change 7 term provisions to water take and use consents for:</p> <p>a) replacement RMA consents of deemed permits under section 413; and</p> <p>b) RMA permits that were previously deemed permits and are currently RMA water take and use permits that expire prior to 31 December 2025.</p>