

**Submission on Proposed Water Permits Plan Change (Plan Change 7)
to the Regional Plan: Water for Otago**

*(Form 5, Clause 6 of the First Schedule, Resource Management Act 1991 – Submission on Publicly
Notified Proposal for Policy Statement or Plan)*

To: Otago Regional Council
policy@orc.govt.nz

Name of submitter: **Falls Dam Company Limited (“FDC”)**

Contact person: Kate Scott
Resource Management Planner, Landpro Ltd
Email: kate@landpro.co.nz
Phone: 0274 957 486

Address for service: C/- Landpro Limited
PO Box 302
Cromwell 9342

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:  Date: 4 May 2020

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

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

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

Falls Dam Company opposes the whole of PC7, as detailed in the following pages.

State what decision you want the Otago Regional Council to Make:

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

Reject PC7 entirely or:

Amend PC7 to remove deemed permits relating to dams and irrigation infrastructure so that these permits can continue to have applications assessed under the current RPW framework and not PC7.

Falls Dam Company supports and adopts the submission of the Otago Water Resource Users Group on Proposed Plan Change 7, including the reasons for that submission and the relief sought in that submission.

Give reasons for the decision you want made:

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

The reasons for the decisions sought by the FDC are set out in the following pages.

Summary of Submission on PC7

1. This submission relates to Plan Change 7 in its entirety.
2. Falls Dam Company Limited (FDC) opposes Plan Change 7 in its entirety.
3. The key reasons for our submission are;
 - a. Plan Change 7 is not required. The operative Otago Regional Council *Regional Plan: Water for Otago (RPW)* already provides a mechanism for the replacement of deemed permits, (including deemed permits which authorise dams) in a way which ensures long term sustainable management of natural resources.
 - b. PC7 fails to address the issue of dams which are also controlled by deemed permits, which will result in a worse outcome for the environment, as there are no provisions for assessing the replacement of dam consents in a manner which provides for their safe operation.
 - c. The existing RPW framework provides for significantly greater environmental outcomes in terms of managing potential adverse effects on the environment, compared with PC7, especially with respect to dams and irrigation infrastructure.
 - d. PC7 does not provide a coherent or complete framework for managing the taking, damming, diverting and re-taking of water in Otago.
 - e. The objectives and policies of PC7 do not give effect to Part 2 Resource Management Act (RMA).
 - f. PC7 fails to give effect to the National Policy Statement Freshwater Management 2017 (NPSFW).
 - g. PC7 also fails to give effect to the Regional Policy Statement, which provides for water harvesting and storage (Policy 3.1.4).
 - h. The Section 32 evaluation is incomplete and has failed to adequately assess the effects of the proposed plan change on existing and proposed new infrastructure, including irrigation storage dams.

The reasons for submission outlined below are in addition to the reasons summarised above.

Abbreviations

CFRD – Concrete Faced Rockfill Dam

FDC – Falls Dam Company Limited

MBIE – Ministry for Business, Innovation & Employment

NPSFM – National Policy Statement Freshwater Management

NZSOLD – New Zealand Society of Large Dams

ORC – Otago Regional Council

RMA – Resource Management Act

RPW – Regional Plan: Water for Otago

Introduction

History of Falls Dam

1. Falls Dam Company Limited operates the Falls Dam on behalf of its owners and shareholders.
2. The owner of the Falls Dam is the Omakau Irrigation Company (OIC). The shareholders are the Omakau Irrigation Company, the Blackstone Irrigation Company (BIC), Galloway Irrigation Society Incorporated (GISI), and Manuherikia Irrigation Co-operative Society (MIC).
3. The Falls Dam is located in Central Otago at the head of the Manuherikia Valley, and was originally constructed to conserve water in the Manuherikia River for the Omakau Irrigation scheme and to augment the supply of water to the Lower Manuherikia Scheme at Chatto Creek¹.
4. Falls Dam was built in the 1930s by the Crown (Public Works Department), and in 1990 ownership of the dam was transferred to the current owners. The Falls Dam is a concrete faced rockfill dam (CFRD) with an approximate storage volume of 10Mm³.
5. In 2002 a small 1.2 MW hydroelectric power station (4m³/s capacity) was installed at the dam which is operated by Pioneer Generation Limited.

¹ Gilkson, 1937

6. Falls Dam is authorised under the following permits;
 - 2001.721 – Discharge Water from Falls Dam for the Purpose of Flow Augmentation [Deemed Permit Expires 1 October 2021].
 - 2001.701 – Dam Water Permit to dam the Manuherikia River for the purpose of storing water for irrigation and domestic supply [Deemed Permit Expires 1 October 2021].
 - 98305 – Surface Water Permit to take water for the purpose of electricity generation [Expires 30 September 2033].
 - 98306 – Discharge water from Falls dam taken for electricity generation purposes [Expires 30 September 2033].

7. Falls Dam currently provides enough storage to enable the irrigation of approximately 10,000 hectares of land throughout the Manuherikia Valley.

8. The operation of Falls Dam requires a difficult and delicate balancing act which is aimed at achieving the following goals²;
 - Optimise use of run of river supplies in order to save storage until it is necessary and then minimise releases as much as possible.
 - Meet water demand where possible and warn users of potential restrictions as early as possible.
 - Maintain minimum flows and where possible maintain flows at the bottom of the system (i.e. Manuherikia River at Campground) above an informal target flow, i.e. a voluntary minimum flow.
 - Secondary to irrigation, its purpose is to maximise hydro-electricity generation.

9. During periods of extreme low flows when tributary inflows are minimal, all four shareholders of the dam are heavily reliant on both storage releases from Falls Dam and inflows into Falls Dam.

10. Stakeholders and owners of Falls Dam work collaboratively to manage water resources throughout the Manuherikia Valley, especially during periods of low flow.

² Golder Associates, June 2016

11. In addition to its regulatory obligations under the RMA, Falls Dam Company Limited is also required to meet other regulatory obligations which oversee the management, operation and safety of dams.
12. The Building Act 1991 has oversight for the construction of dams, as such any change to the existing dam will require a building consent.
13. In June 2019, the Ministry for Business, Innovation and Employment (MBIE) commenced consultation on a Proposed Regulatory Framework for Dam Safety, which if enacted will require comprehensive upgrades and dam safety management systems to be implemented.

Economic Considerations Relating to Falls Dam

14. Since the mid 2000's the FDC (and associated irrigation companies) have been considering options for the upgrade or replacement of Falls Dam, as work will be required in the medium term to ensure that the dam meets relevant dam safety guidelines and regulations. At a minimum this will require the construction of a new spillway and could result in the construction of a new larger impoundment to replace the existing infrastructure.
15. A number of options for the Falls Dam have been advanced through feasibility stage, however the ability for irrigators to make a decision on significant capital expenditure on the dam is currently limited without surety of water supply beyond the current 2021 expiry of deemed permits.
16. The inclusion of limits on areas of irrigation within PC7 to the areas irrigated in 2017-2018 has implications for the upgrade or replacement of Falls Dam, whereby the capital costs of any works will need to be offset by the potential increase in irrigation area to generate the necessary revenue to fund capital costs. It is important to understand that an increase in irrigation area does not equate to an increase in water allocation. Expansion of irrigation areas is facilitated largely by efficiency upgrades, and as a result the area of irrigation is constantly changing. It is different today in 2020 than it was in 2017.
17. Previous estimates of the cost to upgrade or replace Falls Dam range from \$28 Million to \$100 Million depending on which option may be advanced. A new replacement dam of equivalent height (and up to 6m higher than the current dam) has previously been estimated to cost \$60 Million, excluding distribution upgrades.

18. Due to the significant capital investment required, deficiency mitigation actions including maintenance and repair were pragmatically envisaged to be included in the storage works redevelopment process.³
19. This has meant that Falls Dam Company have chosen to commence work on the replacement of the Falls Dam Permits ahead of a decision on the upgrade or replacement of the dam, given any works related to upgrade or replacement are likely to require a suite of approvals under the RMA.
20. FDC have been working for a number of years on their application for consent and are expecting to lodge this application later in 2020 so as to ensure the applications are filed in accordance with Section 124 RMA.
21. FDC have also been working alongside the other irrigators, and irrigation companies within the Manuherikia Catchment on the replacement of deemed permits, with Falls Dam playing an integral role in a catchment wide water management solution.
22. The preparation of the FDC application must continue, irrespective of the notification of PC7, although now FDC will be required to address both the operative RPW and PC7. The circumstances of FDC's application are not what PC7 is seeking to manage and a temporary holding pattern is inappropriate for a major item of infrastructure such as Falls Dam.
23. This only serves to highlight that there is no value in proceeding with PC7, as it will be ineffective, and not result in better environmental outcomes compared to the status quo approach under the RPW.

³ Falls Dam Draft CDSR, February 2020 [Pers. Com Ian Walsh]

Submission on Objective 10A.1

Objective 10A.1.1

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.

24. FDC oppose this objective.
25. This objective is unclear, and contradictory with respect to its application to dams which are authorised by deemed permits. Dams will continue to form part of the long-term sustainable management of surface water resources within Otago, yet the granting of 'place holder' permits until the new Land and Water Regional Plan is made operative does not provide for long-term sustainable management of dams and related irrigation infrastructure.
26. Short term, placeholder consents for dams will ultimately mean that work on repairs, maintenance and upgrades of existing infrastructure, or investment in new infrastructure will not occur, as short-term consents for large capital investment projects are considered un-bankable from a funding perspective. This leads to potentially significant effects in terms of meeting ongoing health and safety obligations associated with the operation of the dam.
27. PC7 is inconsistent with the existing objectives of the PRW, including Objective 5.3.6 which provides for the sustainable use and development of Otago's water bodies, and the beds and margins of Otago's lakes and rivers.
28. This objective recognises that traditionally people have made extensive use of the regions water resources, and that the ability to continue to sustainably use these resources is important. This objective also recognises the need to provide for economic, social and cultural wellbeing including existing use rights, something which Objective 10A.1.1 fails to provide for in respect to dams and dam infrastructure.
29. One of the reasons given by the ORC for the need for PC7 is that the current RPW does not give effect to the NPSFM⁴. FDC do not consider this to be a valid reason for PC7. FDC must, in preparing their application for the replacement of their permits, give effect to the planning framework and all higher order planning documents, including the NPSFM, as

⁴ ORC Memo, Water Permits Plan Change, 1 March 2020, Paragraph 68.

required by Sec 104 (1) (b) RMA, irrespective of whether a regional plan implements the NPSFM.

30. PC7 is inconsistent with Objective 6.3.2 RPW which provides for the water needs of Otago's primary and secondary industries, and community domestic water supplies, including...hydroelectric power generation. The granting of short-term consents as promoted by PC7 does not enable certainty for the ongoing hydrogeneration from Falls Dam.

31. Furthermore, proposed Objective 10A.1.1 is inconsistent with Policy 10A.2.2 and Rule 10A.3.1.1. The objective indicates that this shall be an interim framework until such time as the new water and land plan (LWRP) becomes operative, yet it is quite conceivable that the LWRP will not be operative by the end of the proposed 6 year term of consents, creating an extended period of uncertainty for water users, not greater certainty as promoted by the ORC⁵.

Submission on Policies 10A.2

Policy 10A.2.1

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:

- (a) The deemed permit or water permit that is being replaced is a valid permit; and*
- (b) There is no increase in the area under irrigation, if the abstracted water is used for irrigation; and*
- (c) There is no increase in the instantaneous rate of abstraction; and*
- (d) Any existing residual flow, minimum flow or take cessation condition is applied to the new permit; and*
- (e) There is a reduction in the volume of water allocated for abstraction.*

32. FDC oppose this policy.

33. The use of the word 'avoid' indicates that an activity is inappropriate and as set out in case law, should therefore be prevented from occurring.⁶ Effectively this policy is directing that

⁵ ORC Memo, Water Permits Plan Change, 1 March 2020, Paragraph 6.

⁶ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38

the replacement of permits is to be avoided, except where the listed exceptions can be met.

34. The policy fails to take into account the fact that dams are also captured by deemed permits. The matters of exception do not address matters relating to dams, and would be unable to be met by holders of deemed permits for dams, which based on the directive nature of the proposed wording would indicate that these dams should not be granted replacement consents.
35. The policy does not provide certainty around the outcome sought, and in the case of Falls Dam creates far greater uncertainty than the current RPW framework, as Falls Dam is unable to undertake required upgrades on the basis of this uncertainty that PC7 creates, more so in the case of dams authorised by deemed permits which would fall to be considered as a non-complying activity.
36. This approach is not an effect based approach and does not account for the adverse effects on aquatic values, economic and social-wellbeing that would arise in the event that the permits for dams were not replaced.

Policy 10A.2.2

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.

37. FDC oppose this policy.
38. The proposed term of consent set out in Policy 10A.2.2 is untenable for large scale infrastructure such as Falls Dam. Should an upgrade or replacement of Falls Dam progress prior to LWRP process being completed, and this upgrade/replacement is required to obtain new resource consents Policy 10A.2.2 would prioritise the granting of consent for a period of not more than six years.
39. This policy effectively rules out any upgrade or replacement of the dam until such time as the LWRP is operative, which will have an adverse effect on people and their communities, including economic and social impacts, as well as potentially limiting environmental benefits that could arise from the upgrade or replacement of the dam. It may also create an untenable position in terms of the obligations of FDC to operate and maintain a safe dam structure.

Policy 10A.2.3

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:

- (a) The activity will have no more than minor adverse effects (including nor more than minor cumulative effects) on the ecology and hydrology of the surface water body (and any connected water body) from which the abstraction is to occur; and*
- (b) The resource consent granted will expire before 31 December 2035.*

40. FDC oppose this policy.

41. The use of the word irrespective is intended to provide priority to this policy over all others in the plan, yet this policy fails to account for the significant economic costs associated with operating and maintaining a large dam in a safe and efficient manner. The existing policy provisions of the RPW would be considered to have less weight than this provision, despite the existing policies being far more relevant to dams. This includes Policy 6.5.4, and 6.6.0 RPW.

42. Policy 6.5.4 sets out that in regulating management of flows, regard must be had to the values. The explanation this policy states that where existing development affecting the water body may have led to a stable equilibrium situation with its own natural character, this will be considered when invoking the provision of this policy.

43. Policy 6.5.4 is of utmost importance when considering the re-consenting of Falls Dam, given that the dam has operated for almost 90 years, and when we consider that the framework for assessing the existing environment cannot in the context of a renewal application take into account the effects caused by the activities for which the renewal is sought, unless it would be fanciful or unrealistic to assess the existing environment as though those structures authorised by the consent did not exist.⁷ Prioritising the policies of PC7 over and above the existing policies in the RPW creates a difficult consenting position for the likes of Falls Dam, especially where an application under PC7 would fall as a non-complying activity.

44. Policy 6.6.0 directs that the council shall promote and support development of water infrastructure. It states that "the council will collaborate with the community and with

⁷ *Ngati Rangī Trust v Manawatu-Whanganui Regional Council [2016] NZHC 2948*

others in scoping strategic options for development of new infrastructure". The preparation of PC7 has not been undertaken in a collaborative manner, and in fact has failed to take into account the impacts of PC7 on existing dam infrastructure. PC7 is contrary to a number of existing RPW policies and objectives and does not provide for the ongoing sustainable management of water, especially when storage is recognised as being one of the ways to achieve a more efficient use of water resources.

45. The issues outlined with Policy 10A.2.2 with respect to duration of consent are also valid issues with respect to Policy 10A.2.3.
46. The matters for exception under Policy 10A.2.3 would not be able to be met by large dam owners, as the effects of the dam could not be argued to be no more than minor (albeit they may be able to be mitigated or managed), thus any term of consent under this policy would be constrained to 6 years and not a maximum of 15 years as proposed by this policy.
47. Policy 10A.2.3 does not provide any direction on why applications for non-complying activities (Falls Dam Activity Classification under PC7) that can pass the Sec 104D RMA Gateway Test should be limited to a term not exceeding 15 years. What purpose is served by a 15 year term over a 35 year term is not explained. This is an inefficient way to give effect to the RMA, and would not be tenable for a large dam owner where capital funding will be required to facilitate upgrades or replacements which in turn could limit environmental benefits that can arise from the storage of water.
48. Policy 10A.2.3 effectively ceases all capital investment in the upgrade or replacement of Falls Dam.

Submission on Rules 10A.3

Rule 10A.3.1.1 [Controlled Activity]

Despite any other rule or rules in this Plan;

- (a) Any activity that is currently authorised under a Deemed Permit; or*
- (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;*

*Is a **controlled** activity provided the following conditions are met;*

- (i) The consent duration sought is no more than six years; and*
- (ii) The deemed permit or water permit that is being replaced is a valid permit; and*

- (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*
- (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*
- (v) Any existing residual flow, minimum flow, or take cessation condition (whichever is applicable) is included in the application for resource consent; and*
- (vi) The volume of water taken shall be no more than the average maximum of the daily volume limit, or monthly volume limit or annual volume limit (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.*

The Council reserves control over the following matters:

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

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.

49. FDC oppose this rule.

50. The proposed rule is neither simple or cost effective, and would result in a range of detailed supporting and technical documents being required, which for the same or similar cost an applicant may very well choose to progress down the alternative non-complying path, where the opportunity to obtain a consent term greater than 6 years exists.

51. This rule contradicts the position promoted by the ORC, that the simple controlled activity framework would incentivise short duration consents where they fall as a controlled activity⁸. The matters for control that attach to Rule 10A.3.1.1 mean that a large number of deemed permit holders, (including deemed permit holders of large dams) would be unable to meet these provisions, and automatically fall as a non-complying activity, which is neither simple or cost effective.
52. An example of this is matter for control (d) which relates to the provision of fish passage. This matter for control is likely to create challenges for dam owners and force them down a non-complying activity pathway.
53. The matters for control also fail to provide any direction on the matter of dam safety, or the effects of failure of the dam, matters which would normally be considered essential in assessing the effects of dams.
54. The current rule framework of the RPW, provides far greater scope for assessing the actual and potential effects of dams, including provisions relating to the safe and efficient operation of the dam, and as such PC7 should be rejected, or if it is to proceed dams authorised by deemed permits should be excluded from PC7. The exclusion of such matters demonstrates the unsuitability of Rule 10A.3.1.1, and simply highlights there is no need for PC7.

Rule 10A.3.2.1 [Non-Complying Activity]

Despite any other rule or rules in this Plan:

- (a) *Any activity that is the replacement of an activity authorised under a Deemed Permit; or*
- (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;*

*That does not meet any one or more of the conditions of Rule 10A.3.1.1 is a **non-complying** activity.*

55. FDC oppose this rule.
56. There appears to be little justification within the Section 32 analysis for why a non-complying activity status is an appropriate tool for what is intended to be an interim planning process.

⁸ ORC Memo, Water Permits Plan Change, 1 March 2020, Paragraph 6.

57. A non-complying activity status is overly restrictive, and is likely to capture a number of activities that do not meet one or more of the matters for control for Rule 10A.3.1.1, despite the effects of these activities remaining no more than minor.
58. An application by Falls Dam (and most likely other dam owners) to replace its consents would automatically fall as a non-complying activity under Rule 10A3.2.1 as the matters of control for a controlled activity are irrelevant to dams.
59. This creates an un-necessary cost with the potential for a maximum term of consent of 15 years. The cost of operating, and maintaining dam infrastructure is significant, and these timeframes coupled with the cost of a non-complying activity application would likely mean a halt on development until there is greater certainty.
60. A non-complying activity status in respect to dams creates a significant planning hurdle to overcome in the context of the Section 104D RMA 'Gateway Test'. To enable the granting of consent, an applicant must pass through at least one of the gates. Either the effects of a dam on the environment must be no more than minor, or the application must be consistent with the policy framework. Applying the Ngati Rangī tests, it is unlikely that many large dams will be able to pass through either of the two gates, as such this leaves a real risk that they will be unable to be reconsented. What happens to dams that cannot be reconsented has not been addressed in any ORC document supporting PC7.
61. Rule 10A.3.2.1 is also flawed on the grounds it provides no direction on whether an application for a non-complying activity should be subject to public notification.
62. The current RWP provides for dams as a Restricted Discretionary activity under Rule 12.3.3.1. The matters for discretion are extensive, and far more wide ranging and specific to dams than those set out in PC7. Rule 12.3.3.1.

Rule 12.3.3.1 Matters for Discretion

(a) Any adverse effects of continuing or discontinuing the damming of water on:

- (i) Any natural or human use value identified in Schedule 1 for any affected water body including the impoundment itself;*
- (ii) The natural character of any affected water body including the impoundment itself;*
- (iii) Any amenity value supported by any affected water body including the impoundment itself;*
- (iv) Any heritage value associated with any affected water body including the impoundment itself; and*
- (v) Any existing lawfully established take or damming of water; and*

(b) Any effect on any Regionally Significant Wetland, or on any regionally significant wetland value; and

(c) In the case of an application under Rule 12.3.3.1(iii):

(i) Any adverse effects on any existing lawfully established take, use, diversion or damming of water; and

(ii) Any effect on any wetland or any wetland value; and

(d) Any maximum or minimum level or flow of water, and the range, or rate of change, of levels or flows of water; and

(e) Flooding, erosion, land instability, sedimentation or property damage resulting from the damming or from the discontinuation of the damming; and

(f) Any restoration of exposed lake bed resulting from any reduction in authorised lake level; and

(g) The purpose of the existing dam or lake level control; and

(h) The duration of the resource consent; and

(i) The information and monitoring requirements; and

(j) Any financial contribution, including for regionally significant wetland values or Regionally Significant Wetlands that are adversely affected; and

(k) Any bond; and

(l) Any insurance or other appropriate means of remedying the effects of failure; and

(m) Any adverse effect on any lawful priority attached to any resource consent or deemed permit; and

(n) Whether the damming of water under a water permit should be restricted to allow the damming or taking of water under any other permit; and

(o) The review of conditions of the resource consent; and

63. The Section 32 Evaluation Report⁹ notes that the current planning framework may not allow for adequate consideration of environment effects or drive efficient resource use. This is simply not the case, and the retention of the status quo planning framework will provide significantly better environmental outcomes than PC7.

Submission on Sec 32 Evaluation Report

Summary of Submission Points

64. FDC are concerned that the Sec 32 Report has failed to undertake a detailed cost benefit analysis of the proposed new policy and rule framework, and that this assessment has

⁹ ORC Sec 32 Evaluation Report, 18 March 2020, Page 6.

overplayed the inadequacies of the existing planning framework to deliver long term sustainable outcomes.

65. The Sec 32 evaluation also fails to adequately assess alternative options, instead it provides a summary of a few options, without detailed analysis or discussion.
66. The evaluation report concludes that there are no social costs compared to the status quo.¹⁰ There is no evidence to support this conclusion, and in the case of large dam owners, who may be prevented from reconsementing their dams beyond a period of six years, there is likely to be considerable social costs.
67. Applying for resource consents for major infrastructure is enormously expensive, running well into 6-digit sums. The 4th Schedule of the Act applies equally to short term consent applications as it does to long term ones. No account has been taken to the economic effect on permit holders of having to apply for a sequence of short-term consents. That is a significant factor against PC7 as the ORC recovers consent application costs from applicants and so is effectively insulated from its own inefficient behaviour.
68. If PC7 is justified in the public interest (which FDC denies) then a method should be found to ensure that the cost of a short-term holding pattern is entirely met by the public and not by permit holders. PC7 achieves the opposite- reallocating the cost of meeting the public interest to permit holders. The section 32 analysis fails to identify or evaluate that problem.
69. FDC are disappointed that there was not engagement with the FDC and its representatives regarding the operation of dams in the catchment, and the potential impacts of PC7 on dam owners, despite numerous offers from FDC to the ORC to do so.
70. This has led to the inclusion of dams within the PC7 framework, yet the framework is incapable of delivering good environmental outcomes with respect to reconsementing of dams. The time and costs associated with addressing the flaws of PC7 would be far better being directed to the completion of the replacement consents, which will ultimately deliver significantly better outcomes than can be achieved under PC7.

¹⁰ ORC Sec 32 Evaluation Report, 18 March 2020, Page 21.

Other Matters

71. In the supporting papers to PC7¹¹ it notes in relation to the proposal to reduce the area under irrigation that the expansion of area of irrigation ignores the potential effects on water quality arising from a greater land area under irrigation.
72. No evidence has been provided by the ORC in respect to the issue of water quality, and its link to the proposed restriction on an increase in irrigation area. It appears as if this statement is predicated on assumption rather than fact.
73. In 2015 the Manuherikia Catchment Water Strategy Group (MCWSG), commissioned a report by AgResearch to look at the effects of increased irrigation area and land use intensification on water quality and nutrient losses throughout the Manuherikia Catchment.
74. The analysis of the individual case study farms showed that nutrient losses are strongly influenced by irrigation management practices and an efficient irrigation system can have lower nutrient losses than an inefficient irrigation system. However, the influence of irrigation management on nutrient loss needs to be assessed on a case by case basis as there is still a strong interaction between stock type, management and nutrient loss susceptibility (particularly nitrogen (N) leaching)¹².
75. This report concludes that within the Manuherikia Catchment, there is a negligible decrease in N losses as we move from the current irrigation scenario to a future storage scenario.

Conclusion

76. FDC have outlined the reasons why it does not support PC7, but it falls to two key matters;
77. 1) PC7 fails to identify the issue of trying to re-consent large scale infrastructure which is currently authorised by deemed permits, and as a result provides an inadequate outcome by which to assess any application for consent for dams, and as a result is likely to result in worse environmental and safety outcomes than the status quo RPW.

¹¹ ORC Memo, Water Permits Plan Change, 1 March 2020, Paragraph 31.

¹² AgResearch, Nutrient Losses within the Manuherikia Catchment, June 2015, Page 3.

78. 2) PC7 has failed to assess the economic and social costs of limiting the duration of consent, which for large infrastructure will be in the magnitude of tens of millions of dollars.

79. FDC prefer that PC7 be declined in its entirety, or where this is not the outcome that dams and their associated activities which are currently authorised by deemed permits be removed from PC7 and continue to be assessed under the RPW, and be subject to the granting of consent terms of longer than 6 years.